

11 March 2021

Tax Reform Taskforce
NSW Treasury
GPO Box 5469
Sydney NSW 2001

By email: TaxReformTaskforce@treasury.nsw.gov.au

Dear Policy Team,

Submission on *BUYING IN NSW, BUILDING A FUTURE* Consultation Paper, November 2020

The Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW Ltd (CCIA NSW) is the peak industry body in this State representing the interests of holiday parks, residential land lease communities (residential parks, including caravan parks and manufactured home estates), manufacturers, retailers and repairers of recreational vehicles (RVs, including caravans, campervans, motorhomes, camper trailers, tent trailers, fifth wheelers and slide-ons), camping equipment suppliers, manufactured home builders and service providers to these businesses.

We currently have as members over 720 businesses representing all aspects of the caravan and camping and land lease living industry. Over 630 are located throughout New South Wales (NSW) as follows:

Region	Number of Businesses
Far North Coast & Tweed	61
North Coast	85
New England (North Western NSW)	19
Manning/Forster	29
Newcastle & Hunter	94
Central Coast	49
Sydney & Surrounds	91
Leisure Coast (Illawarra and Shoalhaven)	61
South Coast (Eurobodalla and Sapphire Coast)	72
Central NSW	23
Murray & Riverina	34
Canberra & Snowy Mountains	16
Outback NSW	4

In these businesses commercial property is used for a number of business purposes, including offices, retail, manufacturing and workshop premises. In addition, residential land is used for commercial purposes, such as holiday parks, and residential purposes such as residential land lease communities.

The amount of transfer duty and land tax payable in relation to these properties can be significant, and as the popularity of the caravan and camping and land lease living industry continues to rise, so too does the need for greater access to land suitable for business, tourism and residential use.

Our Association strives to create a better business environment for our members, and to encourage more people to enjoy the active lifestyle options offered by caravan and camping experiences and residential land lease community living. We welcome this opportunity to respond to the *'BUYING IN NSW, BUILDING A FUTURE'* Consultation Paper, November 2020 (Consultation Paper).

We broadly support the Government's proposed changes to the State's property tax system, provided that:

1. purchasers retain the choice to opt-in to pay the property tax at the time of purchase,
2. an exemption from the property tax, or a reduction in the taxable land value of the land, remains available where a residential land lease community is used to provide homes for a community of senior or retired persons,
3. the exemptions from foreign purchaser surcharge duty and surcharge land tax for commercial residential premises remain available to "caravan and home parks," and
4. the Government extends the exemptions from foreign purchaser surcharge duty and surcharge land tax for commercial residential premises to residential land lease communities.

ABOUT THE CARAVAN & CAMPING & LAND LEASE LIVING INDUSTRY

The caravan and camping industry is a valuable part of the tourism economy, and NSW is Australia's favourite State for caravanning and camping. Importantly, the industry accommodates over 25% of the visitor holiday nights in regional NSW, making it a vitally important part of regional tourism infrastructure and an integral part of regional dispersal of international and domestic visitors.

Prior to the impacts of the 2019/20 summer bushfires, the NSW caravan and camping industry recorded its strongest ever annual performance. 4.8 million caravan and camping trips were taken in the State for the year ending December 2019 (an 11% increase on 2018) which generated 18.8 million nights (an increase of 16%). This injected more than \$2 billion in economic value to NSW.

This was also before the impacts of the COVID-19 pandemic and government-imposed restrictions on holiday travel in early 2020. But following those restrictions being lifted in June, the industry began to bounce back save for a few areas vulnerable to border closures and lockdowns.

Tourism Research Australia data for the year ending September 2020 shows the number of caravan and camping holidays in NSW was down 25% compared to 2019 (3.4 million trips) and holiday nights were down 28% (12.8 million nights). However, by comparison across the entire tourism industry, these results are well ahead in performance. More recent data indicates that the caravan and camping industry is recovering through the final quarter of 2020 (again, save for a few areas vulnerable to border closures and lockdowns).

In fact, caravan and camping is the largest generator of holiday nights in all of NSW. With a focus on getting out-and-about in the great outdoors and reconnecting with nature and loved ones, a caravan and camping holiday is a great choice for promoting health and wellbeing.

This important tourism offering should continue to be encouraged, particularly now as NSW communities try to recover from the devastating bushfires of summer 2019/2020 and the ongoing impacts of the COVID-19 pandemic.

The caravan and camping industry is well placed to assist with the revival of domestic tourism ahead of international tourism, evident by the increase in popularity of caravan and camping trips once restrictions on holiday travel were lifted in June 2020. As such, we support a property tax system that encourages further caravan and camping developments in NSW.

Like caravan and camping holidays, residential land lease community living also continues to grow in popularity. These communities can be exclusively comprised of permanent residents, or those that have residential sites as well as tourist sites.

