



## Exemption if Moving from One Residence to Another

This Commissioner's practice explains when a land tax exemption will be granted for private residential property owned at 30 June in transitional circumstances.

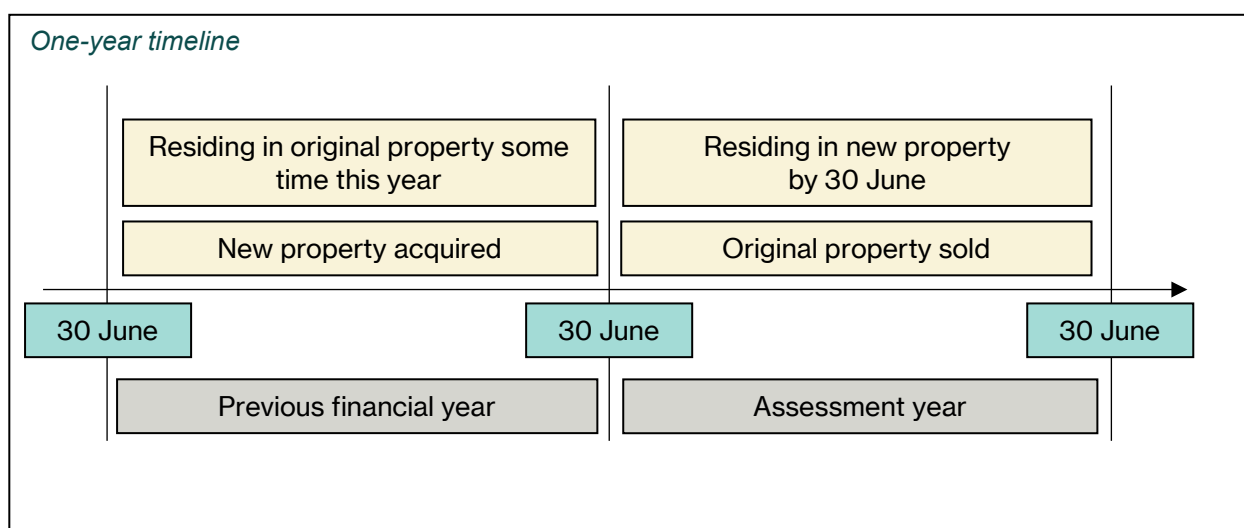
### Background

Sections 27 and 27A of the *Land Tax Assessment Act 2002* (LTA Act) provide an exemption for land held in transitional circumstances. When an individual acquires new property and makes it their primary residence, the new property and the original property may both be exempt for one or more consecutive assessment years.<sup>1</sup> This allows the individual to transition to the new property and dispose of the original property.

### One-year exemption

Section 27 of the LTA Act exempts private residential property held concurrently with a second property for up to one assessment year. This section applies if:

- (a) at 30 June in the previous financial year
  - (i) both the original and the new property are owned by the individual and
  - (ii) either the original or the new property is used as the owner's primary residence and
  - (iii) the other property would have been exempt if it was used as the owner's primary residence and
- (b) the new property was acquired in the previous financial year and
- (c) during the assessment year, the original property is sold and possession is delivered to the new owner.<sup>2</sup>



<sup>1</sup> Subject to the requirements of each section.

