



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

## Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2019-054

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	Published
4. Additional information identified	No
5. Fees	Waived
6. Processing time (in working days)	20
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

**From:** [REDACTED]  
**To:** [CMTEDD FOI](#)  
**Subject:** [REDACTED] - land tax  
**Date:** Thursday, 7 March 2019 4:42:06 PM

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To the FOI team,

I write under the Freedom of Information Act 2016 to request the following documents in possession of the Chief Minister, Treasury and Economic Development Directorate.

- All briefs to the Chief Minister regarding the operation of land tax since the abolition of the vacancy exemption from 1/7/2018 to 7/3/2019

I seek this information in order to inform public debate about the efficacy of this tax extension, and in the context that off-the-plan buyers appear to have been unfairly charged due to the abolition of this exemption, despite its good intention.

I believe my request satisfies schedule 2.1 (a) (i), (ii), (iii), (iv), (v), (vii) and (viii) of the Act, and as such I ask that you waive the processing fees.

Happy to discuss my request further via the below mobile number or via email.





**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

Our ref: CMTEDDDFOI 2019-054

Dear [REDACTED]

### **FREEDOM OF INFORMATION REQUEST**

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 7 March 2019.

Specifically, you were seeking documents in relation to *'all briefs to the Chief Minister regarding the operation of land tax since the abolition of the vacancy exemption from 1 July 2018 to 7 March 2019'*.

On 3 April 2019, the scope was revised to *'all briefs to the Chief Minister about the operation of land tax relating to the vacancy land tax since it was introduced, from 1 July 2018 to 7 March 2019'*.

#### **Authority**

I am an Information Officer appointed by the Director-General of CMTEDD under section 18 of the Act to deal with access applications made under Part 5 of the Act.

I am also a tax officer for the purposes of the *Taxation Administration Act 1999* (TAA).

#### **Timeframes**

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application by 5 April 2019.

#### **Decision on access**

Searches were completed for relevant documents and 16 documents were identified that fall within the scope of your request.

I have decided to grant full access to seven documents and partial access to nine documents. The information redacted in the documents I consider to be information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act. Information has also been redacted in the documents under section 16 of the Act, as I consider it information that is taken to be contrary to the public interest to disclose under schedule 1 of the Act.

I have included as [Attachment A](#) to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

My access decisions are detailed further in the following statement of reasons and the documents released to you are provided as [Attachment B](#) to this letter.

In accordance with section 54(2) of the Act a statement of reasons outlining my decision is below.

## Statement of Reasons

In reaching my access decision, I have taken the following into account:

- the Act;
- the TAA;
- the *Human Rights Act 2004*; and
- the content of the documents that fall within the scope of your request.

## Exemption claimed

My reasons for deciding not to grant access to the identified documents and components of these documents are as follows:

### Disclosure prohibited under law (Schedule 1 section 1.3)

*Any other information the disclosure of which is prohibited by a secrecy provision of a law.*

Documents identified in the search include matters relating to the administration of tax laws and contain taxpayer information. Such documents are subject to the secrecy provisions of the TAA. Under sections 95 and 96 of the TAA, the Commissioner of ACT Revenue may disclose information obtained through the administration of a tax law where is satisfied that the release of information will not directly or indirectly identify a tax payer or their personal affairs.

Schedule 1 of the Act allows for information to be exempt from release if its release is prohibited by a secrecy provision of a law. Certain information contained in the briefs relate to specific taxpayers that was obtained in relation to the administration of a tax law. Information held by ACT Revenue Office (ACTRO) is highly confidential in nature and is not generally publically available as it is taxpayer specific. Therefore, the disclosure of information of this nature would have adverse effects on the administration of tax law and the efficient conduct of ACTRO operations. This is information I consider meets the requirement of the information that the secrecy provision of the TAA applies to. As a result, I have decided to exempt from release this information. I am satisfied that withholding this information from release does not impact the objectives of the Act.

### Public Interest

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interests lies. As part of this process I must consider factors favouring disclosure and non-disclosure.

In *Hogan v Hinch* (2011) 243 CLR 506, [31] French CJ stated that when 'used in a statute, the term [public interest] derives its content from "the subject matter and the scope and purpose" of the enactment in which it appears'. Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and Schedule 2 of the Act.

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factors are relevant to determine if release of the information contained within these documents is within the 'public interest'.

### Factors favouring disclosure (Schedule 2.1)

*Disclosure of the information could reasonably be expected to do any of the following:*

*(a)(ii) Promote open discussion of public affairs and enhance the Government's accountability*

By releasing the briefs, it is allowing transparency of government action. The release of these documents are in line with the 'public interest test' and pro-disclosure intent of the Act, and the principles of open government promoted by the ACT Government. I am satisfied that this factor favouring disclosure carries significant weight, and as such I am confident that the released documents will advance the fair treatment the ACT taxpayers in accordance with the law in their dealings with the ACT Government.

*Disclosure of the information could reasonably be expected to do any of the following:*

*(a)(ii) Contribute to positive and informed debate on important issues or matters of public interest*

The release of the 'Question Time Briefs', as well as the briefs regarding various land tax exemptions will contribute to greater public knowledge about the operation of land tax, and how the Government has responded to the changes to the land tax exemptions since 1 July 2018.

*Disclosure of the information could reasonably be expected to do any of the following:*

*(a)(iii) Inform the community of the Government's operations, including the policies, guidelines, and codes of conduct followed by the Government in its dealings with members of the community.*

The release briefs regarding taxpayer correspondence directly with the Chief Minister allows the community to see how the actions of the Chief Minister serve to ensure that all taxpayers are treated fairly and equally under tax law. These briefs demonstrate a consistency in Government correspondence and the consideration given to matters before ministerial intervention is undertaken.

### Factors favouring non-disclosure (Schedule 2.2)

*Disclosure of the information could reasonably be expected to do any of the following:*

*(a)(ii) Prejudice the protection of an individual's right to privacy or other right under the Human Rights Act 2004.*

When considering the documents and factors in favour of non-disclosure, I have considered the personal information of the individuals contained in the documents. This includes names, signatures, contact and circumstantial information. I have withheld any information of this type as I am of the opinion that release of this personal information may prejudice the protection of the individual's right to privacy or any other right under the *Human Rights Act 2004*.

With regard to ACT Government employees, I am satisfied that the names and contact information of employees at or below Administrative Service Officer Class 6 (ASO6) levels should be redacted due to personal privacy considerations. I am satisfied that this factor favouring non-disclosure should be afforded very significant weight as it relates to individual privacy. For this reason, I have decided to redact the names, signature and contact information of employees that are at or below ASO6 levels.

*Disclosure of the information could reasonably be expected to do any of the following:*

*(a)(xvii) Prejudice the effectiveness of testing or auditing procedures.*

The release of information held in one of the documents could reasonably pose a risk to the risk management matrixes and data collection for intelligence purposes of ACTRO. The disclosure of information of this nature would have adverse effects on the administration of tax law and the efficient conduct of ACTRO operations. I am satisfied that withholding information of this nature will uphold the integrity of ACTRO auditing processes.

When considering audit processes that have not been openly disclosed, the Office of the Australian Information Commissioner in *Besser and Department of Infrastructure and Transport*<sup>1</sup> stated:

*However, where this information has not been disclosed ... I consider the disclosure of this information could reasonably be expected to prejudice the undertaking of future audits. As the Department argued, where not already known, the disclosure of this information may provide individuals with sufficient information to enable them to act in a manner so as to circumvent scrutiny in future audits.*

Guided by this case, I am satisfied that audit procedures not openly disclosed by ACTRO are to remain confidential as they could reasonably be expected to prejudice the effectiveness of future audits undertaken by ACTRO.

