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Public Ruling Land Tax Act:

THE LAND TAX EXEMPTION FOR A HOME

A Public Ruling, when issued, is the published view of the Commissioner of State Revenue (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 or exemption, as the case may be, in accordance with the law.

What this Ruling is about

1. The *Land Tax Act 2010* (the Land Tax Act) provides that land used as a home is exempt from land tax, subject to certain conditions. In this Public Ruling, the exemption is referred to as the home exemption.
2. The conditions are that the land is—
 - (a) comprised in one parcel¹ and
 - (b) either—
 - (i) owned by a person, other than a trustee or the manager of a time-sharing scheme, and used as the person's home or
 - (ii) owned by a trustee of a trust, other than an absentee, and used as the home of all beneficiaries of the trust and
 - (c) not used for a non-exempt purpose.
3. Section 36 of the Land Tax Act provides that land is used as a home only if one of three tests is satisfied.
4. A partial exemption is also available where land is used as a home but also for a non-exempt purpose.²
5. This Public Ruling outlines the factors the Commissioner uses in determining whether land is used as a home and explains the operation of the home exemption when land is used both as a home and for other purposes. Examples are provided in Attachment 1.

¹ A 'parcel' means an area of land that is the subject of a separate valuation made by the Chief Executive under the *Land Valuation Act 2010*: Schedule 4 of the Land Tax Act.

² Section 42 of the Land Tax Act

Ruling and explanation

How the exemption works

6. The flow chart in Attachment 2 shows how the home exemption works. In summary, the home exemption applies as follows:

	Exemption	
	Full	Partial
Use as a home only	✓	
Use as a home + use which is not a non-exempt purpose	✓	
Use as a home + non-exempt purpose		✓

Land used as a home

7. Section 36 of the Land Tax Act provides that land is used as the home of a person for a financial year only if:
- that land, and no other land, has been continuously used by the person for residential purposes, whether alone or with another person, for the six month period (the six month residency period) ending when a liability for land tax arises for the financial year (the main test) or
 - the land is taken to be used as the person's home under ss.37 or 38 (the deeming test) or
 - otherwise— the Commissioner is satisfied the land is used as the person's principal place of residence, whether alone or with another person, when a liability for land tax arises for the financial year (the residual test).
8. Only one of the tests needs to be satisfied.

Main test

9. The test in s.36(1)(a) of the Land Tax Act 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 the person's home:
- the land must have been used by the person for residential purposes (whether alone or with others) for a continuous period of six months ending on the relevant 30 June when liability arises for the financial year
 - no other land has been used by the person continuously for residential purposes during the same period.
10. This is the principal test as most people have only one residential property which is occupied as their home.
11. This test is an objective test which does not depend on the Commissioner's satisfaction as to the circumstances. If the conditions are satisfied, the land will be taken to be the person's home.

Deeming test

12. This test deals with the circumstances, outlined in ss.37 and 38 of the Land Tax Act, where land is taken to be a person's home despite the person being absent during the six month residency period.
13. Section 37 of the Land Tax Act provides that land is taken to be used as a person's home in the circumstances where the person is not in occupation because of illness or having to reside elsewhere to receive care. For more detailed information refer to paragraphs 29–33 of this Public Ruling.
14. Section 38 of the Land Tax Act provides that land may be taken to be a person's home when the person is not in occupation temporarily because of renovations to the residence or the existing residence has been demolished and a new residence is being constructed on the land. For more detailed information refer to paragraphs 34–39 of this Public Ruling.

