



# Briefing

<b>Social housing exemption from interest limitation – sunset clause</b>			
<b>Date:</b>	26 August 2021	<b>Security level:</b>	In Confidence
<b>Priority:</b>	Medium	<b>Report number:</b>	BRF21/22081081

<b>Action sought</b>		
	<b>Action sought</b>	<b>Deadline</b>
Hon Dr Megan Woods <b>Minister of Housing</b>	<b>Agree</b> to the recommendations  <b>Refer</b> copies of this briefing to the Minister of Finance, Minister of Revenue and Associate Minister of Housing (Public Housing).	2 September 2021

<b>Contact for discussion</b>			
<b>Name</b>	<b>Position</b>	<b>Telephone</b>	<b>1<sup>st</sup> contact</b>
Claire Solon	Kaiaki, Place-based Policy and Programmes	04 831 6003	
Matt Pilkinton	Senior Policy Advisor, Urban Development Regulatory Tools	04 830 6963	✓

<b>Other agencies consulted</b>
Inland Revenue, The Treasury

## Minister's office to complete

<input type="checkbox"/> Noted <input type="checkbox"/> Seen <input type="checkbox"/> Approved <input type="checkbox"/> Needs change <input type="checkbox"/> Not seen by Minister <input type="checkbox"/> Overtaken by events <input type="checkbox"/> Declined <input type="checkbox"/> Referred to (specify)  <hr/>
--

<b>Comments</b>          
---

**Date returned to HUD:**

---

# Briefing

## Social housing exemption from interest limitation – sunset clause for leased properties

**For:** Hon Dr Megan Woods, Minister of Housing

**Date:** 26 August 2021

**Security level:** In Confidence

**Priority:** Medium

**Report number:** BRF21/22081081

---

### Purpose

---

1. This briefing seeks your direction on whether to have a sunset clause for the emergency, transitional, public and council housing exemption from the interest limitation rules for leased properties, and if so, the design of the sunset clause. Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development (HUD) does not recommend a sunset clause. If Ministers wish to proceed with a sunset clause, HUD recommends at least a 10-year period (i.e. until 1 October 2031).
2. Registered community housing providers (CHPs) manage nearly 15,000 properties, of which over 9,000 are leased. Similarly, HUD and Kāinga Ora collectively lease a large number of properties for use as emergency, transitional and public housing, with lease terms up to 25 years. The CHP sector is capital-constrained, so in the absence of additional government funding, will not be able to quickly replace these properties with new-build properties. While focusing on increasing supply of new builds, Kāinga Ora will continue to lease properties from time to time to temporarily relocate tenants during major redevelopments.

### Background

---

3. On 29 July 2021, Inland Revenue and the Treasury provided a report to the Ministers of Housing, Finance, and Revenue on key policy issues for the design of the new interest limitation rules (IR2021/325 and T2021/1935). This report included discussion on how the rules should apply to emergency, transitional, public and council housing.
4. The report noted that the interest limitation rules would generally not affect emergency, transitional or public housing properties owned by Kāinga Ora or registered community housing providers (CHPs). This is because Kāinga Ora, which is subject to income tax, is proposed to be exempt from the interest limitation rules, and CHPs will often be charities (and therefore exempt from income tax), or subject to another income tax exemption.<sup>1</sup>
5. However, in the absence of a specific carve-out, properties used for emergency, transitional or public housing that are leased by private landlords to CHPs, Kāinga Ora, or the Crown would be subject to the interest limitation rules. This would lead to a higher tax cost for the owners of these properties, and subsequently could lead to a reduction in the number of properties available for public housing, or an increase in the cost to CHPs or the government in procuring these properties. In addition, some council housing is provided by council-

---

<sup>1</sup> Some CHPs are not charities or eligible for another income tax exemption. Properties owned by these CHPs would be affected by the interest limitation rules in the absence of a specific carve-out for social housing properties.

controlled organisations (CCOs), which are not exempt from income tax and would be subject to the interest limitation rules.

6. On 4 August 2021, the Ministers of Housing, Finance, and Revenue met to discuss the report and agreed to exempt from the interest limitation rules all properties used for emergency, transitional, public and council housing (“the social housing exemption”). Owing to the Government’s desire to move away from the leasing model for the provision of public housing, the prospect of a sunset clause for the exemption was raised in the meeting. We understand the Ministers of Finance and Revenue’s agreement to the social housing exemption was based on the inclusion of this sunset clause for leased properties.
7. The sunset clause that has been proposed would only be for leased social housing properties. Other types of social housing would still require a permanent exemption from interest limitation (for example, properties owned by a CCO or a CHP not eligible for an income tax exemption).

### **Sunset clause to the social housing exemption, for leased properties only**

---

8. The purpose of the sunset clause would be to support the Government’s intention of moving away from the leasing model for the provision of public housing. As stated in the *Public Housing Plan 2021-2024*, the Government wants to see “an increase in the number of new build public housing and a progressive decrease in the proportion of private market homes leased for public housing”. However, it is acknowledged that leasing arrangements may remain necessary in particular circumstances, particularly in priority areas where the need for social housing is most acute.

