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## Public Ruling Land Tax Act:

### THE LAND TAX CONCESSION FOR 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. Land tax does not apply to land used as a principal place of residence (PPR).
2. This concession is provided by either an exemption or a deduction. Attachment 1 sets out when an exemption or deduction applies and lists the relevant sections of the *Land Tax Act 1915* (the Land Tax Act).
3. This Public Ruling explains the concession in more detail. Examples are provided in Attachment 2.

## Ruling and explanation

### How the concession works

4. The flow chart in Attachment 3 shows how the concession works. In summary, the PPR concession applies as follows:

	Concession	
	Full	Partial
PPR only (no non-PPR purpose) <sup>1</sup>	✓	
PPR + non-PPR purpose which is not substantial	✓	
PPR + substantial non-PPR purpose		✓

<sup>1</sup> A single family letting is treated as part of the PPR use. See paragraphs 6–9.

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## PPR purpose

5. Public Ruling LTA003E.1– *When land is used as a principal place of residence* explains how to work out if land is used as a PPR. This Public Ruling should be read together with Public Ruling LTA003E.1.

### A single family letting is part of the PPR purpose

6. A single family letting is regarded as part of the PPR use of land.<sup>2</sup>
7. A family letting is one where the person who owns the land and is using it as their PPR grants to a family member<sup>3</sup> the right to live on the land under a tenancy agreement<sup>4</sup>. The following conditions apply<sup>5</sup>:
- (a) The gross floor area of the leased area must not be more than 50% of the total residential floor area on the land.
  - (b) The rent must not be more than the market rent for the leased area.
  - (c) The family member must use the leased area for residential purposes and must not sub-let or grant some other kind of occupancy right in relation to any part of the leased area to anyone else under a tenancy agreement.

### Family lettings and flats

8. A special rule applies for family lettings where the parcel of land used as a PPR comprises a block of three or more flats. This rule is necessary because, in the case of flats, there are multiple self-contained residences on one land title. The special rule ensures that a family letting must relate to the flat occupied by the landowner as their PPR. Rental of another flat to a family member cannot be a family letting.<sup>6</sup>
9. This special rule is not necessary in the case of home units and town houses. As each unit or town house has its own separate land title, the PPR concession can only relate to the unit or town house occupied by the land owner.

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<sup>2</sup> See s.3E(2) of the Land Tax Act.

<sup>3</sup> A member of a person's family is defined in s.2 of the Land Tax Act to mean each of the following.

(a) The person's spouse.

(b) The parents of the person or the person's spouse.

(c) The grandparents of the person or the person's spouse.

(d) A brother, sister, nephew or niece of the person or the person's spouse.

(e) A child, stepchild or grandchild of the person.

(f) The spouse of anyone mentioned in paragraph (d) or (e).

<sup>4</sup> Tenancy agreement includes a lease or licence or an agreement or arrangement about a person's boarding or lodging: s.2 of the Land Tax Act.

<sup>5</sup> See s.3E(3) of the Land Tax Act.

<sup>6</sup> See s.3E(4) of the Land Tax Act.

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## Non-PPR purpose

10. Where PPR land is also used for a non-PPR purpose, it may still attract a full land tax PPR concession if the non-PPR purpose is not substantial. This could happen in the following ways:
  - (a) The non-PPR purpose may fall within the specific allowances for an allowable letting or a work-from-home arrangement or both so that it is automatically treated as not being a substantial non-PPR purpose. See paragraphs 11–16.
  - (b) In other cases, the non-PPR purpose is not a substantial non-PPR purpose having regard to the circumstances. See paragraphs 17–18.

## Specific allowances for an allowable letting and a work-from-home arrangement

11. If the only non-PPR purpose is an allowable letting, a work-from-home arrangement, or both, the non-PPR uses are automatically treated as not being substantial. A full PPR concession will apply.
12. An allowable letting is one where a person has been given the right to occupy an allowable residential area<sup>7</sup> in another person's PPR under a tenancy agreement<sup>8</sup>. The following conditions apply:<sup>9</sup>
  - (a) The gross floor area of the area must not be more than 28 square metres.
  - (b) The rent must be not more than the market rent for the area.
  - (c) The area must be used by the occupant for residential purposes and the occupant must not sub-let or grant some other kind of occupancy right in relation to any part of the area to anyone else under a tenancy agreement.
13. To benefit from this specific allowance, there must be only one allowable letting for the land.<sup>10</sup>
14. As in the case of family lettings, there is a special rule for blocks of three or more flats. To be an allowable letting in these cases, the letting must relate to the flat which the landowner uses as their PPR.<sup>11</sup>
15. For a work-from-home arrangement to be treated as a non-substantial PPR purpose, the following conditions must be met<sup>12</sup>:
  - (a) The person doing the work must live on the land.
  - (b) The person must be working from home under an arrangement with their employer.
  - (c) The work must not involve using the land for a purpose, or in a manner in which, residential land is not ordinarily used.