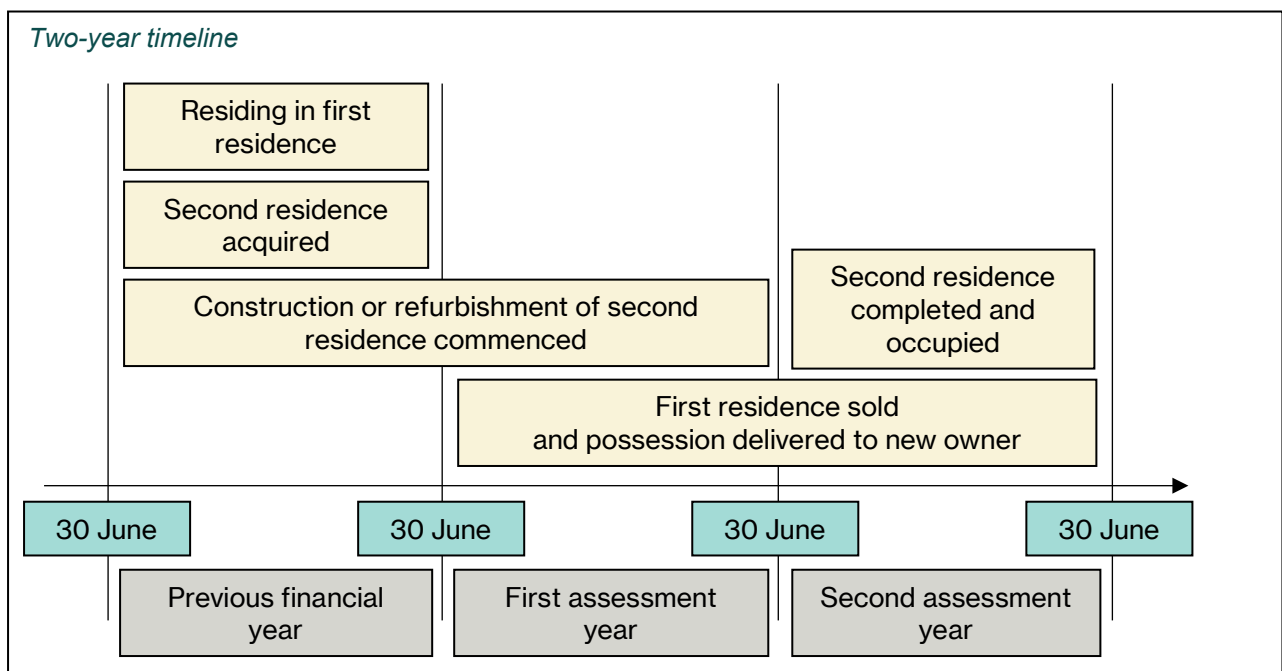
<sup>2</sup> LTA Act s 27(1).

## Two-year exemption

Section 27A of the LTA Act exempts property held concurrently with a second property for up to two assessment years. This exemption is only available when the new property is unoccupied because of the construction or refurbishment of a private residence.

This section applies if:

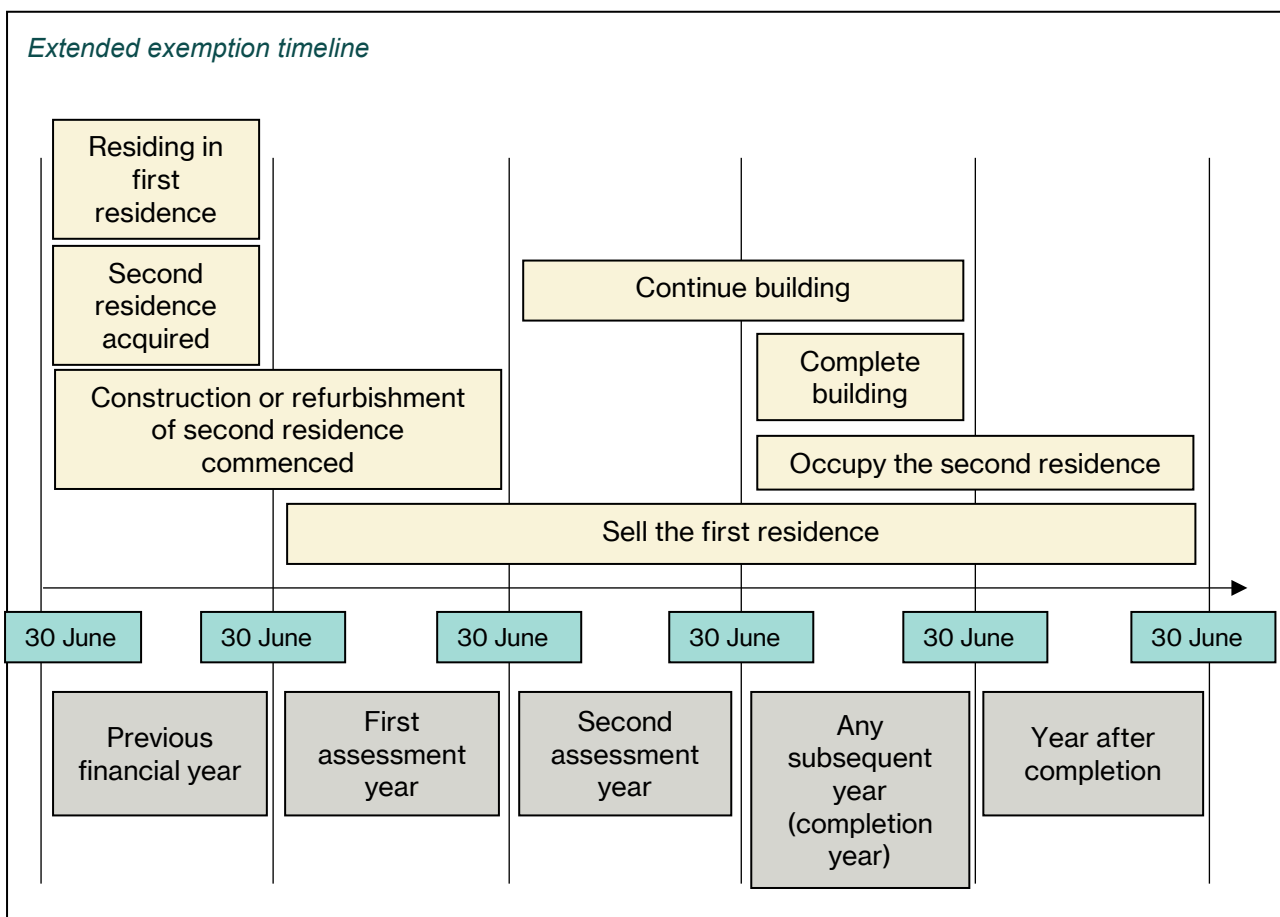
- (a) the property acquired first is exempt for the first assessment year because of its use as the individual's primary residence at midnight on 30 June in the previous financial year and
- (b) the property acquired second would have been exempt for the first assessment year if, at midnight on 30 June in the previous financial year, the individual had used that property as their primary residence and
- (c) the property acquired second was acquired in the previous financial year and
- (d) the commencement date for the construction or refurbishment of property acquired second
  - (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 the property acquired second is in the second assessment year and
- (f) in the case of the refurbishment of the property acquired second – at midnight on 30 June immediately before the first assessment year, the private residence was unoccupied 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 acquired second since its construction or refurbishment and
- (h) the individual uses the property acquired second as their 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 the property acquired first and
  - (ii) has delivered possession of that property to the new owner.



