

NSW State Taxes 2011

Seminar Notes



Office of
State Revenue

September 2011

Contents

	Page
Regional Relocation Grant	2
Duties	6
Payroll tax	11
Land tax	14

Regional Relocation Grant

The object of the *Regional Relocation (Home Buyers Grant) Act 2011* is to provide assistance to persons who purchase homes in regional areas, and are doing so as part of a relocation from a metropolitan area. For that purpose, this Act authorises the payment of a Regional Relocation Grant of \$7000 in respect of an eligible home relocation.

The Regional Relocation Grant is payable on application under this Act in respect of the purchase of a home if:

- a) the purchase is an eligible home relocation, and
- b) the applicant is an eligible applicant.

Eligible applicant

1. All applicants must be natural persons.
2. At least one applicant must be an Australian citizen or permanent resident on completion of the regional home purchase.
3. The applicant(s) must not have received an earlier Regional Relocation Grant (unless repaid).
4. The applicant(s) must not purchase the regional home in his or her capacity as trustee.

Eligible home relocation

1. The applicant must purchase a regional home.
2. The applicant must relocate from a metropolitan area.
3. The applicant must use and occupy the regional home as a principal place of residence.

Home means a building (situated on land in New South Wales) that:

- a) may lawfully be used as a place of residence, and
- b) is, in the Chief Commissioner's opinion, a suitable building for use as a place of residence.

Regional home means a home in a regional area.

a **regional area** means any part of the State that does not fall within a metropolitan area.

Metropolitan area means the following parts of the State:

- a) the Sydney metropolitan area—being the area constituted by the following local government areas:

Ashfield, Auburn, Bankstown, Blacktown, Blue Mountains, Botany Bay, Burwood, Camden, Campbelltown, Canada Bay, Canterbury, Fairfield, Gosford, Hawkesbury, Holroyd, Hornsby, Hunters Hill, Hurstville, Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool, Manly, Marrickville, Mosman, North Sydney, Parramatta, Penrith, Pittwater, Randwick, Rockdale, Ryde, Strathfield, Sutherland Shire, Sydney, The Hills Shire, Warringah, Waverley, Willoughby, Wollondilly, Woollahra, Wyong.

- b) the Newcastle local government area,
- c) the Wollongong local government area.

1. Applicant must purchase a regional home

An applicant **purchases** a regional home if:

- a) land that is the site of a regional home is transferred to the applicant (either solely or jointly with other transferees) for valuable consideration, and
- b) as a result of the transfer, the applicant becomes an owner of the home (either solely or jointly with other transferees).

The transfer must result in 100 per cent of the ownership of the home being transferred. That is, no persons who were owners of the home before the purchase of the regional home commenced can be owners of the home after the purchase is completed.

Land includes land subject to the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

An agreement for the sale or transfer of, or a transfer of, an entitlement to occupy land to which section 21A of the *Land Tax Management Act 1956* applies, is taken to be an agreement for the sale or transfer of, or a transfer of, the land to which that entitlement relates.

Note: The effect of the above provision is to treat a transfer of an entitlement to occupy land that is the subject of a company title arrangement as a transfer of the land to which that entitlement relates.

Owner of a home means a person who is the owner (within the meaning of the *Land Tax Management Act 1956*) of the land that is the site of the home.

Date purchase is commenced

The purchase of the regional home by the applicant must commence on or after 1 July 2011 and before 1 July 2015.

A purchase of a regional home **commences**:

- a) in the case of a transfer of land that is made pursuant to an agreement for the sale or transfer of land – on the date the agreement is entered into, or
- b) in the case of a transfer of land that is made otherwise than pursuant to an agreement for the sale or transfer of land – on the date the transfer is first executed.

A purchase is not an eligible home relocation if:

- a) it is made pursuant to an agreement for the sale or transfer of land that replaces an agreement made before 1 July 2011, and
- b) the replaced agreement is an agreement for the sale or transfer of substantially the same land.

Purchase must be completed

The purchase of the regional home must be completed.

A purchase of a regional home is **completed** when the applicant becomes entitled to possession of the home and, if the interest in the land acquired by the applicant is registrable under a law of the State, the interest is so registered.

Home must be ready for occupation on completion

The regional home must be ready for use and occupation as a place of residence before the purchase is completed.

Note: A purchase of vacant land on which a home is to be built before completion of the purchase is eligible but a purchase of vacant land on which a home is to be built following completion is not eligible.

Maximum value of purchase

1. The value of the purchase must not exceed \$600 000.
2. The value of the purchase is the greater of the following:
 - a) the consideration for the purchase,
 - b) the unencumbered value of the property, the subject of the purchase, on the date the purchase is completed.

Purchase must be for whole parcel

The land the subject of the purchase must comprise the whole of the parcel of land on which the home is situated or, if the land is a parcel of land on which one or more other homes are situated, or to be situated, that part of the land that is an exclusive occupancy.

Land is an exclusive occupancy only if the Chief Commissioner is satisfied that the applicant is entitled to occupy a home that is situated on the land as a place of residence to the exclusion of other persons who occupy or are to occupy the other home or homes situated on the parcel of land.

2. The applicant must relocate from a metropolitan area

An applicant relocates from a metropolitan area if:

- a) the applicant is, within 12 months before the purchase of the regional home commences, an owner of a metropolitan home that is used and occupied by the applicant as a principal place of residence, and
- b) the applicant disposes of the metropolitan home before the purchase of the regional home is completed or within the period allowed for **residence relocation**.

Metropolitan home means a home in a metropolitan area.