Having considered the factors identified as relevant in this matter, I consider that release of information contained in these documents may contribute to a greater understanding of the operation of land tax by allowing you to have a record of the interactions between taxpayers and the ACT Government, as well as internal discussions within Government, regarding the changes to land tax from 1 July 2018. Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that is not in the public interest to release, while releasing the rest of the documents will ensure the intent of the Act is met and will provide you with access to the majority of information held by CMTEDD and ACTRO within the scope of your request.

### **Charges**

Pursuant to *Freedom of Information (Fees) Determination 2017 (No 2)* processing charges are applicable for this request because the total number of pages to be released to you exceeds the charging threshold of 50 pages. However, the charges have been waived in accordance with section 107(2)(b) of the Act.

### **Online publishing – Disclosure Log**

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published in the CMTEDD disclosure log after 10 April 2019. Your personal contact details will not be published.

You may view CMTEDD disclosure log at:

<https://www.cmtedd.act.gov.au/functions/foi/disclosure-log>.

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<sup>1</sup> [2013] AICmr 19 [at 31].

### **Ombudsman Review**

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may write to the Ombudsman at:

The ACT Ombudsman  
GPO Box 442  
CANBERRA ACT 2601  
Via email: [actfoi@ombudsman.gov.au](mailto:actfoi@ombudsman.gov.au)

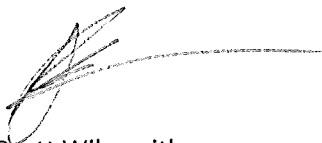
### **ACT Civil and Administrative Tribunal (ACAT) Review**

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal  
Level 4, 1 Moore St  
GPO Box 370  
Canberra City ACT 2601  
Telephone: (02) 6207 1740  
<http://www.acat.act.gov.au/>

Should you have any queries in relation to your request please contact me by telephone on 6207 3478 or email [CMTEDDFOI@act.gov.au](mailto:CMTEDDFOI@act.gov.au).

Yours sincerely



Brett Wilesmith  
Information Officer  
Revenue Management  
Chief Minister, Treasury and Economic Development Directorate  
5 April 2019



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

## FREEDOM OF INFORMATION REQUEST SCHEDULE

NAME	WHAT ARE THE PARAMETERS OF THE REQUEST	Reference NO.
[REDACTED]	All briefs to the Chief Minister about the operation of land tax relating to the vacancy land tax since it was introduced, from 1/7/2018 to 7/3/2019	CMTEDDFOI2019-054

### QUESTION TIME BRIEFS

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-3	40 Land Tax Charges for 2018-19	17/07/18	Full	N/A	Yes
2	4-6	37 Land Tax Charges for 2018-19	02/10/18	Full	N/A	Yes
3	7-9	37 Land Tax Charges for 2018-19	13/11/18	Full	N/A	Yes
4	10-12	34 Land Tax Charges for 2018-19	24/01/19	Full	N/A	Yes
5	13-14	44 Land Tax Charge – Granny Flats	05/03/19	Full	N/A	Yes

### MINISTERIAL BRIEFS

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
6	15-17	Land Tax on Vacant Properties When Moving into a Retirement Village	10/09/18	Partial	Sch 2 s2.2 (a)(ii)	Yes
7	18	Attachment to Brief	Redacted	Partial	Sch 2 s2.2 (a)(ii)	Yes
8	19-20	Request to Waive Land Tax Debt	Redacted	Partial	Sch 2 s2.2 (a)(ii) Sch 2 s2.2 (a)(xvii) Sch 1 s1.3	Yes
9	21	Attachment to Brief	Redacted	Partial	Sch 2 s2.2 (a)(ii)	Yes



10	22-24	Land Tax Objection	Redacted	Partial	Sch 2 s2.2 (a)(ii) Sch 1 s1.3	Yes
11	25-27	Correspondence... seeking Land Tax Exemption	Redacted	Partial	Sch 2 s2.2 (a)(ii) Sch 1 s1.3	Yes
12	28-32	Attachment to Brief	Redacted	Partial	Sch 2 s2.2 (a)(ii)	Yes
13	33-36	Land Tax on Vacant Properties – Incapacity of an Owner	17/01/19	Full	N/A	Yes
14	37-39	Attachment to Brief	22/01/19	Full	N/A	Yes
15	40-41	Land Tax Liability	22/01/19	Partial	Sch 2 s2.2 (a)(ii)	Yes
16	42	Attachment to Brief	Redacted	Partial	Sch 2 s2.2 (a)(ii) Sch 1 s1.3	Yes

**40****Portfolio/s:** Treasurer

Treasurer

**ISSUE: LAND TAX CHARGES FOR 2018-19****Talking points:**

- Estimated Land Tax revenue in 2018-19 is \$141.1 million and will increase from the estimated outcome for 2017-18 of \$130.1 million.
- From 1 July 2018, land tax applies to all properties that are not the owner's principal place of residence, even if they are not rented. This initiative is aimed at increasing the number of residential properties available for rent.
- From 1 July 2018, a foreign ownership surcharge of 0.75% also applies on residential land owned by a foreign individual, corporation or trust. The surcharge is aimed at improving housing affordability for Australian home buyers by increasing the cost of offshore investment in ACT residential property, thus reducing demand from the foreign sector.
- Liability for land tax is assessed quarterly and is based on the status of a residential property on 1 July, 1 October, 1 January and 1 April (liability dates).
- Increases for units are higher due to the impact of the change in calculation methodology in 2017-18.

**Key Information**

- Assessments for 2018-19 are based on a fixed charge of \$1,203 (up from \$1,145 in 2017-18) and marginal tax rates applied to the Average Unimproved Value (AUV) which is a rolling three year average of unimproved land values.
  - The fixed charge was introduced in July 2014 to help ensure a more appropriate spread of the burden between houses (with generally higher AUVs) and units (with generally lower AUVs).
  - Land tax marginal rates were reduced when the fixed charge was introduced to limit the overall land tax revenue increase.

Cleared as complete and accurate: 17/07/2018  
Cleared by: Executive Director Ext: 70010  
Information Officer name: Kim Salisbury  
Contact Officer name: Joe Tonna Ext: 70293  
Lead Directorate: Chief Minister, Treasury and  
Economic Development

- The land tax marginal rates that apply to residential properties in 2018-19 are as follows (unchanged from 2017-18):

AUV	Marginal Rate
AUV from \$0 to \$150,000	0.50%
AUV from \$150,001 to \$275,000	0.60%
AUV from \$275,001 to \$2,000,000	1.08%
AUV \$2,000,001+	1.10%

- There are currently 42,892 properties subject to land tax. Of these, 17,616 are standard residential properties and 25,276 are residential units.
- Land tax for commercial properties was abolished as part of the Government's tax reform that commenced on 1 July 2012. Commercial land tax revenue was replaced through increased commercial rates.

### **Background Information – may not be suitable for public disclosure**

- Land tax is a general revenue measure used by the Government to fund the provision of a range of services and critical infrastructure in the Territory.
- Land tax does not apply to commercial properties.

### Foreign ownership surcharge – exemption for developers

- From 1 July 2018 the Government has introduced a foreign ownership surcharge (the surcharge) on residential land owned by a foreign individual, corporation or trust. The surcharge rate is 0.75% of AUV per year.
- The surcharge is aimed at improving housing affordability for Australian home buyers by increasing the cost of offshore investment in ACT residential property, thus reducing demand from the foreign sector.
- Foreign developers will be exempt from the surcharge during the construction of new dwellings or substantial renovation of existing dwellings on a parcel of land.
  - The exemption will expire on the issue of the Certificate of Occupancy and Use, after which the foreign developer becomes liable for the surcharge (until the completed dwellings are sold).

