



## COMMISSIONER'S PRACTICE LT 17.0 SUPERSEDED

### LAND TAX – PRIMARY PRODUCTION BUSINESS EXEMPTIONS

This Commissioner's practice details the circumstances when a land tax exemption will usually be granted on land used for a primary production business for an assessment year commencing on or after 1 July 2014.

Commissioner's Practice LT 9 'Land Tax – Exemption for Non-rural Business Land' continues to apply for determining exemptions relating to the use of non-rural land for assessment years prior to 2014-15.

#### Background

##### *What is Primary Production*

Section 30A of the *Land Tax Assessment Act 2002* ('LTA Act') provides that land is used for primary production if it is used for any of the following –

- (a) the growing or rearing of plants (including trees, fungi or any crop) for the purpose of selling them, parts of them or their produce;
- (b) the breeding, rearing or maintenance of living creatures for any of the following purposes (produce animals) –
  - (i) selling them, or their progeny, for food;
  - (ii) the production or collection of their skins, shells or bodily produce; or
  - (iii) selling parts of them or their skins, shells or bodily produce;
- (c) the breeding, rearing or maintenance of produce animals for the purpose of selling them or their progeny –
  - (i) for stud purposes; or
  - (ii) to be used for a purpose set out in paragraph (b)(i), (ii) or (iii);
- (d) the breeding or rearing of horses for the purpose of selling them or their progeny; or
- (e) any other thing prescribed for the purposes of this subsection.

Section 30A(2) of the LTA Act clarifies two important matters relating to the exemption. Firstly, that land is used for primary production and is eligible for the exemption irrespective of whether or not the primary produce is sold in a natural, processed or converted state and, secondly, that any land that is used for the processing or converting of anything is not land used for primary production and consequently is not exempt land.

### ***When Land is Used for a Primary Production Business***

Section 30B of the LTA Act provides that land is used for a primary production business if the land is used for primary production and that use of the land –

- (a) has a significant and substantial commercial purpose or character; and
- (b) is directed at making a profit and has a prospect of making a profit (whether or not a profit is actually being made); and
- (c) is planned, organised and carried on in a businesslike manner, rather than being carried on for recreation, hobby, sporting or similar activities; and
- (d) has the same or similar characteristics as, and is carried out in the same or a similar manner to, the ordinary trade in that line of business taking into account scale, size, permanency, and repetition and regularity; and
- (e) is in accordance with any other prescribed factor.

### ***Exemption for Rural Land***

Section 30C of the LTA Act provides that land is exempt for an assessment year if, at midnight on 30 June in the previous financial year, the land is –

- (a) *rural land*; and
- (b) used solely for a primary production business.

Under section 29 of the LTA Act, *rural land* means all land in the State other than non-rural land.

### ***Exemption for Non-rural Land***

Section 30D(1) of the LTA Act provides that land is exempt for an assessment year if, at midnight on 30 June in the previous financial year, the land is –

- (a) *non-rural land*; and
- (b) used solely for a primary production business; and
- (c) used solely for a primary production business, only by an owner of the land and/or if an owner of the land is a *family owner*, a person related to the family owner.

However, under section 30D(2) of the LTA Act, land is not exempt under this section if –

- (a) the land is owned jointly by two or more owners; and
- (b) not every owner of the land is –
  - (i) a family owner; and
  - (ii) a person related to each other family owner; and
- (c) the land –
  - (i) is used for a primary production business by a person related to a family owner of the land; or
  - (ii) is not used for a primary production business by any owner of the land.

Section 29 of the LTA Act defines *non-rural land* to mean all land in the State that is in the *metropolitan region*,<sup>1</sup> or that is outside the metropolitan region and is zoned other than for rural purposes under a local planning scheme or an improvement scheme.

### ***Family Owners of Land and Persons Related to Family Owners of Land***

For the purpose of determining who is a family owner of land, or a person related to a family owner of land, section 30G of the LTA Act provides that a reference –

- (a) to an individual or a *family member* is a reference to the person in their capacity as an individual and not in any other capacity such as agent, trustee or otherwise on behalf of any another person; and
- (b) to a nominated shareholder, nominated beneficiary or nominated unit holder is a reference to the individual nominated in writing for the purposes of this Division –
  - (i) to the Commissioner by the family corporation, the trustee of the family trust or the trustee of the family unit trust scheme, as is relevant; or
  - (ii) if such a nomination is not made within a reasonable period of time after a request for a nomination is made by the Commissioner, by the Commissioner.