An applicant **disposes** of a metropolitan home if:

- a) land that is the site of the metropolitan home is transferred to another person or persons, and
- b) as a result of the transfer, the applicant ceases to be an owner of the home.

The transfer must result in 100 per cent of the ownership of the home being transferred. That is, no persons who were owners of the home before the disposal of the metropolitan home commenced can be owners of the home after the disposal.

The disposal of a metropolitan home **commences**:

- a) in the case of a transfer of land that is made pursuant to an agreement for the sale or transfer of land – on the date the agreement is entered into, or
- b) in the case of a transfer of land that is made otherwise than pursuant to an agreement for the sale or transfer of land – on the date the transfer is first executed.

The period allowed for residence relocation is 12 months after the purchase of the regional home is completed or such longer period as the Chief Commissioner may approve. The Chief Commissioner may approve a longer period for residence relocation only if satisfied that the delay in disposing of the metropolitan home is caused by circumstances beyond the control of the applicant.

3. The applicant must use and occupy the regional home as a principal place of residence

The applicant must use and occupy the regional home that is purchased as a principal place of residence for a continuous period of at least 12 months, with that occupation starting within 12 months (or such longer period as the Chief Commissioner may approve) after the purchase is completed.

The Chief Commissioner may, if satisfied that there are good reasons to do so in a particular case:

- a) modify the requirement imposed by this section by approving a shorter period of occupation by a person, or
- b) exempt a person from the requirement to comply with this section.

Land and home must be used for residential purposes only

The regional home, or the land on which the home is situated, must not be intended to be used, or made available for use, for any purpose that is not ancillary to the use and occupation of the land for residential purposes (such as a commercial, industrial or professional purpose).

However, this section does not exclude the purchase of a farming property that includes a home.

Applications

An application for a Regional Relocation Grant is to be made to the Chief Commissioner in an approved form.

An application **cannot** be made before the purchase of the regional home is completed.

An application must be made no later than 12 months after the purchase of the regional home is completed, subject to this section.

The Chief Commissioner may accept an application after expiry of the 12-month period if satisfied that the delay in making an application was caused by circumstances beyond the control of the applicant or applicants.

An application for a Regional Relocation Grant cannot be made after 31 December 2015.

All interested persons must join in application

All interested persons must be applicants.

A person is an **interested person** if the person:

- a) is an owner of the regional home that is purchased (at the completion of the purchase), and
- b) is or was an owner of the metropolitan home disposed of to relocate from a metropolitan area (before disposal of that home).

Example

Mr Red sells his home in Sydney. Mr and Mrs Red buy a home in Tamworth. Only Mr Red need apply, as he is the only interested person.

Regional area

A regional area does not include any local government area declared by the regulations to be an area for which the Regional Relocation Grant is not available.

A regulation that declares an area to be an area for which the Regional Relocation Grant is not available does not affect the application of this Act to the purchase of a home in that area if the purchase commenced before the commencement of the regulation.

More than one applicant

A requirement imposed by the Act on an applicant applies, if there are two or more joint applicants, to each applicant.

However, an applicant need not comply with such a requirement to the extent that the applicant is exempted from compliance by or under this Act. For example the requirement that at least one applicant is an Australian citizen or permanent resident

One grant per household

Only one Regional Relocation Grant is payable in respect of the purchase of a regional home and the disposal of a metropolitan home.

If a Regional Relocation Grant is paid to an applicant (or joint applicants) on the basis of a particular transaction, no other person is eligible for a Regional Relocation Grant on the basis of that same transaction.

Example

Mr Red and Mr Blue own a home in Sydney. They sell that home and Mr Red buys a home in Bathurst and Mr Blue buys a home in Dubbo. Only one grant is payable in respect of those two purchases.

Power to require valuation

Section 52 authorises the Chief Commissioner to require a valuation to be provided, or to have a valuation made, of property for the purpose of determining the value of a purchase.

Closure of scheme

Section 56 provides that the scheme established by the Act is intended to assist in up to 40 000 eligible home relocations.

Duties

First Home – New Home Scheme

The scheme is intended to help people who are acquiring a new home that is their first home or vacant land upon which they intend to build their first home. The scheme replaces the First Home Plus Scheme from 1 January 2012.

The scheme applies to eligible agreements or transfers which are entered into or occur on or after 1 January 2012. The First Home Plus Scheme continues to apply to eligible agreements or transfers which are entered into or occur prior to that date.

Eligible agreements

The scheme applies to:

- a) agreements for sale entered into on or after 1 January 2012, and
- b) transfers that occur on or after 1 January 2012 (other than transfers made in conformity with an agreement for sale entered into before 1 January 2012).

The agreement or transfer must involve the acquisition of a new home that is a first home or a vacant block of residential land intended to be used as the site of a first home.

A 'new home' is a home that has not been previously occupied or sold as a place of residence, and includes a substantially renovated home.

A 'substantially renovated home' is a home that is 'new residential premises' within the meaning of section 40-75(1)(b) of the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth, such premises not having previously been occupied or sold as a place of residence.

Eligible applicants

A purchaser or transferee under an eligible agreement or transfer may apply under the scheme only if he or she is a first home owner. If there is more than one purchaser or transferee under the agreement or transfer then each of them must be a first home owner (unless the total ownership share of all the purchasers or transferees who are not first home owners does not exceed five per cent). A purchaser or transferee who is under 18 years of age is not eligible to apply under the scheme (except in certain limited circumstances).

Companies, partnerships and trustees (except in certain limited circumstances) are not eligible to apply under the scheme.