**Extended exemption**

If the commencement date for the construction or refurbishment of a second property is on or after 1 July 2020 and before 1 July 2023, section 28G of the LTA Act exempts the second property from land tax for two assessment years if the owner meets the requirements for the section 27A exemption except that:

- (a) the completion date for the construction or refurbishment of the property acquired second is in the third financial year or a subsequent financial year and
- (b) the individual uses the property acquired second as their primary residence before the end of the financial year immediately following the financial year in which construction or refurbishment is completed and
- (c) by end of the financial year immediately following the financial year construction is completed, the owner:
  - (i) has sold or otherwise disposed of property acquired first and
  - (ii) has delivered possession of that property to the new owner.



The Commissioner may exempt a third assessment year if there was a delay in completing construction due to exceptional circumstances that were beyond the owner's control and that could not have been reasonably avoided by the owner. Exceptional circumstances can include the builder failing to start or ceasing work on the residence and can include a building materials or labour shortage.

## **Exclusions**

Land is not exempt if:

- (a) it is held in trust or
- (b) while the owner owned both properties, any income was derived from the property that was not being used as the individual's primary residence or
- (c) the property that was under construction or refurbishment is sold or otherwise disposed of before it is occupied.

This exemption cannot be rolled forward to subsequent assessment years. If the owner does not meet the exemption requirements by the end of the relevant financial year, they will not be eligible for an exemption. For example, if the owner completes the home in the second assessment year but does not occupy the second residence and sell the first residence during that year, they are not eligible for the exemption under section 27A or the extended exemption under section 28G.

## **Refurbishment**

An exemption is only available when the owner did not occupy the property while it was being refurbished.<sup>3</sup>

## **Subdivided land**

When land is subdivided,<sup>4</sup> the original (parent) lot ceases to exist and new lots are created.<sup>5</sup>

When private residential property is subdivided during the exemption period, the exemption requirements of section 27 or 27A cannot be satisfied in relation to the parent lot. However, section 28B allows a partial exemption to apply to that part of the parent lot that will become the new lot on which the primary residence is constructed or refurbished.<sup>6</sup>

If two or more parent lots are amalgamated and the new lot contains the residence being constructed or refurbished, the exemption will apply to all parent lots for the exemption period.

