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**Public Ruling
Land Tax Act:**

**DISCOUNTING OF LAND VALUATION ACT
VALUE—SUBDIVIDED LAND NOT YET
DEVELOPED**

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. This public ruling explains particular terms used in s.30 of the *Land Tax Act 2010* (Land Tax Act) that are relevant for determining whether the value of subdivided¹ land must be discounted at each land tax liability date.
2. Land tax is imposed each financial year² on the taxable value³ of all taxable land.⁴ A liability for land tax for a financial year arises at midnight on 30 June immediately preceding the financial year (the land tax liability date).⁵ Land tax is payable by the owner of the taxable land.⁶
3. 'Taxable value' is the lesser of the *Land Valuation Act 2010* (Land Valuation Act) value (LVA value) of the land for the financial year or the averaged value of the land.⁷
4. Section 30 of the Land Tax Act provides that in certain circumstances where a parcel⁸ of land has been subdivided, the LVA values of the resulting subdivided parcels are to be discounted by 40% (the discount) for the purposes of assessing the subdivider's land tax liability.

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 Section 6 of the Land Tax Act

³ Section 16 of the Land Tax Act

⁴ Section 9 of the Land Tax Act

⁵ Section 7 of the Land Tax Act

⁶ Section 8 of the Land Tax Act

⁷ Section 16 of the Land Tax Act

⁸ 'Parcel' means an area of land that is the subject of a separate valuation made by the Chief Executive under the Land Valuation Act: Schedule 4 of the Land Tax Act.

5. Section 30(1) of the Land Tax Act provides that the discount will apply to a resulting subdivided parcel (the relevant parcel) where all the following requirements are satisfied.
- (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 land.
 - (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.
 - (f) The LVA value of the relevant parcel for the relevant financial year is not included with another parcel in one valuation.⁹
 - (g) The subdivider owns at least 5 other parcels in addition to the relevant parcel that satisfy paragraphs (a) to (e).
6. This public ruling clarifies the Commissioner's interpretation of the following terms in s.30 of the Land Tax Act:
- (a) when a relevant parcel has been 'held for sale'
 - (b) when a relevant parcel was not 'developed land'
 - (c) when a relevant parcel is not being 'held by a subdivider for further subdivision'.

Ruling and explanation

7. For s.30 of the Land Tax Act to apply to a relevant parcel, it is necessary that all the requirements in s.30(1) are satisfied.
8. Some of the requirements must have been satisfied at the time the relevant parcel is first subdivided.¹⁰
9. Some of the requirements must, by their nature, be satisfied at each land tax liability date.¹¹ In particular:
- (a) Since the larger parcel was subdivided, the relevant parcel has been 'held for sale'.

⁹ The Land Valuation Act, chapter 2, part 3, division 3 provides for separate parcels to be included in one valuation in particular circumstances.

¹⁰ Sub-sections 30(1)(a),(b),(c),(f) and (g) of the Land Tax Act

¹¹ Sub-sections 30(1)(d),(e),(f) and (g) of the Land Tax Act

- (b) At each land tax liability date, the relevant parcel is still not 'developed land'.
 - (c) At each land tax liability date, the relevant parcel is not being held by the subdivider for further subdivision.
10. Whether the relevant parcel satisfies these requirements will be a question of fact to be determined on the circumstances of each case.

Held for sale

11. At a land tax liability date, the discount may apply where the relevant parcel has been held for sale since it was subdivided.¹² This requires that the relevant parcel has been held for sale from the time the relevant parcel was subdivided and that it continues to be held for sale since that time.
12. The term 'held for sale' is not defined in the Land Tax Act and therefore has its ordinary meaning.
13. In determining whether the relevant parcel has been held for sale, the Commissioner will consider whether or not there have been genuine efforts to sell the land within a reasonable time of the subdivision.¹³
14. Consideration will be given to all relevant circumstances, such as:
- (a) whether the parcel is listed with one or more real estate agents for sale
 - (b) where the parcel has been listed for sale, the period of listing; and if there has also been a period of non-listing, the time period and whether there are reasonable reasons for the non-listing
 - (c) whether the owner has employed licensed salespersons to market and sell the parcel; and whether those persons actively pursued the sale of the parcel, including through mail-outs to prospective buyers and conducting property information sessions
 - (d) whether the parcel is offered for sale on commercially realistic terms
 - (e) whether the parcel is advertised for sale
 - (f) whether 'for sale' signs are placed on the parcel
 - (g) whether the parcel is accounted for as trading stock in the developer's accounts
 - (h) the general market conditions applying in the area in which the parcel is situated, such as the demand for subdivided land.
15. Generally, if the relevant parcel is listed with, and advertised by, an agent for sale at a commercially realistic price, this strongly suggests the land is held for sale. However, it is possible for land to be held for sale even if the relevant parcel is not specifically listed for sale