First home owner

A first home owner is an individual who has not previously:

- owned residential property in Australia either solely or with someone else (other than residential property held by that person in their capacity as trustee or as executor under a will), and/or
- been a party to an application under the scheme that was approved by the Chief Commissioner.

Any spouse (including a de facto spouse) of that person must also be such a 'first home owner' (whether or not they are also a purchaser or transferee under the agreement or transfer).

Dutiable value

The dutiable value of the dutiable property being acquired under the agreement or transfer must be less than:

- \$600 000 (in the case of the acquisition of a new home), or
- \$450 000 (in the case of the acquisition of a vacant block of residential land upon which the new home is to be built).

Residency requirement

In the case of the acquisition of a new home the home must be occupied by the first home owner or one of the first home owners who is or are acquiring it as a principal place of residence for a continuous period of six months, with that occupation starting within 12 months after completion of the agreement or transfer.

In the case of the acquisition of a vacant block of residential land, the Chief Commissioner must be satisfied that the vacant block is intended to be used as the site of a home to be occupied by the first home owner or one of them as a principal place of residence.

Duty payable

If an application concerning an eligible agreement or transfer is approved, no duty is payable on the agreement or transfer if the dutiable value of the dutiable property that is the subject of the agreement or transfer is not more than:

- \$500 000 (in the case of the acquisition of a new home), or
- \$300 000 (in the case of the acquisition of a vacant block of residential land intended to be the site of a new home).

Otherwise, a reduced duty is payable on the agreement or transfer.

Mortgage duty

There is no specific exemption from mortgage duty under the First Home – New Home scheme. However, the mortgage should be eligible for an exemption from mortgage duty under the owner occupied housing exemption in section 221B of the *Duties Act 1997*.

First home owner grant

The First Home – New Home Scheme and the First Home Owner Grant Scheme are separate schemes with different eligibility criteria. Hence, if you are eligible under the First Home Owner Grant Scheme you can still obtain a grant under that scheme even if you are not also eligible under the First Home – New Home Scheme (for example, because the first home you are purchasing is not a new home).

NSW Home Builders Bonus – Senior's principal place of residence exemption

The senior's principal place of residence duty exemption under the NSW Home Builders Bonus which was available to persons 65 years of age or older is extended to persons between 55 and 65 years of age.

This exemption from duty for new housing purchases is available to persons in that age range in respect of agreements or transfers entered into or occurring on or after 1 July 2011 and before 1 July 2012.

Section 68 exemptions – break-up of marriages and other relationships

Break-up of marriage

No duty is chargeable on a transfer, or an agreement for the sale or transfer, of matrimonial property if:

- a) the property is transferred, or agreed to be sold or transferred, to the parties to a marriage that is dissolved or annulled, or in the opinion of the Chief Commissioner has broken down irretrievably, or to either of

them, or to a child or children of either of them or a trustee of such a child or children, and

- b) the transfer or agreement is effected by or in accordance with:
 - (i) a financial agreement made under section 90B, 90C or 90D of the *Family Law Act 1975* of the Commonwealth that, under that Act, is binding on the parties to the agreement, or
 - (ii) an order of a court under that Act, or
 - (iii) an agreement that the Chief Commissioner is satisfied has been made for the purpose of dividing matrimonial property as a consequence of the dissolution, annulment or breakdown of the marriage, or
 - (iii) a purchase at public auction of property that, immediately before the auction, was matrimonial property where the public auction is held to comply with any such agreement or order.

Break-up of de facto relationship

No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer, of relationship property if:

- a) the property is transferred, or agreed to be sold or transferred, to the parties to a de facto relationship that has, in the opinion of the Chief Commissioner, broken down or to either of them, or to a child or children of either of them or a trustee of such a child or children, and
- b) the transfer or agreement is effected by or in accordance with:
 - (i) a financial agreement made under section 90UB, 90UC or 90UD of the *Family Law Act 1975* of the Commonwealth that, under that Act, is binding on the parties to the agreement, or
 - (ii) an order of a court under that Act, or
 - (iii) a purchase at public auction of property that, immediately before the auction, was relationship property where the public auction is held to comply with any such agreement or order.

Break-up of domestic relationship

No duty is chargeable under this Chapter on a transfer, or an agreement for the sale or transfer, of relationship property if:

- a) the property is transferred, or agreed to be sold or transferred, to the parties to a domestic relationship that has, in the opinion of the Chief Commissioner, been terminated or to either of them, or to a child or children of either of them or a trustee of such a child or children, and
- b) the transfer or agreement is effected by or in accordance with:
 - (i) an order of a court made under the *Property (Relationships) Act 1984*, or
 - (ii) a termination agreement within the meaning of section 44 of the *Property (Relationships) Act 1984* that has been certified in accordance with section 47 of that Act, or
 - (iii) a purchase at public auction of property that, immediately before the auction, was relationship property where the public auction is held to comply with any such order or agreement.

Form ODA 021 must be completed and the applicant must have the required documentary evidence.

Section 63 – Deceased estates

1. Duty of \$50 is chargeable in respect of:
 - a) a transfer of dutiable property by the legal personal representative of a deceased person to a beneficiary, being:
 - (i) a transfer made under and in conformity with the trusts contained in the will of the deceased person or arising on an intestacy, or
 - (ii) a transfer of property the subject of a trust for sale contained in the will of the deceased person, or
 - (iii) an appropriation of the property of the deceased person (as referred to in section 46 of the *Trustee Act 1925*) in or towards satisfaction of the beneficiary's entitlement under the trusts contained in the will of the deceased person or arising on intestacy.
 - b) a consent by a legal personal representative of a deceased person to a transmission application by a beneficiary, and
 - c) a transmission application to a devisee who is also the sole legal personal representative.
2. If a transfer of dutiable property is made by a legal personal representative of a deceased person to a beneficiary under an agreement (whether or not in writing) between the beneficiary and one or more other beneficiaries to vary the trusts contained in a will of the deceased person or arising on intestacy, the dutiable value of the dutiable property is to be reduced by the portion of the dutiable value that is referable to the dutiable property to which the beneficiary had an entitlement arising under the trusts contained in the will or arising on intestacy.

