

NSW to stimulate Build-to-Rent industry

New land tax and duty concessions until 2040

NSW has announced important land tax and foreign investor surcharge concessions for new build-to-rent (BTR) projects until 2040.

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The NSW Government last week announced tax concessions for new BTR projects until 2040, and also released a new streamlined Housing Diversity State Environmental Planning Policy that includes proposed development standards for BTR developments and other affordable housing options.

Eligible projects will have the following concessions:

- a discount of at least 50% on annual land tax
- an exemption from the foreign investor surcharge
- a refund of foreign purchaser duty where a BTR property has subsequently been constructed.

The Australian BTR market faces significant regulatory and taxation hurdles that other segments of the Australian property market do not. ShineWing Australia welcomes the NSW Government announcement to begin levelling the playing field to allow this important segment of the market to grow.

The exemption from foreign investor / purchaser surcharges is particularly important in providing certainty to the foreign capital undertaking feasibility studies on NSW BTR projects. However, it is noted that the concessions for the surcharges seemingly apply only to Australian companies which will narrow eligibility. A broader application, or clarity that the concession extends to trusts seems warranted.

Land Tax concession

The value of an eligible parcel of land will be reduced by 50% where:

- a building is constructed on land after 1 July 2020
- the Chief Commissioner is satisfied that the building is being used and occupied for a BTR property in accordance with the guidelines.

The guidelines on what qualifies as a BTR property include:

- the circumstances in which the building is taken to be a BTR property, including:
 - the planning or development standards that must be complied with

- the minimum lease conditions that must be offered to tenants of the BTR property (including an option for longer leases)
- the minimum scale of the building to qualify as a BTR property – there must be at least 50 units where the development is in metropolitan areas (a different threshold is being considered for regional areas)
- the nature of the ownership and management of the building and the land on which the building is situated (the BTR property must be managed under a unified ownership).
- the circumstances in which the application is required to give an undertaking to not sub divide the land.

The NSW Government is expected to release further guidelines in coming weeks.

The land tax concession will apply proportionately if only part of the land is being used and occupied for a BTR property.

If, within 15 years of the *application*, the land is subdivided or otherwise divided, the owner must inform the Chief Commissioner of the details within one month and a clawback will arise for the years that the concession was claimed (up to a maximum of 15 years).

Foreign investor land tax surcharge

An Australian corporation otherwise subject to the 2% NSW surcharge purchaser duty is entitled to a refund where the Chief Commissioner is satisfied that a building is taken to be a BTR property under the guidelines and the land tax concession (above) applies.

The amount of the refund will be determined by the Treasurer. The Chief Commissioner may approve a foreign investor as an exempt person for particular land where that person is likely to become entitled to a refund. This would prevent the need for the person to pay the surcharge and apply for a refund.

An application for relief must be made within 12 months of being entitled to the concession, and no later than 10 years after the transfer. If within 15 years the land is subdivided, or

otherwise divided, the owner must inform the Chief Commissioner of the details within one month and a clawback will arise for the years that the concession was claimed (up to a maximum of 15 years).

Foreign purchaser surcharge

An Australian corporation otherwise subject to the 8% NSW surcharge purchaser duty is entitled to a refund where the Chief Commissioner is satisfied:

- the transfer was entered into after 1 July 2020 (other than where the contract was entered before 1 July 2020)
- a BTR property has been constructed on the land (or constructed by a related body corporate) after completion of the transfer
- the purchaser is entitled to the land tax concession (above).

An application for relief must be made within 12 months of being entitled to the concession, and no later than 10 years

after the transfer. Clawback provisions will apply where, within 15 years of the application, the land is subdivided or otherwise divided.

How ShineWing Australia can assist

Developers and investors should review their NSW models and feasibility studies. The upfront purchaser duty concession and annual land tax concessions can represent significant savings over the life of an investment that should boost returns to equity providers. The announcements should lead to a number of marginal projects now becoming feasible.

Overall, it is pleasing to see that the NSW Government is attempting to tackle the housing affordability issue more generally. The BTR market, along with social, and shared equity models, play a crucial role in overseas markets and we welcome efforts by all levels of Government to provide the necessary foundations in Australia to allow BTR to play a similar role here.

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