

1. What is Land Tax?

Land Tax is a tax payable by landowners based on the “land value” of land held at noon on 31 March each year.

2. What is the Land Tax Year?

For the purposes of land tax the year of payment is a year commencing 1 April and ending on 31 March. The land tax payable in a year of payment is based on the land value of land owned by the taxpayer on the 31st March immediately preceding the start of the year of payment.

For example, for land valued on 31 March 1990 the year of payment is the year from 1 April 1990 to 31 March 1991.

3. What is the Land Value?

The value of land for land tax purposes is that which appears on the current district valuation roll at 31 March in the year preceding the land tax year. The current valuation of the land must be used.

Where land is used for both taxable and non-taxable purposes, land tax is only payable on the value of land used for taxable purposes.

For example, take the case of a corner dairy where part of the land/buildings comprises the shop-keeper’s residence. The value of the land will be required to be apportioned on the basis of the land used as a residence (being exempt from land tax under section 27(1)(q) of the Act) and land used for “dairy” purposes (being taxable).

In general the Commissioner will accept a “just and reasonable” apportionment of the land values in terms of section 7 of the Act. If agreement cannot be reached the Commissioner will request the Valuer-General to make the apportionment and the assessment will be based on that apportionment.

4. Who is Liable for Land Tax?

Any owner of land including local and public authorities, government departments, companies, partnerships, estates, trusts and individuals who own or hold an interest in land held at noon on 31 March shall pay land tax on the total land value of all land owned other than land that is exempt.

“De Minimis Rule” (or \$10,000 Threshold) - Land tax will not be payable where the total land value owned (that land value not including exempt land) does not exceed \$10,000. Where the total land value exceeds \$10,000 the exclusion does not

apply. The \$10,000 rule applies to land owned jointly as if the land were owned by one person.

5. Joint Ownership

Section 13 of the Act provides that where “2 or more persons own land jointly or in common, whether as partners or otherwise, they shall be liable for land tax”.

Joint owners will be liable on the interest held in land together with any other land owned either jointly or individually. Section 14(2) of the Act allows a deduction for the land tax payable under a joint liability against any land tax payable otherwise.

Example:

Coy A + B in Partnership Own Land Jointly (50% each)	<u>1,000,000</u>
Land Tax Payable -1%	<u>10,000</u>
Coy A - Land Tax Payable	5,000
Coy B - Land Tax Payable	<u>5,000</u>
Coy A - Land Value Owned Individually	500,000
Add Value of Joint Ownership	<u>500,000</u>
Taxable Balance	<u>1,000,000</u>
Land Tax Payable - 1%	<u>10,000</u>
Less Credit Share of Joint Ownership	<u>5,000</u>
Tax to Pay	<u>5,000</u>
Coy B - No other taxable land held	
Coy A - Total land tax payable	\$10,000
Coy B - Total land tax payable	\$ 5,000

6. Companies/Shareholders

Shareholders

The joint ownership provision extends to company shareholders (refer Section 16 of the Act). Although the company pays land tax in its own right, the land owned by the company is deemed to be owned by the shareholders in the same proportion that their interest in the paid-up capital of the company bears to the total paid-up capital.

The shareholders will be liable for their shareholding proportion of the land owned by the company amalgamated with their other land holdings.

A credit will be allowed in the same manner for their proportion of the company’s land tax payment.

This provision will only apply to any shareholder where the shareholder's interest in the land owned by the company (not including business premises) is \$1,000 or over. The \$1,000 test is used to determine whether the shareholder's share is liable. If the \$1,000 amount is exceeded the shareholder's proportion of the whole land, including the business premises, will be taken into account in calculating the land tax payable by the shareholder in the same manner as a joint liability.

The term "business premises" broadly means the building used for business purposes and any land which adjoins the building and is used and occupied in connection with the building.

Companies

Section 17 of the Act provides that companies which have more than two-thirds common shareholding at noon on 31 March shall be deemed to be a single company and liable for land tax accordingly.