Recent Administrative Decisions

Nairn v Chief Commissioner of State Revenue [2011] NSWADT 41

Issue: Meaning of 'new home' for the purposes of sections 18A and 18C *First Home Owner Grant Act 2000*.

Decision: The Administrative Decisions Tribunal delivered a decision affirming the decisions of the Chief Commissioner that the applicant was not eligible for the First Home Owner Boost for new homes under section 18A of the *First Home Owner Grant Act 2000* (NSW) ('the FHOGA') ('the Boost') and was not eligible for the NSW New Home Buyers Supplement under section 18C of the FHOGA ('the Supplement') in relation to the applicant's purchase of a property.

The Tribunal concluded that, as the subject property had been 'previously sold as a place of residence,' the applicant did not purchase a 'new home' for the purposes of sections 18A(7) and 18C(7) FHOGS and was not eligible for the Boost or the Supplement. The Tribunal stated that it is clear that where a building (or part thereof) is sold as a residence, it will not qualify again as a 'new home'. Accordingly, the Tribunal held that a property is not a 'new home' if it has been previously sold notwithstanding the fact that the first purchaser contracts to on-sell the property while it is still under construction.

Warner v Chief Commissioner of State Revenue [2011] NSWADT 212

Issue: Meaning of 'purchaser' and 'transferee' where in each case there is more than one whether section 18(3) of the Duties Act requires the necessary relationship for all parties constituting each of the purchaser and the transferee.

Decision: The Administrative Decisions Tribunal affirmed the decision of the Chief Commissioner.

The Tribunal held that section 18(3) of the Duties Act will have the effect that the Transfer attracts nominal duty if, and only if, all (and not some) of the persons named as the purchaser in the Contract are related to all (and not some) of the persons named as the transferee in the Transfer.

Payroll tax

NSW payroll tax is payable by any NSW employer whose total Australian wages, including their NSW wages, exceed \$678 000 for the 2011–12 financial year. Employers only pay tax on the wages that exceed their threshold deduction. For the 2010–11 financial year the threshold was \$658 000.

Interstate wages

When a NSW employer pays wages in NSW and interstate their threshold in NSW is reduced in the ratio of their NSW wages to their total Australian wages. For example, if an employer's NSW wages are 25 per cent of their total Australian wages their NSW threshold is 25 per cent of \$678 000 = \$169 500.

Rates

From 1 July 2010 to 31 December 2010 the rate of tax was 5.5 per cent.

From 1 January 2011 the rate of tax is 5.45 per cent.

Payroll tax nexus provisions

Employers who pay wages for work performed in Australia are required to return the payroll tax on those wages in a single State or Territory.

When an employee performs work in a single jurisdiction for a month, that month's wages are to be returned in the jurisdiction the employee performed the work in.

When an employee works in two or more jurisdictions, or partly in one or more jurisdictions and overseas, that month's wages are to be returned in the jurisdiction the worker has their principal place of residence. If the employee has no Australian residence the business address of the employer is used.

The nexus provisions, which started on 1 July 2009, ensure a person's whole wages are taxable in only one jurisdiction each month.

Example 1

Each month Bob Peters drives trucks between Brisbane and Adelaide via Dubbo where he lives. Bob works in three jurisdictions each month so all of Bob's wages are taxable in NSW because Bob lives in Dubbo.

Harmonisation

The adoption of the new nexus provisions from 1 July 2009 is a major example of the benefits of harmonisation of payroll tax around Australia. While all eight Payroll Tax Acts are not identical, most of the provisions are and where the legislation is the same each jurisdiction is committed to delivering the same result. Seven jurisdictions have agreed to use the 39 jointly issued Revenue Rulings where the legislation is the same.

Recent revenue rulings		Applies from
PTA026 Ver2	Employment agency contracts – declaration by exempt clients	1 July 2011
PTA037	Paid parental leave	1 July 2011
PTA038	Determining whether a worker is an employee	1 July 2011

Employers with multi state workforces are the major beneficiaries of the reduced compliance burden resulting from the application of the harmonised rules in each State.

Exemption for paternity leave, adoption and maternity leave

From 1 July 2010 wages paid to an employee on paternity leave are exempt for up to 14 weeks pay. From 1 July 2007 wages paid to an employee on maternity leave or adoption leave are exempt for up to 14 weeks pay. The exemption does not apply to sick leave, annual leave or any other form of leave.

Rebate for apprentice wages

From 1 July 2008 a rebate of payroll tax applies to all wages paid to apprentices and new entrant trainees. The rebate does not apply to wages paid to a trainee who has been continuously employed by the employer for more than three months full-time or 12 months casual or part-time immediately before commencing work as a trainee.

Payroll Tax Rebate Scheme – Jobs Action Plan

The Jobs Action Plan rebate gives eligible employers a payroll tax rebate of up to \$4000 for each new employee in NSW hired on or after 1 July 2011. The rebate is paid in two parts after the first and second anniversary of the day employment commenced.