<sup>7</sup> Defined in s.3EA(4) of the Land Tax Act.

<sup>8</sup> Tenancy agreement includes a lease or licence or an agreement or arrangement about a person's boarding or lodging: s.2 of the Land Tax Act.

<sup>9</sup> See the definitions of allowable letting, allowable residential area and prescribed area in s.3EA(4) of the Land Tax Act.

<sup>10</sup> Section 3EA(3)(a) of the Land Tax Act

<sup>11</sup> See the definition of allowable residential area in s.3EA(4) of the Land Tax Act.

<sup>12</sup> See s.3EA(3)(b) and the definition of excluded work in s.3EA(4) of the Land Tax Act.

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16. If there is another non-PPR use in addition to an allowable letting, a work-from-home arrangement or both, the specific allowances do not apply to any of the non-PPR uses and it is necessary to consider all the circumstances to decide if all of the non-PPR purposes are substantial; see paragraphs 17–18.

## Deciding if a non-PPR purpose is a substantial non-PPR purpose

17. Where land is used as both a PPR and for a non-PPR purpose and the specific allowances for an allowable letting and a work-from-home arrangement do not apply<sup>13</sup>, the Commissioner must decide if all of the non-PPR purposes amount to a substantial non-PPR purpose for the land. In making this decision, the Commissioner must consider all relevant factors including the following<sup>14</sup>:
- (a) whether a person other than the principal resident<sup>15</sup> has been given a right to occupy any part of the land under a tenancy agreement<sup>16</sup>
  - (b) whether a person, other than the principal resident or a member of the principal resident's family who uses the land as his or her PPR, works on the land as an employee or contractor (disregarding work on the land itself or a building situated on the land, such as repairs, renovations and landscaping)
  - (c) the extent to which a person uses the land, or has set the land aside for use, for a non-PPR purpose
  - (d) whether the gross income generated during the most recently ended financial year from business or an income producing activity on the land is more than \$30 000  
and
  - (e) any other relevant matter.
18. Depending on the circumstances, any one or more of these factors alone may be sufficient for the Commissioner to determine that a non-PPR purpose is a substantial non-PPR purpose.

## **Working out the allowable deduction**

19. Where land is used both as a PPR and for a substantial non-PPR purpose, a partial concession is available. This concession is claimed by way of an allowable deduction.<sup>17</sup>
20. To work out the allowable deduction, the Commissioner apportions the relevant unimproved value of land between:
- (a) the use of the land as a PPR  
and
  - (b) the use of the land for the substantial non-PPR purpose.<sup>18</sup>

<sup>13</sup> This could be because either these specific purposes do not exist or they do exist but are not the only non-PPR purposes.

<sup>14</sup> See s.3EA(2) of the Land Tax Act.

<sup>15</sup> A principal resident, for s.3EA of the Land Tax Act, is a person who uses the land as their principal place of residence for the purposes of the Land Tax Act.

<sup>16</sup> See footnote 8 above.

<sup>17</sup> Section 11EA of the Land Tax Act

<sup>18</sup> Section 11EA(4) of the Land Tax Act

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21. The apportionment method will vary, depending on the circumstances.<sup>19</sup> For example, in cases where part of the land is set aside exclusively for the substantial non-PPR purpose, it may be appropriate to apportion on a floor area basis. However, this may not be an appropriate basis where the substantial non-PPR use is not physically separated from the PPR use. In the latter case, it may be appropriate to consider both floor area used for the non-PPR purpose and the time and extent of use for that purpose.

**Date of effect**

22. 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
LTA003EA.1.2	3 July 2009	30 June 2009	29 June 2010
LTA003EA.1.1	24 February 2009	24 February 2009	29 June 2009
Supersedes Practice Direction LT 17.1	16 January 2006	16 January 2006	23 February 2009

<sup>19</sup> Section 11EA(5) of the Land Tax Act

**LTA(1915)003EA.1.2****Attachment 1****PPR – Relevant sections of the *Land Tax Act 1915***

The PPR concession is either an exemption or a deduction. Different legislative provisions apply depending upon whether or not the land is the only land owned or is held as trustee and the type of land tenure. The following table summarises the provisions.