Residual test

15. Where the main or deeming tests do not apply, in order for the land to be considered to be used as a person's home, the Commissioner must be satisfied the land is used as the person's principal place of residence (whether alone or with other persons) at the relevant 30 June.
16. In deciding whether land is used as a person's principal place of residence, s.36(2) of the Land Tax Act provides that the Commissioner may have regard to the following—
 - (a) the length of time the person has occupied a residence on the land
 - (b) the place of residence of the person's family
 - (c) whether the person has moved his or her personal belongings into a residence on the land
 - (d) the person's address on the electoral roll
 - (e) whether services such as telephone, electricity and gas are connected to the land
 - (f) whether the person acquired the land with an intention to occupy a residence on the land as his or her principal place of residence
 - (g) any other relevant matter.
17. Unlike the main test, the residual test depends on the Commissioner being satisfied that the facts support the conclusion that the land is used as the person's principal place of residence. This test must be applied by the Commissioner on a case by case basis after considering all the facts and circumstances.

Residential purposes and principal place of residence

18. The tests make reference to use of the land for 'residential purposes' or as a 'principal place of residence'.
19. The term 'residential' means based on or connected with residence.

20. The term 'residence' is not defined in the Land Tax Act. The ordinary meaning of the term is that it is a house in which one resides, a dwelling place or a large house. A 'dwelling' is a place of residence, a house or a continued or habitual residence.
21. 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.
22. Residence in a caravan or boat on land would not satisfy any of the tests in s.36 of the Land Tax Act. These are not permanent fixed structures on the land.
23. 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 home 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.
24. The expression 'principal place of residence' is not defined in the Land Tax Act. However, s.36(2) of the Land Tax Act provides a list of factors that the Commissioner will have regard to in determining whether a residence is a person's principal place of residence. These factors are listed in paragraph 16.
25. Where a person resides in more than one place during a year, the question of which place is the person's principal place of residence 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.³

Absences

26. For the main test, the person claiming the land as his or her home needs to reside on the land in order for the land to be regarded as being used by the person for residential purposes. Similarly, the residual test requires that the land be used as the person's principal place of residence.
27. The term 'used' in this context refers to actual use and not simply an intention to use. For land to be used it must be actually used, not contemplated or intended to be used or be merely suitable for use. Consequently, the construction of a home on what was previously vacant land would not result in the land being used as a person's home, despite the person's intention to occupy the land as his or her home following completion of construction.
28. As previously mentioned, there are particular circumstances where land is deemed to be used as a person's home despite the person's absence. These circumstances are explained below.

Person who receives care

29. Section 37 of the Land Tax Act provides that land is taken to be used as a person's home in the circumstances where the person is not in occupation because of illness or having to reside elsewhere to receive care.

³ *Fovell v Radford* (1969) 21 P & CR 99

30. Land, for a financial year, is taken to be a person's home if, subject to paragraph 32:
- (a) the person who owns the land received care for all or part of the six month residency period and
 - (b) the person used the land for a qualifying residential use before the person started to receive care and
 - (c) the person has used the land for a qualifying residential use⁴ continuously for a period of at least six months.
31. A person receives care if the person:
- (a) resides at a hospital as an inpatient or
 - (b) receives residential care at a residential care service or
 - (c) resides on other land that is not owned by the person and is under the care of someone else.
32. Paragraph 30 will not apply if income has been derived from use of the land during the one year period ending on the relevant 30 June when the liability for land tax arises except where that income is derived from a lease, licence or other arrangement under which a person has a right to occupy the land if:
- (a) the right of occupation is for not more than six months in the one year period or
 - (b) 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 and
 - (ii) maintenance expenses for the land.
33. The maximum period for which a person may be taken under paragraph 30 to use the land as the person's home is six years from the end of the last period of at least six months during which the land was used by the person for a qualifying residential use.

