



Land Tax - Newly Subdivided Land

This Commissioner's practice explains when the Commissioner will raise a retrospective land tax assessment on newly subdivided land which was previously exempt.

Background

The *Land Tax Assessment Act 2002* (LTA Act) provides exemptions from land tax for land that is private residential property, used in a primary production business, or used for a dwelling or residential park. If that land is subdivided¹ and certain conditions are met, the taxable portion of the land is retrospectively assessed for up to five or ten previous years.²

Land tax is payable by the owner at the time of subdivision, even if a different owner benefited from the exemption then sold the land to the current owner.

Each year is assessed using the rates that applied in that year as if the taxable land were the only land of the subdividing owner.³ The amount will be reduced by any land tax already paid on the taxable portion of the land for any of those years.⁴

Private residential land

Under section 14 of the LTA Act, land tax will be assessed for the previous five years on the taxable portion of private residential land that is subdivided if

- the land was exempt or partially exempt under Part 3 Division 2 of the LTA Act⁵ for any of the past five years and
- the area of the land is greater than 2.0234 hectares and
- the subdivision was not carried out only for the purpose of defining an area of land to be taken or resumed under an enactment relating to the compulsory acquisition of land.

The taxable portion of the land is calculated by subtracting the greater of

- the area of land on which the private residence was situated at the time of the subdivision or
- 2.0234 hectares

from the whole area of the land.

¹ Clause 3 of the Glossary to the LTA Act defines when a subdivision occurs for land tax purposes.

² LTA Act ss 14(2), 15(2), and 15A(2).

³ LTA Act ss 14(3), 15(4), and 15A(4).

⁴ LTA Act ss 14(4), 15(5), and 15A(5).

⁵ The most common of these exemptions is the 'primary residence' exemption.

Primary production business land

Under section 15 of the LTA Act, land tax will be assessed for the previous five years on the taxable portion of primary production business land⁶ that is subdivided if

- the land was exempt or partially exempt under Part 3 Division 3 of the LTA Act for any of the past five years and
- the subdivision was not carried out only for the purpose of defining an area of land to be taken or resumed under an enactment relating to the compulsory acquisition of land.

The taxable portion of the land is calculated by subtracting

- the area of land that is exempt as private residential property immediately after subdivision is completed and
- the area of any lot of 2.0234 hectares or more that is zoned for rural purposes under a local planning scheme or an improvement scheme

from the whole area of the land.

A retrospective assessment may apply to land exempt under the rural business land exemption prior to the 2014-15 assessment year.

Dwelling or residential park land

Under section 15A of the LTA Act, land tax will be assessed for the previous ten years on the taxable portion of dwelling or residential park land⁷ that is subdivided if

- the land was exempt or partially exempt under section 39B of the LTA Act for any of the past ten years and
- the subdivision was not carried out only for the purpose of defining an area of land to be taken or resumed under an enactment relating to the compulsory acquisition of land.

The taxable value of the land is calculated by multiplying its unimproved value by

- the percentage of the land that is in a dwelling or residential park immediately after the subdivision and
- the percentage for the park's exemption calculated under section 39C of the LTA Act.

Commissioner's practice

1. The Commissioner will raise a retrospective assessment on subdivided private residential land, primary production business land, or dwelling or residential park land that was previously exempt unless the subdivision was carried out solely to define an area of land to be taken or resumed by compulsory acquisition.
2. To determine whether the land has been subdivided for the purpose of a compulsory acquisition, the Commissioner will consider
 - 2.1 the purpose stated on the plan of subdivision and
 - 2.2 whether any changes to lot boundaries occur that are not required to facilitate the compulsory acquisition and

⁶ See Commissioner's Practice [LT 17 'Primary Production Business Exemptions'](#).

⁷ See Commissioner's Practice [LT 16 'Exemption for Land used for a Caravan Park, Camping Ground or Residential Park'](#).

- 2.3 any applications for development approval relating to the land being subdivided made within a reasonable period before or after subdivision and
 - 2.4 any agreements made within a reasonable period before or after the subdivision involving the sale of lots created by the subdivision.
3. Each lot of land that is subdivided will be assessed separately to any other land owned by the subdividing owner.