Cleared as complete and accurate: 17/07/2018  
 Cleared by: Executive Director Ext: 70010  
 Information Officer name: Kim Salisbury  
 Contact Officer name: Joe Tonna Ext: 70293  
 Lead Directorate: Chief Minister, Treasury and Economic Development

- Aged care facilities and retirement villages are exempt from the surcharge as they are also exempt from land tax.
- The surcharge does not apply to commercial properties, thus foreign-owned commercial accommodation (such as hotels) will not be affected.

Cleared as complete and accurate: 17/07/2018  
Cleared by: Executive Director Ext: 70010  
Information Officer name: Kim Salisbury  
Contact Officer name: Joe Tonna Ext: 70293  
Lead Directorate: Chief Minister, Treasury and  
Economic Development

**ISSUE: LAND TAX CHARGES FOR 2018-19****Talking points:**

- Estimated Land Tax revenue in 2018-19 is \$141.1 million an increase from the estimated outcome for 2017-18 of \$130.1 million.
- From 1 July 2018, land tax applies to all properties that are not the owner's principal place of residence, even if they are not rented. This initiative is aimed at increasing the number of residential properties available for rent.
- From 1 July 2018, a foreign ownership surcharge of 0.75 per cent also applies on residential land owned by a foreign individual, corporation or trust. The surcharge is aimed at improving housing affordability for Australian home buyers by increasing the cost of offshore investment in ACT residential property, thus reducing demand from the foreign sector.
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  - The fixed charge was introduced in July 2014 to help ensure a more appropriate spread of the burden between houses (with generally higher AUVs) and units (with generally lower AUVs).
  - Land tax marginal rates were reduced when the fixed charge was introduced to limit the overall land tax revenue increase.

Cleared as complete and accurate:	02/10/2018	
Cleared by: Kim Salisbury	Executive Director	Ext: 70010
Information Officer name:	Brett Wilesmith	Ext: 50202
Contact Officer name:	Joe Tonna	Ext: 70293
Lead Directorate:	Chief Minister, Treasury and Economic Development	

- The land tax marginal rates that apply to residential properties in 2018-19 are as follows (unchanged from 2017-18):

<b>AUV</b>	<b>Marginal Rate</b>
AUV from \$0 to \$150,000	0.50%
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AUV from \$275,001 to \$2,000,000	1.08%
AUV \$2,000,001+	1.10%

- There are currently 42,892 properties subject to land tax. Of these, 17,616 are standard residential properties and 25,276 are residential units.
- Land tax for commercial properties was abolished as part of the Government's tax reform that commenced on 1 July 2012. Commercial land tax revenue was replaced through increased commercial rates.
- A number of queries have been received from taxpayers asking whether they should be liable to land tax if their property is rented or vacant for part of a quarter. These circumstances are being considered by the ACT Revenue Office on a case by case basis. If an owner is liable, land tax is imposed on the 1<sup>st</sup> day of a quarter, after the quarter in which the liability for land tax arose. There is presently, no ability to apportion land tax to the number of days a person is liable during a quarter.
- A number of taxpayers who have entered an aged care facility and their properties are vacant have requested an exemption from paying land tax on compassionate grounds. These requests are considered on a case by case basis.
- Each year since the introduction of land tax, the ACT Revenue Office (ACTRO) has sent pamphlets and/or flyers containing advice on land tax to all property owners with their Annual Rates Notices.
  - The newly designed Rates Notice for 2018-19 includes information on land tax.
  - Information on land tax obligations is also sent to parties when they purchase property.
  - That is, information is provided directly to parties who may be liable for land tax both regularly and at key times.

## Background Information

Cleared as complete and accurate: 02/10/2018  
 Cleared by: Kim Salisbury Executive Director Ext: 70010  
 Information Officer name: Brett Wilesmith Ext: 50202  
 Contact Officer name: Joe Tonna Ext: 70293  
 Lead Directorate: Chief Minister, Treasury and Economic Development

- Land tax is a general revenue measure used by the Government to fund the provision of a range of services and critical infrastructure in the Territory.
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### Foreign ownership surcharge – exemption for developers

- From 1 July 2018 the Government has introduced a foreign ownership surcharge (the surcharge) on residential land owned by a foreign individual, corporation or trust. The surcharge rate is 0.75% of AUV per year.
- The surcharge is aimed at improving housing affordability for Australian home buyers by increasing the cost of offshore investment in ACT residential property, thus reducing demand from the foreign sector.
- Foreign developers will be exempt from the surcharge during the construction of new dwellings or substantial renovation of existing dwellings on a parcel of land.
  - The exemption will expire on the issue of the Certificate of Occupancy and Use, after which the foreign developer becomes liable for the surcharge (until the completed dwellings are sold).
- Aged care facilities and retirement villages are exempt from the surcharge as they are also exempt from land tax.
- The surcharge does not apply to commercial properties, thus foreign-owned commercial accommodation (such as hotels) will not be affected.

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**ISSUE: LAND TAX CHARGES FOR 2018-19**

**Talking points:**

- Estimated Land Tax revenue in 2018-19 is \$141.1 million an increase from \$133.9 million in 2017-18.-
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**Key Information**

- Assessments for 2018-19 are based on a fixed charge of \$1,203 (an increase from \$1,145 in 2017-18) and marginal tax rates applied to the Average Unimproved Value (AUV) which is a rolling three year average of unimproved land values.
  - The fixed charge was introduced in July 2014 to help ensure a more appropriate spread of the burden between houses (with generally higher AUVs) and units (with generally lower AUVs).
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- There are currently 43,752 properties subject to land tax. Of these, 17,634 are standard residential properties and 26,118 are residential units.
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- A number of queries have been received from taxpayers asking whether they should be liable to land tax if their property is rented or vacant for part of a quarter. These circumstances are being considered by the ACT Revenue Office on a case by case basis. If an owner is liable, land tax is imposed on the 1<sup>st</sup> day of a quarter, after the quarter in which the liability for land tax arose. There is presently, no ability to apportion land tax to the number of days a person is liable during a quarter.
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 Information Officer name: Brett Wilesmith Ext: 50202  
 Contact Officer name: Joe Tonna Ext: 70293  
 Lead Directorate: Chief Minister, Treasury and Economic Development

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Information Officer name:	Brett Wilesmith	Ext: 50202
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**ISSUE: LAND TAX CHARGES FOR 2018-19****Talking points:**

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Cleared as complete and accurate: 24/01/2019  
Cleared by: David Ellis Commissioner Ext: 54811  
Information Officer name: Brett Wilesmith Ext: 50202  
Contact Officer name: Joe Tonna Ext: 70293  
Lead Directorate: Chief Minister, Treasury and  
Economic Development

- The land tax marginal rates that apply to residential properties in 2018-19 are as follows (unchanged from 2017-18):

<b>AUV</b>	<b>Marginal Rate</b>
AUV from \$0 to \$150,000	0.50%
AUV from \$150,001 to \$275,000	0.60%
AUV from \$275,001 to \$2,000,000	1.08%
AUV \$2,000,001+	1.10%

- There are currently 44,398 properties subject to land tax. Of these, 17,844 are standard residential properties and 26,554 are residential units.
- Land tax for commercial properties was abolished as part of the Government's tax reform that commenced on 1 July 2012. Commercial land tax revenue was replaced through increased commercial rates.
- A number of queries have been received from taxpayers asking whether they should be liable to land tax if their property is rented or vacant for part of a quarter. These circumstances are being considered by the ACT Revenue Office on a case by case basis. If an owner is liable, land tax is imposed on the 1<sup>st</sup> day of a quarter, after the quarter in which the liability for land tax arose. There is presently, no ability to apportion land tax to the number of days a person is liable during a quarter.
- A number of taxpayers who have entered an aged care facility and their properties are vacant have requested an exemption from paying land tax on compassionate grounds. These requests are considered on a case by case basis.
- Each year since the introduction of land tax, the ACT Revenue Office (ACTRO) has sent pamphlets and/or flyers containing advice on land tax to all property owners with their Annual Rates Notices.
  - The newly designed Rates Notice for 2018-19 includes information on land tax.
  - Information on land tax obligations is also sent to parties when they purchase property.
  - That is, information is provided directly to parties who may be liable for land tax both regularly and at key times.