Residents usually own their own manufactured home or moveable dwelling and lease the land (the site) from the operator under arrangements regulated by the *Residential (Land Lease) Communities Act 2013* ("RLLC Act") and the *Residential (Land Lease) Communities Regulation 2015* ("RLLC Regulation").¹ Site fees charged vary depending on the size and location of a site, but generally cover the cost of operating a community and access to facilities, and home owners may also receive Commonwealth Rent Assistance.

There are approximately 900 parks across NSW, with 495 residential land lease communities. The total number of residents is 33,912. There are 26 residential land lease communities within the Sydney metropolitan area. Of all residential land lease communities 95% are located in rural and regional New South Wales.²

Residential land lease communities are a good housing choice for many people because of the lifestyle they offer residents. They are a form of community living, providing the opportunity to live in a modern home in sought-after locations, that encourages an active lifestyle and socialising with likeminded individuals.

They are a popular with retired persons, but they also appeal to downsizers, smaller families, first home buyers and single person households. And with the recent launch of the first land lease home loans we expect even more people will be able to opt for land lease living as a housing choice.

As such, there is great opportunity for the Government to develop tax policy that supports the supply of housing in NSW through facilitating the growth of residential land lease communities in NSW.

¹ Those who rent both the site and the home are tenants under the *Residential Tenancies Act 2010* and *Residential Tenancies Regulation 2019*. A 'resident' is defined as either a home owner or a tenant (see section 4(1) of the RLLC Act).

² NSW Fair Trading, *Residential Land Lease Communities Profile of the Industry*, November 2015, https://www.fairtrading.nsw.gov.au/data/assets/pdf_file/0011/369983/Residential_land_lease_communities_in_dustry_profile_Nov_2015.pdf

PURCHASER CHOICE CRITICAL FOR TRANSITION TO PROPERTY TAX

The Government's proposal for a new annual property tax to ultimately replace both stamp duty and land tax would be a monumental change to the State's property tax system and one that is long overdue.

We agree that stamp duty is an outdated, inefficient and volatile tax that negatively impacts on economic growth. A new smaller annual property tax, based on unimproved land value, could bring a number of benefits for the majority of people in NSW, including:

- Removing the up-front cost impost of stamp duty could make home ownership and property investment more achievable, especially for purchasers in Sydney.
- Developers would benefit by paying a lower property tax up until sale, freeing up more capital for construction.
- There would be more certainty in revenue for the Government, making it easier to manage the State budget.
- Addressing the inequity of the large land tax burden placed on a small number of commercial land and investor-owned residential land owners.

It is critical, however, that the transition to the new property tax system be controlled by individual choice. We agree that an opt-in, gradual approach would be the best way of ensuring a fair transition to the property tax. Purchasers should be empowered to transition to the new system in accordance with their individual circumstances and at their own pace.

We note the Government estimates it will take approximately 20 years for half of NSW property to be in the new system and approximately 50 years to fund the transition period. With such a monumental change to property taxes, we agree a long transition period is appropriate. Future governments must resist the temptation to fast track the number of properties entering the new system.

In addition, in order to address any stall in the market prior to commencement of the new system, we agree that the Government should also allow for retrospective opt-in to the property tax for a set period after it commences, so that people who purchase in the months leading up to the new property tax legislation can obtain a refund of the stamp duty paid.

EXEMPTION FOR RESIDENTIAL LAND LEASE COMMUNITIES PRIMARILY USED AND OCCUPIED BY RETIRED PERSONS

Under Revenue Ruling LT 071v3 (copy attached) where a residential land lease community is used to provide homes for a community of senior or retired persons, an exemption from land tax, or a reduction in the taxable land value of the land, under s.10Q of the *Land Tax Management Act* 1956 is available in accordance with the guidelines approved by the Treasurer.

Given the important contribution that residential land lease communities make to the supply of housing in NSW, including for retired persons, it is critical that an exemption from the property tax, or a reduction in the taxable land value of the land, remains available where a residential land lease community is used to provide homes for a community of senior or retired persons.

Should the Government proceed with the property tax we request that an appropriate ruling be made to provide concessions to landowners equivalent to those set out in Revenue Ruling LT 071v3.

SURCHARGE PURCHASER DUTY AND SURCHARGE LAND TAX

From 21 June 2016, a duty surcharge applies to acquisitions of NSW residential land by foreign persons, including foreign individuals, corporations, trusts and governments. Foreign persons are liable to pay surcharge purchaser duty of 8% in addition to any transfer duty payable on the acquisition of residential land.

Also, commencing from the 2017 land tax year, foreign persons who own residential land in NSW must also pay surcharge land tax of 2% in addition to any land tax payable in respect of residential land.