Demolition or renovations

34. Section 38 of the Land Tax Act provides that land may be taken to be a person's home when the person is not in occupation temporarily because of renovations to the residence or the existing residence has been demolished and a new residence is being constructed on the land.
35. Land, for a financial year, will be taken to be a person's home if:
- (a) the Commissioner is satisfied that the person is temporarily residing elsewhere, when a liability for land tax arises for the financial year, because
 - (i) a residence on the land has been or is being demolished and a new residence is being or will be constructed or
 - (ii) a residence on the land is being renovated to an extent requiring it to be vacated and

⁴ A qualifying residential use of land by the owner of the land, means use of the land, and no other land, by the owner for residential purposes, whether alone or with another person: s.37(7) of the Land Tax Act

- (b) the land was used as the principal place of residence of the person at some time during the six month residency period and
 - (c) the person intends to resume using the land as the person's principal place of residence before a liability for land tax arises for the next financial year.
36. With regard to establishing the matters detailed in paragraph 35, the following evidence is to be provided to the Commissioner:
- (a) evidence of building work or renovations (e.g. Council approval)
 - (b) a statutory declaration by the person declaring (where applicable):
 - (i) that the person has resided upon the land as their principal place of residence and stating the date on which such occupation commenced
 - (ii) details of any use of the land other than as the person's home
 - (iii) the date on which the person ceased to reside upon the land as their principal place of residence
 - (iv) the reasons for ceasing to reside upon the land as their principal place of residence
 - (v) either:
 - (A) that the person has re-occupied the land as his or her principal place of residence after construction or renovation was completed and stating the date on which such occupation recommenced or
 - (B) the person's intention to re-occupy the land again as his or her principal place of residence by the following 30 June
 - (vi) any other relevant facts.
37. A person must give written notice to the Commissioner stating that the person is not using the land as his or her principal place of residence where the person:
- (a) has received the benefit of an exemption on the basis of s.38 for a financial year (the relevant year) and
 - (b) fails to resume using the land as his or her principal place of residence before a liability for land tax arises for the next financial year (that is before the next 30 June).⁵
38. The notice must be given to the Commissioner within 28 days after the date the liability mentioned in paragraph 37(b) arises.⁶
39. The Commissioner must make a reassessment of the person's land tax liability for the relevant year on the basis that the land was not exempt.⁷

⁵ Section 44(1)-(2) of the Land Tax Act

⁶ Section 44(3) of the Land Tax Act

⁷ Section 44(4) of the Land Tax Act

Other absences

40. In cases where a person is temporarily absent from the land at the relevant 30 June and neither s.37 nor s.38 of the Land Tax Act apply, the Commissioner may still be satisfied under the residual test in s.36(1)(c) of the Land Tax Act that the land is the person's principal place of residence.
41. Temporary absences may occur for reasons such as holidays, illness, fire, flood, business or employment commitments. 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 principal place of residence.

Land also used for purposes other than a home

42. Where land that is used as a person's home is also used for another purpose, a full home exemption may still be available depending on the extent of the other use. The Commissioner must decide whether the land is being used for a non-exempt purpose.
43. The Commissioner will not consider land is used for a non-exempt purpose if:
- (a) the land is used as the home of a person (principal resident) for a financial year and
 - (b) when liability for land tax arises for the financial year either or both of the following apply—
 - (i) there is a permitted number of allowable lettings for the land
 - (ii) a person has a work-from-home arrangement and
 - (c) the Commissioner is satisfied that land is used only for the purposes mentioned in paragraphs (a) and (b) when a land tax liability arises for the financial year.

Allowable lettings

44. An allowable letting is one where a person (the occupant) has been given the right to occupy a residential area⁸ on the land (the leased area) under a tenancy agreement⁹. The following conditions apply:
- (a) the leased area is not more than 50% of the total floor area of all residential areas on the land and
 - (b) the leased area is not a residential area that—
 - (i) is one of three or more flats in a building and
 - (ii) is not used for residential purposes by the principal resident and
 - (c) the leased area is used by the occupant for residential purposes and the occupant has not given the right to occupy any part of the area to another person under a tenancy agreement and
 - (d) the rent payable for the leased area is not more than the market rent for the area.

⁸ A 'residential area' means a building, part of a building, or another place of accommodation, that is used or available for use for residential purposes: Schedule 4 of the Land Tax Act.