If the subdivision occurs in the first assessment year of a two-year exemption, section 28D provides that the exemption applies for the second assessment year to the new lots that satisfy the exemption requirements rather than to the parent lot.

If the property acquired first is subdivided during the exemption period, the requirement in sections 27 and 27A for that property to be sold and delivered into the possession of the new owner will be taken to be satisfied if all of the new lots are sold and delivered by the end of the assessment year or second assessment year (whichever is relevant).<sup>7</sup>

Section 28E gives the Commissioner discretion to treat certain owners of the parent lot as owners of the new lots for the period between subdivision of the land and the registration of new certificates of title.

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<sup>3</sup> LTA Act s 25A(1)(g).

<sup>4</sup> LTA Act cl 3 of the Glossary explains when land is subdivided. Subdivision includes an amalgamation of land.

<sup>5</sup> LTA Act cl 2(2) – 2(2B) of the Glossary.

<sup>6</sup> LTA Act s 28B(2)(b).

<sup>7</sup> LTA Act s 28C.

## Terms used

*Assessment year* is the financial year for which the land tax is, or is to be, assessed.<sup>8</sup>

*Commencement date* is either the date when the building contract is made, or the date when the building permit is granted under the *Building Act 2011* for an owner-builder.<sup>9</sup>

*Completion date* is the date when the construction or refurbishment is completed to the point where the residence is ready for occupation.<sup>10</sup>

*Exemption period* is an assessment year or two consecutive assessment years (whichever is applicable).

*New lot* is the lot that comes into existence because of a subdivision.<sup>11</sup>

*Parent lot* is the original lot that ceases to exist following subdivision.<sup>12</sup>

*Primary residence* is a person's sole or principal place of residence.<sup>13</sup>

*Private residence* is a building that is occupied, or fit to be occupied and intended by the owner to be occupied, as a place of residence.<sup>14</sup>

*Private residential property* is a lot or parcel of land on which a private residence is being or has been constructed. It is also an interest in a home unit.<sup>15</sup>

*Refurbishment* means to 'furbish again; renovate; polish up again; brighten'.<sup>16</sup>

## Commissioner's practice

1. An application for a one-year exemption can only be made when the property acquired first has been sold and possession delivered to the new owner, and the property acquired second is occupied by the owner. The application must be made using Form [FLT27 'Application for Transitional Residential Exemption'](#).<sup>17</sup>
2. An application for a two-year exemption can only be made after the commencement date for the construction or refurbishment of the property acquired second. The application must be made using Form [FLT27A 'Application for Two-Year Transitional Residential Exemption'](#)<sup>18</sup> and must include a copy of the building contract ('Schedule of Particulars' only). For owner-builders, a copy of the building permit issued by the Local Government Authority must accompany the application.

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<sup>8</sup> LTA Act cl 1 of the Glossary.

<sup>9</sup> LTA Act cl 1 of the Glossary.

<sup>10</sup> LTA Act cl 1 of the Glossary.

<sup>11</sup> LTA Act cl 3 of the Glossary.

<sup>12</sup> LTA Act cl 2(2) of the Glossary.

<sup>13</sup> LTA Act cl 1 of the Glossary. See also [Commissioner's Practice LT 4 'Primary Residence'](#).

<sup>14</sup> LTA Act cl 1 of the Glossary.

<sup>15</sup> LTA Act cl 1 of the Glossary.

<sup>16</sup> *Macquarie Dictionary* (at 14 May 2019), 'refurbish'.

<sup>17</sup> Forms are accessible from the website at <https://www.wa.gov.au/service/financial-management/taxation-and-duty/find-land-tax-forms-and-publications>

<sup>18</sup> Forms are available from the website at <https://www.wa.gov.au/service/financial-management/taxation-and-duty/find-land-tax-forms-and-publications>