The rebate is available to the first 100 000 new jobs in NSW, with 40 000 jobs prioritised for non-metropolitan areas of NSW and the remaining 60 000 in metropolitan areas.

The metropolitan area consists of all the greater Sydney councils plus the Wyong, Gosford, Newcastle and Wollongong local government areas. The non-metropolitan area is the rest of NSW.

Employers must register each new position within 30 days after the employment of a person in that position commences. Applications for registration are available at www.osr.nsw.gov.au

The employment of the new person must increase the business's number of full time equivalent employees (FTE) for a period of at least two years. Rebates may need to be repaid if the new full-time or part-time positions are not maintained for the minimum two year period.

Rebate for disabled workers

From 1 January 2012 to 30 June 2016 a one off rebate of \$4000 will be paid to employers of eligible workers. The rebate will be paid in two equal instalments – \$2000 after three months of employment and a further \$2000 after six months of employment.

Eligible workers are new employees that have completed the Family and Community Services funded Transition to Work (TTW) program and are working a minimum of 12 hours a week on average.

The Office of State Revenue will administer the rebate and more details are available at www.osr.nsw.gov.au

Share and option schemes

From 1 July 2011 shares and options in the employer's company, its parent or subsidiary are declared at granting or vesting using the market value of the share or option. Shares and options in any other corporation are fringe benefits so the FBT rules apply.

Current payroll tax cases

Northern NSW Football Ltd v Chief Commissioner of State Revenue [2011] NSWCA 51

The issue here was whether the appellant, a not for profit organisation established for the promotion of soccer, was exempt from payroll tax as an organisation having a sole or dominant charitable or benevolent purpose.

Justices Allsop, Handley and Gzell decided unanimously that the promotion of a sport, such as soccer was the dominant purpose and activity of the organisation and that any health benefit deriving from that activity was ancillary and not a purpose for which the organisation was established.

Chief Commissioner of State Revenue v Tasty Chicks Pty Ltd and Ors [2010] NSWCA 326

The case dealt with a group of three businesses owned by different members of a family that were all involved in the production of chicken based meals. The common employee grouping provisions applied and the Chief Commissioner did not issue an exclusion order to de-group the businesses. The plaintiff was successful in the Supreme Court in having an exclusion granted but the matter was appealed by the Chief Commissioner. The NSW Supreme Court of Appeal judgment of 21 December 2010 clarified four matters.

1. As noted by Justice Gzell the pre 1 July 2003 legislation did not form a group.
2. The post 2003 and 2007 legislation clearly formed a group under the Act.
3. Justice Gzell was not entitled to apply the Chief Commissioner's discretion to exclude members from a group as such a power is not available to the NSW Supreme Court.
4. The Chief Commissioner had established a powerful case in making his decision not to exclude, including the fact that two of the businesses derived 99 per cent of their business from the other group member, they were located in the same building, had common payroll management, the same accountant and the same bank account.
5. The Court was satisfied the Chief Commissioner was justified in not being satisfied that the businesses were carried on independently and were not connected with each other.

The case confirms that the facts that establish a group under the Act are separate from the criteria the Chief Commissioner considers when an exclusion request is made. The plaintiff bears the responsibility of satisfying the Chief Commissioner as to the two key criteria of independence and connection.

Rinex Integrated Power Pty Ltd v Chief Commissioner of State Revenue [2010] NSWADT 148

At issue was the status of whether a \$1 000 000 payment was made as a superannuation payment or as a termination payment. The first is taxable and the second mostly exempt. The payment was made by Rinex to Mr Richard Collins, the sole director and shareholder of Rinex.

Mr Richard Collins claimed the payment was a one-off payment for the amount owed to him for leave accrued during his employment with the applicant company accumulated over 30 years. The Tribunal found no evidence which indicated Mr Collins was entitled to any termination amount at all in respect of leave and confirmed the amount as superannuation.

The Tribunal also supported the application of full interest on the tax default.

Roden Security Services Pty Ltd v Chief Commissioner of State Revenue [2010] NSWADTAP 10

This NSW Administrative Decisions Tribunal Appeal Panel decision relates to section 3A(1)(e)(v) of the *Payroll Tax Act 1971* under which the Chief Commissioner can exclude a contract, or contracts, from payroll tax if satisfied that those services are rendered by a person who ordinarily renders services of that kind to the public generally.

Roden Security Services Pty Ltd uses contractors as security personnel and its business is to supply security services to its clients. Roden Securities claimed that because its workforce was contractors the services provided by them were provided to the general public. The Tribunal found the security personnel do not provide security services to the public generally but supply them almost exclusively to the business of Roden Security Services Pty Ltd.

Furthermore, the Tribunal confirmed the capacity to independently supply services is not in itself sufficient. There must be evidence such services are supplied to multiple clients within the year in question.

Land tax

What is land tax?

Land tax is a tax levied on the owners of land in NSW as at midnight on 31 December of each year. Land tax applies to land regardless of whether or not income is earned from the land.

Land includes:

- vacant land, including vacant rural land
- land where a house, residential unit or flat has been built
- holiday homes
- company title units
- residential, commercial or industrial units including car spaces
- commercial properties, including factories, shops and warehouses
- land leased from State or local government bodies.

Who needs to pay land tax?

An owner with one or more parcels of taxable land (e.g. strata lots, investment properties, holiday houses, commercial premises, vacant land, company title units, etc) is liable for land tax.

For land tax, an owner is defined as any of the following:

- sole owner
- joint owners
- a company (includes a company in an approved shared equity scheme)
- trustee of any trust
- beneficiary of a trust which is not a special trust
- society or organisation whose land is not exempt from land tax
- unit holders with interests in a unit trust which is entitled to the land tax threshold
- trustees of superannuation funds.

