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Public Ruling Land Tax Act:

WHEN LAND IS USED AS A PRINCIPAL PLACE OF RESIDENCE

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. The *Land Tax Act 1915* (the Land Tax Act) provides an exemption or deduction (concession) for land comprising of one parcel¹ that is used as a person's principal place of residence (PPR).²
2. Section 3E(1) of the Land Tax Act provides that land is not used as a person's PPR unless one of two tests is satisfied.³
3. This Public Ruling explains the factors which the Commissioner takes into account in applying these tests.
4. The extent of the concession available depends on whether the land is also used for other non-PPR purposes. For further information relating to the operation of the PPR concession please refer to Public Ruling LTA003EA.1—*The land tax concession for a principal place of residence*.

¹ A parcel means an area of land that is the subject of a separate valuation made by the Chief Executive under the *Valuation of Land Act 1944*: s.2 of the Land Tax Act.

² For example, ss.13(1)(h), 11(6A) and (6D), 11BA(2), (3) and (4), 11C(2A) and (2B) of the Land Tax Act.

³ Sections 3E(1A)–(5) of the Land Tax Act provide further clarification regarding whether land is used as a person's PPR. Section 3E(1)(a) of the Land Tax Act is subject to s.3EAA.

Ruling and explanation

Two tests

5. Section 3E(1) of the Land Tax Act provides as follows:

In respect of any year in respect of which land tax is leviable or payable, land is not used as the principal place of residence of a person unless—

- (a) *that land and no other land has, for the period of 6 months immediately preceding the time when the ownership of land for the purposes of this Act is determined, been continuously used for residential purposes by the person (whether alone or with other persons) or*
- (b) *in any other case—the Commissioner is satisfied the land is used as the principal place of residence of the person (whether alone or with other persons).*

6. Only one of the tests needs to be satisfied.

The main test

7. The test in s.3E(1)(a) of the Land Tax Act (the main test) applies where only one parcel of land is used continuously as a person's residence for a six month period. Two conditions must be satisfied if the land is to be considered as being a person's PPR:
- (a) the land must have been used by the person for residential purposes (whether alone or with others) for a continuous period of six months immediately preceding the relevant 30 June when the ownership of the land for the purposes of the Land Tax Act is determined.
 - (b) no other land has been used by the person continuously for residential purposes during the same period.
8. This is the principal test because most people have only one residential property which is occupied as their home.
9. This test is an objective one which does not depend upon the Commissioner's satisfaction as to the circumstances. If the conditions are satisfied, the land will be taken to be the person's PPR.
10. This test is subject to s.3EAA of the Land Tax Act which deals with land that is taken to be a person's PPR in certain circumstances despite the person being absent if the absence is due to the person being in hospital, a residential care facility or residing with a carer.⁴

The residual test

11. Where the main test does not apply, the person claiming the concession must satisfy the test in s.3E(1)(b) of the Land Tax Act (the residual test), that is, the Commissioner must be satisfied the land is used by the person as their PPR (whether alone or with other persons).

⁴ Refer to paragraphs 28–31 of this Ruling.

Example 1

A was the owner of two homes at 30 June 2008. A occupied the High Street property as his PPR until 25 January 2008. On 26 January 2008, he commenced living at Low Street as his PPR.

The main test in s.3E(1)(a) of the Land Tax Act does not apply as the Low Street property was not the only land continuously used by the owner for residential purposes during the 6 month period prior to 30 June 2008.

However, the residual test in s.3E(1)(b) of the Land Tax Act applies to the Low Street property which was used at 30 June 2008 as A's PPR.

12. Unlike the main test, the residual test depends upon the Commissioner being satisfied that the facts support the conclusion that the land is used as the person's PPR. This test must be applied by the Commissioner on a case by case basis after considering all the facts and circumstances.