Section 29 of the LTA Act provides that *family member* has the meaning given in section 100 of the *Duties Act 2008* ('Duties Act') in that a reference to a family member of a person is to one or more of –

- (a) a child or remoter lineal descendant of the person; or
- (b) a parent or remoter lineal ancestor of the person; or
- (c) a brother or sister of the person or a remoter lineal descendant of a brother or sister of the person; or
- (d) an aunt or uncle of the person; or
- (e) the spouse, former spouse, de facto partner of 2 years or former de facto partner of 2 years of the person; or
- (f) the spouse or de facto partner of 2 years of a person mentioned in paragraph (a), (b), (c) or (d).

Section 30H of the LTA Act provides that a *family owner* of land is an owner that –

- (a) is an individual; or
- (b) is a corporation in which every shareholder is either the nominated shareholder or a family member of the nominated shareholder ('a family corporation'); or
- (c) holds the land in the capacity of trustee of a discretionary or other trust (other than a unit trust scheme) under which every beneficiary is either the nominated beneficiary or a family member of the nominated beneficiary ('a family trust'); or

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<sup>1</sup> As identified in the Glossary to the LTA Act, *metropolitan region* is the region described in Schedule 3 to the *Planning and Development Act 2005*.

- (d) holds the land in the capacity of trustee of a unit trust scheme under which every unit is held by either the nominated unit holder or a family member of the nominated unit holder ('a family unit trust scheme').

Section 30I(1) of the LTA Act provides that a person is related to a family owner of land who is an individual ('the individual') if the person is –

- (a) a family member of the individual; or
- (b) a partner in a partnership in which every partner is either the individual or a family member of the individual; or
- (c) a corporation in which every shareholder is either the individual or a family member of the individual; or
- (d) a trustee of a discretionary or other trust (other than a unit trust scheme) under which every beneficiary is either the individual or a family member of the individual; or
- (e) a trustee of a unit trust scheme under which every unit is held by either the individual or a family member of the individual.

Under section 30I(2) of the LTA Act, if land is owned jointly by two or more individuals, then for the purposes of determining who is related to a family owner of land, the individual referred to in subsection (1) must be nominated in writing –

- (a) to the Commissioner jointly by the two or more family owners who are individuals; or
- (b) by the Commissioner if such a nomination is not made within a reasonable period of time after a request for a nomination is made by the Commissioner.

Section 30J of the LTA Act provides that a person is related to a family owner of land that is a family corporation if the person is the nominated shareholder for the corporation ('the shareholder') or is –

- (a) a family member of the shareholder; or
- (b) a partner in a partnership in which every partner is either the shareholder or a family member of the shareholder; or
- (c) another corporation in which every shareholder is either the shareholder or a family member of the shareholder; or
- (d) a trustee of a discretionary or other trust (other than a unit trust scheme) under which every beneficiary is either the shareholder or a family member of the shareholder; or
- (e) a trustee of a unit trust scheme under which every unit is held by either the shareholder or a family member of the shareholder.

Section 30K of the LTA Act provides that a person is related to a family owner of land that is a trustee of a family trust if the person is an individual who is the nominated beneficiary for the trust ('the beneficiary') or is –

- (a) a family member of the beneficiary; or
- (b) a partner in a partnership in which every partner is either the beneficiary or a family member of the beneficiary; or

- (c) a corporation in which every shareholder is either the beneficiary or a family member of the beneficiary; or
- (d) a trustee of another discretionary or other trust (other than a unit trust scheme) under which every beneficiary is either the beneficiary or a family member of the beneficiary; or
- (e) a trustee of a unit trust scheme under which every unit is held by either the beneficiary or a family member of the beneficiary.

Under section 30 of the LTA Act, a person is related to a family owner of land that is a trustee of a family unit trust scheme if the person is the nominated unit holder for the scheme ('the unit holder') or is –

- (a) a family member of the unit holder; or
- (b) a partner in a partnership in which every partner is either the unit holder or a family member of the unit holder; or
- (c) a corporation in which every shareholder is either the unit holder or a family member of the unit holder; or
- (d) a trustee of a discretionary or other trust (other than a unit trust scheme) under which every beneficiary is either the unit holder or a family member of the unit holder; or
- (e) a trustee of another unit trust scheme under which every unit holder is either the unit holder or a family member of the unit holder.

## **Commissioner's Practice**

### ***When Land is Used for a Primary Production Business***

1. The criteria set out at section 30B of the LTA Act for determining whether land is being used for a primary production business are based upon common law indicators used to determine whether an activity constitutes the carrying on of a business. It is considered that land used for primary production business includes associated infrastructure on the same land, such as dams, packaging or machinery sheds, loading ramps, etc.
2. When reviewing an application for a primary production exemption, the Commissioner will consider each of the criteria to determine whether the use of land indicates that a primary production business is being carried out. However, the weighting to be given to each criterion may vary from case to case.
3. Where necessary, the Commissioner may choose to engage the services of experts to assist in determining whether or not an activity constitutes a primary production business.

