



COMMISSIONER'S PRACTICE LT 8.2 SUPERSEDED

LAND TAX - EXEMPTION IF MOVING FROM ONE RESIDENCE TO ANOTHER

This Commissioner's practice addresses the granting of an exemption from land tax where two private residential properties are owned at 30 June in transitional circumstances.

Background

Sections 27 and 27A of the *Land Tax Assessment Act 2002* ('the Act') provide the circumstances when an exemption from land tax for an assessment year may be granted for a private residential property that is not being used as the owner's primary residence as at midnight on 30 June of the previous financial year.

Under section 27 of the Act, where an individual owned two private residential properties ('property 1' and 'property 2') at midnight on 30 June, land tax on the property (property 1) that was not being used as the owner's primary residence due to the owner moving between two private residences may be reassessed to allow a residential exemption on that property if:

- (a) property 2 is exempt for the assessment year because of its use as the individual's primary residence at midnight on 30 June in the previous financial year; and
- (b) property 1 would have been exempt for the assessment year if it had been used as the individual's primary residence at midnight on 30 June in the previous financial year; and
- (c) the property the owner acquired second (property 2) was acquired in the previous financial year; and
- (d) property 1 was used as the individual's primary residence –
 - (i) in the previous financial year before using property 2 for that purpose; or
 - (ii) in the assessment year after using property 1 for that purpose; and
- (e) during the assessment year, the owner –
 - (i) sold or otherwise disposed of the property the owner acquired first (property 1); and
 - (ii) delivered possession of that property to the new owner.

Under section 27A of the Act, where an individual owned two private residential properties ('property 1' and 'property 2') at midnight on 30 June, land tax on the property (property 2) that was not being used as the owner's primary residence due to construction or refurbishment of the residence on that land may be reassessed to allow a residential exemption for two consecutive assessment years if:

- (a) property 1 was acquired first and is exempt for the first assessment year because of its use as the individual's primary residence at midnight on 30 June in the previous financial year; and
- (b) property 2 would have been exempt for the first assessment year if, at midnight on 30 June in the previous financial year, the individual had used that property as their primary residence; and
- (c) property 2 was acquired in the previous financial year; and
- (d) the commencement date for the construction or refurbishment of property 2:
 - (i) is in the first assessment year; or
 - (ii) is in the previous financial year and part of the construction or refurbishment is carried out in the first assessment year; and
- (e) the completion date for the construction or refurbishment of property 2 is in the second assessment year; and
- (f) in the case of the refurbishment of property 2 — at midnight on 30 June immediately before the first assessment year, the private residence was unoccupied, but only because the individual had not taken up occupation to enable the private residence to be refurbished; and
- (g) the individual is the first occupant of property 2 since its construction or refurbishment; and
- (h) the individual uses property 2 as his or her primary residence during the second assessment year; and
- (i) by the end of the second assessment year, the owner:
 - (i) has sold or otherwise disposed of property 1; and
 - (ii) has delivered possession of that property to the new owner.

Sections 27(2) and 27A(2) of the Act provide that an exemption will not be granted if, while the owner owned both properties, the owner or any other person derived income from either property.

The operation of these provisions in relation to the requirement to acquire and sell property within specified time periods means that an exemption cannot be rolled forward to later assessment years in which the owner owns both properties.

Terms used as defined in the Glossary to the Act

The *commencement date* for the construction or refurbishment of a private residence is defined as being:

- (a) if the residence is to be constructed or refurbished under a building contract – the date when the contract is made; or

- (b) if the residence is to be constructed or refurbished by an owner-builder – the date when the building permit for the work is granted under the *Building Act 2011*.

The *completion date* for the construction or refurbishment of a private residence is the date when the construction or refurbishment is completed to the point where the residence is ready for occupation.

Primary residence is defined as an individual's sole or principal place of residence.

Private residential property is defined as including:

- (a) a lot of land on which there is a private residence; or
- (b) a parcel of land on which there is a private residence constructed so that part of the residence stands on each of the lots of land that constitute the parcel; or
- (c) an interest in a home unit.

Commissioner's Practice

1. An application under section 27 of the Act can only be made when the property acquired first (property 1) has been sold and possession delivered to the new owner, and the property acquired second (property 2) is occupied by the owner.
2. An application under section 27A of the Act can only be made after the commencement date for the construction or refurbishment of property 2.
3. An application must be made in the approved form, and may require evidence of:
 - 3.1 dates of occupation; and
 - 3.2 the date of disposal and delivery of possession of the property acquired first; or
 - 3.3 the commencement date and expected completion date for the construction or refurbishment of the property for which the exemption is sought.
4. The Commissioner will consider a partial exemption under section 18 of the Act where an owner has an interest in more than one residential property and the ownership of the properties is not identical.
5. A partial exemption may be also be allowed in circumstances where not all of the owners use the land as their primary residence or where the land is used for both residential and non-residential purposes.
6. The Commissioner may inspect properties and/or seek documentary evidence to verify completion of construction/renovation and owner occupation.

7. If any conditions are not met, any exemption in respect of property 2 will be removed and an assessment issued.

Date of Effect

This Commissioner's practice takes effect from 30 October 2015.

Nicki Suchenia
COMMISSIONER OF STATE REVENUE

30 October 2015

Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
LT 8.0	29 October 2003	29 October 2003	24 November 2005
LT 8.1	25 November 2005	25 November 2005	29 October 2015
LT 8.2	30 October 2015	30 October 2015	30 June 2019