



Office of State Revenue  
NSW TREASURY

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## Revenue Ruling No. LT 82

# The Principal Place of Residence Exemption

## Sch 1A Clauses 1-14 and Sections 9C and 9D Land Tax Management Act 1956

### Ruling history

Ruling no.	Issued date	Dates of effect		Status
		From	To	
LT 82	15 August 2008	15 August 2008		Replaces revenue rulings <a href="#">LT5</a> , <a href="#">LT20</a> , <a href="#">LT27</a> , <a href="#">LT40</a> and <a href="#">LT42</a>

### Preamble

#### Schedule 1A

Schedule 1A of the *Land Tax Management Act 1956 (the Act)*, applying from the 2004 land tax year, re-enacted and revised a number of former provisions of the legislation, with a condensed schedule bringing together all aspects of the principal place of residence (PPR) exemption. It also replaces with legislation, certain interpretations previously issued in Revenue Rulings LT5, LT20, LT27 and LT42.

Schedule 1A includes 16 separate Clauses.

1. [Definitions](#)
2. [PPR exemption](#)
3. [Meaning of residential land](#)
4. [Accepted additional residential occupancies](#)
5. [Permitted incidental business purposes](#)
6. [Unoccupied land intended to become the principal place of residence](#)
7. [Former and new places of residence both owned at the taxing date](#)
8. [Accepted absences from the principal place of residence](#)
9. [Concession continues following the death of the owner](#)
10. [Right to reside following the death of the owner](#)
  - 10A. [Concession for first home owners – shared equity arrangements](#)
  - 10B. [Concession for multiple occupancy land](#)
11. [Land owned by companies and trustees not exempt](#)
12. [Only one principal place of residence for all members of the one family](#)
13. [Two or more lots used as the site of the principal place of residence](#)
14. [Two or more strata lots used as the site of the principal place of residence](#)

## Sections 9C & 9D – Mixed Development Land and Mixed Use Land

Sections 9C and 9D provide a concession in the form of a reduction of taxable land value where land is partly used by the owner as the principal place of residence and where some other 'non-exempt' use is also made of the land. This part of the Ruling also replaces the former Ruling LT40.

### **Ruling**

#### **Definitions – Section 3**

The term, principal place of residence, relates to the one place of residence of a person, whether within or outside Australia, that is the **principal** place of residence of that person. The term 'owner' includes joint owners, any one or more of whom, may occupy the land as the principal place of residence.

#### **PPR exemption – Schedule 1A, Clause 2**

The exemption applies to a parcel of residential land or to a Strata lot, that is used and occupied as the principal place of residence of the owner of the land, and for no other purpose (except as allowed in Clauses 4 and 5 hereunder). If there are joint owners, the land may be used and occupied by any one or more of them.

**The owner must use and occupy the land to qualify for the exemption.** The land will not be considered to be the principal place of residence unless the owner has continuously used and occupied the land for residential purposes since 1 July in the year preceding the relevant taxing date (ie 31 December). If the land has been purchased after 1 July, or if the owner has otherwise commenced or resumed occupation after 1 July, the exemption will be allowed if the Chief Commissioner of State Revenue is satisfied that the land is then used and occupied as the principal place of residence of the owner.

#### **Meaning of Residential land – Schedule 1A, Clause 3**

A parcel of residential land, generally, will refer to a single lot of land, the site of a building or buildings, designed, constructed or adapted for residential purposes. It might also be expected that the use and occupation of the building would satisfy the requirements of the Local Council for a structure that is to be lived in as a residence.

Adjoining lots may together be regarded as a parcel of residential land when they are used as the site of a single residence, are undivided physically and are commonly owned. Where separate buildings are located on each of two lots, both buildings should not be separately occupied or capable of being used for separate occupation.

Two or more Strata lots may be eligible for the exemption provided those lots have adjoining walls or floors and have been structurally modified to include internal access so that they then become a single residence.

