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Public Ruling Land Tax Act:

MEANING OF 'HELD FOR SALE' IN SECTION 30 OF THE *LAND TAX ACT 2010*

A public ruling, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a public ruling, the change in the law overrides the public ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.

What this ruling is about

1. Section 30 of the *Land Tax Act 2010* (the Land Tax Act) provides that in certain circumstances where land has been subdivided¹, the value of the parcel² of land under the *Land Valuation Act 2010* (the LVA value) is to be discounted by 40% for the purposes of determining land tax liability.
2. Section 30(1) of the Land Tax Act sets out the circumstances in which a parcel will attract the discount. Section 30 will apply to a parcel (the relevant parcel) if all the following apply:
 - (a) the relevant parcel is one of the parts into which a larger parcel has been subdivided
 - (b) the person who subdivided the larger parcel (the subdivider) was the owner of the larger parcel when it was subdivided
 - (c) when the larger parcel was subdivided, the relevant parcel was not developed land³
 - (d) since the larger parcel was subdivided, the relevant parcel has been held for sale
 - (e) when a liability for land tax on the relevant parcel arises:
 - (i) the subdivider is still the owner of the relevant parcel
 - (ii) the relevant parcel is still not developed land and is not being held by the subdivider for further subdivision

¹ For the purposes of s.30 of the Land Tax Act, land is taken to be subdivided when a plan of subdivision providing for the division of the land into lots is registered under the *Land Title Act 1994*: s.30(3) of the Land Tax Act.

² 'Parcel' means an area of land that is the subject of a separate valuation made by the Chief Executive under the *Land Valuation Act 2010*: Schedule 4 of the Land Tax Act.

³ 'Developed land' means land improved, or being improved, by the construction of a building or other facility reasonably capable of being used: s.30(4) of the Land Tax Act.

- (f) the LVA value of the relevant parcel for the relevant financial year is not calculated under that Act, chapter 2, part 3, division 3⁴
 - (g) the subdivider owns at least five other parcels that satisfy paragraphs (a) to (e).⁵
3. This public ruling explains how the Commissioner will determine whether or not the relevant parcel will be regarded as 'held for sale' for the purposes of s.30(1)(d) of the Land Tax Act.

Ruling and explanation

4. The term 'held for sale' is not defined in the Land Tax Act and therefore has its ordinary meaning.
5. Whether a relevant parcel of land is held for sale will be a question of fact to be determined on the circumstances of each case. The central question is whether or not there have been genuine efforts to sell the land within a reasonable time of the subdivision.
6. Regard will be had to all relevant circumstances, such as:
- (a) whether the land is listed with one or more real estate agents for sale
 - (b) where the land has been listed for sale, the period of listing; and if there has also been a period of non-listing, the period of and reasons for the non-listing
 - (c) whether the owner has employed licensed salespersons to market and sell the land and those persons actively pursue the sale of the land, including through mail-outs to prospective buyers and conducting property information sessions
 - (d) whether it is offered for sale on commercially realistic terms
 - (e) whether it is advertised for sale
 - (f) whether 'for sale' signs are placed on the property
 - (g) whether the land is accounted for as trading stock in the developer's accounts
 - (h) the general market conditions applying in the area in which the land is situated, such as the demand for subdivided land
 - (i) whether the lot is being held for further subdivision.

Example 1

A developer in a remote rural area subdivides a parcel into ten lots. Annual land sales in the area are historically very slow and the developer sells only two lots per annum. However, the properties are listed with local agents on commercial terms. The Commissioner would consider that the land is held for sale for the purposes of s.30(1)(d) of the Land Tax Act.

⁴ The *Land Valuation Act 2010*, chapter 2, part 3, division 3 provides for separate parcels to be included in one valuation in particular circumstances.

⁵ Section 30(1)(g) of the Land Tax Act was amended by the *Revenue and Other Legislation Amendment Act 2016*. The amendment is taken to have had effect on and from 4 October 2014: s.99 of the Land Tax Act.

Example 2

A land owner subdivides a property into three lots and places a small sale advertisement for the lots in the local newspaper on two occasions. The lots are not listed with local agents nor are 'for sale' signs erected on the lots. The advertised sale prices greatly exceed the market values and comparable sales in the area. Despite the fact that no offers are received, the owner takes no additional or different steps to try to sell the lots and they remain unsold for two years. The Commissioner would not consider that the land is held for sale for the purposes of s.30(1)(d) of the Land Tax Act.

7. A parcel of land that is held for investment will not be held for sale.

Example 3

A developer subdivides a parcel into 25 lots. The developer puts 20 of the lots on the market by listing them with real estate agents on commercial terms. These lots will be regarded as held for sale.

However, the developer thinks that the remaining five lots will significantly increase in value in the years ahead and decides to hold on to these lots for the time being. These five lots will not be held for sale.

8. Where subdivided lots are held for sale, the owner need not provide any evidence to that effect to the Commissioner unless requested to do so.
9. However, the owner must notify the Commissioner in any of the following circumstances:
- a subdivided lot is not held for sale
 - a subdivided lot ceases to be held for sale
 - the owner of a subdivided lot not held for sale receives a land tax assessment for the lot in which the LVA value of the lot is discounted by 40%.

Date of effect

10. This public ruling takes effect from the date of issue.

Elizabeth Goli
Commissioner of State Revenue
Date of issue: 12 December 2016

References

Public Ruling	Issued	Dates of effect	
		From	To
LTA030.1.3	12 December 2016	12 December 2016	Current
LTA030.1.2	6 June 2011	1 July 2011	11 December 2016
LTA030.1.1	30 June 2010	30 June 2010	30 June 2011