



## Commissioner's Discretion to Grant Exemption or Concession

This Commissioner's practice details what the Commissioner of State Revenue (Commissioner) will consider when deciding whether to apply discretion to grant an exemption, concession or further concession under section 20 of the *Land Tax Assessment Act 2002* (LTA Act).

### Background

Part 3 of the LTA Act contains provisions that exempt land from land tax subject to certain requirements. If those requirements are not met, section 20(1) allows a taxpayer to apply to the Commissioner for discretion to grant an exemption, concession or further concession (collectively referred to as 'exemption') for:

- (a) *primary residence* - any portion of private residential property used by an individual for a non-exempt purpose if the property is exempt to some extent under section 21, 22 or 23 because of its use as their primary residence
- (b) *deceased estates* - land not exempt under section 23 for an assessment year because rent or income was derived from the property in that year, or because it was exempt under that section in the previous assessment year
- (c) *home owner in full-time care* - private residential property not exempt under section 26B for an assessment year because rent or income was derived from the property
- (d) *land for sale by mortgagee* - land not exempt under section 42 because the owner was already receiving an exemption under another provision, rent or other income was derived from the property, or the property was exempt under that section in the previous assessment year
- (e) *Crown land* - land for which a person is taken to be the owner under section 8(1) and which is not otherwise subject to an exemption or concession
- (f) *religious body or educational institution* - land sold by a religious body or educational institution that would otherwise be taxable under sections 32(2) or 33(2).

If the Commissioner refuses to apply discretion to grant an exemption or revokes an exemption, the applicant may appeal the decision to the Minister within 60 days after the date on which notice of the decision was issued.<sup>1</sup>

### Commissioner's practice

1. The Commissioner may apply discretion to grant an exemption without requiring an application to be made.
2. If an application is made and the land would qualify for an exemption under another section of the LTA Act, the Commissioner will consider it an application for exemption under that section.

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<sup>1</sup> LTA Act ss 20(3) to 20(8).

3. When considering whether to grant an exemption, the Commissioner will conduct any investigation necessary to determine:
  - 3.1 whether there are reasonable grounds to apply discretion<sup>2</sup> and
  - 3.2 if there is sufficient evidence to support the taxpayer's application.

4. If land does not qualify for an exemption relating to:

- 4.1 primary residence
- 4.2 deceased estate
- 4.3 owner in care or
- 4.4 sale by mortgagee

because rent or other income was derived from the land, the Commissioner will generally grant an exemption if the amount of income was nominal and was derived from a family member who resided at the property for maintenance or caretaking purposes. A person applying under these circumstances must provide:

- 4.5 documents evidencing the financial arrangement
- 4.6 evidence of payments received under the arrangement, the purpose of those payments and details of any bills or expenses and
- 4.7 evidence of how income or expenses have been treated for income tax purposes.

### **Primary residence**

5. The Commissioner will generally exempt the portion of land used for a non-exempt purpose if the land is mainly used by the owner or beneficiary<sup>3</sup> as their primary residence and:
  - 5.1 the non-exempt purpose is associated with the primary residence or
  - 5.2 a separate residence on the same lot of land is used by a family member<sup>4</sup> of the owner, and the owner gains no material financial benefit from the arrangement. In these circumstances, the evidence specified in paragraph 4 must be provided.

#### *Examples*

1. John keeps bees in a section of his garden that he uses solely for the beehives. He sells the honey from his bees at the local market and through his Facebook page. The part of the garden used for his commercial beehives is land used for a non-exempt purpose.  
  
The Commissioner will generally exempt that portion of the land because the non-exempt purpose is associated with John's primary residence.
2. Jane converts her garage into a home hairdressing salon. She installs hairdressing facilities and equipment, which does not allow for the garage to be used for any other purpose. She actively promotes her business and registers it as a small home-based business. The part of her primary residence used for the commercial purpose is land used for a non-exempt purpose.  
  
The Commissioner will generally exempt that portion of the land because the non-exempt purpose is associated with her primary residence.

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<sup>2</sup> LTA Act s 20(2).

<sup>3</sup> The beneficiary must be entitled under a will to use the property as their residence.

<sup>4</sup> *Duties Act 2008* s 100.

3. Mary and Elizabeth have two buildings on their land. They use the rear building as their primary residence and the front building as a fish and chip shop. The part of the land used for the fish and chip shop is land used for a non-exempt purpose.

Because the use of the building for commercial purposes is not associated with their use of the land as their primary residence, the Commissioner will not apply discretion to exempt that portion of the land.

### **Deceased estates**

6. The Commissioner will generally extend a deceased estate exemption for a second assessment year if administration of the estate is delayed past 30 June due to factors outside the executor or administrator's control, such as:
  - 6.1 a dispute over estate administration or distribution which results in court proceedings
  - 6.2 an agreement to sell the property that is scheduled to settle before 30 June, but is delayed by the buyer or their conveyancer or
  - 6.3 a delay in transferring the property to a beneficiary or beneficiaries due to the illness of the executor or administrator.

#### *Example*

Jane died on 1 June 2018. She left her primary residence to her children, Mary and Andre.

Jane's will appointed her brother Tim as her executor. Mary and Andre contested the will so Tim could not administer Jane's estate until the dispute was settled in August 2020.

Tim applied for an exemption for two years because the estate's administration was delayed by the dispute.

The property was exempt for the first year after Jane died (the 2018/19 year). The Commissioner exercised discretion to grant an exemption for the second year (2019/20).

The property was taxable for the third year (2020/21) because the Commissioner has no discretion to grant an exemption for a third year.

7. When deciding whether to extend an exemption for a second year because of the circumstances in paragraph 6.3, the Commissioner will have regard to whether the property would otherwise be exempt under section 21 because the beneficiary or beneficiaries are using the property as their primary residence.

### **Land for sale by mortgagee**

8. If a person receives an exemption for one property<sup>5</sup> and they have another property that has been vacated for the purpose of vacant possession by the mortgagee, the Commissioner will exempt the vacant property if:
  - 8.1 the vacant property was the owner's primary residence immediately before the mortgagee took vacant possession and
  - 8.2 the sale of the property is delayed until after 30 June due to circumstances beyond the mortgagee's control and
  - 8.3 the owner is not receiving an exemption for another property that has been vacated for the purpose of vacant possession by the mortgagee.

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<sup>5</sup> under section 21, 22, 23, 24, 24A, 25 or 25A of the LTA Act.

### **Crown land**

9. If a nominal amount is paid for a Crown lease arrangement, the Commissioner will exempt the land.

### **Religious body or educational institution**

10. The Commissioner will exempt land owned by a religious or educational institution<sup>6</sup> that would otherwise be subject to retrospective assessment if, within the same assessment year, the institution:
- 10.1 sells the land reserved for a religious or educational purpose and
  - 10.2 acquires new land within the same local government area and
  - 10.3 uses or reserves the newly acquired land for the original religious or educational purpose.

### **Date of effect**

This Commissioner's practice takes effect from 22 February 2023.

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COMMISSIONER OF STATE REVENUE

22 February 2023

### **Document history**

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<sup>6</sup> See section 32(2) & 33(2) of the LTA Act and [Commissioner's Practice LT 20 'Land Owned by a Religious Body or Educational Institution'](#).