#### **Concession for land on which there is one other residential occupancy – Schedule 1A, Clause 4**

In addition to occupation by the owner as the principal place of residence, the owner is permitted to have one other residential occupancy on the land, from which income may be derived. That other occupancy may be in the form of a dual occupancy, eg a rented flat, a granny flat, a suite of rooms (not being a self-contained flat) or up to two rooms, each of which is separately occupied (eg by boarders). An owner providing a 'bed & breakfast' service would be entitled to retain the principal place of residence exemption provided the guest facility is no more than one of the permitted occupancies. If the 'bed and breakfast' occupies more of the property than that allowed by the permitted occupancies, a concession to reduce the taxable value of the land is available – see Sections 9C and 9D in this Ruling.

## **Concession for incidental business use – Schedule 1A, Clause 5**

The owner may use one room of the principal place of residence for incidental business purposes and may derive income from this use. The business itself, however, must be primarily conducted elsewhere. For example, a plumber may use a shed for the storage of equipment or materials, or an accountant may see clients after hours in a room set aside for this purpose. The exemption would apply, only in part, if more than one room is so used, or if the room is used on a full time basis by the owner, working from home – see Sections 9C and 9D in this Ruling.

## **Concession for unoccupied land intended to be the principal place of residence – Schedule 1A, Clause 6**

Unoccupied land may be exempt under the principal place of residence exemption if the owner intends to use and occupy the land at the completion of proposed building works. If the criteria of intended use are met, the owner will be taken, for the purposes of the exemption, to use and occupy the land.

Unoccupied land includes vacant land or land on which an existing building is to be renovated, or demolished and rebuilt.

The exemption applies for two tax years:

- following the year in which the land was purchased, or
- following the date when building works are physically commenced on the land, in any case where a person, other than the owner, has occupied the land after its acquisition by the owner.

**Note:** Building works will be taken to have physically commenced once demolition has commenced, excavation of footings dug or such other preparatory work undertaken. The preparation and lodgement of plans and development applications will not be recognised as the commencement of physical activities.

The land must be unoccupied during the period of the exemption and the exemption will not apply if any portion of the land is tenanted and from which the owner is deriving any income.

The intended use of the land must not be unlawful. The intended use must be within the permitted building laws of Local and State authorities, that is, the land must be zoned so as to permit its intended use.

An extension of the two year concession may be allowed if the owner can demonstrate that there has been a delay in the commencement or completion of the building works, and that delay has been beyond the control of the owner. Such a delay might include unforeseen works necessary to stabilise the land for building, litigation with the Council or neighbouring owners, or perhaps, the insolvency of a building contractor. Normally, though, it will be expected that the building works will be completed, or substantial progress will be made by the end of the two year period.

It is critical to the exemption that, at the completion of the building works, the owner uses and occupies the building as his or her principal place of residence and continues to so use and occupy the building for at least six months. Failure to meet this critical requirement will cause the concession to be revoked for each year to which it had been allowed.

The concession for an intended place of residence cannot apply, if the owner, or any member of the owner's family (as defined in Clause 12) is entitled to have the principal place of residence exemption allowed for any other land. This condition has now been clarified in *Chief Commissioner of State Revenue v White and anor. [2008] NSWADTAP 27*.

The concession for land intended to be the principal place of residence will not be allowed if, under the local planning laws, the land, including any adjoining land also owned by the owner, is capable of having more than two dwellings lawfully built on it. In effect, land eligible for the intended principal place of residence exemption, may be capable of the construction of a dual occupancy development, as permitted within Clause 4 of the principal place of residence exemption, but it must not be capable of any greater development.

## **Concession for the sale of former PPR – Schedule 1A, Clause 7**

The principal place of residence exemption may apply to both a former and a new place of residence where the sale of the former residence has not been completed at a relevant taxing date (31 December).

At a relevant taxing date, if a person is the owner of a home that was his/her principal place of residence and the person is also the owner of a new home that is being or is intended to be used and occupied by the person as his or her principal place of residence, both the former and new homes are taken to be used and occupied as the person's principal place of residence on that taxing date.

Example: A person purchased a new home in October 2007 and sold their former home in March 2008. Both are exempt at midnight 31 December 2007, effective for the 2008 tax year.

The concession may also apply where, at a relevant taxing date, the person is the owner of both an existing home and a parcel of vacant land on which the person intends to build a new home. The vacant land may have been purchased only within six months preceding the relevant taxing date and the new home must be completed and occupied by the next taxing date. The former home must be sold within six months of the relevant taxing date.