3. Apply for an extended exemption using Form [FLT 27A](#).
  - 3.1 The application can be made at any time if the building contract or building permit is dated between 1 July 2020 and 30 June 2023.
  - 3.2 A copy of the building contract or building permit must be provided with the application.
4. The Commissioner may exercise discretion to grant an exemption for a third year if the applicant receives an exemption under section 28G, and the owner provides evidence there has been a delay in construction due to exceptional circumstances outside their control that they could not have reasonably avoided. Examples of exceptional circumstances include:
  - 4.1 the builder ceased operating or
  - 4.2 the builder did not commence or complete construction/refurbishment or
  - 4.3 construction was delayed due to a building materials or labour shortage.Examples of when delays could have been reasonably avoided include:
  - 4.4 an owner's builder becoming insolvent would not be within the owner's control. However, a disagreement between an owner and builder over pricing under the building contract would not constitute exceptional circumstances outside the owner's control.
  - 4.5 an owner could have reasonably avoided the delay if the builder under the building contract absconded before commencing work on the property, but a second builder offered to complete the contract.
5. Evidence may be required to show:
  - 5.1 dates of occupation and
  - 5.2 the date of disposal and delivery of possession of the property acquired first or
  - 5.3 the commencement date and expected completion date for the construction or refurbishment of the property for which the exemption is sought.
6. A partial exemption will be granted if:
  - 6.1 the land is owned jointly, and not all joint owners use the land as their primary residence or
  - 6.2 the land is owned jointly, and one or more of the joint owners is entitled to a residential exemption on other land that they own during the exemption period or
  - 6.3 the land is partially used for a non-exempt purpose (such as for a business).
7. Following completion and occupation of the newly constructed/refurbished residence for which a two-year exemption was granted and sale of the property acquired first, the Part B Confirmation Form<sup>19</sup> should be submitted and the entitlement to the exemption will be reviewed. If all exemption requirements have not been met, the exemption will be revoked and a reassessment will be issued for the relevant assessment years.

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<sup>19</sup> This form is provided with the exemption approval letter.

8. The Commissioner may seek evidence and/or inspect properties to verify all exemption requirements have been met.

### ***Subdivided land***

9. The owner must notify the Commissioner of their intention to subdivide or amalgamate at the time of application. If the new plan is not yet available, the owner should provide a sketch, aerial photo or architectural/building plan that indicates the area of the parent lot that will become the new lot on which the primary residence is being constructed/refurbished.
10. If the new lot owners owned the parent lot jointly with other persons and subdivision subsequently takes place during the exemption period, the Commissioner will only apply the exemption to the part of the parent lot which becomes the new lot to be occupied by the new lot owners.
11. If the land is subdivided or amalgamated during the exemption period, the Commissioner will apply the relevant provisions in sections 28A, 28B, 28C, 28D and 28E considering:
  - 11.1 the number of owners
  - 11.2 the date that the subdivision is effected
  - 11.3 the number of new lots that result
  - 11.4 the area of the new lots
  - 11.5 the uses of the new lots and
  - 11.6 the date that the new certificates of title are issued.
12. An application for the Commissioner to exercise discretion to treat certain owners of the parent lot as owners of the new lots for the period between subdivision and the registration of new certificates of title can be made if:
  - 12.1 a liability is raised during the period between subdivision and the registration of new certificates of title and
  - 12.2 the registration of the certificates of title changes or will change the ownership of the new lots.

This will raise a liability against the land ownership that is or will be determined by the registration of the new certificates of title, rather than the land ownership previously determined by the subdivision.

13. The application must be made in writing and must include:
  - 13.1 the land identification of the relevant new lots
  - 13.2 for each new lot – a statement detailing the ownership that has resulted or will result from the new certificates of title
  - 13.3 if the new certificates of title have been registered – the date they were registered and
  - 13.4 if the new certificates of title have not been registered – evidence of the new ownership, such as a Form 22 'Disposition on Subdivision'<sup>20</sup> or contractual agreement.

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<sup>20</sup> Available from Landgate at <https://www0.landgate.wa.gov.au/for-individuals/forms-and-fees/survey-and-strata-forms>

14. The Commissioner may issue assessments before new certificates of title have been registered if evidence is submitted that demonstrates the new ownership.

**Date of effect**

This Commissioner’s practice takes effect from 5 December 2023.

Chris McMahon  
 COMMISSIONER OF STATE REVENUE  
 16 April 2024

**Document 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     |
| LT 8.3                  | 1 July 2019      | 1 July 2019      | 30 June 2020     |
| LT 8.4                  | 24 July 2020     | 1 July 2020      | 4 December 2023  |
| LT 8.5                  | 16 April 2024    | 5 December 2023  | Current          |