⁹ A tenancy agreement includes a lease, licence or an agreement or arrangement about boarding or lodging for a person: Schedule 4 of the Land Tax Act

45. An allowable letting where the occupant is a member of the principal resident's family is called a family letting.
46. A member of a person's family means 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).
47. The permitted number of allowable lettings for the land is
- (a) one allowable letting or
 - (b) two allowable lettings if—
 - (i) at least one of the lettings is a family letting and
 - (ii) the total floor area of the leased areas for the lettings is not more than 50% of the total floor area of all residential areas on the land.

Work-from-home arrangements

48. A work-from-home arrangement, referred to in paragraph 43(b)(ii), must meet the following conditions:
- (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.

Deciding if land is used for a non-exempt purpose

49. Where land is used as both a home and for another purpose the Commissioner may decide that the land is being used for a non-exempt purpose if:
- (a) the Commissioner is satisfied that the use of the land for the other purpose is substantial and
 - (b) the allowable lettings and work-from-home arrangements do not apply.
50. In deciding whether the use of land for other purposes is substantial, the Commissioner must have regard to the following factors:
- (a) whether a person other than the principal resident has been given a right to occupy any part of the land under a tenancy agreement
 - (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 home, 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 purposes other than as the home of the principal resident
- (d) whether the gross income generated during the financial year immediately before the relevant financial year from business or an income producing activity on the land is more than \$30 000
- (e) any other relevant matter.

51. Depending on the circumstances, any one or more of these factors alone may be sufficient for the Commissioner to determine that use of the land for a purpose other than as a home is a non-exempt purpose.

Apportioning the taxable value of the land for a partial home exemption

52. Where land is used both as a home and for a non-exempt purpose, a partial home exemption is available.¹⁰
53. The Commissioner apportions the taxable value of the land between the use of the land as a home and the use of the land for non-exempt purposes, having regard to:
- (a) the proportion of the land used for each purpose and
 - (b) the extent to which each proportion is used for the purpose.¹¹
54. The apportionment method will vary, depending on the circumstances. For example, in cases where part of the land is set aside exclusively for the non-exempt purpose, it may be appropriate to apportion on a floor area basis. However, this may not be an appropriate basis where the non-exempt purpose use is not physically separated from the home use. In the latter case, it may be appropriate to consider both floor area used for the non-exempt purpose and the time and extent of use for that purpose.
55. Where there is only one family letting for the land, the family letting is taken to be included in the use of the land as a home.¹²

Date of effect

56. This Public Ruling takes effect from 1 July 2011.

Tony Kulpa
Deputy Commissioner of State Revenue
Date of Issue 6 June 2011

¹⁰ Section 42 of the Land Tax Act

¹¹ Section 42(3) of the Land Tax Act

¹² Section 42(4) of the Land Tax Act

References

Public Ruling	Issued	Dates of effect	
		From	To
LTA000.1.2	6 June 2011	1 July 2011	17 June 2025
LTA000.1.1	30 June 2010	30 June 2010	30 June 2011

SUPERSEDED

Attachment 1

EXAMPLES

Land used as a home

1. A is the owner of two properties as at 30 June 2010. A occupied the High Street property as his principal place of residence until 25 January 2010. On 26 January 2010, A commenced living at Low Street as his principal place of residence.

The main test in s.36(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 six month period prior to 30 June 2010.

However, the residual test in s.36(1)(c) of the Land Tax Act applies to the Low Street property which was used as at 30 June 2010 as A's home.

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 2009 and were residing there as at 30 June 2010. 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 has been designed for, and will be used as a shed once the house has been constructed. Neither the main test or the residual test in s.36(1)(a) and (c) are satisfied and the land will not be regarded as their home.

3. Same as Example 2 except that X and Y reside in a caravan on the land.

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

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. H's Electoral Roll address is the Gold Coast. The majority of his personal belongings are at the Gold Coast. Neither parcel of land meets the requirements of the main test in s.36(1)(a) of the Land Tax Act because H had more than one residence during the six month period ending at the relevant 30 June. However, having regard to the factors listed in paragraph 16, the Commissioner would be satisfied, in accordance with the residual test in s.36(1)(c) that the Gold Coast land is used as H's principal place of residence.