The former home must have been used by the owners as their principal place of residence and no income may have been derived, except either, as permitted by Clause 4 of Schedule 1A, or where a purchaser has entered into a lease or licence arrangement with the owner, pending completion of the sale of the home.

The person must dispose of the former home by 30 June in the following year or seek an extension from the Chief Commissioner. The former home is considered to be disposed of when the person ceases to own the land or when there has been an exchange of contracts.

The Chief Commissioner of State Revenue may extend the time in which the former home is to be sold, if it can be demonstrated that the owner has been actively and realistically seeking to dispose of the property, but, due to specific circumstances, such a sale has not been achieved.

The person must have become the owner of the new home within the six months preceding the relevant taxing date. The new home must then be used and occupied by the owner by the next taxing date and no income may be derived from the new home by the owner except from a tenancy which had been entered into by the previous owner.

If the former home is not sold by the following 30 June or if the new residence is not occupied by the person as their principal place of residence by the next taxing date, then land tax will be assessed on the property not used as the principal place of residence as at the relevant taxing date.

## **Concession for absences from the PPR – Schedule 1A, Clause 8**

A person may be absent from their former residence for a period of up to six years and retain the exemption for the principal place of residence - for example, an owner may be absent during an extended holiday or that owner may have taken an employment opportunity at a location distant from their home. Clause 8 provides the criteria within which the concession will be allowed during the period of absence.

An owner who is absent from his or her principal place of residence will be taken to continue to use and occupy that residence if:

- Prior to the absence, the owner continuously used and occupied the residence on the land, for at least six months.
- The owner then occupies other land which is not owned by the person and not owned by a member of the person's family. (See Clause 12)

- By the end of the six year absence, the owner resumes actual use and occupation, continuously, for a further six months. The exemption ceases if the owner fails to resume occupation at the end of the six year absence and the land will be taxable from that point. However, if the land is sold before the end of the six year period of absence, the requirement for the owner to reoccupy the residence is extinguished.

From 2007, this concession was amended to discount any period from the six year limit that an owner is in full time care. Full time care is classified as – a period when the owner:

- resides at a hospital or mental hospital as a patient, or resides at an aged care establishment while being provided with residential care or respite care, or
- resides with a carer who is eligible for a carer payment under the *Social Security Act 1991 (Commonwealth)*.

During the period of absence by the owner, the former residence should not be income earning, except as permitted hereunder.

Income may be derived from letting under a formal lease or licence, granting a person a right of occupation, provided that the period of such letting has not exceeded six months in the year preceding a relevant taxing date.

Alternatively, income may be derived under some other arrangement where a person occupies the residence, but does not have a formal right to occupy. Such an occupancy might be expected to be on a 'caretaker' basis and may be continuous, however, the income derived from this occupancy should not reflect 'commercial rental', nor the owner's regular mortgage payments, but rather an amount, no more than equivalent to regular outgoings such as council, water, energy and maintenance charges on the land .

Maintenance charges might include lawn mowing, window cleaning, pool maintenance, minor electrical and plumbing repairs, but would not include more significant items such as repainting, replacement of a water heater, or refitting a kitchen or bathroom.

**Note:** Clause 12 of Schedule 1A limits members of the one family to one principal place of residence.

### **Short-term letting – 'peak holiday season'**

The principal place of residence exemption will generally continue where the owner lets the dwelling for a short time during the December – January holiday period, provided the property is not let under a Residential Tenancy Agreement over that period, and provided the owner's absence is temporary.

### **Concession on death of the owner – Schedule 1A, Clause 9**

The principal place of residence exemption continues to apply after the death of the owner for land which was eligible for that exemption immediately before the death of that owner.

The exemption continues for up to 12 months, unless the land 'vests' in a person, other than an executor or beneficiary, in the process of the administration of the estate.

Where the land has not vested within the 12 months, an extension may be allowed if the land is then occupied by a person as their principal place of residence and that person is likely to be confirmed as a beneficiary of the estate in whom the land will vest.

For the purposes of the exemption, the land will vest in a person when that person becomes the registered proprietor of the land under the *Real Property Act 1900*.