¹² Section 30(1)(d) of the Land Tax Act

¹³ *Haigh Developments Pty Ltd v Commissioner of State Revenue* [2013] QCAT 600

with an agent. If the land is not specifically listed with an agent, evidence may be required to confirm the efforts made to sell that particular parcel since it was subdivided.

Example 1—parcels held for sale

A developer in a remote rural area subdivides land into 30 parcels. Annual land sales in the area are historically very slow and the developer sells only 2 parcels per annum. Although all parcels are available for sale, the developer provides details of a genuine sales strategy for that market of listing 5 properties at a time with local agents on commercial terms. The availability for sale of all parcels, listing with local agents, sales strategy that is consistent with the market conditions and the annual sales support genuine efforts to sell the parcels within a reasonable time of the subdivision. The Commissioner considers that the parcels are held for sale.

Example 2—parcels not held for sale

A landowner subdivides land into 6 parcels and twice places a small sale advertisement for the parcels in the local newspaper. The parcels are not listed with local agents and 'for sale' signs are not erected on the parcels. 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 parcels and they remain unsold for 2 years. The Commissioner would not consider that the parcels are held for sale.

16. The Commissioner will also consider if the actual use of the parcel is consistent with it being held for sale.¹⁴ Where the relevant parcel is used for a purpose that is inconsistent with its subdivision and sale, the Commissioner will consider that the land is not held for sale.¹⁵

Example 3—parcel held for sale

A developer subdivides land into 30 parcels. The developer lists the parcels for sale with a local agent and commences a 6-week on-site sales campaign. One of the parcels that is being marketed for sale is cleared but otherwise undeveloped, and prospective purchasers are directed to park their cars on that parcel during the campaign. The Commissioner would consider the use of the parcel is consistent with it being held for sale.

Example 4—parcel not held for sale

A developer in a rural area subdivides land into 6 large parcels. The developer lists the parcels for sale with a local agent. However, the developer also enters into a 6-month lease with a construction company to store machinery on a parcel. The Commissioner would consider each of the granting of exclusive possession of the leased parcel and its actual use for storing machinery as being inconsistent with its subdivision and sale. The Commissioner will not consider the parcel to be held for sale since that time.

Additionally, if the developer no longer has at least 6 parcels eligible for the discount, the discount will not apply to the remaining 5 parcels.¹⁶

Developed land

17. At a land tax liability date, the discount may apply where the relevant parcel is not developed land.¹⁷ This requires that the relevant parcel is not developed land from the time it was subdivided and that it continues to not be developed land since that time. It follows that if the

¹⁴ *Gladstone Town Council v. Gladstone Harbour Board* [1964] QdR 505 at 512

¹⁵ *Chief Commissioner of State Revenue v. Metricon Qld Pty Ltd* [2017] NSWCA 11

¹⁶ Sub-section 30(1)(g) of the Land Tax Act

¹⁷ Sub-sections 30(1)(c) and (e)(ii) of the Land Tax Act

land is developed at any time, the requirement in s.30(1)(e)(ii) of the Land Tax Act will not be satisfied for the relevant land tax liability date or any subsequent land tax liability date.

18. The term 'developed land' is defined in s.30(4) of the Land Tax Act to mean 'land improved, or being improved, by the construction of a building or other improvement reasonably capable of being used'.
19. The term 'improvement' is not defined in the Land Tax Act. An 'improvement' consists of 'something done which has enhanced the value of the land'.¹⁸
20. Generally, the Commissioner considers a permanent fixture enhances the value of the land. However, the Commissioner does not consider the relevant parcel to be improved if the improvements only consist of site improvements as defined under the Land Valuation Act, which includes:
 - (a) restoring, rehabilitating or improving its surface by filling, grading or levelling
 - (b) reclamation by draining or filling, including retaining walls
 - (c) underground drainage
 - (d) any other works done to the land necessary to improve or prepare it for development.¹⁹
21. In contrast, site improvements do not include excavating the land for footings and foundations.²⁰
22. This follows the approach taken when deciding site value under the Land Valuation Act that these types of ground improvements undertaken to the land by developers merge with the land.
23. In determining if 'a building or other improvement is reasonably capable of being used', the Commissioner will objectively consider the intended purpose of the building or improvement and if it can be used for that intended purpose.