*Significant commercial purpose or character*

4. Relevant factors in determining whether land used for primary production is used for a significant commercial purpose or character include –
  - 4.1 the physical size and scale of the activity;
  - 4.2 the repetition and regularity of the activity;
  - 4.3 the intensity of the activity;
  - 4.4 the characteristics of the activity compared with the characteristics of businesses involved in the same type of primary production;
  - 4.5 the history and future prospects in relation to income, expenses and profit;
  - 4.6 the current and expected commercial viability of the activity;
  - 4.7 the size of the profits having regard to the value of the land;
  - 4.8 the amount of capital employed in the activity;
  - 4.9 the resources (including time, labour and expenditure) put into the activity;
  - 4.10 the due diligence undertaken by the person conducting the activity to ensure the commercial viability and the legality of the activity; and
  - 4.11 the organisation of the activity, for instance, whether the activity is conducted in a businesslike manner.

*(Prospect of) Making a profit*

5. It is essential that the use of the land is directed at making a profit on a continuous and repetitive basis and has a prospect of doing so, even if a profit is not currently being made. An activity that is carried out primarily as a hobby or for recreation purposes will not satisfy this criterion.
6. Non-cash costs such as depreciation should be accounted for in determining profit, as should holding costs such as local government rates and land tax. Consideration should also be given to labour, other resources provided free of charge, and the value of any benefits obtained in lieu of monetary remuneration (for example, an employee who is remunerated by way of free or reduced rent).
7. While it is not necessary for the primary production activities to make a profit in every year in order to classify the activities as a primary production business, actual profits or losses from previous years and expectations of profit or loss in future years are important indicators of whether the use of the land is directed at making a profit on a continuous and repetitive basis and has a prospect of doing so.
8. Where continued losses are made, the Commissioner will generally not allow an exemption. Accordingly, it is important that the person conducting the primary production activity is able to show that the activity is directed at making a profit on a continuous and repetitive basis and has a prospect of doing so, and that

the other criteria are present in sufficient strength to outweigh the objective view that the activity is inherently unprofitable.

*Use of the land is planned, organised and carried on in a businesslike manner*

9. Rather than being carried on for recreation, hobby, sporting or similar activities, a primary production business is characteristically carried on in a systematic, organised and repetitious manner that generally conforms with ordinary commercial principles that amount to the carrying on of a business.
10. Establishing that an activity is planned, organised and carried on in a businesslike manner may require comparing the planning, organisation and recordkeeping of the activity with those of businesses carrying out the same type of primary production.
11. For taxation purposes, certain records are required to be kept if a business is being carried on. The keeping of additional records, such as breeding records for a stud farm, waybills for a cattle business or records of such things as input and production costs, seasonal and other conditions affecting production and how growing and market conditions have varied or may vary in the future, may assist in showing that a business is being carried on.
12. In circumstances where the business is not carried on in an organised and systematic manner, the person will need to show that the other criteria are present in sufficient strength to demonstrate that the activity is a primary production business.
13. Regardless of whether an activity is carried on in an organised and systematic manner, the pursuit of a hobby is not the carrying on of a business. Generally, an activity is carried on as a hobby or for recreation or sport if –
  - 13.1 it is evident that the person conducting the activity does not intend to make a profit and there is no system or plan in place to show how a profit can be made;
  - 13.2 losses are incurred because the activity is motivated by personal pleasure;
  - 13.3 the transaction is isolated and there is no repetition or regularity of sales;
  - 13.4 activity is not carried on in the same manner as a business activity;
  - 13.5 there is little evidence of any system or organisation about the activity;
  - 13.6 the activity is carried on a small scale; or
  - 13.7 there is an intention by the person conducting the activity to carry on a hobby, a recreation or a sport rather than a business.