## **Concession for tenancy following the death of the owner - Schedule 1A, Clause 10**

The exemption may continue following the death of the owner where a right of occupancy was created by the will of that deceased owner and a person occupies the land as their principal place of residence. Such a right of occupancy may apply to either the former residence of the deceased or to other land also owned by the deceased.

Likewise, if a person, other than a tenant, resided with the owner and continues in occupation after the death of the owner, the exemption may continue to apply where that right of occupancy is established by the will of the deceased, or where the right of occupancy is granted by a beneficiary to whom the land has passed within the administration of the estate – for example, a relative may have resided with an owner and cared for that owner prior to the owner's death. The land will continue to gain the exemption where a beneficiary permits the relative to continue to reside there as that person's principal place of residence.

## **Concession for first home owners who purchase under shared equity arrangements – Schedule 1A, Clause 10A**

The principal place of residence exemption does not apply to land owned or jointly owned by a company or by the trustee of a special trust. However, a first home owner who purchases a principal place of residence together with a shared equity partner, will be entitled to the exemption, provided that the person is eligible for the Duties concession provided under the First Home Plus scheme, as created by the *Duties Amendment (First Home Plus One) Act 2007*.

Where the equity partner is a natural person, for example, a family member, the land will be fully exempt, however, if the equity partner is a company or trustee of a special trust, the exemption will not extend to the interest of that equity partner whose proportionate ownership will be liable to land tax.

## **Concession for multiple occupancy land – Schedule 1A, Clause 10B**

Where land is the site of two or more flats, one of which is the principal place of residence of the owner – (and the remaining flat(s) is/are not an “excluded residential occupancy” – see Clause 4), Section 9C is to apply so as to provide a proportionate concession for the principal place of residence.

**Note:** Clause 10B was introduced by *State Revenue Legislation Amendment Act, 2008*, and becomes effective from the 2009 tax year.

## **Companies and trustees not exempt – Schedule 1A, Clause 11**

If the land is owned by a company or is jointly owned by a company, the land will not be exempt, notwithstanding the company may be a ‘family company’ and the family of the directors may occupy the residence on the land. Likewise, if a company acts as a trustee for natural persons who use and occupy the residence on the land, the land will not be exempt.

Exceptions apply if (i) the land is owned by a company, being a trustee company within the meaning of the *Trustee Companies Act 1964*, or the Public Trustee, or (ii) a company may be an owner of the land occupied by a beneficiary, if that company is the trustee of a ‘concessional trust’ as defined in Section 3B of the *Land Tax Management Act 1956*.

The person, or persons occupying the land must be regarded as owners of the land, otherwise the land will not be exempt. If the owner of the land is the trustee of a Special Trust (see Section 3A *Land Tax Management Act 1956*) the land will not be exempt as the beneficiaries of such a trust cannot be regarded as owners of the land. The land may be otherwise owned by a trustee, not being a company, and the exemption will apply if the land is then used and occupied by a person, beneficially entitled under the terms of the trust. Likewise, a trustee, together with a beneficiary may use and occupy the land and gain the exemption, but, the land will not be exempt if the trustee, alone, occupies the land.

## **Only one exempt residence for all members of the same family – Schedule 1A, Clause 12**

Exemption is available for only one place of residence owned by a family. If a family own and occupy more than one residence, the exemption will apply to the one place of residence which most fully meets the requirements of Clause 2 herein, that is, the place of residence that was continuously used and occupied in the six months preceding the relevant taxing date. If two residences are owned and both can be demonstrated to be continuously used and occupied by the family, the owners may then elect to have the exemption apply to either one of those residences. Such an election may not be made unless the continuous use and occupation requirements are met.

A family is defined as a person and his or her spouse together with any dependent child or step child who ordinarily resides with them. The spouse of a person may be a person to whom the person is legally married or a person with whom the person is living as a couple in a de facto relationship within the meaning in the *Property (Relationships) Act 1984*. A dependent child or step child is taken to be a person under the age of eighteen years and not legally married.

If it can be demonstrated that a person, although legally married to another person, is separated from that other person and has no intention of resuming cohabitation with that other person, the Chief Commissioner of State Revenue may deem that the person is not to be regarded as the spouse of the other person. In such circumstances, the owners may apply to have the exemption apply to more than one residence, each of which is then used and occupied by one of those owners, as the principal place of residence.