Where there is less than a 66 2/3% common shareholding the provisions of Section 16 of the Act may apply by apportioning any land tax liability to the individual shareholders.

7. Leasehold Land

The holder of an interest in leasehold land is the owner for land tax purposes. A lessee's interest is usually found in connection with long term leases and is the difference between the agreed rental and the inflation adjusted rental which would be charged if not for the long term lease. This would be combined with any freehold land to obtain the total land value. Points to note in relation to leasehold land:

- There is no liability for land tax on an interest in land where the lease is of buildings only;
- A lease with a compulsory purchase clause is treated as an agreement for sale and purchase. The lessee is deemed to be the owner of the land and becomes liable for land tax as soon as possession has taken place.

For a full explanation of Lessee's Interest in Land refer to the Annex to this appendix. This information was provided by Valuation New Zealand Ltd.

8. Absentee owners

Previously, absentee owners of land were charged a penal rate of land tax. This provision has been

repealed (refer Section 5 of the Land Tax Amendment Act 1989) and absentee owners are now treated in the same manner as other land taxpayers.

9. Trustees Liability

A trustee is liable for land tax as if the trustee were the owner of the land. Where a trustee is the trustee of several trusts each trust will be separately liable in its own right unless the trustees are joint occupiers and subject to a joint liability.

Where the same trustees hold land under 2 or more trusts but on behalf of the same beneficiaries, the trustees will be jointly liable.

Where the trustee is the owner of other land liable for land tax in the trustee's own right it shall be imposed separately from any land liable for which the person is a trustee, unless it is jointly occupied and therefore subject to a joint liability.

10. Maori Land

No Maori is liable for land tax in respect of his/her interest in Maori land (defined as Maori freehold land within the meaning and for the purposes of the Maori Affairs Act 1953) unless the land is occupied by a person other than the Maori owner or a trustee of him/her.

Where the land is occupied by some person other than the Maori owner, the Maori owner is liable for land tax at half of the normal rates. The tax imposed is limited to one tenth of the revenue derived from the land.

If the occupier is not a Maori, but has an interest in Maori land then he/she will be liable for land tax on that interest in the usual way.

11. Buyer or Seller of Land - Who is Liable?

Section 19 of the Act provides where an agreement has been made for the sale of land, the buyer is deemed to be the owner for land tax purposes when possession (refer below for explanation of possession) is obtained, irrespective of whether conveyancing has been completed.

Section 20 of the Act provides that the seller shall be deemed to remain the owner for land tax purposes until possession of the land has been delivered and at least 15% of the purchase money has been paid. This provision will not apply where the land value owned by the seller of the land at the date of the agreement for sale, including the land being sold, is less than \$80,000.

There is a proviso allowing the Commissioner not to apply these provisions where an agreement was made in good faith and not for the purposes of evading land tax.

12. Mortgagee in Possession

Where a mortgagee takes possession of land from the mortgagor, the mortgagee, pursuant to Section 24 of the Act, is deemed to be the beneficial owner of the land and liable for land tax. A deduction is allowed for the land tax paid in respect of the land by the mortgagor.

13. Exemptions from Land Tax

The Land Tax Amendment Act 1989 substitutes a new Section 27 to the Act which exempts certain classes of land from land tax. Further changes were included in the Land Tax Amendment Act (No.2) 1989.

The land tax base has been broadened to apply in the main to all commercial and industrial land and includes land owned by public and local authorities including government departments.