Joint owners are assessed as if they are a single owner. Each joint owner may also be assessed separately on all their interests in land, with their share of each jointly owned parcel of land added to the value of each parcel of land that they own individually. Where tax is paid by the joint owners, each joint owner is entitled to a deduction in his/her separate assessment to prevent double taxation of the jointly owned land.

A company is assessed in the same way as a sole owner unless it is related to another company. A related company can be assessed separately or assessed jointly with another company or companies to which it is related. In assessing land tax, each member of the group will be assessed as either a concessional, joint concessional or non-concessional company.

Where the total taxable land value of the group does not exceed the premium rate threshold, but exceeds the general threshold, these companies are assessed at 1.6 per cent of the taxable value above the land tax threshold plus \$100. Each non-concessional company is then assessed at 1.6 per cent of their taxable value as it does not qualify for the threshold.

Where the total taxable land value of the group exceeds the premium rate threshold, the total taxable land value of each non-concessional company is assessed at two per cent.

A trustee of a trust is assessed in the same way as a sole owner unless it is a special trust.

Special trusts do not qualify for the general threshold. A special trust is assessed at the rate of 1.6 per cent on the combined taxable value of the land up to the premium land tax threshold (\$2 366 000) and then two per cent thereafter.

How is land tax calculated for 2011?

Land tax is calculated on the combined value of all taxable land owned above the 2011 threshold of \$387 000. The amount of tax is \$100 plus 1.6 per cent of the land value between the threshold and the premium rate threshold (\$2 366 000) and two per cent thereafter.

If the combined value of the land does not exceed the threshold, no land tax is payable.

General example

Basic land tax calculation				
Total taxable value of land	Rate of land tax payable	Example		Land tax payable
\$470 000	1.6 cents for each \$1	Total value of land	\$470 000	\$1 428 (\$1 328 + \$100)
		Threshold	\$387 000	
		Value of land above the land tax threshold	\$83 000	
		Rate of land tax payable	x 1.6% (plus \$100)	

Premium land tax calculation				
Total taxable value of land	Rate of land tax payable	Example		Land tax payable
\$2 759 000	2 cents for each \$1 over the premium threshold	Total value of land	\$2 759 000	\$39 624 (7 860 + \$31 664 + \$100)
		Premium threshold	\$2 366 000	
		Value of land above the premium land tax threshold	\$393 000	
	1.6 cents for each \$1 over the land tax threshold	Total value of land under premium threshold	\$2 366 000	
		Threshold	\$387 000	
		Value of land above the threshold	\$1 979 000	
		Rate of land tax payable	(\$393 000 x 2%) plus (\$1 979 000 x 1.6%) (plus \$100)	

Special trusts land tax calculation *				
Total taxable value of land	Rate of land tax payable	Example		Land tax payable
\$470 000	1.6 cents for each \$1	Total value of land	\$470 000	\$7 520
		Threshold	Does not apply	
		Rate of land tax payable	x 1.6%	

Note: A premium land tax marginal rate of two per cent applies for special trusts on the total taxable land value above \$2 366 000.

How is the value of your land determined?

The Valuer General values all land in NSW annually and provides these values to the Office of State Revenue for land tax purposes. Values are determined as at 1 July, preceding each land tax year.

Average values

For 2007 and subsequent tax years, the value used to determine the land tax liability will generally be the average of the land value for the current tax year and the land values for the previous two years. Where a parcel of land was only recently created (e.g. by subdivision or amalgamation) the average value will be based only on the land values for those taxing dates when the newly created land item existed.

Strata unit valuations

For strata units, the land value for each individual strata lot is calculated on a proportional basis using the unit entitlement for each lot and the aggregate for the strata scheme.

Assessment of joint owners of land

Joint owners may be joint tenants or tenants in common. The joint owners together are called the 'primary taxpayer' and are assessed as if they are a single owner. All joint owners are jointly liable for the land tax payable by the primary taxpayer.

Each joint owner is called a 'secondary taxpayer' and will be assessed separately for their interest in the jointly owned property together with other interests in land (if any). Other interests in land can be owned either as a sole owner or as another interest in jointly owned land.

If an owner owns other land jointly with different persons, each unique combination of joint owners will be assessed as separate primary taxpayers. For example, if A owns land jointly with B, and A owns other land jointly with C, there are two primary taxpayers and three secondary taxpayers.

Deduction to prevent double taxation

To prevent double taxation on land included in assessments of both a primary taxpayer and a secondary taxpayer, the secondary taxpayer is entitled to a deduction which is the lesser of two calculations. Both calculations are based on the taxpayer's interest in the jointly owned land, as follows:

$$\text{i) } \frac{\text{Interest (share of land value) of individual in joint ownership}}{\text{Total land value of joint ownership}} \times \text{Tax on joint ownership (the primary taxpayer)}$$

OR

$$\text{ii) } \frac{\text{Interest (share of land value) of individual in joint ownership}}{\text{Total land value of individual}} \times \text{Tax on individual (the secondary taxpayer)}$$

The lesser of these two calculations is deducted from the total amount of land tax assessed in the secondary (or individual) assessment.

Example using 2011 rates

Mr A and Mr B jointly own Property 1 with a land value of \$800 000.

Mr A wholly owns Property 2 that has a land value of \$100 000.

Mr A will receive a joint assessment with Mr B for Property 1 and an individual assessment on the combined value of his share of the value of property 1 plus the value of property 2.

