



## **Withdrawal of Memorials and Consent to Deal on Land**

### **Introduction**

1. Where land tax becomes payable under section 7 of the *Land Tax Assessment Act 2002* and the amount owing is not paid by the date on which payment is due, section 76(2) of the *Taxation Administration Act 2003* (TAA) provides that the Commissioner may lodge a memorial for registration against the land to secure the payment of land tax that is in arrears.
2. Under the provisions of section 80 of the TAA, on application by an owner of land or a person intending to purchase land, the Commissioner may issue a certificate that indicates whether there is a charge on the land under section 76 of the TAA and the amount of unpaid tax secured by the charge or, where an assessment notice has not been issued, an estimate of the amount of land tax that will be assessed.
3. Where a memorial is registered against land and payment is made of the amount secured by the charge, section 81(1) of the TAA provides that the Commissioner must give to the taxpayer a withdrawal of memorial releasing the land from the charge. Notwithstanding this, the Commissioner may lodge a withdrawal of memorial under section 81(5)(a) at any time whether or not the relevant tax has been paid.
4. If land tax is assessed in relation to land comprising two or more lots, section 76(7) of the TAA establishes that the charge (and subsequently any unpaid tax) attaches to each separate lot in the same proportion that the taxable value of the lot bears to the total taxable value of the land.
5. Section 81(2) of the TAA provides that if land tax is assessed in relation to land comprising a number of separate lots or parcels, the Commissioner is not obliged to give a withdrawal of memorial for any lot or parcel unless the whole of the land tax is paid.
6. Where a memorial is lodged, section 82(5) of the TAA prohibits the registration of any instrument affecting that land without the Commissioner's consent.
7. Section 79(1) of the TAA provides that land tax is a first charge on the land and has priority over all other mortgages, charges and encumbrances over the land.
8. Section 79(2) of the TAA provides that, in the case of another statutory charge that ranks as a first charge under another Act having previously been registered on the same land, the relative priority of the charges is determined according to the order of registration.
9. The purpose of this ruling is to identify the circumstances in which the Commissioner will provide a withdrawal of a memorial or consent to deal on land where the whole of the land tax secured by the charge has not been paid.

## **Ruling**

10. Where land that comprises a number of separate lots or parcels has a memorial registered against it, the Commissioner may provide a withdrawal of memorial even if payment of the whole of the land tax applicable to all the separate lots or parcels has not been made.

### ***Withdrawal of memorial***

11. Where a payment made by the taxpayer is sufficient to cover the whole of the land tax applicable to the total tax secured by the memorial, the Commissioner may provide a withdrawal of memorial releasing that land from the charge.

### ***Partial withdrawal of memorial***

12. In circumstances where the taxpayer is seeking to sell part of the land by Transfer of Land by Mortgagee (Power of Sale) but the sale proceeds will be insufficient to cover the amount owing under that mortgage as well as all arrears of tax owing by the taxpayer, the Commissioner may provide a withdrawal of memorial for that land subject to payment having been made of the outstanding land tax applicable to:
  - (a) all the land the subject of the mortgage that is to be sold and
  - (b) any remaining land the subject of the mortgage against which a memorial has been registered that can be satisfied from the proceeds of the sale.
13. In circumstances where the taxpayer is seeking to lodge an instrument affecting part of the land against which a memorial is registered, the Commissioner may provide a withdrawal of memorial releasing that land from the charge without payment of the whole of the land tax applicable to all the separate lots or parcels subject to:
  - (a) payment having been made of the outstanding land tax which is applicable to all the land the subject of the instrument
  - (b) payment of any additional amount as determined by the Commissioner and
  - (c) the owner demonstrating that payment of the whole of the land tax applicable to all the separate lots or parcels will cause undue financial hardship or will cause the ultimate sale of the land affected by the instrument to not proceed.

### ***Consent to deal on land***

14. In circumstances where the taxpayer is seeking to lodge an instrument affecting part of the land against which a memorial is registered, and is unable to make payment of all the taxes secured by the memorial, the Commissioner may give consent to the registration of such an instrument subject to:
  - (a) payment having been made of an amount determined by the Commissioner and
  - (b) the owner demonstrating that payment of the whole of the land tax applicable to all the land the subject of the instrument will cause undue financial hardship or will cause the ultimate sale of the land affected by the instrument to not proceed.

## Ruling History

Revenue Ruling	Issued	Dates of effect	
		From	To
LT 1.0	June 1993	June 1993	30 June 2003
LT 1.1	1 July 2004	1 July 2003	15 September 2014
LT 1.2	16 September 2014	16 September 2014	Current