The following list of exemptions will however apply for the land tax year of payment commencing 1 April 1990:

- (a) Land forming any National Park within the meaning of the National Parks Act 1980.
- (b) Land owned by the Crown or any Local or Public Authority which is used as a domain, recreation, historic, scenic, nature, scientific or Government purpose reserve or any other type of reserve within the meaning of the Reserves Act 1977; wildlife management reserve, wildlife refuge or wildlife sanctuary; flood ponding area, any foreshore areas and the bed of the territorial sea and any navigable lake or river. If the land is used for the pecuniary profit of any person then the exemption will not apply. Land tax will be payable.
- (c) Land on which is situated any vice-regal residence or Parliament buildings.
- (d) Land owned and used by the Crown or any Public or Local Authority which is used as the site of a public library, museum, cemetery or burial ground, recreation ground, garden, domain or reserve; land used solely or principally for games or sports and not used for the private pecuniary profit of any individual. If the site of the public library, etc., is reserved land the private pecuniary profit test of individuals applies.
- (e) Land used for a national or public road.
- (f) Land occupied by NZ Railways Corporation and used as part of the permanent railway. This exemption does not include land used for:
 - Railway or marshalling yards;
 - Loading/unloading areas;
 - Administrative or other ancillary purposes.
- (g) Land owned by the Crown or land reserved and occupied for pastoral purposes, e.g., land used for sheltering livestock which is being moved by a drover from the farm to the freezing works.
- (h) Maori customary land within the meaning of the Maori Affairs Act 1953.
- (i) Land owned by or in trust for any society or trustees and used as the site of a public library, museum, cemetery or burial ground, recreation ground, garden, domain or reserve. Provided that the activity is not carried on for the private pecuniary profit of any individual.
- (j) Land owned by or in trust for any charitable society or institution if the land is used as a site for the purposes of the charitable body and not for the private pecuniary profit of any individual. This exemption is limited to 7 hectares of land.
- (k) Land owned, occupied or in trust for any society or association of persons, whether incorporated or not used solely or principally for games or sports other than horse or greyhound racing or trotting and not used for the private pecuniary profit of an individual.
- (l) Land owned or occupied by any racing club or company, all the shares of which are owned by the racing club or clubs, if such land is used solely or principally for horse or greyhound racing or trotting.
- (m) Land owned by or in trust for a society incorporated under the Agricultural and Pastoral Societies Act 1908 and used as a showground or meeting place.
- (n) Land owned by or in trust for a society incorporated under the Libraries and Mechanics Institute Act 1908 and used as a site for its purpose.

(o) Land used for the purpose of a university, college, high school, secondary school or public education institute not carried on for the private pecuniary profit of an individual.

(p) Land owned solely or principally for any of the following or combination of the following:

- Animal husbandry - includes poultry and bee keeping and the breeding of horses;
- Growing fruit, vegetables or other crop producing plants;
- Horticulture;
- Viticulture;
- Forestry or silviculture.

Hobby farmers will not be subject to land tax in relation to land owned for that purpose. This is due to the removal of the business test from this exemption. The exemption will not apply where land is used for the above purposes as a temporary measure, e.g., growing vegetables on a city lot planned for development.

(q) Land used principally as the site of any residential dwelling (being a house, flat, townhouse, home unit, or similar dwelling) and any vacant residential land intended to be used as the site of any dwelling. Where the area of land on which the residence is situated or is to be situated is greater than:

- 4,500 square metres; or
- An area which is considered appropriate having regard to the size and character of the residence or residences;

The Commissioner may determine that a proportion of the land is not attributable to the residence and the exemption will therefore not apply to that portion.

(r) Land used principally as the site of a boardinghouse, lodginghouse, hostel or private residential hotel. This exemption does not apply to any establishment that caters principally for temporary or transient accommodation (one month is considered outside of temporary or transient accommodation) or premises for which a hotel premises or tourist-house premises licence is in force.

(s) Land used as the site for any home of the aged within the meaning of Section 120A(3) of the Health Act 1956.

(t) Land used as the site of a building that is classified by the NZ Historic Places Trust in terms of paragraph (a) or (b) of Section 35(1) of the Historic Places Act 1980. This exemption does not apply where the classification relates solely to the facade of a building.

(u) Land used as the site of any hospital including servicing and landscaped areas directly associated with the operation of the hospital. A hospital means any public or private hospital.

(v) Land used by an Area Health Board to provide health services. This exemption reflects the wider operations now expected of area health boards.