Tax and allowable deduction calculation for Mr A:

Assessment for joint owners Mr A and Mr B (Property 1):	
Total land tax payable on Property 1 (land value \$800 000)	\$6 708
Mr A's 50% interest in Property 1	\$400 000

Mr A's individual assessment (his share of Property 1 and Property 2):	
Mr A's 100% ownership of Property 2	\$100 000
Mr A's 50% interest in Property 1	\$400 000
Total land value of Mr A's interests in Properties 1 and 2	\$500 000
Land tax payable on total land value of \$500 000 before deduction	\$1 908*

* Minus the deduction to prevent double taxation – whichever is the lesser of calculation i) or ii).

i) Calculation 1:

$$\frac{\$400\,000}{\$800\,000} \times \$6\,708 = \$3\,354$$

OR

ii) Calculation 2:

$$\frac{\$400\,000}{\$500\,000} \times \$1\,908 = \$1\,526.40$$

Mr A's allowable deduction is \$1 526.40, so his total land tax payable will be:	
\$1 908	– \$1 526.40 = \$381.60

Recent Administrative Decisions

Saboune v Chief Commissioner of State Revenue [2011] NSWADT 8

The applicants, Mr and Mrs Saboune filed an application for review in the Administrative Decisions Tribunal following a decision by the Chief Commissioner to disallow an objection to their 2007 and 2008 land tax assessments. The central issue in dispute was whether the property in Strathfield, owned by the applicants was exempt from land tax under the principal place of residence ('PPR') exemption in the *Land Tax Management Act 1956* ('the Act') for the relevant years.

The applicants purchased the property in October 2006. At that time they sold their existing PPR in Oatley. At the time of purchase, the applicants stated it was their intention to knock down and rebuild the home on the Strathfield property.

The applicants claim that the existing property was not big enough to accommodate their family, and so they rented a house nearby. During

the time they waited to obtain the development consent they leased the property to tenants from November 2006 until April 2008. Demolition took place in May 2008 and their new home was completed in December 2009.

The applicants argued that the property should be exempt as their PPR under Clause 2(2)(b) of Schedule 1A of the Act, as it was always their intention to occupy the property as their family home. An alternative argument was that they were entitled to the concession in Clause 6 of Schedule 1A of the Act, as it had been their intention at all times to use the property as their PPR, and they had not claimed any other property as their PPR during the relevant period.

Decision

Judicial Member Verick found that as the applicants had not used the property as their PPR during and prior to the leasing period they could not meet the conditions under Clause 2(2)(b), the Tribunal also found that Clause 6 could not assist the applicants either, because of the clear requirement that the land be 'unoccupied'. The property was not 'unoccupied' because it was leased during the relevant period, from which the applicants derived rental income.

Caruana v Chief Commissioner of State Revenue [2011] NSWADT 183

The applicants sought a review of the decision of the Chief Commissioner to disallow their objection to land tax assessments issued for the 2004–09 land tax years in respect of the properties at Sutherland Road, Londonderry ('the Londonderry property') and Hume Highway, Lansvale ('the Lansvale property').

The two key issues in this case were:

- a) whether the intended use of the Londonderry property was sufficient to constitute 'use' of the property for primary production, in circumstances where it was intended to be, but was never actually used for primary production activities during the relevant land tax years; and
- b) whether the activities conducted at the Lansvale property, of processing, sale and distribution of the bodily produce of animals that have been slaughtered off-site, constituted primary production.

The applicants submitted that the primary production exemption applied in all relevant tax years in respect of the Londonderry property on the basis that the applicants carried on an existing primary production business elsewhere and intended to use the land for primary production in the course of that business; and the Lansvale property on the basis that the applicants carried on an existing primary production business elsewhere and used the land for primary production in the course of that business.

Decision

The Tribunal found that the question of whether the primary production exemption is available is resolved by reference to the **use** of the subject land, and not by reference to its ownership. In relation to the Londonderry property, the Tribunal concluded that the primary production exemption cannot be available in respect of land that is not used at all or in respect of land that is not used for a prescribed primary production activity.

In respect of the Lansvale property, the Tribunal noted that a 'primary production' activity included the 'keeping in existence or continuance of live animals' (i.e. the 'maintenance of animals'). The Tribunal found that the processing, sale and distribution of the body parts and products of slaughtered animals comprised 'secondary production', which was to

be distinguished from 'primary production'. In this regard, the Tribunal noted that primary production ends and secondary production begins when another process transforms a live plant or animal into a derivative product. Importantly, the Tribunal held that secondary production (such as slaughtering animals) 'is the antithesis of 'maintenance', because it involves altering, not keeping in existence or continuance, the relevant thing'.

The Tribunal also noted that the fact the Lansvale property was used in conjunction with other property owned by the applicants (on which there was primary production activity) does not have the effect of passing that same character to the property in question. The Tribunal agreed that the primary production exemption is available only where the subject land is used for a prescribed primary production activity. The Tribunal agreed that if the land is not used for a prescribed primary production activity, the exemption is not available just because the land is owned by a primary producer and/or the land plays some ancillary role in a primary production business.

Romano v Chief Commissioner of State Revenue [2011] NSWADT 73

Members of the Romano family ('the applicants') owned two adjoining properties in Catherine Field. One of those properties, which fronted onto Deepfields Road, was owned by Pasquale and Carmela Romano, ('Deepfields property'). Pasquale and Carmela's son Rocco owned the other property, which fronted onto Catherine Fields Road ('Catherine Fields property').

