

NSW land tax - main residence exemption

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The recently issued NSW *Revenue Ruling* (No. LT 82) clarifies various aspects of the principal place of residence (PPR) exemption from NSW land tax as found in section 10(1)(r) and Schedule 1A to the *Land Tax Management Act 1956* (NSW) (**Act**).

The exemption covers the one place of residence of a person that is the principal place of that person. The test is applied on a worldwide basis, so that an individual can only have one main residence in the whole globe. To qualify for the exemption the parcel of residential land or Strata lot must be used and occupied as the PPR of the owner of the land since 1 July in the year preceding the relevant taxing date, that is, 31 December (clause 1 of Schedule 1A to the Act).

Definition of “residential land”

A parcel of residential land includes:

- a single lot of land, the site of a building or buildings, for residential purposes (clause 3 of Schedule 1A to the Act); or
- adjoining lots or two or more strata lots if the lots are adjoining, not separate and are not be separately occupied (clauses 13 and 14 of Schedule 1A to the Act).

Land on which there is one other residential occupancy

There exists a limited right by an owner of a PPR to have one other residential occupancy on the land, from which income can be derived.

However, for the exemption to extend to such an income generating occupancy, the occupancy must be in one of two forms:

- dual occupancy: for example, a granny flat or rented flat that is not itself a self-contained flat; or
- up to two rooms, each separately occupied (clause 4 of Schedule 1A to the Act).

Incidental business use

If a business is mainly conducted from somewhere other than the residence and incidental business use occurs in no more than one room of the residence, even if income is derived from the use, the exemption will still apply (clause 5 of Schedule 1A to the Act).

Exemption applies to both a former and new place of residence

If, on 31 December of a particular year, a person is both the owner of a home that was their PPR and also a new home that is being or is intended to be used and occupied by the same person, both homes may be exempt if certain conditions are met.

To be exempt, the following conditions must be met:

- the person must have become the owner of the new home by 30 June the following year;
- the new home must be used and occupied by the owner by 31 December the following year; and
- the former home must be sold by 30 June the following year (clause 7 of Schedule 1A to the Act).

Absences from residence

Having established a property as the individual's residence, the individual may then lease their residence for a period of up to 6 years and the exemption still apply.

However, for the exemption to apply the owner must:

- prior to the absence, continuously have used and occupied the residence on the land, for at least 6 months;
- have occupied other land which is not owned by the person or by a member of the person's family; and
- by the end of the 6 year absence, resume actual use and occupation for a further 6 months.

It should be noted that during the 6 year absence by the owner of the property income may be derived from the letting of the property under a formal lease or licence agreement. Each year though, the lease or licence can only last up to 6 months. Other informal arrangements are permissible (clause 8 of Schedule 1A to the Act).

Short-term letting

During the December-January period, the PPR exemption continues to apply where the owner lets the PPR, provided there is no residential tenancy agreement over that period and the owner's absence is temporary *Revenue Ruling* LT 82 page 5).

Shared equity arrangements - first home owners

Provided that a first home owner is entitled to the stamp duty concession under the First Home Plus scheme, they will be entitled to an exemption if the residence is purchased with a shared equity partner.

The shared equity partner must be a natural person for a full exemption from land tax to apply. A company or trustee of a special trust will only exempt the first home owner to the proportion of ownership the individual purchases (clause 10A of Schedule 1A to the Act).

Multiple occupancy land

Where the land on which a residence exists is the site of two or more flats, the exemption applies to the proportion that is actually a residence (clause 10B of Schedule 1A to the Act).

Companies and trustees

In general, land owned by a company, even a “family company”, or a company trustee for natural persons will not be exempt from land tax.

An exception to the above applies, however, where persons occupying the land are regarded as the owners of the land and either:

- the land is owned by a company, being a trustee company within the meaning of the *Trustee Companies Act 1964 (NSW)*, or the Public Trustee, or;
- a company is the owner of the land occupied by a beneficiary, if that company is the trustee or a ‘concessional trust’ as defined in section 3B of the Act (clause 11 of Schedule 1A to the Act).

One exemption for all members of the same family

If a family owns and occupies a number of residences, the exemption will apply only to one place of residence which meets the requirements most fully in clause 2 of Schedule 1A to the Act.

A family for these purposes is defined as a person and their spouse, whether married or de facto, together with any child or step child under the age of 18, who ordinarily resides with them (clause 12 of Schedule 1A to the Act).

Land partially used and occupied as an owner’s PPR

The land value of a property that is partly used as the residence of an owner and partly used for other non-exempt purposes is reduced by an allowable proportion.

There are two types of multiple use property that the can apply:

1. Mixed development apportionment factor (section 9C of the Act)

Where land is partly used as the owner's residence and partly used for other purposes such as a residential occupancy, a shop or business the proportionate concession applies.

2. Mixed use apportionment factor (section 9D of the Act)

Where land is used partly as the owner's residence and partly for non-residential purposes, but there are no buildings or parts of buildings on the land which are separately used and occupied for non-residential purposes the proportionate concession applies.

Examples include land that is partly used for a tennis court hire or coaching centre.

Conclusion

The above examination of the principal place of residence exemption from NSW land tax provides guidance on cases that do not clearly fall within the straightforward continuously owner-occupier situation. Each set of circumstances warrant a thorough investigation of the legislation to determine whether the conditions of the exemption are met.