	<b>Owners other than trustees</b>	<b>Trustees</b>
<b>Exemption (single parcel)</b>		
Lots on building unit plans	s.11B(1)(d)(i) and (3)	–
Some community titles	s.11BA(1)(d)(i) and (3)	–
Other	s.13(1)(h), subject to s.13(3)	–
<b>Deduction</b>		
Lots on building unit plans	s.11B(1)(d)(i) and (2)	s.11B(1)(d)(ii) and (3A) subject to s.11B(3B)
Some community titles	s.11BA(1)(d)(i) and (2)	s.11BA(1)(d)(ii) and (4) subject to s.11BA(5)
Home unit companies	s.11C	s.11C
Other	s.11(6A)	s.11(6D) subject to s.11(6F)

## Attachment 2

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### Examples

#### Lettings

##### Family letting

1. A two-storey family home is owned by parents who live with their children. Two grandparents live in a granny flat which occupies the whole of the ground floor. There is no tenancy agreement in relation to the grandparents' occupation and they do not pay any rental.

There is no family letting in this case as the grandparents are not occupying the granny flat under a tenancy agreement. However, the whole of the home is being used as a PPR because, like the occupation of the home by the children, the grandparents are part of the family's occupation of the home as a PPR. A full concession applies.

If the grandparents had been renting the downstairs flat at market rental, this would be a family letting provided all other conditions for a family letting were satisfied. The family letting would also be regarded as part of the use of the home as the family's PPR and a full concession would still apply.

Also, if the parents enter into a tenancy agreement with one of the children in addition to the family letting arrangement with the grandparent, that second tenancy agreement can not be a family letting. However, a full concession may still apply if the second tenancy qualified as an allowable letting.

##### Allowable letting

2. C owns a two-storey house which is his PPR. The bottom floor includes an area of 25m<sup>2</sup> which he leases to D at market rental under a residential tenancy agreement. There are no other non-PPR purposes.

A full PPR concession would be allowable for the land as the tenancy is an allowable letting which, by itself, is not a substantial non-PPR purpose.

3. H owns a large house which is her PPR. H converts part of the house into a small self-contained studio apartment for her own use and leases the rest of the house to J. The leased area is greater than 28m<sup>2</sup>.

The lease of the balance of the house to J is not an allowable letting as the area is greater than 28m<sup>2</sup>. This non-PPR use (the lease to J) would be a substantial non-PPR use as J is renting a significant part of the house. Only a partial PPR concession would be available. As each residential area is self-contained, it would be appropriate in this case to allow a deduction in respect of the proportion of the total floor area used by H as her PPR.

##### Family letting/allowable letting - flats and units

4. X owns a parcel of land on which there is a block of six flats. X occupies flat 1 as his PPR and rents flat 2 to his brother and sister-in-law at market rent. Other flats are rented to other tenants.

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There is no family letting of flat 2 because, in the case of a block of three or more flats, a family letting must relate to the flat occupied by the owner of the flats as their PPR (in this case, flat 1).

Also, none of the five tenancy agreements is an allowable letting because none of those flats are occupied by the landowner as his PPR. (Also, the area of each flat is likely to be greater than 28m<sup>2</sup>.)

The renting of the five flats would be a substantial non-PPR purpose. A partial concession would apply. Apportionment on a floor area would be appropriate in this case. On this basis, 1/6th of the relevant unimproved value of the land would be an allowable deduction.

5. B owns all six home units in a block. She lives in unit 1 with her family, rents unit 2 to her mother at market rental and rents the remaining units to various tenants.

Each home unit is a separate parcel of land with its own title. Unit 1 is used solely as a PPR and will attract the full concession. There is no family letting in relation to unit 1. In relation to unit 2, there can be no family letting or allowable letting as that unit is not land used by the landowner (B) as a PPR. No concession would apply for that unit or any of the other four units let to tenants.

## Using the home for work or business purposes

6. T owns a combined neighbourhood grocery shop and flat which is her PPR.

The shop is a substantial non-PPR purpose. Only a partial concession would apply. Apportionment of the concession would depend on all the relevant circumstances of the case. Assuming the grocery shop and flat are separate areas without any other use, apportionment based on the floor area of the grocery shop would be appropriate in this case.

7. E lives with F in F's PPR. E is employed as an architect and works two days a week from a home office from where she accesses her employer firm's computer systems to upload and download work and communicate with supervisors via email and telephone. E works at the employer's premises three days a week. E rarely meets clients at the home.

This is a work-from-home arrangement. A full concession would apply.