The Chief Commissioner had assessed land tax on each of these properties for the 2008–10 land tax years. The applicants said that the assessments were excessive and should be revoked because the properties attracted the primary production exemption in section 10AA of the *Land Tax Management Act 1956* ('the Act'). This question in turn depended on whether the 'dominant use' of both parcels, which were accepted to be 'rural land' within the meaning of this provision, was for the maintenance of animals, namely cattle, for the purpose of selling them or their natural increase or bodily produce.

The evidence given by Pasquale and Rocco Romano was that they had maintained cattle on both properties since the time they were purchased. Over the years they had bought and sold cattle and Pasquale had attended auction sales for that purpose. They also said that some 60 or 70 cattle were born on the properties over the years, although it was not apparent that any were born during the relevant tax years.

The managing ranger for the Cumberland Livestock Health and Pest Authority gave evidence that the carrying capacity of both properties was 4.1 cattle. At 30 June 2007 there were seven cattle on the properties, at 30 June 2008 there were five and at 30 June 2006 there were six. However, the applicants had also derived income from leases of four residences on the properties. This income was substantial. Net of expenses, it respectively amounted to \$12 021, \$21 664 and \$21 087 for the financial years ended 30 June 2007–09. By contrast, Pasquale's tax returns showed that the cattle generated an income of \$26 in the year ending 30 June 2007 and losses of \$730 and \$80 respectively for the years ending 30 June 2008 and 2009.

Decision

The land tax assessments for the 2008–10 land tax years were confirmed.

Even though the areas devoted to grazing cattle far exceeded those devoted to the rental properties, the question posed by the Act was whether the dominant use of the land was the maintenance of animals. According to Gzell J in *Leda Manorstead v Chief Commissioner* [2010]1NSWSC 867, this was a question of fact and degree and even perhaps one of impression. The approach to adopt in undertaking that enquiry was a 'broad' and 'commonsense' one: *Greenville Pty Ltd v Commissioner of Land Tax* [1977]7 ATR 278.

Taking into account the various factors referred to in the authorities, Judicial Member Frost decided that the primary production use was not so predominant as to stamp the land with this character. One of the properties had three income-producing residences on it and the other had one. The level of investment in the residential premises, represented by the buildings themselves, together with their curtilages and the income they yielded, had to be weighed against the farming infrastructure. The renting out of the residential premises was such a significant activity that it was impossible to conclude that primary production was the dominant use of either property.

Black v Chief Commissioner of State Revenue [2011] NSWADT 66

The applicant, Mr Black, who owned two properties, one in Cronulla and the other in Caringbah applied for a review of a decision of the Chief Commissioner to deny him exemption from land tax in respect of the 2009 land tax year for a property he owned in Caringbah, NSW ('the Caringbah property').

Mr Black claimed exemption from land tax pursuant to Section 10(1)(r) and Schedule 1A of the *Land Tax Management Act 1956* (NSW) ('the LTMA').

Background

On 8 January 2009, the Chief Commissioner issued a land tax assessment in respect of the 2009 land tax year granting Mr Black an exemption from land tax in respect of the Cronulla property on the basis that it was used and occupied as his principal place of residence.

The applicant objected to the assessment on the basis that, as at 31 December 2008, his principal place of residence was the Caringbah property. He claimed land tax should instead be assessed against the Cronulla property and that the principal place of residence exemption should attach to the Caringbah property.

Mr Black provided evidence that he intended to sell either the Caringbah property or the Cronulla property and that the global financial crisis had resulted in uncertainty as to which property should be placed on the market.

The Chief Commissioner provided evidence that Mr Black had entered into an exclusive arrangement with a real-estate agent only for the sale of the Caringbah property. Mr Black provided evidence of difficulties removing a tenant from the Caringbah property in early 2008 to emphasise the difficulties he had in residing in the Caringbah property earlier than October 2008.

The Chief Commissioner presented Mr Black's utility bills as evidence that Mr Black had been residing continuously in the Cronulla property. Mr Black conceded he used this property from time to time and that he had carried out maintenance, repairs and renovations which had resulted in these utility charges being incurred.

Decision

Judicial Member Hirschhorn disallowed the Applicant's claim that the 'principal place of residence' exemption applied to the Caringbah property because he did not satisfy clause 2(2)(a) of Schedule 1A of the LTMA. That is, he did not 'continuously' use and occupy the Caringbah property for residential purposes from 1 July 2008 to 31 December 2008.

The Tribunal also determined that the Caringbah property was not used and occupied by the applicant as the applicant's principal place of residence as at midnight on 31 December 2008, as required by section 2(2)(b) of Schedule 1A of the LTMA.

The Tribunal acknowledged that a person may reside at more than one place during the relevant land tax year. However, it determined that the applicant could not claim the principal place of residence exemption for the Caringbah property as there was sufficient evidence to conclude that the Cronulla property was his principal place of residence.

The Tribunal listed the factors which assist in determining a person's principal place of residence, as set out by the Appeal Panel in Chief Commissioner of State Revenue (RD) v McIlroy [2009] NSWADTAP 21 at [44] as:

1. The words 'principal place of residence' are to be given their ordinary meaning in the context in which they appear.
2. Consideration of whether a person has been residing or occupying premises as the person's principal place of residence is to be assessed objectively, in light of the circumstances relating to the actual occupation of the dwelling.
3. The intention of the person concerned, gauged objectively, is relevant but not determinative of the issues.
4. The short length of a person's residence, while relevant, is not determinative, but the occupation must have a degree of permanence to it.

The Tribunal found that the Cronulla property was the applicant's principal place of residence as at 31 December 2008. The Decision of the Chief Commissioner was affirmed.