## Background Information

Cleared as complete and accurate: 24/01/2019  
 Cleared by: David Ellis Commissioner Ext: 54811  
 Information Officer name: Brett Wilesmith Ext: 50202  
 Contact Officer name: Joe Tonna Ext: 70293  
 Lead Directorate: Chief Minister, Treasury and Economic Development

- Land tax is a general revenue measure used by the Government to fund the provision of a range of services and critical infrastructure in the Territory.
- Land tax does not apply to commercial properties.

### Foreign ownership surcharge – exemption for developers

- From 1 July 2018 the Government has introduced a foreign ownership surcharge (the surcharge) on residential land owned by a foreign individual, corporation or trust. The surcharge rate is 0.75% of AUV per year.
- The surcharge is aimed at improving housing affordability for Australian home buyers by increasing the cost of offshore investment in ACT residential property, thus reducing demand from the foreign sector.
- Foreign developers will be exempt from the surcharge during the construction of new dwellings or substantial renovation of existing dwellings on a parcel of land.
  - The exemption will expire on the issue of the Certificate of Occupancy and Use, after which the foreign developer becomes liable for the surcharge (until the completed dwellings are sold).
- Aged care facilities and retirement villages are exempt from the surcharge as they are also exempt from land tax.
- The surcharge does not apply to commercial properties, thus foreign-owned commercial accommodation (such as hotels) will not be affected.

Cleared as complete and accurate:	24/01/2019	
Cleared by: David Ellis	Commissioner	Ext: 54811
Information Officer name:	Brett Wilesmith	Ext: 50202
Contact Officer name:	Joe Tonna	Ext: 70293
Lead Directorate:	Chief Minister, Treasury and Economic Development	

**ISSUE: LAND TAX CHARGES – GRANNY FLATS (NEW)****Talking points:**

- Land tax is imposed under the *Land Tax Act 2004* on all parcels of rateable residential land in the ACT, unless the parcel is occupied as an owner's principal place of residence or one of the exemptions listed in the Land Tax Act is invoked. The following circumstances cover the majority of exemptions that are applied for:
  - a parcel is occupied by a person under a nil or nominal rent arrangement; or
  - a parcel is, or has become, unfit for occupation as a place of residence.
- A second dwelling (granny flat) on a parcel of land with separate bathroom, kitchen and living area is land taxable. It may be standalone, adjoining the main dwelling or under the main roof line. The requirement to pay land tax then depends on the circumstances in which it is used.
- The application of the provisions in the Land Tax Act generally means that where a person (say a family member) resides in a granny flat that is part of a residential property and does not pay rent, or only pays a nominal amount of rent, then the arrangement attracts the exemptions under the legislation and no land tax is payable.
- Where a person is living in someone's home as a boarder, again no land tax applies. While not defined in the legislation, a boarder will not have exclusive possession of the property as they will reside with the owner who may provide services to the boarder e.g. refreshing the linen and bathroom items, and providing meals.
- Where a second dwelling is rented on market terms or for more than a nominal amount of rent, it would be treated as any other rental property and land tax would be payable.

Cleared as complete and accurate:	05/03/2019	
Cleared by: Nicole Masters	Commissioner	Ext: 70010
Contact Officer name:	Joe Tonna	Ext: 70293
Lead Directorate:	Chief Minister, Treasury and Economic Development	
Cleared for release	Yes	
Information Officer name:	Brett Wilesmith	
TRIM Ref: TRSY19/55461		

## Key Information

- A subdivided property would be treated as two separately taxable properties and the '*Principal Place of Residence*' exemption would be considered.
- The basis of land tax calculations for Granny Flats are captured in the following table.

Land Fully Taxable	Land Part Taxable	Non Taxable
Granny flat <b>rented</b> where main house is rented or vacant	Granny flat <b>rented</b> where main house is occupied by owner, life tenant, or by an occupant under a nil or nominal rent arrangement – <u>liable based on percentage of rental floor area</u>	Granny flat <b>rented (at nil or nominal rates)</b> where main house is occupied by owner life tenant, or by an occupant under a nil or nominal rent arrangement
Granny flat <b>vacant</b> where main house rented or vacant		Granny flat <b>vacant</b> where main house is occupied by owner, life tenant, or by an occupant under a nil or nominal rent arrangement

## Background Information

- The ACT Revenue Office (ACTRO) have received a number of queries from taxpayers asking whether they should be liable to land tax if their property is rented or vacant for part of a quarter. These circumstances are being considered by ACTRO on a case-by-case basis. If an owner is liable, land tax is imposed on the 1<sup>st</sup> day of a quarter, after the quarter in which the liability for land tax arose. There is presently, no ability to apportion land tax to the number of days a person is liable during a quarter.

Cleared as complete and accurate: 05/03/2019  
 Cleared by: Nicole Masters Commissioner Ext: 70010  
 Contact Officer name: Joe Tonna Ext: 70293  
 Lead Directorate: Chief Minister, Treasury and Economic Development  
 Cleared for release Yes  
 Information Officer name: Brett Wilesmith  
 TRIM Ref: TRSY19/55461

Chief Minister, Treasury and Economic  
Development Directorate

UNCLASSIFIED

To: Treasurer

Tracking No.: CMTEDD2018/4484

Date: 3 September 2018

From: Director, Economic and Financial Analysis

Subject: Land tax on vacant properties when moving into retirement village

Critical Date: Nil

Critical Reason: In the normal course of business

- UT *JW 3.9.18*

**Recommendations**

That you:

1. Note the information contained in this brief;

*Noted* / Please Discuss

2. Sign the attached letter; and

*Signed* / Not Signed / Please Discuss

3. Agree for potential amendments to land tax exemptions to be considered further in the context of the next Revenue omnibus bill.

*Agreed* / Not Agreed / Please Discuss

Andrew Barr MLA .....

Sch 2 s2.2(a)(ii)

Minister's Office Feedback

UNCLASSIFIED



### Background

1. From 1 July 2018, any residential property which is not the owner's principal place of residence is subject to land tax. Previously, only rented residential land or residential land owned by a corporation was taxable.
2. A vacant property is exempt from land tax until the end of the next full quarter after the owner moves out of the residence, giving an exemption of three to six months.

