



Income Tax Assessment (Build to Rent Developments) Determination 2024

made under the *Income Tax Assessment Act 1997*

Compilation No. 1

Compilation date: 29 March 2025

Includes amendments: *Income Tax Assessment (Build to Rent Developments) Amendment (Expanding Affordability Requirements) Determination 2025*

Prepared by The Treasury

About this compilation

This compilation

This is a compilation of the *Income Tax Assessment (Build to Rent Developments) Determination 2024* that shows the text of the law as amended and in force on 29 March 2025 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1—Preliminary

1 Name

This instrument is the *Income Tax Assessment (Build to Rent Developments) Determination 2024*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the day after this instrument is registered; and (b) 1 January 2025.	1 January 2025

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Income Tax Assessment Act 1997*.

4 Definitions

Note: Expressions have the same meaning in this instrument as in the *Income Tax Assessment Act 1997* as in force from time to time—see paragraph 13(1)(b) of the *Legislation Act 2003*.

- assessing event**, for a dwelling, means any of the following:
- (a) a lease being entered into for the dwelling;
 - (b) the lease for the dwelling being renewed;
 - (c) after a lease is entered into or renewed, one of more of the following occurring:
 - (i) an adult individual moving in or out of the dwelling;
 - (ii) a dependent child of an adult individual occupying the dwelling moving out of the dwelling, resulting in no dependent children of an adult individual occupying the dwelling continuing to occupy the dwelling;
 - (iii) an individual occupying the dwelling providing a notice under subsection 7(6).

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average annual earnings means the amount of the full-time adult average weekly ordinary time earnings (original), for the most recent period for which an amount has been published by the Australian Statistician, multiplied by 52.

Note: In 2024, statistics published by the Australian Statistician could be viewed on the Australian Bureau of Statistics website (<http://www.abs.gov.au>).

BTR owner, in relation to a dwelling, means the owner of the dwelling that forms part of a build to rent development.

dependent child: an individual is a **dependent child** of another individual if:

- (a) the second individual is a parent of the first individual; and
- (b) either:
 - (i) the first individual is a dependent child of the second individual within the meaning of subsection 5(2) or (4) of the *Social Security Act 1991*; or
 - (ii) the first individual is receiving a disability support pension (within the meaning of the *Social Security Act 1991*), and lives with the second individual.

lower-income dwelling has the meaning given by subsection 7(1).

moderate-income dwelling has the meaning given by subsection 6(1).

the Act means the *Income Tax Assessment Act 1997*.

Part 2—Build to rent developments

5 Requirements for affordable dwellings

- (1) Under subsection 43-153(3) of the Act, each of the following requirements for a dwelling to be an affordable dwelling are determined:
 - (a) the dwelling is either:
 - (i) a moderate-income dwelling; or
 - (ii) a lower-income dwelling;
 - (b) the dwelling is part of a build to rent development in which the number of dwellings that are lower-income dwellings is equal to or greater than:
 - (i) 2% of the number of the dwellings; or
 - (ii) if the number of dwellings worked out under subparagraph (i) is not a whole number—that number rounded down to the nearest whole number of dwellings;
 - (c) the dwelling is part of a build to rent development that satisfies subsection (2);
 - (d) if the dwelling is tenanted—each tenant of the dwelling was identified by an eligible community housing provider as a prospective tenant for the dwelling (having regard only to the requirements for dwellings in this instrument and any matter expressly advised to the provider by the BTR owner).
- (2) For the purposes of paragraph (1)(c) a build to rent development satisfies this subsection if the BTR owner engages an eligible community housing provider to assist the BTR owner to:
 - (a) identify prospective tenants for each affordable dwelling in the development; and
 - (b) ascertain, for each assessing event in relation to each affordable dwelling in the development, whether the dwelling satisfies the criteria in subsection 6(2) or 7(2) (whichever applies).
- (3) The requirements in paragraphs (1)(c) and (d) do *not* apply to a dwelling if special circumstances exist in relation to the dwelling.

6 Meaning of moderate-income dwelling

- (1) A dwelling is a ***moderate-income dwelling*** if:
 - (a) the dwelling satisfies the criteria set out in subsections (2) and (4); and
 - (b) the dwelling is not a lower-income dwelling.
- (2) A dwelling satisfies the criteria in this subsection if the dwelling is tenanted, or available to be tenanted, only by one or more of the following:
 - (a) an adult living alone whose taxable income, for the most recent income year, for which the Commissioner has given the adult a notice of assessment, ending before the dwelling's most recent assessing event, was less than 120% of average annual earnings;
 - (b) 2 or more adults living together whose combined taxable incomes, for the most recent income year, for which the Commissioner has given each adult

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- a notice of assessment, ending before the dwelling's most recent assessing event, was less than 130% of average annual earnings;
- (c) one adult living with one or more dependent children of the adult, where the adult's taxable income, for the most recent income year, for which the Commissioner has given the adult a notice of assessment, ending before the dwelling's most recent assessing event, was less than 140% of average annual earnings;
 - (d) 2 or more adults living with one or more dependent children of any of the adults, where the adults' combined taxable incomes for the most recent income year, for which the Commissioner has given each adult a notice of assessment, ending before the dwelling's most recent assessing event, was less than 140% of average annual earnings.
- (3) Despite subsection (2), if a dwelling no longer satisfies the criteria in that subsection only because of an event mentioned in subparagraph (c)(i) or (ii) of the definition of assessing event, the dwelling is taken to continue to satisfy the criteria until:
- (a) if, immediately before the event, the dwelling was taken to satisfy the criteria in subsection (2) because of a previous application of this subsection—the day worked out under paragraph (b) for that previous application; or
 - (b) otherwise—the earlier of:
 - (i) the end of 12 months after the event; or
 - (ii) the end of the lease for the dwelling.
- (4) A dwelling satisfies the criteria in this subsection if the rent payable under a lease for the dwelling is 74.9% or less of the market value of the right to occupy the dwelling under the lease.