Residential purposes and place of residence

13. The tests refer to use of the land for 'residential purposes' or as the principal 'place of residence'.
14. The term 'residential' means based on or connected with residence.⁵
15. 'Residence' is not defined in the Land Tax Act. The ordinary meaning of the term is that it is the house in which one resides, a dwelling place or a large house.⁶ A 'dwelling' is a place of residence, a house or a continued or habitual residence.⁷
16. The ordinary meanings of 'residence' and 'dwelling' indicate that a permanent fixed structure that is suitable for human habitation characterises a residence. This would include, for example, a home unit or town house.
17. Residence in a caravan or boat on land would not satisfy either test in s.3E of the Land Tax Act. These are not permanent fixed structures on the land.
18. A shed or garage is generally a permanent, fixed structure, however as a rule, neither structure would qualify the land as being used as a PPR as a shed or garage is not generally designed for human habitation. However, if a shed or garage is modified for use as a residence suitable for human habitation, it will be considered to be a residence provided it is a class 1a dwelling for the purposes of the Building Code of Australia.

Example 2

X and Y own a block of land upon which they are constructing a house. In the meantime, they live in a shed on the land. They moved into the shed in September 2007 and were residing there as at 30 June 2008. Their personal belongings have been moved into the shed apart from some items which are in storage. The telephone and electricity have been connected. The shed has not been designed for human habitation and under the Building Code of Australia does not meet the requirements for classification as a class 1a building. It

⁵ Defined in the Australian Concise Oxford Dictionary

⁶ The Macquarie Concise Dictionary Third Edition

⁷ The Macquarie Concise Dictionary Third Edition

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has been designed for, and will be used as, a shed once the house has been constructed. Neither of the tests in s.3E(1) of the Land Tax Act are satisfied and the land will not be regarded as their PPR.

Example 3

Same as Example 2 except that X & Y reside in a caravan.

The land can not be considered to be X and Y's PPR as the caravan is not a permanent fixed structure. The land would be considered to be vacant land.

Principal place of residence—the residual test

19. The main condition of the residual test in s.3E(1)(b) of the Land Tax Act is that the Commissioner be satisfied that the land is used as the person's PPR.
20. Where a person resides in more than one place during a year, the question of which place is the person's PPR is a question of fact and degree. In these cases, it is necessary to examine the history and circumstances, the purpose for which each property is used, the duration of ownership and the amount of time spent during the course of the year in each.⁸
21. Factors which have been identified by the Australian Tax Office as significant indicators of whether or not a dwelling is used as a person's 'principal residence'⁹ are relevant in this context also. These indicators include the following.
 - (a) the length of time the person has lived in the dwelling
 - (b) the place of residence of the person's family
 - (c) whether the person has moved his or her personal belongings into the dwelling
 - (d) the address to which the person has his or her mail delivered
 - (e) the person's address on the Electoral Roll
 - (f) the connection of services such as telephone, gas and electricity
and
 - (g) the person's intention in occupying the dwelling.
22. This is not an exhaustive list of the relevant factors but the factors listed assist in establishing whether or not land is used as a person's PPR by highlighting the degree of permanency and physical presence associated with the land.

Example 4

H owns a house at the Gold Coast and a business in Brisbane. Generally, from Monday to Friday, he resides in a unit he owns in Brisbane close to his business. On the weekends, he returns to his Gold Coast address where his wife resides on a full-time basis. He claims the PPR deduction on his Gold Coast home. H's Electoral Roll address is the Gold Coast. He also satisfies other indicators such as having his personal belongings at the Gold Coast address, and telephone, electricity and other accounts at that address.

⁸ *Fovell v. Radford* (1969) 21 P & CR 99

⁹ See Taxation Determination 51—*Capital Gains: What factors are taken into account in determining whether or not a dwelling is a taxpayer's sole or principal residence.*

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Neither parcel of land meets the requirements of the main test in s.3E(1)(a) of the Land Tax Act due to the fact that H had more than one residence during the six months immediately preceding the relevant 30 June. However, having regard to the indicators listed in paragraph 20, the Commissioner would be satisfied, in accordance with the residual test in s.3E(1)(b), that the Gold Coast land is used as H's PPR.