### Issues

3. On **Sch 2 s2.2(a)(ii)** wrote to you regarding **Sch 2 s2.2(a)(ii)** land tax liability. Her former residence has been vacant since she moved into an aged care facility in **Sch 2 s2.2(a)(ii)** after suffering a heart attack.
  - a. Under the new land tax system, an aged or infirm person moving into aged care due to unexpected or difficult circumstances has between three and six months to sell the property before they becomes liable for land tax. **Sch 2 s2.2(a)(ii)** became liable for land tax on 1 July 2018.
4. **Sch 2** argues the time period allowed is insufficient for an elderly person moving into aged care in difficult circumstances. He also notes the Centrelink age pension asset test rules allow the former residential home to be exempt for asset test purposes for two years after a person enters residential aged care.
5. While a three month period is appropriate in most circumstances to demonstrate a property is no longer a primary place of residence and should become subject to land tax, arguably there are circumstances where more time should be provided.
  - a. The ACT legislation recognises related circumstances where the exemption should be longer. There is a two year exemption after the death of the owner of a property that was their principal residence.
  - b. The Commissioner for Revenue may also exempt property from land tax for up to a year on compelling compassionate grounds, when the owner is *temporarily* absent.
  - c. Victoria and New South Wales both exempt properties that would otherwise be a principal place of residence were the owner able to live alone or not in full time care. (*Land Tax Act (Vic) 2005* section 56 and the *Land Tax Management Act (NSW) 1956* Schedule 1A section 8.)
6. The policy goal of taxing vacant land was to increase the number of properties available in the rental market by providing a financial incentive to rent properties.
  - a. A full exemption similar to Victoria and New South Wales would be contrary to this policy goal; however, allowing more time in these limited circumstances would not undermine the objective.
7. On this basis, we recommend further consideration be given to exempting a property for up to two years when owned by an individual in full time care, if it had previously been the individual's principal place of residence. Such an amendment could be considered in the context of the next Revenue omnibus bill.
8. It is possible there will be similar cases to this one brought to your attention in the

near future as properties that would not previously have been subject to land tax become taxable under the new legislation.

- 9. The Commissioner for Revenue has indicated that he is not able to exempt **Sch 2 s2.2(a)** **Sch 2 s2.2(a)(ii)** (or other future similar cases) from land tax under current legislation. As Treasurer, you are able to exempt a property from land tax or waive the land tax liability.
- 10. A draft response to **Sch 2 s2.2(a)(ii)** is at Attachment A, thanking him for bringing the matter to the Government's attention and noting that the Government is monitoring the impact of the policy change.

**Financial Implications**

- 11. Revenue from the change to land tax was estimated at \$2 million in 2018-19. A small portion of this is likely to be affected by any additional exemption.

**Consultation**

Internal

- 12. Revenue Management Division: Kim Salisbury, Executive Director, and David Ellis, Senior Manager, Objections and Policy.

Cross Directorate

- 13. Nil. Not required.

External

- 14. Nil. Not required.

**Work Health and Safety**

- 15. N/A

**Benefits/Sensitivities**

- 16.

**Communications, media and engagement implications**

- 17. N/A

Signatory Name:	Kathy Goth	Phone:	50772
Action Officer:	Conrad Asmus	Phone:	70648

**Attachments**

Attachment	Title
Attachment A	<b>Sch 2 s2.2(a)(xvi), Sch 2 s2.2(a)(ii)</b>



**Andrew Barr MLA**

**Chief Minister**

Treasurer

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

Sch 2 s2.2(a)(ii)

Dear Sch 2 s2.2(a)(ii)

Thank you for your letter of Sch 2 s2.2(a)(ii) about the application of land tax following your Sch 2 s2.2(a)(ii) move into an aged care facility. I'm sorry to hear that this has been a stressful time for your family.

Applying land tax to vacant properties is a recent initiative, with the objective of increasing the number of properties available for rent by encouraging leasing of properties that would otherwise be vacant.

The Government carefully monitors the impacts of significant policy changes. This includes observing whether the desired policy outcome is being achieved and whether there are unintended or undesirable impacts arising as a result of the change. The concerns you have raised are valuable for this process and will be taken into account in considering the need for future amendments.

Thank you for bringing this to the Government's attention.

Yours sincerely

Andrew Barr MLA

Treasurer

Sch 2 s2.2(a)(ii)

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actchiefminister



Chief Minister, Treasury and Economic  
Development Directorate

SENSITIVE

To: Treasurer

Tracking No.: CMTEDD2018/5556

Date: 27 November 2018

From: Executive Director, Revenue Management Division

Subject: Request to waive land tax debt - Sch 2 s2.2(a)(ii)

Critical Date: 7 December 2018

Critical Reason: To respond to constituent

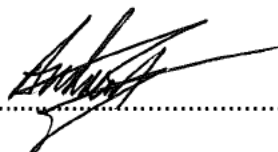
- UT .../.../...

#### Recommendations

That you:

1. That you sign the attached noting you do not intervene in tax matters and highlighting the option of rates deferral.

Andrew Barr MLA .....



Noted / Please Discuss

Sch 2 s2.2(a)(ii)

Minister's Office Feedback

SENSITIVE



**Background**

1. On **Sch 2 s2.2(a)(ii)** lodged an objection with this office to the Notice of Assessment issued on **Sch 2 s2.2(a)(ii)**. The assessment included land tax, penalty tax and interest from **Sch1 s1.3**.

**Issues**

1. **Sch 2 s2.2(a)(ii)** has written to you and is unhappy that it took the ACT Revenue Office six years to identify the rental. She says she was unaware of land tax and that references to land tax on rates notes are not sufficiently prominent. She is disputing the penalty and interests.
2. In relation to the assessment:
  - At objection the issues raised by **Sch 2 s2.2(a)(ii)** were addressed.
  - **Sch1 s1.3, Sch 2 s2.2(a)(ii)**
  - Land tax references are more prominent in the new rates notices.
  - It is only over last year that the ACT Revenue Office has had the capability to reliably match data with the ATO.
  - **Sch 2 s2.2(a)(xvii)**

**Financial Implications**

1. Nil.

**Consultation**

Internal

2. Nil.

Cross Directorate

3. Nil.

External

4. Nil.

**Work Health and Safety**

5. Nil.

**Benefits/Sensitivities**

6. Nil.

**Communications, media and engagement implications**

7. Nil.

Signatory Name: Kim Salisbury  
Action Officer: Jodie Gardiner

Phone: 62070010  
Phone: 62070009



**Andrew Barr MLA**

**Chief Minister**

Treasurer

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

**Sch 2 s2.2(a)(ii)**

Dear **Sch 2 s2.2(a)(ii)**

Thank you for your email of **Sch 2 s2.2(a)(ii)** regarding the land tax on your property **Sch 2 s2.2(a)(ii)**

Land tax is an important revenue source for the ACT, being used to fund a wide range of services including health, education, roads and municipal services. It is applied where a property is not used as an owner's principal place of residence and is also applied to vacant residential property.

While there is some discretion in the administration of the law regarding the application of penalties, it is applied on a consistent basis by the ACT Commissioner for Revenue and delegates within the Revenue Office. The Office publishes its approach to penalty tax on its website (please see circular 'GEN006.2 Penalty Tax' at on the ACT Revenue website, [www.revenue.act.gov.au](http://www.revenue.act.gov.au)).

I am sorry to hear about the difficult period you have been through during the time your property was rented. However, I hope you can understand that I do not personally intervene in individual land tax matters as to do so would risk the unfair or inconsistent application of ACT tax laws.

In light of your current status as **Sch 2 s2.2(a)(ii)** you may be interested to know about the rates and other community assistance the Government provides to ACT residents. For example, owners who are suffering substantial hardship or who are aged 65 years and above may be eligible to defer the payment of general rates. Eligible concession cardholders may be entitled to a utilities concession rebate. The information about these assistance schemes is also published on the ACT Revenue website under 'Home Owners Assistance' or 'Community assistance'.

While I appreciate this is not the answer you were seeking, I hope this information is of assistance to you.

Yours sincerely

Andrew Barr MLA  
Treasurer

**Sch 2 s2.2(a)(ii)**

**ACT Legislative Assembly**

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AndrewBarrMLA

actchiefminister



Chief Minister, Treasury and Economic  
Development Directorate

SENSITIVE

**To:** Treasurer Tracking No.: CMTEDD2018/5541

---

**Date:** 27 November 2018

---

**CC:**

---

**From:** Executive Director, Revenue Management Division

---

**Subject:** Sch 2 s2.2(a)(ii) Land Tax Objection

---

**Critical Date:** 7 December 2018

---

**Critical Reason:** To respond to constituent

---

- UT .../.../...