If E routinely met with clients or held other regular business meetings at the home, it would not be a work-from-home arrangement because this extent of business use would be using the land in a way that residential land is not ordinarily used. The specific allowances would therefore not be available. This would be a substantial non-PPR purpose as the home is virtually an additional place of business for her employer. A partial exemption would apply. In this case, relevant factors for apportionment may be the area of the land used for business purposes and the amount of time the land is used for business purposes.

8. V is a member of a band. The band does not earn significant income from performances and V therefore continues to work full time in a music store, pursuing his music in his own time. He also makes about \$10 000 a year from music lessons which he gives in his lounge room after work intermittently on week days.

The degree of V's musical activities is not significant. There is no dedicated area for giving music lessons and the income generated by his music activities on the land is still well below



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the benchmark of \$30 000. As the non-PPR use is not substantial, a full concession would apply.

9. G owns a large house which is his PPR. He rents an 18m<sup>2</sup> bedroom to a boarder at market rental and does office work at home for his employer three days a week but does not see clients at home.

As the conditions of a work-from-home arrangement and allowable letting exist, the non-PPR uses are not substantial and a full PPR exemption would apply.

10. As for Example 9 except that G also rents another bedroom to a second boarder.

The specific allowances for an allowable letting and a work-from-home arrangement do not apply because there is more than one allowable letting. Consequently, it is necessary to consider whether all of these non-PPR uses are a substantial non-PPR purpose. In this case, there is a substantial non-PPR purpose namely, the two boarding arrangements and the use of the home for the business of the employer. A partial concession would apply. In this case, relevant factors to take into account for apportionment of the concession may include the floor area of the rented areas, the floor area of G's home office, and the time the home office is used for office work.

11. P works for a company and often takes paperwork home at night and on the weekends. She works on this paperwork in a bedroom which has been set up as a home office. The room is also used for other purposes such as personal computing, home accounts and reading.

The use of the home office is not a work-from-home arrangement as there is no evidence of an arrangement with P's employer that this work would be done from her home. The home office is not exclusively set aside for work purposes but is integrated into the home and continues to be used for residential purposes. Also, the non-PPR use of the room is not significant because it is used only after business hours and it is not a place of business. Use of the room in this way is incidental to the residential use of the property. It is not a substantial non-PPR use. A full concession would apply.

12. L is a share trader who works from a home office in his PPR. The home office is exclusively set aside for L's sharetrading activities. He earns \$75 000 per annum from his trading activities.

A business is being carried on from the home office which is used exclusively for generating income which is not a purpose for which residential land is ordinarily used. In addition, the business generates significant revenue (over \$30 000). This is not a use which is incidental to the residential use of the land. It is a significant non-PPR purpose. Only a partial concession is available. Apportionment on a floor area basis would be appropriate for working out the allowable deduction because the home office is exclusively for the share trading activity.

13. K is a glass blower and has retail outlets in two shopping centres. K's business is still relatively small, and K's employees craft ornaments in a shed at the back of K's PPR property, transporting the finished work to the shops.

As K's employees work on the land to a significant extent, this would constitute a substantial non-PPR purpose. (These arrangements would not be a work-from-home arrangement under the specific allowances because K's employees do not reside on the land and this type of

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activity involves using the land for a purpose for which, and a manner in which, residential land is not ordinarily used.) Only a partial PPR concession would be available. On the basis that the shed is dedicated to production of K's trading stock, apportionment of the concession based on the floor area of the shed would be appropriate in this case.

14. Q supplements his regular income by running a small auto-repair business from a workshop behind Q's PPR. Q made a gross income of \$31 000 in the relevant financial year, and had one casual employee who also worked in the workshop.

The combination of Q engaging in an income-producing activity on the land, the amount of income generated through that activity, the fact that Q employs another person who works on the land, and the fact that the workshop is set aside for Q's business use, indicate that the non-PPR purpose of the land is a substantial non-PPR purpose. A partial concession would apply, and apportionment based on the area of the land Q uses for the business would be appropriate in this case.

## Setting aside part of the land for a non-PPR purpose

15. L's PPR is on acreage. L decides to construct a dirt bike practice track on the land for fellow members of his bike club to practise. L uses the track, and also charges a nominal fee to the club for members to use the track. The track takes up a quarter of the block. L also constructs an access road for members to access the track and keep them away from L's PPR for privacy.

A significant part of the land has been set aside for a non-PPR purpose. The fact that only nominal income is generated by the activity does not prevent this purpose from being a significant non-PPR purpose because it is not necessary that the non-PPR purpose be a business or commercial purpose. This would be a substantial non-PPR purpose so that only a partial concession would be available.

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## Attachment 3

PPR = Principal Place of Residence