Section 27(2) of the Land Tax Act 1976 stipulates that the exemptions provided by section 27(1)(a) to 27(1)(n) be limited to the "owner" specified in those sections of the Act.

The situation that occurs predominantly is when a land owner who is exempt from land tax (say a charitable organisation exempt in accordance to section 27(1)(j) of the Land Tax Act 1976) who is leasing land to a non exempt organisation on a commercial basis. The exemption is limited to the lessor (owner) and cannot be transferred to the lessee (tenant) because of section 27(2) of the Act.

The other situation which can occur is when an exempt organisation (say a sporting organisation which is exempt with accordance to section 27(1)(k) of the Land Tax Act 1976) who leases land from a non exempt organisation on a commercial basis. The exemption in this case is limited to the lessee (tenant) and cannot be transferred to the lessor (owner).

In both cases a lessee/lessor interest assessment is required to be carried out by Valuation New Zealand. This will determine the exempt and liable portions (given the circumstances above) within the land in question with the two portions totalling the land value.

14. Rate of Land Tax

The rate of land tax is as follows:

(a) 1.5% for every dollar of taxable land value for the 1989 year of assessment;

(b) 1% for every dollar of taxable land value for the 1990 and subsequent years of payment.

15. Returns and Payments

The annual land tax returns (form IR 2) are to be sent to Inland Revenue no later than 7 May for the year of payment (i.e., for the 1990 year of payment the return is due on 7 May 1990). Both the land tax return and payment are to be sent to the Upper Hutt Processing Centre at P O Box 40141, Upper Hutt. All land tax enquiries will remain with Masterton office.

Land tax payment dates have been amended and differ for the 1990 year of payment and 1991 and subsequent years of payment.

For the 1990 year of payment, land tax will be due and payable in 2 equal sums on 7 May 1990 and 7 October 1990 (previously payment was due in one sum on 7 October). For the 1991 and subsequent years of payment full payment will be required on 7 May, the same date for furnishing of the land tax return.

As a result of the advancement of the payment date, the Department has adopted a self-assessment approach to processing land tax returns, similar to that adopted to GST processing. A taxpayer will now be required to pay land tax as calculated in the return and pay that amount without the Commissioner being required to first issue an assessment. An assessment is only issued where the taxpayer requests such an assessment, where the return is incorrectly calculated, where no return is furnished or where the Commissioner considers it necessary. An assessment is normally only requested when the taxpayer wishes to seek adjudication by the Courts.

NOTE: As there are two payment dates for 1990, the first payment is to be sent with the land tax return which is also due to be furnished by 7 May. A notice will be issued after the return is received. This will include a replacement pay-in slip for the 7 October 1990 payment together with a self-addressed envelope.

16. Late Payment

Penalty for non or late payment has been changed with effect from the 1990 year of payment. Additional tax for late payment is charged at 10% on the overdue account. Further additional tax of 2% is then charged on a compounding basis for every subsequent month that the tax is overdue.

It should be noted that the Commissioner has the authority to register a charge against the land where a default in payment has occurred (refer Section 50 of the Act).

17. Non-Furnishing of Return

If a land tax return is not furnished by the due date a default assessment will be issued in absence of a return and additional tax for late payment will apply as outlined above.

18. Income Tax Deductibility

Section 140 of the Income Tax Act deems land tax payable for any year of payment in respect of land used in the production of assessable income to be an expense incurred during the year in which the land tax is paid.

Example 1:

1990 Land Tax Year of Payment

Land Tax Payable 7 May 1990
7 October 1990

The land tax paid is deemed to be an expense for the taxpayer's 1991 income year (i.e., it is an expense incurred during the 1991 income year).

Example 2:

For a late 1990 income tax balance date, e.g., 30 June.

7 May 1990 instalment deemed a 1990 expense
7 October 1990 instalment deemed a 1991 expense
7 May 1991 payment for 1991 land tax is deemed to be a 1991 expense - the last 2 payments in this example being made during the taxpayer's 1991 income year.