**Recommendations**

That you:

1. That you sign the attached noting you do not intervene in tax matters.

Andrew Barr MLA .....  Noted / Please Discuss  
Sch 2 s2.2(a)(ii)

Minister's Office Feedback
----------------------------

**Background**

1. On **Sch 2 s2.2(a)(ii)** lodged an objection with this office to a Notice of Assessment issued on **Sch 2 s2.2(a)(ii)**. The assessment was for the periods, from and including, **[REDACTED]**. The assessment comprised land tax, penalty tax and interest.

**Issues**

1. **Sch 2 s2.2(a)(ii)** have written to you about a land tax compliance assessment for their property at **Sch 2 s2.2(a)(ii)** **Sch1 s1.3** **Sch1 s1.3**. However, land tax had not been assessed in relation to a prior rental period from **Sch1 s1.3**.

2. **Sch1 s1.3**

3. **Sch 2 s2.2(a)(ii)** believe that the ACT Revenue Office should have been more proactive in determining the rental dates and providing timely notices of assessment. They are unhappy that interest accrued while their objection was being processed.

4. In relation to this assessment:
  - **Sch1 s1.3**
  - **Sch1 s1.3**
  - Once an assessment is raised, interest begins to accrue from the due date, this is made clear on the assessment notice.

5. **Sch1 s1.3**

**Financial Implications**

1. Nil.

**Consultation**

Internal

2. Nil.

Cross Directorate

3. Nil.

External

4. Nil.



**Work Health and Safety**

5. Nil.

**Benefits/Sensitivities**

6. Nil.

**Communications, media and engagement implications**

7. Nil.

Signatory Name: Kim Salisbury

Phone: 62070010

Action Officer: Jodie Gardiner

Phone: 62070009

Chief Minister, Treasury and Economic  
Development Directorate

UNCLASSIFIED

To: Treasurer

Tracking No.: CMTEDD2018/6933

Date: 17 December 2018

From: Director, Economic and Financial Analysis Branch

Subject: Correspondence from **Sch 2 s2.2(a)(ii)** seeking a land tax exemption

Critical Date: 19 December 2018

Critical Reason: To enable the response to be sent in the timeframe requested by your office

- UT
- ED

*AV 18/12/18*  
*.../.../...*

### Recommendations

That you:

1. Note that **Sch 2 s2.2(a)(ii)** has previously corresponded with the government about this matter, and you previously provided a response advising of potential options available to assist **Sch 2 s2.2(a)(ii)** **Sch1 s1.3** who made a representation to you on his behalf; and

*Noted* / Please Discuss

2. Sign the attached letter to **Sch 2 s2.2(a)(ii)** advising him that he may be eligible for a land tax exemption for the period that his property was unfit for occupation due to renovations.

*Signed* / Not Signed / Please Discuss

Andrew Barr MLA .....



**Sch1 s1.3**

Minister's Office Feedback

UNCLASSIFIED

**Background**

1. Sch 2 s2.2(a)(ii) recently wrote to you requesting a land tax exemption for his investment property in Sch 2 s2.2(a)(ii) for a period between Sch1 s1.3 Sch1 s1.3 during which time the property was vacant.
2. Sch 2 s2.2(a)(ii) property was liable for land tax during this period as a result of the recent amendment to the *Land Tax Act 2004* requiring land tax to be paid on all residential properties that are non-principal places of residence. Prior to 1 July 2018, Sch 2 s2.2(a)(ii) property would not have been liable for land tax while it was vacant.
3. **Sch 2 s2.2(a)(ii)**
4. Sch1 s1.3 Sch1 s1.3 providing limited details about Sch 2 s2.2(a)(ii) circumstances and asking if he may be eligible for a land tax exemption (refer Attachment A). You responded to Sch1 s1.3  
A copy of your response is at Attachment B. It is not known whether Sch 2 s2.2(a)(ii) forwarded your response to Sch 2 s2.2(a)(ii) or discussed its contents with him.

**Issues**

5. There are three potential options available to assist Sch 2 s2.2(a)(ii):
  - a. A land tax exemption, if the property was unfit for occupation Sch1 s1.3 Sch1 s1.3. The Commissioner for Revenue would need to determine if Sch 2 s2.2(a)(ii) is eligible for such an exemption.
  - b. A waiver of Sch 2 s2.2(a)(ii) land tax liability, under Section 131 of the *Financial Management Act 1996*. You have full discretion to grant a waiver to Sch 2 s2.2(a)(ii) should you see fit.
  - c. Also, as noted in your response to Sch1 s1.3
6. Sch 2 s2.2(a)(ii) may be eligible for a land tax exemption. Sch 2 s2.2(a)(ii) advised in both of his letters that the property Sch1 s1.3 Sch1 s1.3. Under the *Land Tax Act*, if a property is unfit for occupation on the first day of an assessment quarter, it is exempt from land tax.
  - a. However, no exemptions are applicable for minor repairs.
7. Should Sch 2 s2.2(a)(ii) believe that the property was unfit for occupation on the first day of an assessment quarter, he may wish to lodge an objection.
  - a. If Sch 2 s2.2(a)(ii) lodges an objection and his matter is not resolved before his land tax bill is due for payment Sch 2 s2.2(a)(ii) the Revenue Office has advised that no compliance action will be taken in regard to the amount owing until

the matter is resolved.

- 8. A draft response to [Sch 2 s2.2(a)(ii)] advising him that there are exemptions under the *Land Tax Act 2004* that may be relevant, and advising him how to seek a land tax exemption is at Attachment B.

9. **Sch 2 s2.2(a)(xvi)**

**Financial Implications**

- 10. Nil, based on the recommendation in this brief. However, a waiver of [Sch 2 s2.2(a)(ii)] and tax bill would result in revenue forgone of [Sch1 s1.3]

**Consultation**

Internal

- 11. Brett Wilesmith – Senior Manager, Policy and Objections Unit, Revenue Management Division.

Cross Directorate

- 12. Nil.

External

- 13. Nil.

**Work Health and Safety**

- 14. N/A.

**Benefits/Sensitivities**

- 15. The introduction of the principal place of residence test for land tax has led to a small number of representations claiming that the new test causes hardship in particular circumstances, such as where the owner is no longer able to live at the property due to health reasons, or where an owner is unable to secure a new tenant.

**Communications, media and engagement implications**

- 16. Nil.

Signatory Name: Kathy Goth Phone: 50772  
 Action Officer: Nathan Brown Phone: 73531

**Attachments**

Attachment	Title
Attachment A	Previous correspondence from [Sch 2 s2.2(a)(ii)]
Attachment B	[Sch 2 s2.2(a)(ii)]
Attachment C	[Sch 2 s2.2(a)(ii)]

Sch1 s1.3, Sch 2 s2.2(a)(ii)

Mr Andrew Barr  
Treasurer  
GPO Box 1020  
CANBERRA ACT 2601  
By email: [barr@act.gov.au](mailto:barr@act.gov.au)

Sch1 s1.3, Sch 2 s2.2(a)(ii)





## Andrew Barr MLA

**Chief Minister**

Treasurer

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

# Sch1 s1.3, Sch 2 s2.2(a)(ii)

---

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 actchiefminister



# Sch1 s1.3, Sch 2 s2.2(a)(ii)



Andrew Barr MLA  
Treasurer





**Andrew Barr MLA**

**Chief Minister**

Treasurer

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

**Sch 2 s2.2(a)(ii)**

Dear **Sch 2 s2.2(a)(ii)**

Thank you for your letter of **Sch 2 s2.2(a)(ii)** in relation to land tax owing on your investment property on **Sch 2 s2.2(a)(ii)**

I am pleased to see **Sch1 s1.3**

**Sch1 s1.3**

hope the

following information will prove useful to your current circumstances.