For the purpose of both surcharge purchaser duty and surcharge land tax a “dwelling” is defined in section 104I(1) of the *Duties Act 1997* as “a house, or a room or a suite of rooms (whether or not forming part of a building or a detached building), that is –

- (a) occupied or used as a separate dwelling, or
- (b) so constructed, designed or adapted as to be capable of being occupied or used as a separate dwelling.”

However, certain residential premises are exempt from surcharge purchaser duty and surcharge land tax. Revenue Ruling G 011 (copy attached) clarifies where the surcharge will not apply to residential premises, including but not limited to “caravan and home parks” -

“Most caravan parks and home parks are excluded from paying surcharge purchaser duty and surcharge land tax. However, long term accommodation in a caravan park or home park may still be liable if any of the features in paragraph 13 of this ruling are evident.”³

Should the Government proceed with the property tax, it is important for the caravan and camping industry and the NSW visitor economy that the exemption provided to “caravan and home parks” (i.e. holiday parks) is maintained. We request that an appropriate ruling be made to provide concessions to landowners equivalent to those set out in Revenue Ruling G 011.

In addition, we also request that the exemptions from surcharge purchaser duty and surcharge land tax be extended to NSW residential land lease communities.

Currently, paragraph 13 of the Ruling provides that factors that may indicate that premises are dwellings under section 104I(1) and therefore not suitable for a determination under section 104I(2) include:

“a. the operator agreeing with an occupant to provide accommodation for a periodic term (which may be for a period of months or years at a time), such as in a residential lease,

³ Stephen R Brady, Chief Commissioner of State Revenue, Ruling number G 011, *Surcharge land tax and duty: Residential premises that are not dwellings*, 29 November 17, <https://www.revenue.nsw.gov.au/help-centre/resources-library/rulings/general/g011>

- b. the operator having the right to impose a cleaning fee on an occupant when the occupant ceases to occupy the premises,*
- c. an occupant being permitted, subject to the terms of the lease, to alter the premises, such as by attaching hanging devices on a wall,*
- d. an occupant being permitted, subject to the terms of the lease, to keep pets in the premises,*
- e. an occupant being granted long stay accommodation of more than 90 days (excluding boarding houses and hostels),*
- f. an occupant having to arrange and pay for the connection of a telephone, electricity, or gas service,*
- g. an occupant being responsible for the cleaning and minor maintenance of the premises, such as changing light bulbs,*
- h. the premises being unfurnished,*
- i. the right to occupy is granted to an occupant in exchange for the occupant lending an amount to the operator.”*

Because of the nature of arrangements under the RLLC Act, these factors exclude NSW residential land lease communities from the exemption from paying surcharge purchaser duty and surcharge land tax.

We request that the Government review this policy position ahead of its decision on the property tax, because investment by Australian-based developers that are foreign persons is important for the growth of residential land lease communities in NSW.

There are currently a number of residential land lease community operators backed by foreign capital looking to invest in multiple sites across NSW, but the surcharge duty is prohibitive compared to projects in other states. Surcharge land tax also applies, even though residential land lease communities typically receive an exemption from land tax (refer to our submissions above regarding Revenue Ruling LT 071v3).

Given the demand for more housing in NSW, and the changes to population and other factors influencing housing as identified in the NSW Government’s recent discussion paper on ‘*A Housing Strategy for NSW*,’⁴ residential land lease communities play an important role in providing diversity in housing choices in NSW. Their development could be accelerated if the exemptions from surcharge purchaser duty and surcharge land tax were extended to NSW residential land lease communities.

This could be achieved by extending existing guidelines regarding “exempt dwellings” in Revenue Ruling G 011 to cover residential land lease communities. Asset class specific exemptions are already available for student accommodation and aged care.

Alternatively, the existing exemption from surcharge for new home development by Australian-based developers that are foreign persons, as set out in Revenue Ruling G 013

⁴ NSW Department of Planning, Industry and Environment, *A Housing Strategy for NSW Discussion Paper*, May 2020, <https://www.planning.nsw.gov.au/Policy-and-Legislation/Housing/A-Housing-Strategy-for-NSW>

(copy attached), could be extended to circumstances where developers sell only the home and rent the land. Currently a sale of the land and home is required.

We note that in July 2020 the Government introduced the *State Revenue Legislation Amendment (COVID-19) Housing Response Bill 2020* (Housing Response Bill)⁵ to stimulate the economy with targeted support for the residential construction sector, including a reduction of 50% on land tax valuations of new build-to-rent development projects where construction commences on or after 1 July 2020 (until the 2040 tax year) and exemptions and refunds of surcharge purchaser duty and surcharge land tax for land with build-to-rent properties.

In the second reading speech on introduction of the Housing Response Bill on 29 July 2020, The Hon. Domenic Perrottet, Treasurer, said:

“The bill takes an important step in removing barriers presented by State taxes to the construction of build-to-rent developments.