## **Two or more lots, used as the site of the principal place of residence – Clause 13**

The principal place of residence exemption may be extended to two or more lots of land, provided the lots are adjoining, are owned by the same person or persons, who occupy the land, and that land is the site of a single residence (which may include an 'excluded residential occupancy' – see Clause 4). Where separate buildings are erected on the separate lots, they will not be regarded as a single residence, if more than one building is capable of separate occupation.

**Note:** Clause 13 was introduced by State Revenue Legislation Amendment Act, 2008, and becomes effective from the 2009 tax year.

## **Two or more strata lots used as the principal place of residence – Clause 14**

The principal place of residence exemption may be extended to two or more (residential) strata lots, provided that, the lots have adjoining walls or floors, are owned by the same person or persons who occupy the site and the lots comprise a single residence (which may include an 'excluded residential occupancy' – see Clause 4). The separate lots will not be regarded as a single residence, unless there is evidence of internal structural modification, such as an "inter-connecting passageway" or an "internal staircase".

**Note:** Reference to 'two or more strata lots' herein, does not include further lots, such as parking or storage lots – ancillary to the residential lots, and which may otherwise be exempt.

**Note:** Clause 14 was introduced by State Revenue Legislation Amendment Act, 2008, and becomes effective from the 2009 tax year.

## **Sections 9C and 9D – Concession for Land Partially Used and Occupied as an Owner's Principal Place of Residence – Mixed Development Land and Mixed Use Land**

Where land is partly used as the principal place of residence of the owner and partly used for other non-exempt purposes, the land value will be reduced by an allowable proportion.

The allowable proportion is that part of the Land Value that applies to the owner's residence.

Where land is used for a combination of residential and commercial purposes, the Valuer-General may determine a Mixed Development Apportionment Factor (MDAF) or a Mixed Use Apportionment Factor (MUAF). Which Apportionment Factor is determined will depend on whether or not the non-residential land use includes use of a building capable of separate occupation.

**Apportionment factor** is the proportion (expressed as a percentage) that the rental value of the part of that land that is non-residential land bears to the rental value of the 'mixed development', or 'mixed use' land as a whole.

**Mixed development land** is defined in Section 14 BB of the *Valuation of Land Act 1916*, as a parcel of land occupied or used solely as the site of one or more buildings comprising:

- (a) one, or more than one, flat, and
- (b) one, or more than one, office.

**Mixed use land** is defined in Section 14BBE of the *Valuation of Land Act, 1916*, as a parcel of land that is:

- (a) the site of a residence, occupied or used for residential purposes, and,
- (b) also used for non-residential purposes.

### **Section 9C – Mixed Development Land**

The concession for mixed development land applies where the land is partly used as the owner's residence and partly used for other purposes for example where there is more than one other residential occupancy, a shop or business.

Where an MDAF has been determined and an owner's residence is the only residence on the land, the allowable proportion is the remainder of the land value after deducting the MDAF. If there are two or more residences on the land, the remainder of the land value is reduced in the proportion that the floor area of the owner's residence bears to the floor area of all residences on the land, including that of the owner.

If an MDAF does not exist, the owner may nominate a proportion of the total land value, which is the "fair and reasonable" proportion of the land value attributable to the dwelling. If the Chief Commissioner of State Revenue is not satisfied that a claim is fair and reasonable, the Valuer General will be requested to determine an apportionment factor.

### **Section 9D – Mixed Use Land**

The concession for mixed use land applies where land is partly used as the owner's residence and partly used 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 use. Examples include land which is partly used for a tennis court hire or coaching centre.

The 'allowable proportion' is the proportion of the land value which is attributable to an exempt residence. The amount of the taxable land value is therefore determined by subtracting the allowable proportion from the land value.

The MUAF recorded in the register of land values maintained by the Valuer-General will be used for land tax purposes. If an MUAF does not exist, the owner may nominate a proportion of the total land value, which is the "fair and reasonable" proportion of the land value attributable to the dwelling.

An application for the concession under Sections 9C or 9D should be made using the [OLT 030 – 08/08](#) form.

**Tony Newbury**  
Chief Commissioner of State Revenue  
15 August 2008