Example 5

F is a professional footballer with a Brisbane club. F enters into a contract to play with a Victorian club for the next three seasons. F owns a home in Brisbane and rents an apartment in Melbourne. F moves his family and belongings to Melbourne where they remain for the duration of the contract.

The use of the Brisbane land does not meet the requirements of the main test in s.3E(1)(a) of the Land Tax Act and the Commissioner cannot be satisfied, under the residual test in s.3E(1)(b), that the Brisbane land is used as F's PPR.

Example 6

X owned two properties at 30 June 2008. One property is a house at Mission Beach which is his residential and postal address as well as his address on the Electoral Roll. X had been receiving the PPR deduction on the property since 2003.

The other property is a house at Noosa which is more valuable than the Mission Beach property. X claimed a PPR deduction on this property for 30 June 2008.

X is registered in the White Pages telephone directory for both the Mission Beach and the Noosa properties. In November 2007, X commenced to spend November to April at the Noosa house and the remainder of the year at the Mission Beach house.

Neither parcel of land would meet the requirements of the main test in s.3E(1)(a) of the Land Tax Act due to the fact that X had more than one residence during the six months immediately preceding 30 June 2008. However, having regard to the indicators listed in paragraph 20, the Commissioner would be satisfied, in accordance with the residual test in s.3E(1)(b), that the Mission Beach land is used as X's PPR.

Temporary absences

23. For the main test, the person claiming the land as their PPR needs to reside on the land in order for the land to be regarded as being used by the person for residential purposes, unless the circumstances fall within s.3EAA of the Land Tax Act as outlined in paragraphs 28–31. Similarly, the residual test requires that the land be used as a PPR.
24. The term 'used' in this context refers to actual use and not simply an intention to use¹⁰. For land to be used it must be actually used, not contemplated or intended to be used or be merely suitable for use.¹¹ Consequently, the construction of a home on what was previously vacant land would not result in the land being used as a person's PPR, despite the person's intention to occupy the land as their PPR following completion of construction.

¹⁰ *The Trustee for O'Rourke Seven Trust v The Commissioner of Land Tax*, Land Court, 8 August 1996 (unreported)

¹¹ *Thomason v Chief Executive, Department of Lands*, Land Court, 3 March 1995 (unreported). See also *The University of Queensland v Commissioner of Land Tax* [2006] QLC 21.

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25. However, a temporary absence from the land for any reason such as holidays, illness, home renovations, fire, flood or demolition of an old dwelling¹² may not, depending upon the circumstances, result in the land ceasing to be the person's PPR. Each case must be considered on its facts to determine whether or not the absence has resulted in the land ceasing to be the person's PPR.

Example 7

A takes an extended overseas holiday commencing on 4 April and returning on 9 March the following year. A allows a friend, B, to reside at his home for security purposes. In return, B pays sums of money into A's bank account to cover household costs for the period. The household costs are those A or B would usually incur themselves during the same period. Such household costs include electricity, gas or telephone accounts but excludes mortgage repayments or the equivalent of rent at market rates.

While the use of the land does not meet the requirements of the main test in s.3E(1)(a) of the Land Tax Act, the Commissioner would be satisfied, in accordance with the residual test in s.3E(1)(b), that the land is used as A's PPR, as the arrangement between A and B is one that is only incidental to A's use of the land as a PPR.

If B also paid A rent then the payment of rent would constitute use of the property for an income-producing activity and would be considered a non-PPR purpose. For further information regarding the consequence of using a PPR property for a non-PPR purpose, please refer to paragraphs 10–18 of Public Ruling LTA003EA.1.

