



## REVENUE RULING

# **SUPERSEDED**

## LT 1.1

### LAND TAX

### MORTGAGEE SALES – WITHDRAWAL OF MEMORIALS

#### 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

#### INTRODUCTION

1. Section 76 of the *Taxation Administration Act 2003* (“the Act”) establishes land tax as a first charge upon the land in priority over all other encumbrances, and where the land taxed comprises two or more lots, the land tax payable is a first charge on each and every lot.
2. Although unpaid land tax is a charge against the aggregate land holdings of an owner, section 80 of the Act provides that, on application by the purchaser of any land, the Commissioner may issue a certificate indicating the proportion of land tax which applies to the land purchased, and may on payment of that proportion, release the land from the charge.
3. Under the provisions of section 76 of the Act, the Commissioner may lodge a memorial at the Office of Titles to secure the payment of land tax that is in arrears. Where a memorial is so lodged, the registration of any instrument affecting the land concerned is prohibited without the Commissioner’s consent.
4. Under section 81(1) of the Act, if a memorial is registered, the Commissioner must serve on the taxpayer an instrument releasing the land from charge upon the payment of the amount secured by the charge.
5. Unless the Commissioner’s consent is given, a transfer to give effect to the sale of land, which is the subject of a memorial, cannot be registered.

6. Ordinarily, where a mortgagee wished to sell a lot or lots under the provisions of a mortgage, all arrears of land tax in the name of the owner concerned would have to be paid to facilitate removal of the memorial. This would occur even where some lots in that ownership were not subject to the mortgage.
7. The purpose of this ruling is to indicate the circumstances under which the Commissioner will give consent to the registration of a transfer in respect of land which is the subject of a memorial, where:
  - (a) the land is sold under a mortgagee's sale; and
  - (b) the sale proceeds are insufficient to cover all arrears of land tax owing by the owner, as well as the amount owing under the mortgage and under any subsequent mortgages over the land being sold.

## **RULING**

8. Consent will be given to the registration of a transfer in respect of land that forms part of the land which is the subject of a memorial and which is sold under the provisions of a mortgage, subject to the following conditions:
  - (a) payment is made on the proportion of the outstanding land tax which is applicable to all the land which is the subject of the first mortgage registered over the land which has been sold;
  - (b) before any amount is paid to a subsequent mortgagee, payment is made of that proportion of the outstanding land tax which is applicable to all the land the subject of the subsequent mortgage and which has not been paid in accordance with paragraph (a) herof; and
  - (c) any balance remaining out of the proceeds of the sale is applied towards the payment of all outstanding land tax on all other land owned by the mortgagor before any amount is paid to the mortgagor of the land.
9. Where the Assistant Commissioner (Revenue Services) is satisfied that the requirements of (8) above have been met, the Assistant Commissioner (Revenue Services) will:
  - (a) endorse the transfer of the land which has been sold, with his consent to its registration; and
  - (b) issue a withdrawal of memorial in respect of the land, for presentation to the Registrar of Titles.

## **DATE OF EFFECT**

This Revenue Ruling takes effect from 1 July 2003