*HUD does not consider that a sunset clause is necessary to support the Government’s intention of moving away from leasing arrangements*

9. Te Tūāpapa Kura Kāinga – Ministry of Housing and Urban Development (HUD) does not recommend a sunset clause for the social housing exemption from interest limitation for leased properties. Continuing to provide these properties with an exemption from the interest limitation rules will not get in the way of efforts to progressively decrease the proportion of public housing properties leased from the private market. Even without a sunset clause, as the number of leasing arrangements progressively decreases, there will be fewer private market rentals eligible for the exemption.
10. As noted above, despite the intention to move away from leasing arrangements, there will be circumstances in which leased properties are still necessary to supplement the supply of social housing. This applies particularly in areas where the need for social housing is most acute, or where Kāinga Ora needs to temporarily relocate tenants to undertake major redevelopment. A sunset clause could increase the difficulty of meeting demand for social housing in these areas upon expiration of the exemption. This would be especially true if the exemption expired before the sector has been able to make significant progress in increasing the amount of non-leased social housing properties.
11. Currently CHPs manage almost 15,000 public housing properties of which over 9,000 are leased. Increasing the number of new build public housing properties and progressively decreasing the proportion of leased properties is going to take time, particularly given the capital constraints most CHPs face.

*A sunset clause should not apply until at least 2031 to give sufficient time for social housing providers to move away from leasing arrangements*

12. If Ministers decide a sunset clause for leased properties is necessary, HUD recommends it not apply until at least 1 October 2031 (i.e. a 10 year period) to give social housing providers enough time to make significant progress towards increasing the amount of non-leased properties. In addition, HUD recommends that any properties leased for social housing before 1 October 2031 should remain exempt from the interest limitation rules for the entirety of the leasing arrangement that has been entered into. The terms of these leasing agreements can last up to 25 years and there is a risk that the agreements could be

cancelled if the sunset clause causes the owner to become subject to the interest limitation rules.

*A sunset clause should not apply to leasing arrangements between associated parties*

13. There may also be some circumstances where a provider of social housing does not have legal ownership of its properties, despite having effective economic ownership. For example, a CHP may set up a special purpose vehicle (SPV) to construct and hold its properties, with the SPV leasing these properties back to the CHP. HUD recommends that any sunset clause should not apply to these sorts of leasing arrangements between associated parties. This would ensure CHPs are not required to re-structure their property holdings to avoid being impacted by the interest limitation rules upon expiration of the social housing exemption for leased properties.

## Consultation

---

14. The Treasury and Inland Revenue were consulted on this briefing.
15. Inland Revenue would prefer that the social housing exemption not contain a sunset clause for leased properties. Inland Revenue is still working through the practical implications of administering an exemption for all housing used for emergency, transitional, public and council housing, including monitoring and verification requirements to support the integrity of the interest limitation rule. Given the inherent complexities associated with an exemption for such housing, a sunset clause for leased properties would likely be more complex due to proposed exceptions and requirements surrounding the tracking of contract dates.

## Next steps

---

16. We recommend you discuss this briefing with your colleagues, the Minister of Finance and Minister of Revenue, and indicate to officials by 2 September whether a sunset clause for leased properties is necessary for the social housing exemption and if so, the design of the sunset clause.

## Recommended actions

---

17. It is recommended that you:
    1. **Note** that the Ministers of Housing, Finance, and Revenue agreed to an exemption from the interest limitation rules for properties used as emergency, transitional public or council housing, regardless of who owns the property. *Noted*
    2. **Note** that the agreement to the exemption was based on it being subject to a sunset clause for leased properties. *Noted*
    3. **Note** that HUD does not consider a sunset clause is necessary to support the Government's intention of moving away from the leasing model for the provision of public housing. *Noted*
- Either**
4. **Agree** to the social housing exemption from the interest limitation rules not being subject to a sunset clause for leased properties (HUD recommendation). *Agreed/Not agreed*
- Or*
5. **Agree** to a sunset clause meaning that private market rentals leased for use as social housing on or after 1 October 2031 will not be eligible for the social housing exemption. *Agreed/Not agreed*

***If you agree to recommendation 5***

6. **Agree** to the following features of the sunset clause:

- Private market rentals leased for use as social housing before 1 October 2031 will remain subject to the social housing exemption for the entire length of the leasing agreement.
- Leasing arrangements between a social housing provider and an associated person will remain eligible for the social housing exemption.

*Agreed/not  
agreed*

7. **Refer** copies of this briefing to the Minister of Finance, Minister of Revenue, and Associate Minister of Housing (Public Housing).

*Referred*

s 9(2)(a)

Claire Solon  
**Kaiaki, Place-based Policy and  
Programmes**

26/08/2021

---

Hon Dr Megan Woods  
**Minister of Housing**

..... / ..... / .....