



## COMMISSIONER'S PRACTICE LT 9.0

### LAND TAX – EXEMPTION FOR NON-RURAL BUSINESS LAND

#### Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
LT 9.0	29 October 2003	29 October 2003	18 August 2011

This Commissioner's practice addresses the circumstances when the Commissioner will exercise his or her discretion and grant an exemption from land tax on non-rural land in certain circumstances.

#### Background

Section 20 of the *Land Tax Assessment Act 2002* ("the Act") provides for a discretionary power to exempt farming land which would not otherwise be exempt because of the requirements of section 29(3) and (4) of the Act.

Section 29(1) provides that land (except land in a non-rural zone, defined in the Glossary as within the metropolitan region, or outside the metropolitan region but not zoned rural) is exempt for an assessment year if, at midnight on 30 June in the previous financial year, it is or was used solely or principally on a commercial basis to produce income to the user from the sale of produce or stock in the course of carrying out one or more of the following kinds of rural business –

- an agricultural business, silvicultural business or reforestation business;
- a grazing business, horse breeding business, apicultural business, pig-raising business or poultry farming business.

Section 29(3) of the Act requires that the owner of land in a non-rural zone that is used for a rural business, is also the user of the land and the owner derives in excess of one third of their total net income (defined below) from the business of primary production within the State of Western Australia.

However, even if section 29(3) does not apply to land in a non-rural zone used for a silvicultural or reforestation business or both, the land is exempt under section 29(4) if the area of the land is at least 100 hectares, and the land is fully stocked at midnight on 30 June in the previous financial year for the purposes of the business.

Clause 5 of the Glossary of the Act defines total net income as:

- where the owner is an individual — the individual's gross income from all sources less the expenses of earning the income;
- where the owner is two or more individuals — the sum of the gross incomes from all sources of all the individuals less the respective expenses of earning the incomes; or
- where the owner is a body corporate — the sum of the total net incomes of the body corporate and of any other body corporate deemed to be related to it under section 50 of the *Corporations Act 2001*.

Section 20(2) allows the Commissioner to exempt farming land should the conditions of section 29(3) and (4) not be met and the taxpayer shows reasonable cause.

Section 19 of the Act requires an owner of land to give the Commissioner any information within his or her knowledge that is relevant when deciding an exemption or concession for land tax will apply.

### **Commissioner's Practice**

#### *The owner must be the user*

1. The Commissioner regards the user of the land as the person entitled to the income from farming the land.
2. The Commissioner will consider an application for exemption where the user is closely related by blood or marriage to the owner of the land, providing that:
  - 2.1 the primary production business is a substantial commercial operation;
  - 2.2 the one-third income test would be satisfied if the user was the owner; and
  - 2.3 there is no reason to believe that the arrangement is contrived to avoid land tax.
3. Application for exemption will also be considered where some, but not all, of the owners use the land.

*The one-third income test*

4. Where the one third of total net income test is not met, the Commissioner will exercise his or her discretion and grant an exemption where it is clear that the farming business is being carried out on a substantial basis and:
  - 4.1 there is no doubt that the main source of the user's income is from primary production; or
  - 4.2 the user usually derives one-third of his income from primary production but failed to do so because of seasonal or economic conditions or some other temporary aberration; or
  - 4.3 farming provides, or is intended to provide, the major source of the user's livelihood.
5. Exemptions granted by the exercise of the Commissioner's discretion will be reviewed annually.
6. Where there is any significant change in the circumstances that applied when the exemption was granted, the user is required as a condition of the exemption, to notify the Commissioner as soon as the change becomes apparent.

**Date of Effect**

This Commissioner's practice takes effect from 29 October 2003.

Bill Sullivan  
COMMISSIONER OF STATE REVENUE

29 October 2003