

Vacant Land Non-Deductible Holding Costs from 1 July 2019

The [Treasury Laws Amendment \(2019 Tax Integrity and Other Measures No.1\) Bill 2019 \(Cth\)](#) (“**Vacant Land Legislation**”) was introduced into Federal Parliament on 24 July 2019. The Vacant Land Legislation will deny deductions for holding costs (*e.g. interest, rates, land tax, repairs and similar items*) incurred in relation to vacant land from 1 July 2019 under new s 26-102 ITAA 1997 unless a specified vacant land exception provision applies. On 15 October 2019 final amendments were introduced by the Federal Government, including three additional non-deductibility exceptions. The Vacant Land legislation received Royal Assent on 28 October 2019 and is now law.


NOTE

Common examples of vacant land include farm land, property development sites and land only partially used for business purposes. Where vacant land status is present, one of five proposed vacant land exceptions may preserve holding cost deductibility from 1 July 2019, if applicable to the circumstances involved.

What is the effect of the Vacant Land Legislation applying from 1 July 2019?

The following table illustrates how new s 26-102 ITAA 1997 will affect vacant land held for income producing purposes (*in this case a field*) in circumstances where none of the vacant land non-deduction exceptions apply. As illustrated below:

- the 2018/19 (*and earlier year*) taxable income for the agisted vacant land reflects both the revenue and expenses relating to the property using ordinary s 8-1 ITAA 1997 deduction principles; but
- the 2019/20 (*and later year*) taxable income reflects that the new vacant land non-deduction rule will effectively “switch off” deductibility for the holding costs, while no change arises for the \$50,000 assessable agistment fees.

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Field (Vacant Land) Agisted (no business or other exception)	Revenue/ (Costs)	2018/19 taxable income	2019/20 taxable income
Agistment Fees (assessable)	\$50,000	\$50,000	\$50,000
Holding Costs	(\$30,000)	(\$30,000)	NIL deductible
Taxable Income		\$20,000	\$50,000

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NOTE

The above scenario might equally have involved a negatively geared vacant land investment becoming positively geared from 1 July 2019.

IMPORTANT

Where the vacant land non-deduction rule applies, the Vacant Land Legislation Explanatory Memorandum (“EM”) suggests that any non-deductible holding costs should be included in the CGT cost base of the vacant land. There are, however, various types of land which will not benefit from this suggested approach including, but not limited to, all pre-CGT land and some post-CGT land which was acquired between 20 September 1985 and 20 August 1991 (see existing s 110-25(4) ITAA 1997).


When will s 26-102 ITAA 1997 Vacant Land Holding Cost Non-Deductibility apply?

The flow chart on page 4 below illustrates when new s 26-102 ITAA 1997 may apply to deny holding cost deductibility in relation to vacant land held (as freehold owner or lessee) as follows:

- Vacant land non-deductibility under new s 26-102 ITAA 1997 is only a problem if the property held is vacant land. Vacant land status will not apply where land includes a sufficiently substantial, permanent and independent structure which is in use or available for use. For example, a residential rental property on an average-sized quarter acre lot or a commercial building which occupies the majority of its site are generally unlikely to be vacant land - such scenarios would result in a “no” answer in the flowchart below and non-deductibility issues would therefore not arise under new s 26-102 ITAA 1997 from 1 July 2019 in such cases.
- To the extent that vacant land status is present, it will be necessary to satisfy any one of the following five **vacant land non-deduction exceptions** in order to prevent holding costs incurred from 1 July 2019 from becoming non-deductible under new s 26-102 ITAA 1997:
 - The **excepted entity exception** may apply where the vacant land is held by an excepted entity such as a company, Managed Investment Trust (“MIT”), Public Unit Trust (“PUT”) or a super fund which is not a Self-managed Super Fund (“SMSF”). Examples might include vacant land held in a company which is either a property developer's trading stock or pre-CGT vacant land.
 - The **business use exception** may apply where the vacant land is used/held ready for use in a business carried on either by the land holder itself or by its their connected, affiliate or other specified related entity per new ss 26-102(2) ITAA 1997.