One of the barriers to build-to-rent development is the current structure of land tax in New South Wales. With a high tax-free threshold, the structure makes it far more profitable for a developer to sell off individual units to small, private landlords than to operate a professionally managed, large-scale rental development. To mitigate that tax discrepancy, the bill, in an Australian first, introduces a 50 per cent discount to land valuations for the purposes of calculating land tax. The discount applies to new build-to-rent developments until 2040. By limiting the benefit to new developments, the measure will help support new construction during this difficult time. Providing those benefits until 2040 ensures a period of certainty for investors, with the greatest benefit flowing to those who start building sooner. The bill will also effectively extend the existing carve-outs of developers from foreign investor surcharges to include build-to-rent. This is consistent with the Government’s existing position that while the surcharges should generally apply to foreign owners of residential land, they should not inhibit new housing supply from coming online.”

Similar to developers in the build-to-rent sector, the current structure of NSW property taxes is a barrier for new residential land lease community developers that are foreign persons, hampering new housing from ‘coming online.’ At the moment, it is more attractive for these developers to build new developments in other states.

In keeping with the Government’s policies and other measures to assist the people of NSW into homes, extending the exemptions from surcharge purchaser duty and surcharge land tax to residential land lease communities would be beneficial for housing supply in NSW.

Therefore, ahead of the Government’s decision on the property tax, we request that the exemptions from surcharge purchaser duty and surcharge land tax be extended to NSW residential land lease communities. In addition, should the Government proceed with the property tax, we request that an appropriate ruling be made to ensure these concessions are carried over into the new system.

CONCLUSION

Thank you for your consideration of the feedback we have provided and the issues raised.

⁵ Passed Parliament 5 August 2020; Assented 11 August 2020.

In representing the interests of our members, we are keen to continue to participate in any further consultations on the new property tax system and ask that we be noted as a stakeholder so that we are included in all future communications and meetings.

Should you wish to meet and/or discuss any aspect of this submission please contact



Yours sincerely



Chief Executive Officer

Exemption: residential parks primarily used and occupied by retired persons

 revenue.nsw.gov.au/help-centre/resources-library/rulings/land/lt071v3

Section 10Q Land Tax Management Act, 1956

Ruling number	LT 071v3
Date issued	7 February 2018
Issued by	Stephen R Brady Chief Commissioner of Land Tax
Effective from	1 January 2018
Effective to	-
Status	Current

Ruling history.

Ruling number	<u>LT 071v2</u>
Date issued	17 December 2015
Effective from	1 January 2016
Effective to	31 December 2017
Status	Replaced by LT 071v3
Ruling number	<u>LT 071</u>
Date issued	7 March 2003
Effective from	7 March 2003
Effective to	31 December 2015
Status	Replaced by LT 071v2

Preamble

1. Where a residential park is used to provide homes for a community of senior or retired persons, an exemption from land tax or a reduction in the taxable land value of the land is available in accordance with the following Treasurer's guidelines.

2. The purpose of this ruling is to notify land owners of the approved guidelines and explain how owners may apply for the concession.

Guidelines Approved by the Treasurer

3. These guidelines apply for the purposes of determining whether land which is or includes a “community or residential community” within the meaning of the Residential (Land Lease) Communities Act 2013 (“RLLC Act”), and referred to in these guidelines as a “community”, is entitled to a land tax exemption or reduction in taxable value under s.10Q of the Land Tax Management Act 1956 (LTM Act).
4. An exemption or reduction in taxable value does not apply unless the community is registered under section 14 of RLLC Act.
5. If a parcel of land is used solely for the purposes of a community and more than 50% of the homes on the land are used and occupied by at least one qualifying home owner, the land is exempt low cost accommodation under s.10Q of the LTM Act.
6. If part of a parcel of land is used solely for the purposes of a community and more than 50% of the homes on that part of the land are used and occupied by at least one qualifying home owner, that part of the land so used is low cost accommodation for the purposes of s.10Q of the LTM Act. Pursuant to ss 10Q(4) and 10R(3)-(3C) of the LTM Act, the taxable value of the parcel is reduced in accordance with the following formula:

$$\mathbf{RTV = TV \times A/B}$$

Where:

RTV = the reduction in the taxable value of the parcel of land

TV = the taxable value of the parcel before the reduction

A = the estimated area of land used exclusively for the purpose of a community

B = the total area of the parcel of land

7. If there is no clear boundary between parts of the land used for the purposes of a community and parts of the land used for other purposes but more than 50% of the homes on the land are used and occupied by at least one qualifying home owner, a proportion of the land is to be regarded as being used for low cost accommodation for the purposes of s.10Q of the LTM Act. Pursuant to ss 10Q(4) and 10R(3)-(3C) of the LTM Act, the taxable value of the parcel of land is reduced in accordance with the following formula:

$$\mathbf{RTV = TV \times C/D}$$

Where:

RTV = the reduction in the taxable value of the parcel of

TV = the taxable value of the parcel before the reduction

C = number of residential sites occupied by qualifying home owners

D = total number of residential sites capable of separate occupation in a cabin, mobile home, caravan, tent or other form of residence

8. The entitlement to an exemption or a reduction in taxable value of a parcel of land is to be determined having regard to the relevant facts and circumstances on the taxing date for each tax year (that is, midnight on the **31 December** immediately preceding the tax year).

