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Public Ruling Land Tax Act:

CONTRACTS FOR THE SALE AND PURCHASE OF LAND – WHO IS THE OWNER PURSUANT TO SECTION 3B

A Public Ruling, when issued, is the published view of the Commissioner on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue/s it addresses. Where a change in legislation or case law (the law) affects the content of a Public Ruling, the change in the law overrides the Public Ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant, subsidy or exemption, as the case may be, in accordance with the law.

What this Ruling is about

1. Section 11 of the *Land Tax Act 1915* (the Land Tax Act) provides that land tax is payable by every owner of land upon the taxable value of all the land owned by the owner, and not exempt from taxation under the Land Tax Act.
2. The relevant date of ownership for land tax purposes is at midnight, 30 June immediately preceding the financial year in and for which the tax is levied.¹
3. The term 'owner' is defined in s.3B of the Land Tax Act as follows:
 - (1) *The owner of land includes every person—*
 - (a) *other than a mortgagee in possession, who is, jointly or severally entitled to—*
 - (i) *the land for an estate of freehold in possession; or*
 - (ii) *receive, or has received, the rents and profits from the land; or*
 - (b) *who is taken to be the owner under this Act.*
 - (2) *The person who is receiving the rents and profits of the land is taken to be the owner of the land while that receipt continues even though that person may have made some disposition of the land.*

¹ Section 12 of the Land Tax Act

- (3) *If an agreement has been made for the sale of land, whether or not the agreement has been completed by conveyance—*
- (a) *the seller is taken to be the owner of the land until possession of the land is delivered to the buyer; and*
 - (b) *the buyer is taken to be the owner of the land as soon as the buyer obtains possession of the land.*
- (4) *However, the fact that a person is taken to be the owner of land under subsection (2) or (3) does not exclude someone else from being the owner.*
4. This Public Ruling clarifies who is the owner of land at the relevant 30 June where an agreement has been made for the sale of the land.

Ruling and explanation

5. Ownership for land tax purposes depends upon who is in possession of the land at the relevant 30 June.² Possession for the purpose of determining ownership under the Land Tax Act is taken to mean entitlement to the control, use and occupancy of the land including the rents and profits from the land.
6. Where a contract for the sale of land has been executed, the person in possession of the land is considered to be the owner regardless of whether the contract has been completed.
7. Where an agreement delivers possession of land, the person who has taken possession is considered to be the owner of the land if possession is in the capacity of purchaser and not in some other capacity such as a builder.³
8. Although the purchaser of land may be required to pay land tax under a private arrangement entered into by the parties, the responsibility for the payment of land tax under the Land Tax Act remains with the owner of the land at the relevant 30 June. Adjustments of land tax between the vendor and purchaser are also a private arrangement and do not involve the Commissioner of State Revenue.

Example 1 - Purchase by Instalment

A owns a block of land for which a plan of subdivision has been created but not yet registered. The land has been pegged out into four smaller lots (Lots 1 to 4) and A proceeds to offer the lots for sale. In May 2008, B enters into negotiations with A to purchase Lot 1 for a consideration of \$50 000. B wishes to take possession as soon as possible, however, as Council approval for the subdivision has not yet been received no definite date for completion of the contract of sale can be given. A contract is executed which states that completion is to be 14 days after a Certificate of Approval is issued by the Local Council. The contract provides that upon payment of a deposit of \$5 000, B will have possession immediately and will pay monthly instalments of \$500 with the balance payable upon completion. B pays the deposit on 10 June 2008. B then clears and levels the land in preparation for building a

² *Spinks v Commissioner of Land Tax* [1963] QWN 37

³ *Cobai Pty Ltd v The Commissioner of Land Tax*, unreported decision of the Queensland Land Court handed down on 31 May 1999.

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home. Council approval of the subdivision is granted in early September 2008 and the plan and transfer of Lot 1 are soon after registered. Settlement occurs in mid September.

At 30 June 2008, A is the registered proprietor of the land, however B has possession of the land and is the owner for land tax purposes from 10 June 2008. Possession by B was established by the fact that the agreement gave B possession in the capacity of a purchaser and that B had carried out, on her own behalf, certain work on the land which can be considered to be an act of possession.

Example 2 – Builders Terms Contracts

X subdivides a vacant parcel of land with the intention of selling all the subdivided lots. Z, a builder, wishes to purchase three of the vacant lots for \$40 000 each in order to build “spec” homes on them. As is normally the case in developer-builder transactions, Z needs to build the homes and on-sell the properties before the full initial purchase price can be paid to X. In February 2008, contracts for each lot are entered into. The contracts provide that Z is to pay to X deposits of \$10 000 for each lot with the balance in relation to each lot to be paid to X upon Z selling each property to a third party or after six months has elapsed whichever comes first. Z is to obtain immediate possession. The contracts also stipulate that the homes must be of a certain standard in keeping with covenants relating to the standard of development for the subdivision. X is to retain access to the land in order to keep check on the size and quality of the homes. By 30 June 2008, Z has constructed houses on two of the lots however has not completed the sale of either property. The third lot is still vacant. None of the contracts have been completed.

At 30 June 2008, X is still the registered proprietor of the three lots, however Z has possession of each lot and is the owner for land tax purposes. Although early possession was given to Z under the terms of the contract to allow Z to commence building homes, Z obtained that possession as a purchaser. Z is entitled to the rents and profits from the land and has freedom to sell to anyone for whatever price can be obtained. Through the contracts, X has placed some limitations upon Z in relation to building standards and X still has right of access to the land. This does not amount to occupation or possession.

Example 3 – Joint Venture Agreements

Same as Example 2 except that rather than execute contracts, X and Z enter into separate joint venture agreements for each lot. Each agreement provides that Z is to pay a bond of \$5 000 to X and obtain immediate possession to construct houses on each lot. Z is to find the buyers and arrange the sale of the lots at a price mutually agreed upon by Z and X. When a buyer is found, the contract of sale is to state that X is the vendor. All sale proceeds are to go to X. After deducting the value of the land and legal expenses, X pays to Z the balance of the sale proceeds. If Z has not found a buyer after six months, a contract for the sale of the land from X to Z is to be executed. At 30 June 2008, Z has been unable to find any buyers, however is still within the six month “cut-off” period.

At 30 June 2008, X has possession of the land and is the owner for land tax purposes. Although the joint venture agreement stated that Z was to have immediate possession, that possession was no more than a licence to occupy for the purpose of constructing a house and arranging its sale. It can not be considered that Z has possession in the nature of a purchaser. The agreement does not constitute an agreement for sale since such an agreement does not come into existence unless a condition precedent is met, that is, unless Z can not find a buyer within six months. X is still entitled to receive rents and profits from the

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land and maintains some control over the sale price of the land. On the other hand, any profits that Z receives come from the joint venture agreement itself and not from the land.

Date of effect

9. This Public Ruling takes effect from 30 June 2009.

David Smith
Commissioner of State Revenue
Date of Issue 3 July 2009

References

Public Ruling	Issued	Dates of effect	
		From	To
LTA003B.1.2	3 July 2009	30 June 2009	29 June 2010
LTA003B.1.1	24 February 2009	24 February 2009	29 June 2009
Supersedes Practice Direction LT 10.1	8 March 2002	8 March 2002	23 February 2009

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