ANNEX TO APPENDIX C, TIB NO. 9, MARCH 1990

Lessees' Interest in Land

Background: Within the terms of Section 5 of the Land Tax Act 1976, the land value of a taxpayer's land which appears on the district valuation roll, is to be used as a base for land tax.

Section 8(1) relates to an estate or interest in land which does not appear on the district valuation roll, whereby the Valuer-General will assess a special valuation of that estate or interest.

Section 8(3) allows a right of objection to the taxpayer to this special valuation, which includes the right for the valuation to be determined by the Land Valuation Tribunal.

It is therefore the Valuer-General's responsibility to assess the value of the estate or interest at the appropriate market level as at the effective date.

However, the Valuer-General has in the past accepted that the value of all the interests will not add to more than the assessed freehold value appearing on the district valuation roll, and makes appropriate checks and adjustments to ensure that this is the case.

Assessment of Lessee's Interest

In most centres of New Zealand there is some sales evidence on which to base the assessments of this interest.

In general terms the interest is assessed on the basis of:

- (i) The benefit of a low ground rental for the balance of the lease term - before renewal.
- (ii) An assessment for the value of the "right to occupy" generally reflecting the degree of benefits of the lease terms, i.e., fixed leases with limited review periods, and with rentals assessed at lower than first mortgage or comparable investment rates normally confer significant advantages to the lessee. The premium paid varies throughout the country, but is primarily related to local demand in the market place for such leasehold interests when they are offered for sale.

Lessee's Interest in Land by Valuation New Zealand Ltd.

The lessee's interest value in ground leased property for land tax purposes is determined by the

land value component as appearing on the valuation roll as at 31 March in any year, and by the rights conferred to the lessee by the terms of the lease.

In any lease a lessee "owns" the right to occupy the land subject to paying a contract rent for that occupancy benefit. In addition many leases normally confer a right of renewal of a further fixed term or longer, i.e., "Glasgow" leases which are in perpetuity.

In establishing the rental for the ground most leases ensure that there is to be no rental payable or ascribed to the value of improvements which any lessee has made on the land, or has purchased as a benefit from a previous lessee.

When determining the value of a lessee's interest it is necessary to make an assessment of what the likely rental would be based on the land value appearing on the district valuation roll for the year in question, if the rental were to be reviewed or renewed at that date as the case may be, in order to ascertain the current benefit that the lessee has left to enjoy in terms of the existing ground rental below a full contract rental level. The present value of that financial benefit, is discounted at a rate of interest. The appropriate rate will balance the typical prudent lessee's opportunity cost of capital against the risks of leasehold investment compared to freehold investment. This discounted annual benefit will determine the value of the benefit to run in the lease.

Added to that benefit will be some allowance for the value of the rights of renewal which the lessee can exercise at the expiry of each term. If these are perpetual rights, the value of these may be quite significant and are affected by the following factors:

- The degree to which the rental basis on renewal is likely to produce a rental which is advantageous to the lessee compared to the opportunity cost of long term ownership.
- The term of the rent review periods, with 21 year terms generally regarded as being more valuable than say 7 year terms over which any rental benefits from a renewed fixed annual rent will apply.
- The degree to which it is perceived that Government may by legislation interfere with the terms and conditions of leases to reduce or enhance the lessee's benefits or rights, such as rent freeze regulations, changing freeholding rights, or altering statutory or negotiated ground rental percentages.

- The likely level of any variations in expected inflation over a term of the next renewal that would act to reduce the real cost of rental payments and in turn affect the perceived financing opportunity costs and benefits.
- The likelihood that land values will increase more (or less) than the inflation rates, giving an added advantage (or disadvantage) to the lessee in comparison to the alternative of freehold ownership financing opportunity costs.

The benefit of renewal will therefore vary from lease to lease, as well as from urban and rural properties, and from one location to another, as the case may be, but is finally dependent on the terms of each individual lease document.

APPENDIX C TO TIB NO. 9, MARCH 1990

LAND TAX

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