Definitions applying to terms used in this ruling

9. An existing residential site or home that is temporarily unoccupied is classified as being occupied by a qualifying home owner if the operator who manages, controls or otherwise operates the community will only permit the site to be occupied by home owners of which at least one is a qualifying person.

10. A qualifying home owner is a person who is retired or who is at least 55 years old who owns a home on a residential site, and uses and occupies the home as the person's principal place of residence.

11. For the purposes of paragraph 6, where a parcel of land is used for the purposes of a community and for other purposes (including unused land intended for future development) and the demarcation is unclear, the part of the parcel that is used exclusively for the purposes of a community may be calculated as the sum of the total area of all sites which are used and occupied by at least one qualifying home owner plus the area of any land containing amenities which are used exclusively by the qualifying home owners.

12. The following terms used in this ruling have the meanings given by the RLLC Act:

community or residential community means an area of land that comprises or includes sites on which homes are, or can be, placed, installed or erected for use as residences by individuals, being land that is occupied or made available for occupation by those individuals under an agreement or arrangement in the nature of a tenancy, and includes any common areas made available for use by those individuals under that agreement or arrangement.

Note: A community may be:

1. a caravan park (that is, land, including a camping ground, on which caravans, or caravans and other moveable dwellings, have been, are or are to be placed, installed or erected), or
2. a manufactured home estate as defined in the Local Government Act 1993 (that is, land on which manufactured homes have been, are or are to be placed), whether or not the caravan park or manufactured home estate is the subject of an approval under the *Local Government Act 1993*.

home means:

3. any caravan or other van or other portable device (whether on wheels or not) other than a tent, used for human habitation, or
4. a manufactured home as defined in the *Local Government Act 1993*, or
5. any conveyance, structure or thing of a class or description prescribed by the regulations for the purposes of this definition.

home owner means:

6. a person who owns a home on a residential site in a community that is the subject of a site agreement (whether or not the person resides at the site), or
7. a person who obtains an interest in a site agreement as the personal representative, or a beneficiary of the estate, of a deceased individual who, immediately before the individual's death, was a person mentioned in paragraph (a), or
8. another successor in title of a person mentioned in paragraph (a), but does not include any person, or any person of a class, excluded from this definition by the regulations.

operator of a community means a person who is:

9. the person who manages, controls or otherwise operates the community, including by granting rights of occupancy under site agreements or tenancy agreements, whether or not the person is an owner of the community, or
10. the personal representative, or a beneficiary of the estate, of a deceased individual who, immediately before the individual's death, was a person mentioned in paragraph (a), or
11. a mortgagee in possession of a community for which site agreements are in force, or
12. another successor in title of a person mentioned in paragraph (a), other than a person, or a person of a class, excluded from this definition by the regulations.

residential site means a site in a community for a home that is used, or is intended to be used, as a residence by an individual.

Ruling

13. Owners who wish to apply for the concession must apply by completing the application form on the Revenue NSW website. The application should be lodged no later than 30 days after receiving a notice of assessment which includes the relevant land. The completed application may be posted to the Chief Commissioner at the following address:

Revenue NSW
GPO Box 4269
Sydney NSW 2001

or, alternatively, the application may be emailed to landtax.lodgements@revenue.nsw.gov.au.

14. Records of owners who claim concessions are regularly audited by Revenue NSW. Documentary evidence supporting the application, showing that the use and occupation of the land meets the approved guidelines must be retained and produced for inspection, if requested.

Surcharge land tax and duty: Residential premises that are not dwellings

 revenue.nsw.gov.au/help-centre/resources-library/rulings/general/g011

Ruling number	G 011
Date issued	29 November 17
Issued by	Stephen R Brady Chief Commissioner of State Revenue
Effective from	21 June 2016
Effective to	-
Status	Current

Preamble/Background

1. From **21 June 2016**, surcharge purchaser duty applies to certain dutiable transactions over residential land in NSW. Commencing from the 2017 land tax year, surcharge land tax applies to foreign persons who are owners of residential land in NSW. This Revenue Ruling clarifies where the surcharge will not apply to residential premises.
2. “Dwelling” for both surcharge purchaser duty and surcharge land tax is defined in section 104I(1) of the Duties Act 1997 as a house, or a room or a suite of rooms (whether or not forming part of a building or a detached building), that is:
 1. occupied or used as a separate dwelling, or
 2. so constructed, designed or adapted as to be capable of being occupied or used as a separate dwelling.
3. Section 104I(2) provides that a dwelling does not include a reference to a room or suite of rooms determined by the Chief Commissioner not to be a dwelling.

