



**This replaced the 21 October 2008 version of this Digest which contained an error on Page 5.**

## National Rental Affordability Scheme (Consequential Amendments) Bill 2008

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## National Rental Affordability Scheme (Consequential Amendments) Bill 2008

**Date introduced:** 24 September 2008

**House:** House of Representatives

**Portfolio:** Families, Housing, Community Services and Indigenous Affairs

**Commencement:** 1 July 2008

**Links:** The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

### Purpose

The purpose of the National Rental Affordability Scheme (Consequential Amendments) Bill 2008 (the Bill) is to amend the *Income Tax Assessment Act 1997* (the ITAA) to give effect to tax incentives for the purposes of the National Rental Affordability Scheme (the NRAS) established by the National Rental Affordability Scheme Bill 2008.

Note that the Bill would operate retrospectively and would apply to income tax assessments for the 2008-09 and subsequent financial years.<sup>1</sup>

### Background

The NRAS seeks to assist low and moderate income households in rental accommodation, by subsidising both

- investment in additional rental properties, and
- the rents on those rental properties.

The rent subsidy would take the form of rent at a rate of at least 20 per cent below the market rate.<sup>2</sup>

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1. Explanatory Memorandum, National Rental Affordability Scheme (Consequential Amendments) Bill 2008, p. 3. As to the Government's explanation of the retrospective effect of the Bill, see [Explanatory Memorandum](#), National Rental Affordability Scheme Bill 2008, p. 4.
  2. 'Market rate' or 'market value rent' is not defined in either the National Rental Affordability Scheme Bill 2008 or in the National Rental Affordability Scheme (Consequential Amendments) Bill 2008. The Government has left the formula for determining market value

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NRAS investment subsidy would take the form of three types of tax incentives to investors in the NRAS:

- exemption of capital gains from tax
- tax offset, and
- making a State or Territory contribution to the scheme—in cash or in-kind—non-assessable for tax purposes.

A tax offset applies where the investor is liable to pay tax. The Commonwealth would offer institutional investors and other eligible bodies an annual tax offset for 10 years,<sup>3</sup> provided the investors comply with the NRAS's conditions.<sup>4</sup> The conditions generally include that:

- the renter meets an as-yet-unspecified income test, and
- the rent is at least 20 per cent below the market rate (also undefined).

The tax offset would initially be \$6000 per dwelling per year.

State or Territory governments would, also contribute an annual amount in financial or in-kind support and initially, this contribution would be \$2000 per dwelling per year.<sup>5</sup>

Both the Commonwealth and State incentives would be indexed to the rental component of the consumer price index.

For additional background information about the NRAS, see: [Bills Digest no. 49, 2008–09](#) for the National Rental Affordability Scheme Bill 2008.<sup>6</sup>

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rent to be prescribed in future regulations: see Explanatory Memorandum, National Rental Affordability Scheme Bill 2008, p. 5.

3. Explanatory Memorandum, National Rental Affordability Scheme (Consequential Amendments) Bill 2008, p. 5. Note that the proposed definition of 'incentive period' is 'a 10 year period that starts on or after 1 July 2008': National Rental Affordability Scheme Bill 2008 **proposed section 4**.
4. Targeted investors include financial institutions, banks, property trusts, superannuation funds, developers and not-for-profit organisations: see Explanatory Memorandum, National Rental Affordability Scheme Bill 2008, p. 4.
5. The Hon. Tanya Plibersek, Minister for Housing and Minister for the Status of Women, 'Second reading: National Rental Affordability Scheme Bill 2008', House of Representatives, *Debates*, 24 September 2008, p. 7.
6. R. Webb and P Hicks, 'National Rental Affordability Scheme Bill 2008', *Bills Digest*, no. 49, 2008–09, Parliamentary Library, Canberra, 2008-09.

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## Financial implications

According to the Government, the total fiscal cost of the NRAS (in other words, the cost of the NRAS to the Budget) would be approximately \$622.6 million over a period of four years as follows:<sup>7</sup>

2007-08	2008-09	2009-2010	2010-2011	2011-12
–	\$23.5m	\$72.2m	\$170.1m	\$356.8m

The Government also states that compliance costs for entities participating in the NRAS may vary depending on the type of entity and that these costs are likely to be low.<sup>8</sup> However, an estimate of these costs would be necessary to inform prospective NRAS participants, who would weigh such costs against any proposed incentives when deciding whether to participate in the NRAS.

## Main provisions

As noted, there are three types of tax incentive:

- capital gains tax exemption
- tax offset and
- the non-assessability of State and Territory government payments.

**Schedule 1** of the Bill amends the ITAA.

**Item 1** inserts the definition of the ‘**National Rental Affordability Scheme**’ into existing section 11-55 of the ITAA.