26. Public Ruling LTA003E.2 covers the situation where land is temporarily vacated due to demolition of an existing home and construction of a new home or the refurbishment of the existing home.
27. Temporary absences may also occur where a person divides their time between two or more residences for reasons such as meeting business or employment commitments. This requires a consideration of which land is the person's PPR. Paragraphs 20 to 22 deal with that issue. Having made that determination, it is necessary to consider whether or not their absences from the land which is their PPR has the result that the land ceases to be their PPR.
28. The main test is subject to s.3EAA of the Land Tax Act. Section 3EAA of the Land Tax Act provides that in certain circumstances land will be taken to be a person's PPR, even though the person may not have continually occupied the land for residential purposes for the six month period (relevant period) as required by the main test.
29. Land will be taken, under s.3EAA of the Land Tax Act, to be a person's PPR during the relevant period if during the whole or part of the period the person—
- (a) resided at a hospital as an inpatient
 - or
 - (b) received residential care at a residential care service
 - or

¹² See Public Ruling LTA003E.2—*Principal place of residence concession—house demolished or vacant due to renovations.*

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- (c) resided on other land that is not owned by the person with, and was under the care of someone else.
30. Paragraph 29 will not apply if income has been derived from the use of the land during the one year period immediately preceding the relevant 30 June when ownership of land for the purposes of the Land Tax Act is determined except where that income is derived from—
- (a) a lease, licence or other arrangement under which a person has a right to occupy the land and the total period for which the right of occupation is conferred is not more than six months of the one year period
 - or
 - (b) a lease, licence or other arrangement under which a person has a right to occupy the land, and the income is not more than is reasonably required to cover the following—
 - (i) rates and other charges levied on the land by the local government for the land
 - (ii) maintenance expenses for the land.
31. The maximum period for which a person may be taken under paragraph 29 to use land as the person's PPR is six years starting at the end of the last period of at least six consecutive months during which the land was actually used as the person's PPR.
32. In cases where a person was temporarily absent from the land and s.3EAA of the Land Tax Act does not apply, the person may not be able to satisfy the six month condition of the main test in s.3E(1)(a) of the Land Tax Act. However, in these cases, the Commissioner may still be satisfied under the residual test in s.3E(1)(b) that the property was the person's PPR. This may be the case even if the person allowed a relative or friend to occupy the house as caretaker during their temporary absence.

Example 8

K is unable to live in his home unassisted. He moves into his daughter's home in March 2009. K's grandson moves into K's house and under the arrangement the grandson pays K an amount equal to the local government rates and charges incurred by K in relation to his home.

K does not meet the occupancy requirement for the main test in s.3E(1)(a), however, his circumstances fall within s.3EAA of the Land Tax Act. Therefore, the land is taken to be K's PPR for the purposes of levying land tax for the 2009–2010 financial year (that is, based on K's land holdings as at 30 June 2009).

Family letting included as part of PPR purpose

33. In certain circumstances,¹³ the granting, by the principal resident¹⁴ of a right to live on the land under a tenancy agreement to a family member (family letting) will be considered to be part of the use of the property as a person's PPR and not a use of the land for a non-PPR purpose.¹⁵
34. For a further explanation of a family letting, please refer to paragraphs 6–9 and Example 1 of Public Ruling LTA003EA.1.

¹³ Sections 3E(3) and (4) of the Land Tax Act

¹⁴ The principal resident is the person who is using the property as their PPR: s.3EA(3) of the Land Tax Act.

¹⁵ Section 3E(2) of the Land Tax Act

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Use of land for non-PPR purposes

35. Use of the land also for non-PPR purposes may not prevent the land from being taken to be a person's PPR.¹⁶
36. For information regarding the use of a person's PPR also for a non-PPR purpose please refer to paragraphs 10–18 and Examples 2–15 of Public Ruling LTA003EA.1.

Date of effect

37. This Public Ruling applies in respect of land tax levied for a financial year starting on or after 1 July 2009.

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

References

Public Ruling	Issued	Dates of effect	
		From	To
LTA003E.1.2	3 July 2009	1 July 2009	29 June 2010
LTA003E.1.1	24 February 2009	24 February 2009	30 June 2009
Supersedes Practice Direction LT 11.2	20 July 2006	20 July 2006	23 February 2009

¹⁶ Section 3E(5) of the Land Tax Act