Ruling

4. This ruling constitutes a determination by the Chief Commissioner for the purposes of section 104I(2). The following guidelines will help identify the types of premises determined not to be a dwelling by the Chief Commissioner.

5. **Hotels, Motels & Inns** will not be dwellings if the premises:

1. are operated for commercial purposes,
2. offer accommodation to the public,
3. provide accommodation on a multiple occupancy basis,
4. provide central management and services,
5. do not provide the occupants an exclusive right to occupy any particular part of the premises in the same way as a tenant, and
6. provide short term accommodation (generally less than 90 days).

6. **Hostels & Boarding Houses** will not be dwellings if the premises:

1. provide lodgers with a principal place of residence for more than 90 days,
2. are operated for commercial purposes, and
3. are registered under the Boarding Houses Act 2012.

7. **Student accommodation** will not be dwellings if the premises:

1. are purpose built exclusively for students (regardless of whether the rooms are self-contained),
2. provide students with a principal place of residence for more than 90 days,
3. are operated for commercial purposes, and
4. are made available solely for occupation by students.

Providing temporary short term accommodation to persons or groups of persons during semester holidays is permitted.

Note: Accommodation provided to the manager or caretaker, being an individual, is not a dwelling for the purposes of surcharge purchaser duty and surcharge land tax.

Purpose built student accommodation includes substantially renovated accommodation that:

1. has been created through renovations in which the whole, or substantially the whole, of a building is removed or replaced (whether or not the renovations involve the removal or replacement of foundations, external walls, interior supporting walls, floors or staircases), and,
2. as renovated, has not been previously occupied or sold for any purpose other than as student accommodation.

8. **Aged Care and other Care Facilities** will not be dwellings if the premises:

1. provide accommodation in the facility for a person for more than 90 days or provide palliative care,
2. provide appropriate staffing to meet the nursing and personal care needs of the person,
3. provide meals and cleaning services,
4. provide furnishings, furniture and equipment for the provision of that care and accommodation, and
5. are operated for commercial purposes.

Note: Does not include a person's private home where care is provided to a person.

In some cases, residential care by an approved provider or respite care provided under the [Aged Care Act 1997 \(Cth\)](#) may be included in a retirement village complex. Each facility will be considered on its merits.

9. **Bed and Breakfast accommodation**

A bed and breakfast is generally a private home and will therefore be treated as a dwelling even though it provides temporary or short-term accommodation to the public. However, where a particular bed and breakfast is run on similar lines to, and has all of the features of, a motel, hotel or inn, it may be determined not to be a dwelling under section 104I(2).

Given the significant variation in different types of bed and breakfast operations, each facility will be considered on its own merits.

10. **Caravan & Home Parks**

Most caravan parks and home parks are excluded from paying surcharge purchaser duty and surcharge land tax. However, long term accommodation in a caravan park or home park may still be liable if any of the features in paragraph 13 of this ruling are evident.

11. Separately titled rooms, apartments, serviced apartments, cottages and villas

Separately titled rooms, apartments (including serviced apartments), and cottages and villas on adjoining land will not be treated as dwellings if the premises:

1. are combined with sufficient commercial infrastructure (for example, reception areas, dining and bar areas, meeting/function rooms, laundry and car parks),
2. are owned or operated as a whole regardless of whether they are separately titled,
3. are operated for commercial purposes, and
4. provide short term accommodation (generally less than 90 days).

However, notwithstanding the above, such premises will be liable to surcharge if the owner or occupier of the premises is permitted to occupy the premises for more than 90 days per calendar year.

12. Relevant factors in determining a commercial purpose

To show that there is a commercial purpose, the operator should be able to evidence:

1. a genuine intention and a reasonable expectation that the activity is likely to generate a profit, and
2. the activity is being, or will be, carried on consistently in an organised and efficient manner.

In determining whether the above elements are present, various factors will be considered including (but not limited to):

1. repetition, regularity and intensity of that activity,
2. history and future prospects in relation to income, costs and profit,
3. characteristics of other businesses within the industry, and
4. expected commercial viability of the business in the foreseeable future.