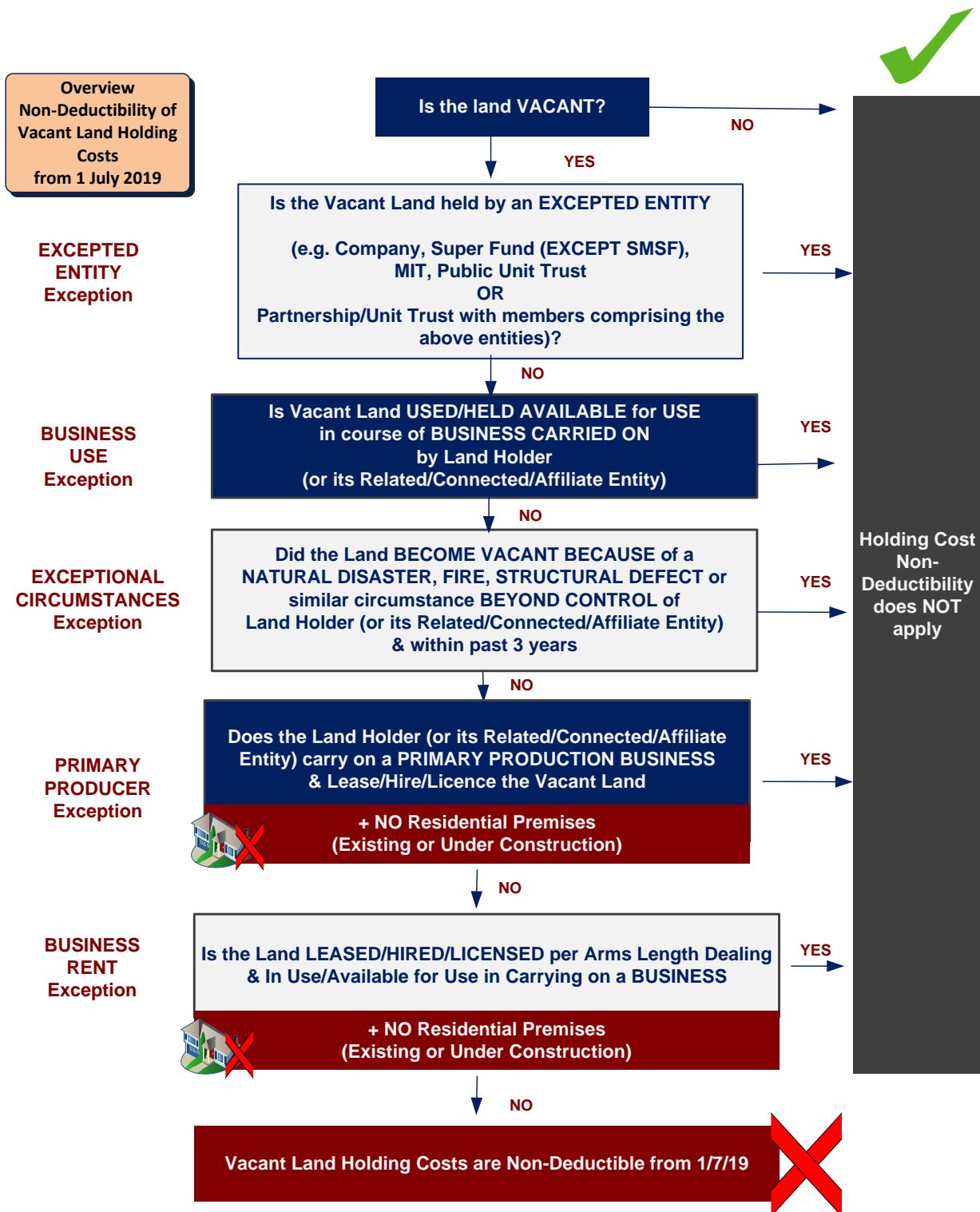
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- The **exceptional circumstances exception** may apply where vacant land status was caused by a previously used substantial, permanent and independent structure becoming unable to be used nor available for use or rent due to exceptional circumstances beyond the control of the land holder (*or their connected, affiliate or other specified related entity per new s 26-102(2) ITAA 1997*). Such exceptional circumstances might include a natural disaster, fire, serious structural defect or similar circumstances with the non-deductibility exception generally applicable for a maximum 3 years after the exceptional circumstances arose and subject to special record keeping requirements.
- The **primary producer exception** may apply where the land holder (*or their connected, affiliate or other specified related entity per new s 26-102(2) ITAA 1997*) is carrying on a current primary production business and lease hire or licence the vacant land to any entity for any purposes in circumstances where there are no residential premises (*either existing or under construction*) on the land.
- The **business rent exception** may apply where vacant land is leased, hired or licensed to any entity under an arm's length dealing whereby the vacant land is in use or available for use in carrying on a business and where there are no residential premises (*either existing or under construction on the land*).

 View the Online Recording of the flowchart on the next page by cutting and pasting this link - <http://taxastute.adobeconnect.com/pl9wqsj8lcqv/> into your browser and following the prompts from Adobe Connect (the makers of PDF).

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IMPORTANT:

The vacant land holding cost deduction rule and its application is a complex legislative issue, a full analysis of which is beyond the scope of this summary Tax Astute Snapshot overview. Tax Astute clients should refer to their detailed Vacant Land Client Guide for numerous further details.

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NOTE

- To the extent that none of the above exceptions apply, the vacant land holding costs incurred from 1 July 2019 will be non-deductible.
- It is possible that the business use exception may only be partially satisfied. For example, if only part of the land is used/available for use in carrying on business by the land holder (*or their connected/related entity*) then holding cost deductions may need to be apportioned.
- The fact that particular vacant land may satisfy other existing tax requirements (*e.g. trading stock status, Small Business CGT active asset status or taxable supply status for GST*) will not always result in a corresponding positive outcome for vacant land non-deductibility purposes. Such variances may arise due to different legislative requirements under these existing provisions in comparison to new s 26-102 ITAA 1997.

IMPORTANT

Existing residential premises which are relatively substantial regarding an average-sized lot will generally prevent vacant land status from applying (*a positive outcome for deductibility*). In other circumstances, however, residential premises (*which are very broadly defined in s 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 - see [GSTR 2012/5](#)*) may prove problematic for vacant land non-deductibility purposes (*unless one of the above exceptions can be applied*). Adverse residential premises outcomes may arise in circumstances where:

- Broadly defined residential premises for vacant land purposes (*including a house, a hospital, a retirement village and/or a mixed-use commercial/residential development*) are under construction and not yet complete and available for rent. In this case the land (*of any size*) will be deemed vacant during this period (*i.e. denying holding cost deductibility to the developer unless one of the above exceptions can apply*); and/or
- The land holder seeks access to either the Primary Producer Exception or the Business Rent Exception (*both of which cannot apply if any residential premises are present or under construction on vacant land*). For example, a single farm house or a small holiday village on a substantial farm land title held would deny access to both of these vacant land exceptions. Holding cost deductibility would therefore be denied unless the above business use exception could apply.

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WANT MORE DETAILS?

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- Tax Astute training session;
- Tax Astute reference notes; and
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