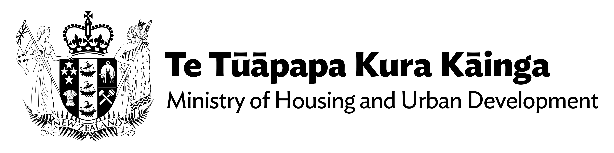
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# **Build-to-rent**

# Exclusion from interest limitation rules

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Guidance for build-to-rent tenants and providers

[Publish Date]

Build-to-rent exclusion from interest limitation rules

This guidance is for current and prospective build-to-rent tenants and providers, and people who may be interested in the build-to-rent in-perpetuity exclusion from interest limitation rules.

Build-to-rent land is excluded in perpetuity from the property interest limitation rules that took effect 1 October 2021. The intent of this exclusion is to ensure interest limitation rules do not disincentivise investment in build-to-rent developments.

The exclusion applies to new and existing developments on registered build-to-rent land. Initial investors can deduct interest for as long as they hold the land and operate it as build-to-rent. Any subsequent investor(s) can deduct interest for as long as the land continues to qualify for the exclusion.

Interest deductions will not be phased out for existing build-to-rent developments, as per the interest limitation rules. Taxpayers who hold existing developments will have until 1 July 2023 to meet the build-to-rent land requirements to be eligible for the exclusion and to apply for registration.

What is build-to-rent?

Build-to-rent is a type of housing (medium to high-density) specifically built to provide long-term rental housing. Build-to-rent includes the development and long-term management of a multi-unit rental property by institutional investors and developers, often financed by institutional capital (including iwi, pension funds and retail funds) over a 50-year timeframe.

The benefits of build-to-rent housing include creating dedicated rental supply (particularly the most-needed typologies), enabling affordability and providing better renting experiences and ensuring security of tenure for tenants.

Interest limitation rules

Changes to interest limitation rules took effect 1 October 2021 to phase out investors’ ability to deduct interest costs against the income they make from a property. These changes aim to support more sustainable house prices and improve affordability for first home buyers.

To encourage continued investment in new housing supply, new build properties are exempt from the rules for 20 years after a code of compliance certificate is issued.

For more information about the interest limitation rules, including about the 20-year new build exemption, visit [www.ird.govt.nz/property-interest-rules](http://www.ird.govt.nz/property-interest-rules).

Build-to-rent exclusion requirements

The exclusion applies to build-to-rent developments on land registered by Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development.

To qualify for the exclusion from interest limitation, a development must meet the following requirements, as set out in the definition of build-to-rent land in the Income Tax Act 2007:

* 20 or more dwellings in a single development on a single block or adjacent blocks, held in one or more titles
* owned by the same person (a person includes a legal entity like a company)
* each dwellings is being prepared for use, available, or occupied under a residential tenancy
* every residential tenancy has the option of a 10-year term, with the ability for the tenant to give 56 days’ notice of termination
* every tenancy agreement includes a personalisation policy, with reference to sections 42, 42A and 42B of the Residential Tenancies Act 1986.

Land will no longer qualify for the build-to-rent exclusion if at any point in time the build-to-rent developments on the land do not meet these requirements. Even if the requirements are met in the future, the land will be unable qualify for the build-to-rent exclusion again.

In situations where an inadvertent breach of the definition occurs, for example, a genuine administrative error sees a tenant in one of the 20 dwellings not provided an explicit personalisation policy, Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development will work with build-to-rent providers to assist them in meeting compliance.

Mixed-tenure developments

Dwellings on build-to-rent land and the land itself do not have to be strictly neighbouring. For example, a commercial space or owner-occupied home can exist in a single development between qualifying build-to-rent units.

The definition of build-to-rent land refers to sections CB 12(1)(a) to (e) and CB 13(1)(a) and (b), and requires land to be part of a single development. This clarifies that developments which span multiple blocks of land and are not directly touching, for example, are separated by a road, are eligible for the exclusion if all other requirements are met.

Apportionment

Only interest relating to the portion of the development meeting the build-to-rent land definition can be claimed. Taxpayers will need to apportion their interest expense in their income tax returns for any dwellings that do not meet the build-to-rent land definition.

What is a build-to-rent tenancy?

The definition of build-to-rent land requires a tenancy that is covered under the Residential Tenancies Act 1986. A build-to-rent tenancy is therefore like other types of residential rental arrangements, which are offered under fixed-term or periodic tenancy agreements. Additional requirements exist under the build-to-rent land definition that mean build-to-rent providers (prospective and current) must offer tenants a 10-year fixed-term tenancy with the ability for tenants to terminate the tenancy with 56 days’ notice and provide a clear personalisation policy to tenants.

10-year fixed-term tenancy agreements

Build-to-rent tenants must be offered a 10-year fixed-term tenancy agreement, with the ability to terminate the tenancy with 56 days’ notice. Tenants do not have to accept this offer and can request other tenancy agreements as provided for by the Residential Tenancies Act 1986. Where other tenancy terms are agreed, the Residential Tenancies Act 1986 applies.

Tenants seeking to renew their tenancy agreement in a build-to-rent dwelling must always be offered the option of a 10-year fixed-term tenancy. This applies in instances of renewal or at any time if agreed to by both the tenant and provider.

The intent of this requirement is to give tenants increased tenure security which has many wellbeing benefits, while maintaining their rights as tenants and to ensure suitable levels of household flexibility and mobility.

Personalisation policies

Build-to-rent providers must explicitly offer tenants the ability to personalise their dwellings, with reference to sections [42](https://www.legislation.govt.nz/act/public/1986/0120/latest/DLM95092.html), [42A](https://www.legislation.govt.nz/act/public/1986/0120/latest/LMS451308.html) and [42B](https://www.legislation.govt.nz/act/public/1986/0120/latest/LMS451310.html) of the Residential Tenancies Act 1986. This may look like a build-to-rent provider including a clause in tenancy agreements or producing a document offered to all tenants within a development explicitly outlining how tenants can personalise their dwellings. Providers must include their position on the keeping of pets.

Personalisation policies are not intended to pre-authorise the personalisations featured in the policies, rather they are intended to make clear to tenants upfront what personalisations the build-to-rent provider is happy for the tenant to make.

At the end of a tenancy, tenants will be required to ‘make good’ on any personalisation made during the tenancy, as set out in section [42B(4)](https://www.legislation.govt.nz/act/public/1986/0120/latest/LMS451310.html) of the Residential Tenancies Act 1986.

The intent of this requirement is to make lifestyle issues, like pets and home-making, more transparent to current and prospective tenants.

How to apply

The exclusion applies to build-to-rent developments on land registered by Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development as build-to-rent.

Once approved, the Ministry will record land on the register and share relevant information with Inland Revenue. Taxpayers can indicate this in their yearly tax returns.

Further information about the register of assets and how to apply is available on [Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development's website](https://www.hud.govt.nz/our-work/build-to-rent/).

Complaints or concerns

For complaints or concerns about build-to-rent providers’ obligations relating to the exclusion, you can contact Te Tūāpapa Kura Kāinga at [BTR@hud.govt.nz](mailto:BTR@hud.govt.nz).

Complaints or concerns relating to breaches of the Residential Tenancies Act 1986 should be directed to Tenancy Services. You can find further information about how to do this online at [www.tenancy.govt.nz](http://www.tenancy.govt.nz).