**Item 6** of the Bill proposes amendments to the ITAA in relation to capital gains tax exemptions.

**Item 7** of the Bill proposes to insert a **new Division 380—National Rental Affordability Scheme** into the ITAA, which deals with tax offsets (**new Subdivision 380-A**), as well as the non-assessability of State and Territory payments (**new Subdivision 380-B**).

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7. Explanatory Memorandum, National Rental Affordability Scheme (Consequential Amendments) Bill 2008, pp. 3–4.

8. *ibid.*, p. 4.

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## Capital gains

Taxation law provides capital gains tax concessions for housing in two ways:

- owner-occupied houses are exempt from capital gains tax; this encourages the purchase of such housing relative to other forms of investment, and
- the rate of tax on capital gains on investments in rental dwellings is concessional at 50 per cent of the gains.

With respect to capital gains tax and the NRAS, the Explanatory Memorandum to the Bill states:

A capital gain or capital loss may arise from a CGT event happening to an entitlement to receive incentives from the Australian Government, or from state or territory governments, in relation to the NRAS. The application of CGT to these entitlements is inappropriate as it would reduce or remove the benefit that the incentives are intended to provide.<sup>9</sup>

**Item 6** proposes to **amend subsection 118-37(1)** of the ITAA, to include NRAS receipts in the list of receipts that are exempted from capital gains tax. These NRAS receipts are:

- an incentive:<sup>10</sup> **proposed paragraph 118-37(1)(h)**
- a variation, transfer or revocation of an allocation:<sup>11</sup> **proposed paragraph 118-37(1)(i)**, and
- anything of economic value that a State or Territory government, or a public body provides: **proposed paragraph 118-37(1)(j)**.

However, a capital gain arising from the disposal of an NRAS dwelling will still be subject to capital gains tax.

## Tax offsets

A tax offset reduces the amount of tax that a person or body would have to pay in a financial year.

**Item 5** proposes to insert a **new subsection 67-25(2B)** into the ITAA, to the effect that tax offsets under **proposed new Division 380** would be subject to refundable tax offset rules. This would make the NRAS tax offset a refundable tax offset.

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9. *ibid.*, p. 20 at paragraph 1.44.

10. For the definition of 'incentive', see **proposed section 4** in the National Rental Affordability Scheme Bill 2008.

11. As provided for in **proposed section 8** of the National Rental Affordability Scheme Bill 2008.

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In **item 7, proposed new subdivision 380-A** would provide for six categories of bodies that could claim a tax offset:

- individuals, corporate tax entities and superannuation funds
- a party to a non-entity joint venture
- certain entities to whom NRAS rent flows indirectly
- claims by a trustee of a trust that does not have net income for an income year
- when the NRAS flows indirectly to or through an entity, and
- share of NRAS rent.

Not-for-profit entities do not ordinarily pay tax and so are not eligible to receive incentives in the form of refundable tax offsets. The Government states that not-for-profit entities may instead receive incentives in the form of an amount payable for an NRAS year.<sup>12</sup>

The provisions are largely mechanical and, as they are described adequately in the Explanatory Memorandum,<sup>13</sup> this Digest does not describe those provisions.

The provisions in **proposed new subdivision 380-A** are based on several principles, which may be summarised as follows:

- the claimant for a tax offset would have to possess a certificate, issued by the Secretary of the department responsible for administering the NRAS legislation, which would:
  - certify that the claimant is entitled to make an claim, and
  - specify the amount of the offset
- where there are multiple parties to a project—for example, the participants in a non-entity joint venture—each party designated in the certificate would be entitled to receive a pro-rata proportion of the offset (the proportion that a party could claim would be based on its share of the NRAS rent, and the total of the proportional amounts would have to equal the total amount of the offset), and
- in general, the trustee of a trust indirectly entitled to NRAS rent, could claim an offset only when the trust had net income.

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12. See Explanatory Memorandum, National Rental Affordability Scheme Bill 2008, p. 7; Explanatory Memorandum, National Rental Affordability Scheme (Consequential Amendments) Bill 2008, pp. 3 and 6.

13. *ibid.*, pp. 7–19.

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## Payments by a State or Territory

**Item 7** also proposes to insert new **Subdivision 380-B—Payments made in relation to the National Rental Affordability Scheme etc.**, into the ITAA. New **Subdivision 380-B** would contain **new section 380-35**, which proposes that a payment or non-cash (in-kind) benefit provided by a State or Territory, would be neither assessable nor exempt income.

## Concluding comments

Taken together, the Bill's provisions contain substantial tax incentives to increase the supply of rental housing.

However, the effect of these incentives would be mitigated by the fact that investors would have to accept below-market rents as a condition of participating in the NRAS. Compliance costs would also be a factor for consideration by investors.

Potential investors would have to weigh such factors when deciding whether to invest under the NRAS.

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