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.36(1)(a) of the Land Tax Act and the Commissioner cannot be satisfied, under the residual test in s.36(1)(c), that the Brisbane land is used as F's principal place of residence. Therefore, the Brisbane land would not be exempt as land used as a home.

6. X owned two properties at 30 June 2010. 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 has been using the property as his home since 2007.

The other property is a house at Noosa which is more valuable than the Mission Beach property. X claimed the home exemption on this property for 30 June 2010.

X is registered in the White Pages telephone directory for both the Mission Beach and the Noosa properties. In November 2009, 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.36(1)(a) of the Land Tax Act due to the fact that X had more than one residence during the six months ending 30 June 2010. However, having regard to the indicators listed in paragraph 16, the Commissioner would be satisfied, in accordance with the residual test in s.36(1)(c), that the Mission Beach land is used as X's principal place of residence and thus would receive the exemption for land used as a home for the 2010–11 financial year.

7. K is unable to live in his property unassisted. He moves into his daughter's home in March 2010. 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 property.

K does not meet the occupancy requirement for the main test in s.36(1)(a), however, his circumstances fall within s.37 of the Land Tax Act. Therefore, the land is taken to be K's home for land tax purposes for the 2010–11 financial year.

8. X owns a number of parcels of land in Queensland, including property (parcel 1) purchased in October 2008. Parcel 1 was X's home. In May 2010 X moved out and resided at another address while X's old home was demolished and a new home was built. X intended moving back in September 2010 when the new home was due to be completed.

In respect of X's land holdings as at 30 June 2010, X claims the exemption for land used as a home on the above property and provides a copy of the building approval along with a statutory declaration covering the matters detailed in paragraph 36.

The Commissioner will be satisfied that the land is X's home under s.38 of the Land Tax Act for the 2010–11 financial year. The assessment of land tax for the 2010–11 financial year, based on X's land holdings as at 30 June 2010, will reflect the exemption for X's home.

9. The same facts as Example 8, however, X subsequently decided not to move back in until September 2011.

X is required to notify the Commissioner within 28 days after 30 June 2011 that he did not resume using the land as his principal place of residence.

The Commissioner will reassess X's land tax liability for the 2010–11 financial year on the basis that parcel 1 was not exempt.

10. Z takes an extended overseas holiday commencing on 4 April and returning on 9 March the following year. Z allows a friend, Y, to reside at his home for security purposes. In return, Y pays money into Z's bank account to cover household costs for the period. The household costs include those Z or Y would normally 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.36(1)(a) of the Land Tax Act, the Commissioner would be satisfied, in accordance with the residual test in s.36(1)(c), that the land is used as Z's principal place of residence, as the arrangement between Z and Y is one that is only incidental to Z's use of the land as a principal place of residence.

Lettings

Allowable letting

11. C owns a two-storey house which is his home. C leases part of the bottom floor to D at market rent under a residential tenancy agreement. The land is not used for any other purpose.

A full home exemption would be applicable for the land as the tenancy is an allowable letting.

12. H owns a large house which is her home. 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 50% of the total floor area of all residential areas on the land.

The lease of the balance of the house to J is not an allowable letting as the leased area is greater than 50% of the total floor area of the residential areas. This use of the land for a purpose other than for a home (the lease to J) would be a non-exempt purpose as J is renting a significant part of the house. Only a partial home exemption 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 home.

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

There are no allowable lettings in respect of flat 2 or the other flats because, in the case of a block of three or more flats, an allowable letting must relate to the flat occupied by the owner of the flats as his or her home (in this case, flat 1).

The renting of the five flats would be a non-exempt purpose. A partial home exemption would apply. Apportionment on a floor area basis would be appropriate in this case.