Example 5—parcel is not developed land

A developer relocates a prefabricated temporary sales office onto the relevant parcel to facilitate the subdivision's land sales activities. The sales office:

- is not fixed to the land
- is not connected to utilities
- may be easily relocated to another site when the parcel is sold
- is not considered to enhance the value of the parcel.

The Commissioner does not consider the land to be 'developed land' because the sales office is not considered to be a permanent fixture.

¹⁸ *Brisbane City Council v Valuer General (Q)* (1978) 140 CLR 41

¹⁹ Section 23(1) of the Land Valuation Act

²⁰ Section 23(3)(a) of the Land Valuation Act

24. The Commissioner will consider the relevant parcel as being improved as soon as there is evidence of construction on the parcel of a building or other improvement reasonably capable of being used. The Commissioner considers that construction commences from the excavation of the land for the laying of footings or foundations for the building or improvement.

Example 6—parcel is developed land

Due to slow sales, a developer enters into an agreement with a local builder to construct homes on several parcels across the development. The Commissioner would consider that a parcel is ‘developed land’ from the moment the builder commences excavation of foundations for construction of a home.

Held by the subdivider for further subdivision

25. At a land tax liability date, the discount may apply where the relevant parcel is not held by the subdivider for further subdivision.²¹
26. In determining if a subdivider is holding a parcel for further subdivision at a land tax liability date, the Commissioner will consider all facts and circumstances to objectively determine if the subdivider holds the relevant parcel for further subdivision as at the land tax liability date. Regard will be had to:
- (a) relevant documents that demonstrate if the parcel is held for further subdivision including council approval, development plans and marketing information for the relevant parcel
 - (b) if the parcel is required to be further subdivided before sale (e.g. into separate lots under a community titles scheme).

Example 7—parcel held for further subdivision

A developer plans to construct units on 7 parcels they hold from a previous subdivision. Marketing information confirms that each parcel is to be developed into 40 units under a community titles scheme. Construction will commence when a minimum number of sales is reached. The Commissioner would consider each parcel is held for further subdivision.

27. Where a relevant parcel that has been receiving the benefit of the discount is further subdivided before sale, the Commissioner may seek evidence to determine if the requirement in s.30(1)(e)(ii) of the Land Tax Act was satisfied for all relevant prior land tax liability dates.

Example 8—parcel held for further subdivision

As part of a subdivision, a developer created a large parcel that they plan to sell for construction of a school. This was reflected on their master plan, and the parcel had received council approval as a school site.

After 4 years of actively trying to sell the parcel as a school site, they decide to further subdivide the parcel into residential lots. The developer can provide evidence of prior marketing activities to prospective purchasers of the land as a future school. However, the evidence provided also clearly details that a surveyor was subsequently engaged to resurvey the parcel into residential lots.

The Commissioner would consider the developer held the parcel for further subdivision from the date the surveyor was engaged.

²¹ Section 30(1)(e)(ii) of the Land Tax Act

Taxpayer obligations

28. Section 28 of the *Taxation Administration Act 2001* (Administration Act) requires a taxpayer to advise the Commissioner if they become aware that the correct liability for tax is more than the amount stated in an assessment within 30 days after becoming aware of this. This means that a subdivider who receives the benefit of the discount must notify the Commissioner within 30 days of when they become aware that any of the requirements under s.30(1) of the Land Tax Act have not been met so that the discount does not apply.
29. Section 114(1) of the Administration Act requires a taxpayer to keep the records necessary to enable their tax law liability to be ascertained. Further, s.118 of the Administration Act requires taxpayers to retain these records for up to 5 years. This means that if a subdivider is receiving the benefit of a discount, they must retain—for up to 5 years—sufficient records to support that a relevant parcel satisfied the requirements under s.30(1) of the Land Tax Act as at the relevant liability date.

Date of effect

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

Simon McKee
Commissioner of State Revenue
Date of issue: 21 February 2024

References

Public Ruling	Issued	Dates of effect	
		From	To
LTA030.1.4	21 February 2024	21 February 2024	Current
LTA030.1.3	12 December 2016	12 December 2016	20 February 2024
LTA030.1.2	1 July 2011	1 July 2011	11 December 2016
LTA030.1.1	30 June 2010	30 June 2010	30 June 2011