*Same or similar characteristics*

14. The use of the land must have the same or similar characteristics as, and be carried out in the same or similar manner to, the ordinary trade in that line of business taking into account scale, size, permanency, and repetition and regularity.
15. An activity is more likely to be a primary production business when it is carried on in a manner akin to that of other similar types of businesses. In considering this criterion, the Commissioner may compare the following factors with the characteristics of others engaged in the same type of business –
  - 15.1 the amount of capital invested;
  - 15.2 the sort of expenses incurred;
  - 15.3 the types of customers to whom the product is sold;
  - 15.4 the type of marketing;
  - 15.5 the size of the profits and the profit margin;
  - 15.6 the resources (including time, labour and expenditure) put into the activity;
  - 15.7 the relevant knowledge and experience of the person conducting the activity;
  - 15.8 the organisation of the activity; and
  - 15.9 the method of operation of the activity.
16. The larger the scale of the activity, the more likely it will be that a business of primary production is being carried on. However, where the scale of the activity is small but still results in more produce than is required for the personal use of the person conducting the activity, and where there is also intent to profit from the activity and a reasonable expectation of doing so, a business may be considered to be carried on despite the scale. Where the scale of the activity is small, more weight is placed on the other criteria when deciding whether a person is carrying on a business of primary production.
17. In assessing the volume of sales, allowance should be made for whether the business is in the early stages of activity, as well as for droughts, fires and other uncontrollable events which may affect the volume of sales.
18. The person conducting the activity should carry out at least the minimum activities necessary to maintain a commercial quantity and quality of product for sale. Where there are minimum necessary levels that have not been maintained, it may be construed that, for a period, the person conducting the activity ceased to carry on a business of primary production.

### **Owner-user Test (Non-rural Land Only)**

19. In relation to the criteria that must be satisfied for non-rural land to qualify for a primary production exemption under section 30D of the LTA Act, the land must be used solely for a primary production business only by an owner of the land, a person related to the owner of the land (if the owner is a family owner), or a combination of both.

#### *Examples*

- John is the sole owner of the land. The land is used solely for a primary production business by John. The land is exempt.
- John is the owner of the land. The land is leased to unrelated neighbour David who uses the land solely for a primary production business. The land is not exempt.
- John is the owner of the land. The land is used solely for a primary production business by John and unrelated neighbour David. The land is not exempt.
- John is the owner of the land. The land is used solely for a primary production business by John's brother, Mark. As a brother is a related person as set out in the meaning of family member, the land is exempt.
- John is the owner of the land. The land is used solely for a primary production business by John and John's brother, Mark. The land is exempt.

20. Where non-rural land is jointly owned by two or more persons, the land will only qualify for the exemption where a related person is using the land for a primary production business if the joint owners are all family owners and each owner is related to each other.

21. Where non-rural land is jointly owned by unrelated persons, the exemption will only apply if all of the owners and no other person(s) are using the land in a business of primary production. Note that a partial exemption is not available if one or some of the owners are using the land for primary production.

#### *Examples*

- Unrelated persons John, David and Joan own the land, and only Joan uses the land for a primary production business. The land is not exempt because it is not being used by all of the owners.
- Unrelated persons John, David, Joan and Sue own the land, and John, David, Joan and Sue all use the land for a primary production business. The land is exempt because it is being used by all of the owners.
- John and John Pty Ltd are the owners of the land. All owners qualify as a family owner of land and all owners are related to each other. As the land is used solely for a primary production business by John's son Paul, the land is exempt.
- John, John's wife Jane and unrelated neighbour David are the owners of the land. David's son, Allan, is using the land for a primary production business. The land is not exempt as, even though the person using the land is related to one owner, all of the owners are not related to each other.

22. Appendix A illustrates when non-rural land is eligible for the primary production exemption.

### **Partial Exemptions**

23. Where a portion of land is being used solely for a primary production business and all other criteria for the exemption have been met, a partial exemption may be granted for that portion of the land.

*Example*

If two-thirds of a parcel or lot of land is being used solely for a primary production business and one-third is being used for a trucking business, two-thirds of the land will be exempt from land tax.

24. When determining whether land is used for primary production, it is irrelevant whether a thing is sold, or to be sold, in a natural, processed or converted state. However, the processing or converting of anything for the purpose of selling it ('secondary production') is not primary production.

25. Where land is used for both primary production and secondary production, a partial exemption may be allowed on that portion of the land used solely for the primary production business.

*Example*

If two-thirds of a parcel or lot of land is used to grow oranges for a production business and one-third is used to process the oranges into juice, two-thirds of the land will be exempt from land tax.

26. The onus of proving that land is being used solely for a primary production business rests with the owner of the land, even if another person is conducting the activity on the land. If another person conducts the activity, the owner is responsible for obtaining detailed information about that person's use of the land.

### **Date of Effect**

This Commissioner's practice takes effect from 1 July 2014.

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 ACTING COMMISSIONER OF STATE REVENUE  
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### **Document History**

Document	Issued	Dates of effect	
		From	To
LT 17.0	22 May 2015	1 July 2014	30 June 2019

APPENDIX A

How to determine if non-rural land is eligible for the primary production business exemption