14. 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 rent 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 home and will attract the full home exemption. There are no allowable lettings in relation to unit 1. In relation to unit 2, there can be no allowable letting as that unit is not land used by the

landowner (B) as her home. No concession would apply for that unit or any of the other four units let to tenants.

Family letting

15. 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 rent.

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 property is being used as a home because, like the occupation of the home by the children, the grandparents are part of the family's occupation of the home. A full home exemption applies.

If the grandparents had been renting the downstairs flat at market rent, 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 land as a home and a full home exemption 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 grandparents, that second tenancy agreement would also be a family letting provided all other conditions were satisfied. A full home exemption may still apply if the total floor area of the leased areas for the lettings is not more than 50% of the total floor area of all residential areas on the land.

Using the home for work or business purposes

16. T owns a combined neighbourhood grocery shop and flat which is her home.

The use of the land as a shop is a non-exempt purpose. Only a partial home exemption would apply. Apportionment of the home exemption 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.

17. E lives with F in F's home. 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 home exemption 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. This would be a substantial non-exempt purpose as the home is virtually an additional place of business for her employer. A partial home 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.

18. 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 the benchmark of \$30 000. As the use of the land other than as a home is not substantial, a full home exemption would apply.

19. G owns a large house which is his home. He rents a small bedroom to a boarder at market rent 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 use of the land other than as a home is not substantial and a full home exemption would apply.

20. As for Example 19 except that G also rents another bedroom to a second boarder.

The provisions for an allowable letting and a work-from-home arrangement will not apply because there is more than one allowable letting (of which one is not a family letting). Consequently, it is necessary to consider whether all of these other uses are considered to be a non-exempt purpose. In this case, there is a substantial non-exempt purpose namely, the two boarding arrangements and the use of the home for the business of the employer. A partial home exemption 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.

21. 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 use of the land for a purpose other than as a home 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 non-exempt purpose. A full home exemption would apply.

22. L is a share trader who works from a home office in his home. 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 non-exempt purpose. Only a partial home exemption 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.

23. 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 home, transporting the finished work to the shops.

As K's employees work on the land to a significant extent, this would constitute a non-exempt purpose. (These arrangements would not be a work-from-home arrangement under the specific provision because K's employees do not reside on the land and this type of activity involves using the land for a purpose for which, and a manner in which, residential land is not ordinarily used.) Only a partial home exemption would be available. On the basis that the shed is dedicated to production of K's trading stock, apportionment of the home exemption based on the floor area of the shed would be appropriate in this case.

24. Q supplements his regular income by running a small auto-repair business from a workshop behind Q's home. 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 use of the land other than as a home is a non-exempt purpose. A partial home exemption 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 purpose other than use as a home

25. L's home is on acreage. L decides to construct a dirt bike practice track on the land for fellow members of his bike club to practice. 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 home for privacy.

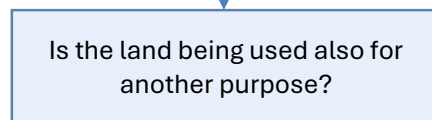
A significant part of the land has been set aside for a purpose other than use as a home. The fact that only nominal income is generated by the activity does not prevent this purpose from being a non-exempt purpose because it is not necessary that the non-exempt purpose be a business or commercial purpose.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

Attachment 2

Paragraphs 7–41



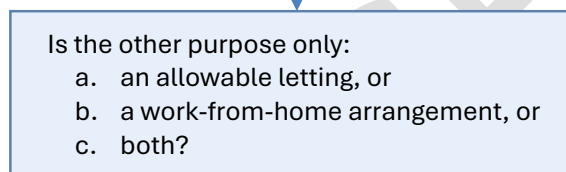
Yes



Yes

No

Paragraphs 43–48

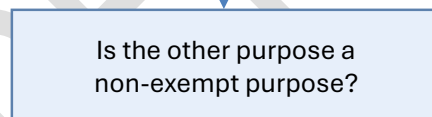


Yes

Full exemption

No

Paragraphs 49–51



Yes

Partial exemption

No