13. Features that indicate that the dwellings are not a hotel, motel, inn, hostel, boarding house or similar premises¹

Ultimately, it is necessary to consider the features of each premises to determine whether the overall character of the premises meets the requirements outlined above. While not an exhaustive list, factors that may indicate that premises are dwellings under section 104I(1) and therefore not suitable for a determination under section 104I(2) include:

1. the operator agreeing with an occupant to provide accommodation for a periodic term (which may be for a period of months or years at a time), such as in a residential lease,
2. the operator having the right to impose a cleaning fee on an occupant when the occupant ceases to occupy the premises,
3. an occupant being permitted, subject to the terms of the lease, to alter the premises, such as by attaching hanging devices on a wall,
4. an occupant being permitted, subject to the terms of the lease, to keep pets in the premises,
5. an occupant being granted long stay accommodation of more than 90 days (excluding boarding houses and hostels),
6. an occupant having to arrange and pay for the connection of a telephone, electricity, or gas service,
7. an occupant being responsible for the cleaning and minor maintenance of the premises, such as changing light bulbs,
8. the premises being unfurnished,
9. the right to occupy is granted to an occupant in exchange for the occupant lending an amount to the operator.

14. Other categories of premises

Other categories of premises may still be determined not to be a dwelling notwithstanding that some or all of the features outlined in this Ruling are not present. These will be considered on a case by case basis.

Footnotes

1. ¹ Please note that, while the following features are similar to those listed in the “Goods and Services Tax Ruling GSTR 2012/6”, there are significant differences between the GST legislation and the surcharge provisions of the *Duties Act 1997* and the Land Tax Act 1956.

Exemptions for foreign Australian-based developers

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Exemption from surcharge for new home development by Australian-based developers that are foreign persons

Ruling number G 013

Date issued 05 March 2018

Issued by **Stephen R Brady**
Chief Commissioner of State Revenue

Effective from 05 March 2018

Effective to -

Status **Current**

Preamble/Background

1. Surcharge purchaser duty applies to acquisitions of residential land by a foreign person from **21 June 2016**. Surcharge land tax applies to foreign persons who are owners of residential land from **2017** land tax year.
2. In 2017, amendments were made to the [Duties Act 1997](#), [Land Tax Act 1956](#) and [Land Tax Management Act 1956](#), providing for surcharge concessions to be provided to Australian-based developers who are foreign persons.

3. Under sections 104ZJA of the *Duties Act 1997* or 5C of the *Land Tax Act 1956*, there are two forms of concession:
1. An exemption from surcharge purchaser duty or surcharge land tax if the Chief Commissioner is satisfied that the foreign person will use land, in respect of which the person would otherwise incur liability for surcharge, for the following purposes:
 - construction and sale of new homes, or
 - subdivision and sale for new home construction.The Chief Commissioner may apply the exemption to a surcharge liability arising before the exemption was granted, thereby entitling the foreign person to a refund of surcharge payments already made.
 2. A refund of surcharge purchaser duty or surcharge land tax where the foreign person has not been granted an exemption from surcharge, but has used land in respect of which surcharge has been paid for either of the purposes specified under the first concession.
4. Orders to be approved by the Treasurer and published in the Gazette will provide guidance on the second of these concessions.
5. This ruling relates to the first concession, and sets out in further detail the matters which the Chief Commissioner will consider in determining whether an exemption from surcharge purchaser duty and surcharge land tax liability should be granted to an Australian-based developer that is a foreign person.
6. The ruling also provides guidance on the circumstances in which the exemption may be revoked, and on the provision of refunds for surcharges where an exemption is granted after surcharge has been paid.

Ruling

Granting of an exemption

7. The Chief Commissioner may, on the application of a person, exempt the person from paying surcharge purchaser duty on a transfer of residential-related property, and/or from the liability to pay surcharge land tax in respect of residential land owned at midnight on **31 December** in a year.
8. In respect of surcharge purchaser duty, the exemption may apply to more than one transfer (including future transfers). In respect of surcharge land tax, the exemption may be granted for more than one land tax year (including future land tax years).

9. To be granted an exemption from surcharge purchaser duty or surcharge land tax:

1. The person must be an Australian corporation¹ (hereafter referred to as “corporation”), and
2. The Chief Commissioner must be of the opinion that, were the corporation to pay surcharge purchaser duty or surcharge land tax, it would likely become entitled to a full refund of the relevant surcharge on the basis that either of the following requirements for a refund would be met by the corporation:

1. Construction and sale of new homes

1. construction of a new home on the land concerned by the corporation or a related body corporate and sold to a person who is not an associated person of the corporation,
2. the new home is not used and occupied for any purpose (other than a display home) before the completion of the sale, and
3. an application for refund is made within 12 months of the home being sold and no later than 10 years after the acquisition of the land concerned by the corporation².

2. Subdivision of land for new home construction

1. subdivision of the land by the corporation or a related body corporate for the purpose of new home construction and then sold by the corporation after the issue of a subdivision certificate, and
2. an application for refund is made within 12 months of issue of the subdivision certificate and no later than 10 years after the acquisition of the land concerned by the corporation³.