Example 1

Yana owns a lot that receives a primary production exemption. She is given notice of a taking order of part of that lot for road widening. The plan of subdivision has the purpose of 'Acquisition', and there are no changes to lot boundaries other than needed to facilitate the compulsory acquisition. This subdivision is solely to define an area of land for compulsory acquisition so is not subject to a retrospective assessment.

Example 2

Xavier owns a lot that receives a primary production exemption. He receives notice of a taking order for part of that lot for road widening. He decides to start winding up the farming business, so prepares a plan of subdivision that divides part of the land not affected by the taking order into a number of smaller blocks suitable for sale and residential development. Although the subdivision was required to facilitate a compulsory acquisition, Xavier's proposed plan of subdivision is not solely for that purpose. The subdivision is subject to a retrospective assessment.

Private residential land

4. The Commissioner will raise a retrospective reassessment on the taxable portion of the property. If the land was subject to a partial exemption for any of the previous five years, the tax under the retrospective assessment will only be levied on the part of the property which received the exemption.

Primary production business land

5. The Commissioner will raise a retrospective reassessment on the portion of land which is not otherwise exempt as a primary residence immediately after subdivision or 'zoned for rural purposes under a local planning scheme or an improvement scheme'.
6. Land is 'zoned for rural purposes under a local planning scheme or an improvement scheme' if the zoning only permits use consistent with the rural zoning in the model provisions for local planning schemes,⁸ or if all the following apply:
- 6.1 the land's zoning permits uses inconsistent with the rural zoning in the model provisions for local planning schemes and
 - 6.2 the land (regardless of any change in legal description) is subject to an additional use, restricted use, or special use zoning, permitting use for primary production under the scheme⁹ and

⁸ *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 1 clause 16(2), item 5.

⁹ This includes provisions under the scheme substantially similar in effect to the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 1 clauses 19-21.

- 6.3 the Commissioner is satisfied the land is exempt for the assessment year following subdivision because it is used for a primary production business and
- 6.4 the Commissioner is satisfied the subdivision did not occur as part of developing land previously exempt because it was used for a primary production business.
7. The Commissioner will reduce the amount of the assessment by the amount of land tax which has previously been assessed in relation to the subdivided land.

Example 3

Vincent owns a lot in the metropolitan area that receives a primary production business exemption. The land is zoned residential but is subject to an 'additional use' in the local planning scheme permitting its use for primary production. The subdivision divides the lot into two equally sized lots. Vincent provides evidence the purpose of the subdivision is so he can continue farming one of the two lots and his son can take over farming the other.

As the land has an additional use zoning, continues to qualify for a primary production business exemption, and the subdivision is not for the purpose of developing the land, the Commissioner will accept that the land is 'zoned for rural purposes' and not subject to a retrospective assessment.

Example 4

Ursula owns land in the metropolitan area that receives a primary production business exemption. The land is zoned residential and the local planning scheme does not provide for the land to be used for primary production as an additional use, restricted use, or part of a special use zone (non-conforming use).¹⁰ Any lots resulting from subdivision of Ursula's land will not be considered 'zoned for rural purposes under a local planning scheme or an improvement scheme'. Therefore, this land will not be subtracted from the assessment.

Dwelling or residential park land

8. The Commissioner will raise a retrospective reassessment if, prior to the subdivision, the land was exempt as dwelling or residential park land. The taxable value of the land will be reduced by the percentage of the land that remains exempt based on its use as a caravan park. See Commissioners Practice [LT 16 'Exemption for Land used for a Caravan Park'](#) for the requirements of a caravan park exemption.

Date of effect

This Commissioner's practice takes effect from 19 April 2023.

Chris McMahon
COMMISSIONER OF STATE REVENUE

19 April 2023

¹⁰ This includes provisions under the scheme substantially similar in effect to the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 1 clause 22.

Document history

Commissioner's Practice	Issued	Dates of effect	
		From	To
LT 2.1	19 August 2011	19 August 2011	18 April 2023
LT 3.1	19 August 2011	19 August 2011	18 April 2023
LT 19.0	19 April 2023	19 April 2023	Current