



Commissioner's Discretion

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 an exemption, concession or further concession 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 of the LTA Act because of its use as the individual's primary residence
- (b) *Deceased Estates* - land not exempt under section 23 of the LTA Act for an assessment year because it derived rent or income in that year, or because it was exempt under that section in the previous assessment year
- (c) *Land for Sale by Mortgagee* - land not exempt under section 42 of the LTA Act 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
- (d) *Crown Land* - land for which a person is taken to be the owner under section 8(1) of the LTA Act and which is not otherwise subject to an exemption or concession
- (e) *Religious Body or Educational Institution* - land sold by a religious body or educational institution that would otherwise be taxable under section 32(2) or section 33(2) of the LTA Act.

If the Commissioner refuses to grant an exemption or concession, the applicant may appeal the decision to the Minister within 60 days after the date on which notice of the Commissioner's decision was issued.¹

Commissioner's Practice

1. The Commissioner may exercise discretion² to grant an exemption, concession or further concession (collectively referred to as 'exemption' for the purposes of this Practice) for land that falls under the provisions of section 20(1) of the LTA Act.
2. When considering applying discretion to grant an exemption, the Commissioner will conduct any investigation necessary and will consider:
 - 2.1 whether there are reasonable grounds to apply discretion with regard to the precedent such a decision will set and
 - 2.2 if there is sufficient evidence to support the taxpayer's application and
 - 2.3 any information the Commissioner considers relevant.

¹ LTA Act ss 20(3) to 20(8).

² LTA Act s 20(2).

3. If an application for discretion is made and the land would qualify for an exemption under another section of the LTA Act, the Commissioner will consider the application as an application for exemption under the relevant provision of the Act.
4. If an application for exemption is made³ and the exemption cannot be applied because the requirements are not met, or if the Commissioner reviews an exemption and finds that the land does not qualify, the Commissioner will consider applying discretion without requiring a further application to be made.

Primary residence

5. When part of the land is used by an owner or beneficiary⁴ as their primary residence, the Commissioner will generally apply discretion to exempt the portion used for a non-exempt purpose if:
 - 5.1 the principal use of the land is the exempt use
and
 - 5.2 the use of the land for the non-exempt purpose is associated with the use as a primary residence or
 - 5.3 a separate residence on the same lot of land is used by a family member⁵ of the owner, and the owner gains no material financial benefit from the arrangement.
6. A person applying under the circumstances described in paragraph 5.3 must provide:
 - 6.1 any existing documentation evidencing the arrangement
 - 6.2 evidence of any payments received under the arrangement and the purpose of those payments. If the payments are only to cover bills and other incurred expenses, provide details of the expenses and
 - 6.3 evidence of how any income or expenses have been treated for income tax purposes.
7. If a deceased estates exemption is granted on land for which the deceased owner received an exemption under section 20(1)(a), the Commissioner will generally apply the exemption to the same proportion of land that was exempt at the time of the owner's death.

Deceased estates

8. Upon application, the Commissioner will generally extend a deceased estate exemption for a second assessment year if the administration of the estate is delayed past 30 June due to factors outside the executor or administrator's control, such as:
 - 8.1 a dispute over who should administer the estate or how the estate should be distributed which results in court proceedings
 - 8.2 an agreement to sell the property that is scheduled to settle before 30 June, but is delayed by the buyer or their conveyancer.
 - 8.3 a delay in transferring the property to a beneficiary or beneficiaries due to the illness of the executor or administrator.

³ under a provision referred to in section 20(1) of the LTA Act.

⁴ The beneficiary must be entitled under a will to use the property as their residence.

⁵ *Duties Act 2008* s 100.

Example

Jane died on 1 June 2018. She left her primary residence to her two 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.

9. When deciding whether to extend an exemption for a second year because of the circumstances in paragraph 8.3, 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.
10. If land does not qualify for a deceased estates exemption because it derived rent or other income during the assessment year, the Commissioner will generally exercise discretion to 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.

Crown land

11. If a nominal amount is paid for a Crown lease arrangement, the Commissioner may exempt the land unless the leaseholder is using it for business, commercial, professional or trade purposes.

Land for sale by mortgagee

12. If a person receives an exemption for one property⁶ and they have another property that has been vacated for the purpose of vacant possession by the mortgagee, the Commissioner will apply an exemption for the vacant property if:
 - 12.1 the vacant property was the owner's primary residence immediately before the mortgagee took vacant possession and
 - 12.2 the sale of the property is delayed until after 30 June due to circumstances beyond the mortgagee's control and
 - 12.3 the owner is not receiving an exemption for another property that has been vacated for the purpose of vacant possession by the mortgagee.

⁶ under section 21, 22, 23, 24, 24A, 25 or 25A of the LTA Act.

13. If the property derived rent or other income during the assessment year, the Commissioner will generally exercise discretion to grant an exemption if the applicant declares the amount received was nominal and was derived from a person who resides at the property for security, caretaking or similar purposes.

Religious body or educational institution

14. The Commissioner will exempt land that was owned by a religious or educational institution⁷ that would otherwise be subject to retrospective assessment if, within the same assessment year, the institution:
- 14.1 sells that land reserved for a religious or educational purpose and
 - 14.2 acquires new land within the same local government area and
 - 14.3 uses or reserves the newly acquired land for the original religious or educational purpose.

Date of Effect

This Commissioner's practice takes effect from 27 October 2021.

Marcelyn Nicolaou
COMMISSIONER OF STATE REVENUE

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Commissioner's Practice History

Document	Issued	Dates of effect	
		From	To
LT 21.0	12 December 2019	12 December 2019	26 October 2021
LT 21.1	27 October 2021	27 October 2021	21 February 2023

⁷ 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'](#).