7 Meaning of lower-income dwelling

- (1) A dwelling is a **lower-income dwelling** if the dwelling satisfies the criteria set out in subsections (2) and (4).
- (2) A dwelling satisfies the criteria in this subsection if the dwelling is tenanted, or available to be tenanted, only by one or more of the following:
 - (a) an adult living alone whose taxable income, for the most recent income year, for which the Commissioner has given the adult a notice of assessment, ending before the dwelling's most recent assessing event, was less than 75% of average annual earnings;
 - (b) 2 or more adults living together whose combined taxable incomes, for the most recent income year, for which the Commissioner has given each adult a notice of assessment, ending before the dwelling's most recent assessing event, was less than 90% of average annual earnings;
 - (c) one adult living with one or more dependent children of the adult, where the adult's taxable income, for the most recent income year, for which the Commissioner has given the adult a notice of assessment, ending before the dwelling's most recent assessing event, was less than 100% of average annual earnings;
 - (d) 2 or more adults living with one or more dependent children of any of the adults, where the adults' combined taxable incomes for the most recent

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income year, for which the Commissioner has given each adult a notice of assessment, ending before the dwelling's most recent assessing event, was less than 100% of average annual earnings.

- (3) Despite subsection (2), if a dwelling no longer satisfies the criteria in that subsection only because of an event mentioned in subparagraph (c)(i) or (ii) of the definition of assessing event, the dwelling is taken to continue to satisfy the criteria until:
 - (a) if, immediately before the event, the dwelling was taken to satisfy the criteria in subsection (2) because of a previous application of this subsection—the day worked out under paragraph (b) for that previous application; or
 - (b) otherwise—the earlier of:
 - (i) the end of 12 months after the event; or
 - (ii) the end of the lease for the dwelling.
- (4) A dwelling satisfies the criteria in this subsection if the rent payable under a lease for the dwelling is *not* more than the lesser of:
 - (a) 74.9% of the market value of the right to occupy the dwelling under the lease; and
 - (b) 30% of:
 - (i) if the dwelling is tenanted by an adult (either living alone or with one or more dependent children)—the taxable income, for the most recent income year, for which the Commissioner has given the adult a notice of assessment, ending before the dwelling's most recent assessing event; or
 - (ii) if the dwelling is tenanted by 2 or more adults living together (either with or without one or more dependent children)—the combined taxable incomes, for the most recent income year, for which the Commissioner has given each adult a notice of assessment, ending before the dwelling's most recent assessing event.
- (5) Despite subsection (4), if:
 - (a) an event mentioned in subparagraph (c)(iii) of the definition of assessing event occurs in relation to a dwelling; and
 - (b) because of that event, the dwelling no longer satisfies the criteria in subsection (4);
 the dwelling is taken to continue to satisfy the criteria in that subsection for the period of 60 days after the event.

Request for rental review

- (6) A tenant of a lower-income dwelling may provide a notice to the owner of the dwelling requesting a review of the rent payable under the lease for the dwelling if:
 - (a) the notice is provided during a financial year; and
 - (b) a notice has *not* previously been provided in respect of the dwelling for the financial year.
- (7) The notice must:
 - (a) be made in writing; and

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- (b) be accompanied by information that would enable the owner to assess whether the dwelling satisfies the criteria in subsection (4).

Part 10—Transitional Provisions

Division 1—Transitional provisions relating to the Income Tax Assessment (Build to Rent Developments) Amendment (Expanding Affordability Requirements) Determination 2025

100 Application provision

The amendments of this instrument made by the *Income Tax Assessment (Build to Rent Developments) Amendment (Expanding Affordability Requirements) Determination 2025* (the **amending determination**) apply in relation to a dwelling on and after the day that is 12 months after the commencement of the amending determination.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted	orig = original
am = amended	par = paragraph(s)/subparagraph(s)
amdt = amendment	/sub-subparagraph(s)
c = clause(s)	pres = present
C[x] = Compilation No. x	prev = previous
Ch = Chapter(s)	(prev...) = previously
def = definition(s)	Pt = Part(s)
Dict = Dictionary	r = regulation(s)/rule(s)
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md not incorp) = misdescribed amendment cannot be given effect	SLI = Select Legislative Instrument
mod = modified/modification	SR = Statutory Rules
No. = Number(s)	Sub-Ch = Sub-Chapter(s)
o = order(s)	SubPt = Subpart(s)
Ord = Ordinance	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Income Tax Assessment (Build to Rent Developments) Determination 2024	23 December 2024 (F2024L01729)	1 January 2025	—
Income Tax Assessment (Build to Rent Developments) Amendment (Expanding Affordability Requirements) Determination 2025	28 March 2025 (F2025L00459)	29 March 2025	—

Endnote 4—Amendment history

Provision affected	How affected
s4	am F2025L00459
s5	rs F2025L00459
s6	ad F2025L00459
s7	ad F2025L00459
s100	ad F2025L001459