10. For the purposes of clause **9B** of this ruling, the Chief Commissioner may have regard to the following:

1. the corporation's past or present involvement in new home construction or the subdivision of land for new home construction
2. the corporation's plans for new home construction or subdivision of land for new home construction, as evidenced by, for example, corporate plans, prospectuses, annual reports or other similar publications
3. approval by the Foreign Investments Review Board to purchase real estate
4. development timetables
5. approval of finance by a financial institution
6. relevant development approvals
7. any other matter considered relevant by the Chief Commissioner.

In relation to each of these approvals, the Chief Commissioner may consider processes underway for the corporation to obtain such approvals (eg a proposed strata plan for which a strata certificate has been sought).

11. In respect of relevant development approvals (10(f)), the Chief Commissioner may consider the following, as appropriate:

1. a construction certificate issued under section 109C(1)(b) of the Environmental Planning and Assessment Act 1979
2. a subdivision plan registered under section 195A of the Conveyancing Act 1919
3. a complying development certificate issued under section 85 of the *Environmental Planning and Assessment Act 1979*
4. a subdivision certificate⁴ issued under Part 4A of the *Environmental Planning and Assessment Act 1979*
5. a strata certificate issued by a local council under the Strata Schemes Development Act 2015
6. any other approvals deemed relevant by the Chief Commissioner.

12. An exemption may be subject to conditions. Such conditions may, for example, include requirements to report periodically on the progress of a development or such other requirements that may assist the Chief Commissioner to monitor a corporation's adherence to its obligations under sections 104ZJA of the *Duties Act 1997* and 5C of the *Land Tax Act 1956*, and under the terms of the exemption.
13. Where an approval is given subject to conditions, the conditions may be varied, at any time, by notice to the corporation. The Chief Commissioner may determine an appropriate transition period before a corporation is required to implement a new or revised condition.
14. If a corporation's application for exemption is refused, the corporation is not prevented from submitting a further application. Any further application will be assessed against the legislation and guidelines contained in this Ruling, provided that additional evidence to support the application is provided.

Revocation of an exemption

15. An exemption remains in force until it is revoked by the Chief Commissioner, by notice to the corporation. Prior to revoking an exemption, the Chief Commissioner may provide the corporation an opportunity to show cause why the exemption should not be revoked.
16. The Chief Commissioner may revoke an exemption having regard to the exempt corporation's conduct, including conduct which, had the corporation paid surcharge purchaser duty or surcharge land tax, may have made the corporation ineligible for a full refund. Circumstances in which an exemption may be revoked include the following:
 1. land is purchased to build new homes but is on-sold before a new home is constructed⁵.
 2. land is on-sold before a subdivision certificate is issued⁶.
 3. a new home is sold to an associated person.
 4. a home is used and occupied (other than as a display home) before the completion of the sale.
 5. non-compliance with any conditions attached to an exemption.

The Chief Commissioner will consider the nature, extent and duration of the corporation's conduct in determining whether an exemption should be revoked.

17. The revocation of an exemption can be backdated to when surcharge liability would (but for the approval) have arisen.
1. If the revocation of an approval is backdated, surcharge purchaser duty will be assessed or reassessed as if the approval had never applied and as if liability for duty arose when revocation of the approval was notified.
 2. If the revocation of an approval is backdated to extend to a land tax year in respect of which the exemption has already been applied, surcharge land tax is payable and is to be assessed or reassessed as if the approval had never applied in respect of that tax year.

Refunds of surcharge paid prior to an exemption being granted

18. If an Australian corporation is granted an exemption from surcharge purchaser duty, the Chief Commissioner may apply that exemption to a transfer that took place before the exemption was granted and for which surcharge purchaser duty was paid. Likewise, an exemption from surcharge land tax may be applied to a surcharge land tax liability arising before the exemption was granted.
19. The Chief Commissioner will need to be satisfied that the backdating of the exemption is warranted, having regard to the corporation's use or intended use of the residential land.

Footnotes

1. ¹ For avoidance of doubt, an Australian corporation or related body corporate includes an Australian trustee company. That is, the holding of residential-related property in a trust may also satisfy the exemption if the trustee of the trust is an Australian trustee company.
2. ² The 10 year timeframe applies to land acquired after the introduction of the surcharges (i.e. 21 June 2016). For surcharge land tax (which applies from the 2017 land tax year regardless of when the land was acquired), if completion of the transfer of the residential land to the Australian corporation occurred before 21 June 2016, then the relevant requirements must be met by no later than 21 June 2021.
3. ³ See endnote ii
4. ⁴ It is acceptable that the subdivision certificate does not have the same lot number as the lot on which the new home is ultimately constructed.
5. ⁵ See 104ZJA(1)(a)
6. ⁶ See 104ZJA(1)(b)