In your letter, **Sch1 s1.3, Sch 2 s2.2(a)(ii)**

**Sch1 s1.3, Sch 2 s2.2(a)(ii)** There is an exemption under the *Land Tax Act 2004* which may be relevant to your situation. If you consider that your property was unfit for occupation on the first day of an assessment quarter **Sch1 s1.3, Sch 2 s2.2(a)(ii)** you can seek a land tax exemption for the relevant quarter. Whether or not your property is eligible for this exemption will depend on the nature of the renovations. To progress consideration of a possible exemption, you may lodge an objection to your land tax assessment – via email through [objections@act.gov.au](mailto:objections@act.gov.au) or by post to:

ACT Revenue Office  
PO Box 293  
CIVIC SQUARE ACT 2608

In lodging an objection, you should provide supporting evidence that the property was unfit for occupation (such evidence might include, for example, details of the works involved and a statutory declaration from your builder on the extent of repairs). Please note there are no exemptions available from land tax for minor works or repairs. Similarly, there are no exemptions available where a property is vacant due to a lack of suitably available tenants.

As a **Sch1 s1.3, Sch 2 s2.2(a)(ii)** you may also be able to defer the general rates on your principal residence. The General Rates Deferral scheme allows eligible applicants to defer all or part of the rates bill on their principle place of residents indefinitely or until their property is sold. While this does not relate to your investment property, it may provide valuable assistance managing your expenses. The ACT Government charges a low rate (currently 1.94 per cent) of simple interest on deferred amounts.

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@ABarrMLA



AndrewBarrMLA



actchiefminister





Applying land tax to vacant properties is a recent initiative, with the objective of increasing the supply of rental accommodation in the ACT. The Government carefully monitors the impacts of significant policy changes such as this one. This includes observing whether the desired policy outcome is being achieved and whether there are unintended or undesirable impacts arising as a result of the change. The concerns you have raised are valuable for this process.

Thank you for contacting me on this matter, I trust this information is of assistance to you.

Yours sincerely



Andrew Barr MLA  
Treasurer

Sch1 s1.3, Sch 2 s2.2(a)(ii)

Chief Minister, Treasury and Economic  
Development Directorate

SENSITIVE

To: Treasurer

Tracking No.: CMTEDD2018/7007

Date: 14 January 2019

From: Executive Director, Revenue Management Division

Subject: Land tax on vacant properties – Incapacity of owner

Critical Date: 31 January 2019

Critical Reason: In the normal course of business

- UT *AV 16/1/19* .../.../...
- DUT .../.../...

**Recommendations**

That you:

1. **Sign** the attached notifiable instrument (at Attachment A) providing for a maximum two-year land tax exemption where an individual is in full time care and the property has previously been the individual's principal place of residence; and

**Signed / Not Signed / Please Discuss**

2. **Agree** that parties with land tax imposed from 1 July 2018 that would have eligible for the new exemption can seek waivers under section 131 of the *Financial Management Act 1996*.

**Agreed / Not Agreed / Please Discuss**

Andrew Barr MLA ..... *Andrew Barr* ..... *17/1/19*

Minister's Office Feedback

SENSITIVE

### Background

1. From 1 July 2018, any residential property which is not the owner's principal place of residence is subject to land tax. Previously, only rented residential land or residential land owned by a corporation was taxable.
2. A vacant property is exempt from land tax until the end of the next full quarter after the owner moves out of the residence, giving an exemption of three to six months.
3. Other exemptions include provision for a two-year exemption after the death of an owner.
4. You previously agreed to further consideration of potential amendments (in the context of the next revenue omnibus bill) to land tax exemptions for up to two years where an individual moves into full time care. (CMTEDD2018/4484 refers.)

### Issues

5. We propose a maximum two-year land tax exemption for the owner of a residential property/unit to recognise circumstances beyond a person's control where they can no longer be resident in their own property and are not in a position to respond to the imposition of a land tax liability. Specifically it is proposed to provide for where:
  - a. the property had been used by the owner as a principal place of residence immediately prior to moving into care (and not subject to land tax);
  - b. the owner is no longer independent and is residing in a form of care facility (hospital, nursing home, carer); and
  - c. the property is vacant – if the property is rented at any time during the exemption period, it would cease to be exempt.
6. The proposed approach is broader than just residence in an aged-care facility recognising the potential for incapacity or infirmity due to varied reasons (other than age) and residence in alternate care facilities.
  - a. The breadth of application (apart from limiting the timeframe – see CMTEDD2018/4484) is generally consistent with exemptions provided in New South Wales and Victoria. See legislative extracts at Attachment B.
7. The exemption can be undertaken via notifiable instrument under the operation of section 34 of the *Land Tax Act 2004* – see draft at Attachment A.
  - a. Subsection 34(1) provides that the administering Minister may exempt the owner of a parcel of land from payment of land tax owing for any period in relation to the parcel, or from payment of a stated part of the land tax.
  - b. Subsection 48(2) of the *Legislation Act 2001* provides that the power given under an Act or statutory instrument to make a statutory instrument about particular matters includes power to make a statutory instrument about any one or more of the matters or a particular class of the matters.

Period between 1 July 2018 and new exemption commencing

8. Due to the operation of section 34 the draft exemption is to exempt an owner from the payment of land tax (owing for any period).
9. Individuals who have paid in the intervening period from 1 July 2018 and the new exemption commencing would not benefit.
10. To provide these parties with the same relief treatment, we propose that they would need to apply for an act of grace payment under section 130 of the *Financial Management Act 1996*. We expect that the number of parties would be limited.

Other potential options

11. Other approaches considered to provide relief are outlined at Attachment C.

**Financial Implications**

12. Revenue from the change to land tax was estimated at \$2 million in 2018-19. A small portion of this is likely to be affected by any additional exemption.

**Consultation**

Internal

13. Economic and Financial Group, Treasury [Kathy Goth, ext. 50772] were consulted and have raised no comments.
14. The Legal Services Unit, Revenue Management advised on the drafting of the instrument [Lisa Tomlins, Principal Solicitor ext. 52502].

Cross Directorate

15. ACT Health, Health Policy [Rebecca Williams, ext. 57978] have advised support for the proposed change.
16. Community Services, Human Services Policy [Louise Bassett, ext. 57743] had nil comment.

External

17. Nil.

**Work Health and Safety**

18. N/A.

**Benefits/Sensitivities**

19. The measures will align with the land tax exemption conditions provided in other jurisdictions (e.g. New South Wales and Victoria).
20. The imposition of a two-year limit is a point of difference, however we consider this to be generally sufficient time for parties to adjust their affairs and is consistent with a similar period for deceased owners.

**Communications, media and engagement implications**

21. If agreed, the ACT Revenue Office will advise of the changes via:

SENSITIVE

- a. letters from the Commissioner to the following stakeholder representative groups:
  - i. COTA ACT;
  - ii. Carers ACT;
  - iii. ACT Disability, Aged and Carer Advocacy Service (ADACAS);
  - iv. ACT Mental Health Consumer Network;
  - v. Health Care Consumers' Association;
  - vi. ACT Law Society; and
- b. revised Revenue Office information – website and land tax flyers (provided with rates notices and land sales).

Signatory Name: Kim Salisbury Phone: 70010  
Action Officer: Brett Wilesmith Phone: 50202

**Attachments**

Attachment	Title
Attachment A	Draft Notifiable Instrument and Explanatory Statement
Attachment B	Extract – New South Wales and Victorian Land Tax Acts
Attachment C	Other potential approaches

SENSITIVE

Australian Capital Territory

# Land Tax (Non-independent) Exemption 2019

**Notifiable Instrument NI2019–30**

made under the

*Land Tax Act 2004*, section 34 (1) (Exemption from land tax)

## EXPLANATORY STATEMENT

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### Background

The *Land Tax Amendment Act 2018* commenced on 1 July 2018 and, in part, amended the *Land Tax Act 2004* to implement an extension of land tax to all residential dwellings that are not an owner's principal place of residence (announced in the 2017-18 Budget).

### Exemption

This instrument provides a maximum two-year exemption from the payment of land tax for the owner of a residential property/unit to recognise circumstances beyond a person's control where they can no longer be resident in their own property due to a loss of independence. Specifically it provides for where:

- a. the property had been used by the owner as a principal place of residence immediately prior to moving into care (and not subject to land tax);
- b. the owner is no longer independent and is residing in a form of care facility (for example, hospital, nursing home, carer); and
- c. the property is vacant.

If the property is occupied at any time during the exemption period, it would cease to be exempt from land tax.

This instrument has retrospective effect beginning on 1 July 2018 to apply to parties since the 2018 reforms. Retrospective application of the exemption is non-prejudicial.



Authorised by the Treasurer  
Andrew Barr MLA

**22 JAN 2019**

Australian Capital Territory

# Land Tax (Non-independent) Exemption 2019

Notifiable instrument NI2019–30

made under the

*Land Tax Act 2004*, section 34 (1) (Exemption from land tax)

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## 1 Name of instrument

This instrument is the *Land Tax (Non-independent) Exemption 2019*.

## 2 Commencement

This instrument is taken to have commenced on 1 July 2018.

## 3 Definitions

In this instrument:

*Approved mental health facility* and *approved community care facility* have the same meaning as in the *Mental Health Act 2015* (ACT).

*Nursing home* has the same meaning as under section 10 of the *Land Tax Act 2004*.

*Residential unit* means a unit that is residential land.

## 4 Application

This instrument applies to a person (**affected owner**) under the *Land Tax Act 2004* who is or was the owner of a parcel of residential land or a residential unit (**premises**) if the Commissioner is satisfied that:

- (a) the affected owner has lost the ability to live independently; and
- (b) the affected owner resides:
  - i. at a hospital or hospice as a patient; or
  - ii. at an approved mental health facility or approved community care facility; or
  - iii. at a nursing home; or

- iv. with another person (a **carer**) who is eligible for a carer payment under the *Social Security Act 1991* (Cwlth) because the carer provides care to the person; and
- (c) the premises were used and occupied as the affected owner's principal place of residence immediately prior to the circumstances specified in paragraphs (a) and (b); and
- (d) the premises are unoccupied for the duration of the period mentioned in section 5.

## 5 Exemption of Land Tax

I exempt an affected owner from the payment of the land tax owing in relation to the premises for the period:

- a) commencing the date the affected owner first satisfies the conditions set out in section 4 (a)-(c) (the **commencement date**); and
- b) ending the earliest of:
  - i. 2 years after the commencement date; or
  - ii. if the affected owner sells the premises, the date the affected owner ceases to be the owner; or
  - iii. if the premises are occupied, the date the premises are occupied.



Andrew Barr MLA  
Treasurer  
22.01, 2019



Chief Minister, Treasury and Economic  
Development Directorate

UNCLASSIFIED

To: Treasurer

Tracking No.: CMTEDD2019/78

Date: 17 January 2019

CC:

From: Executive Director, Revenue Management Division

Subject: Land Tax Liability

Critical Date: 21 January 2019

Critical Reason: To ensure response is provided to taxpayer in a timely manner.

- DUT     .../.../...
- UT     .../.../...

**Purpose**

To provide background information for a response to be provided in a timely manner to the taxpayer regarding his land tax liability.

**Recommendations**

That you:

1. Note that land tax has been applied correctly and sign the attached letter (Attachment A).

Signed / Not Signed / Please Discuss

Andrew Barr MLA .....



Sch 2 s2.2(a)(ii)

Minister's Office Feedback

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**Background**

1. On 11 July 2018, Sch 2 s2.2(a)(ii) purchased a property from Sch 2 s2.2(a)(ii)
2. Land Tax was payable for the Sch1 s1.3 as the property was in the name Sch 2 s2.2(a)(ii) on 1 July 2018. In most circumstances any outstanding amounts, such as rates and or land tax would be reconciled at the settlement process.
3. Generally, solicitors would request a conveyance certificate from ACT Revenue, which would highlight any outstanding charges. In this case, the solicitor acting on behalf of Sch 2 s2.2(a)(ii) did not request one. Any outstanding charges remain with the property and therefore the liability of the new property owner.
4. There is no discretion available to extinguish such debts. It is a matter between Sch 2 s2.2(a)(ii) and his solicitor.

**Issues**

5. The land Tax liability has been paid by Sch 2 s2.2(a)(ii) and any interest which was accrued has been remitted.

**Financial Implications**

6. Nil

**Consultation**

Internal

7. N/A

Signatory Name: Kim Salisbury Phone: 70010  
Action Officer: Joe Tonna Phone: 70293

**Attachments**

Attachment	Title
Attachment A	Ministerial Response to Sch 2 s2.2(a)(ii)



**Andrew Barr MLA**

**Chief Minister**

Treasurer

Minister for Social Inclusion and Equality

Minister for Tourism and Special Events

Minister for Trade, Industry and Investment

Member for Kurrajong

## Sch 2 s2.2(a)(ii)

Dear **Sch 2 s2.2(a)(ii)**

Thank you for your letter of **Sch1 s1.3, Sch 2 s2.2(a)(ii)** regarding the land tax on your property **Sch 2 s2.2(a)(ii)**. I am responding to your letter as land tax falls within my portfolio as Treasurer.

Land tax is an important revenue source for the ACT. Revenue from land tax funds a wide range of services including health, education, roads and municipal services. ACT residential properties that are not an owner's principal place of residence or which are owned by a trust or corporation are generally liable for land tax. Both vacant and rented properties that are not the owner's principal place of residence are liable for land tax.

I have been advised by the Commissioner for ACT Revenue that as the property was owned by a company on 1 July 2018 it is liable to land tax, for that quarter.

Land tax in the ACT is billed quarterly and is payable on the first day of the quarter unless exempt. When an owner becomes eligible for an exemption, the exemption will apply from the first day of the quarter after the date the owner became eligible for the exemption. There is no ability to apportion land tax or provide an exemption during a quarter.

I have been advised the ACT Revenue Office is not privy to settlement arrangements and I would advise you to contact the solicitor who acted on your behalf, to confirm any adjustments which should have been made at settlement.

I am advised the ACT Revenue Office has administered all charges in accordance with the legislation. The Commissioner for ACT Revenue has advised me that **Sch1 s1.3** **Sch1 s1.3**. I hope you understand that the law is being applied consistently to all land tax paying owners, and it would be unfair to other taxpayers if I were to intervene in this instance.

What may be of some help, however, is the rates and other community assistance the ACT Government provides to Canberra residents and pensioners. You can find further information about this through the ACT Revenue Office website at [www.revenue.act.gov.au/home-owner-assistance/rates-assistance](http://www.revenue.act.gov.au/home-owner-assistance/rates-assistance).

I really appreciate you raising this matter with me and hope this information is of assistance to you.

Yours sincerely

Andrew Barr MLA  
Chief Minister

### ACT Legislative Assembly

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AndrewBarrMLA



actchiefminister

