

REVENUE CIRCULAR GEN011.2
Principal Place of Residence
Issue Date: 11 September 2023
Status: Current – Effective 11 September 2023
Previous Circular: GEN011.1

Contents

Preamble	2
Summary.....	2
Circular.....	3
Relevant person.....	3
Meaning of Occupy.....	3
Occupancy factors	3
Place of residence.....	4
Determining the principal place of residence	4
Absence from a principal place of residence	5
Exemptions and discretions	6
Duty	6
FHOG.....	6
Land tax	6
Commissioner’s power to review the residence period	6
Compliance	7
Appendix – Legislative provisions.....	8

Preamble

1. The concept of a 'principal place of residence' is important to several taxes and schemes run by the ACT Revenue Office. For example, a person may be required to occupy and use a home as a principal place of residence to be eligible for certain tax concessions and exemptions.
2. This circular explains how the ACT Revenue Office determines a person's principal place of residence for the following laws (the **relevant laws**):
 - the *Duties Act 1999*;
 - the *First Home Owner Grant Act 2000*;
 - the *Land Tax Act 2004*;
 - the *Payroll Tax Act 2011*;
 - the *Rates Act 2004*;
 - the *Taxation Administration Act 1999*; and
 - legislative instruments that provide for various duty charges and concessions subject to the principal place of residence requirements.
 - These schemes (collectively, **duty concessions**) include: the Home Buyer Concession Scheme, the Off the Plan Unit Duty Concession Scheme, the Pensioner Duty Concession Scheme, Owner Occupier Duty, and the Disability Duty Concession Scheme.
3. The Appendix to this circular contains a list of provisions referring to a principal place of residence.

Summary

4. The ACT Revenue Office interprets the terms 'occupy' and 'principal place of residence' according to their ordinary meaning, having regard to the purposes of the legislation in which the terms appear.
5. For the relevant laws, and unless otherwise specified in the legislation, ACT Revenue Office considers that a person's principal place of residence is:

the place of residence or home that the person primarily occupies, on an ongoing and permanent basis, as the person's settled or usual home.
6. Whether a person has occupied a home as their principal place of residence is a question of fact having regard to all the circumstances of the case. The person's intention is relevant to this question. However, the intention is neither determinative of the issue nor a dominant consideration.

Circular

Relevant person

7. A reference to a 'person' in this circular means the individual required under law to use and occupy a parcel of land as their principal place of residence.
 - In relation to the duty concessions and the First Home Owner Grant (**FHOG**)¹, the relevant person is the recipient of the grant or concession (and the person's domestic partner in some cases).
 - In relation to rates, it is the eligible pensioner claiming a rebate.
 - Corporations and trustees are excluded from land tax exemptions that involve an owner's principal place of residence.
8. Unless permitted by the relevant law, a parcel of land cannot be occupied by a person on someone else's behalf. However, exemptions may be available if a person cannot occupy a home themselves.

Meaning of Occupy

9. To occupy ordinarily means to inhabit, live in, or reside at a home. The Macquarie Dictionary defines **occupy** as including '*to be resident or established in (a place) as its tenant*'.
10. A home is considered occupied by a person if the person actively uses and lives in the home, with a degree of permanence, to use it as a residence. Actual occupation is required, not merely an intention to occupy. A home that a person never occupies cannot be that person's principal place of residence. However, exemptions and discretions may be available under the relevant laws.

Occupancy factors

11. The ACT Revenue Office will consider the following factors in determining whether a person has occupied a place of residence. Additionally, if the person has multiple places of residence, these factors also help to establish which residence is the person's principal place of residence.
 - **Address**
The person's address on the electoral roll, mailing address, and other addresses they use—such as for driver's licence or vehicle registration purposes.
 - **Family**
Where the person's immediate family members live.
 - **Finance and insurance**
For example, whether the home is financed and insured as an owner-occupied or for investment purposes.
 - **Intention**
Whether the person intends the home to be their principal place of residence, measured objectively.

¹ While the amount of the FHOG has been prescribed as nil since 1 July 2019, the legislation remains in force. Hence, this circular continues to refer to FHOG matters. It also entitles someone to apply to defer the payment of duty.

- **Length of time**
The length of time that the person has occupied the home and the pattern of occupation.
- **Other occupants**
A person may share their principal place of residence with other occupants (for example, family members, guests, boarders, or lodgers). However, unless it is proven otherwise, the ACT Revenue Office will presume that when another party has rights to the whole property, it will not be landlord's principal place of residence. A parcel of land might contain multiple dwellings which can have other tax consequences.
- **Possessions**
Whether the person has moved their clothing, furniture, and other personal possessions into the home.
- **Residential activities**
Where the person sleeps, eats meals, entertains friends and family, and does other usual residential activities.
- **Location of employment, education, and social activities**
The location of employment, where (if relevant) children are schooled, and where the person's relevant social activities are located.
- **Utilities**
Whether services such as telephone, electricity, and gas are connected to the home in the person's name, and whether usage is consistent with the occupation of the home.

Place of residence

12. It is not possible to occupy a parcel of land that does not contain a place of residence – that is, a residential dwelling. While vacant land is not a valid place of residence, the relevant laws may apply special rules if a home is to be constructed on the land.
 - A recipient of the duty concessions or FHOG is not required to begin occupying a parcel containing a new home until the Certificate of Occupancy and Use (COU) has been issued under the *Building Act 2004*.
 - A parcel of land can be exempted from land tax if it is unfit for occupation as a residence due to construction or substantial renovation, until after the COU has been issued, or the parcel has become fit for occupation.
13. If a home cannot be occupied, it will not be treated as a place of residence under the relevant law. This will not have an impact on the residency status of other properties.
14. In relation to land tax, a parcel of land with multiple dwellings can contain multiple places of residence. Therefore, proportional land tax may be payable if at least one of the dwellings is rented to a tenant and at least one other dwelling is occupied by the owner as a principal place of residence, by a life tenant, or by an occupant under a nil or nominal rent arrangement.

Determining the principal place of residence

15. The ordinary meaning of the principal place of residence recognises that a person can occupy more than one place of residence at a time; however, only one residence can be the ***principal*** place of residence. Principal takes its ordinary meaning of '*first or highest in rank, importance, value, etc.; chief; foremost*' (see the *Macquarie Dictionary*).

16. If a person has multiple places of residence, the person's principal place of residence is determined as a question of fact, considering all the circumstances, including the occupancy factors as they relate to each property. A person cannot have more than one principal place of residence at a time. In relation to land tax, a domestic partnership may only have one parcel of land that is eligible for a principal place of residence exemption at a time.
17. In certain uncommon situations, adjacent properties with separate legal titles might be considered as one principal place of residence if they are collectively used as a single dwelling. This could happen, for instance, when the properties are expanded to augment the garden space (excluding separate farmlands) or if two adjacent, independently titled buildings or units have been significantly and legally altered to function as a single dwelling. The mere removal of fences between two individually titled properties or cases where distinct owners possess separate titles does not count as significant modifications.
18. Possible exemptions could include separate units that have undergone major changes to operate as a single dwelling (that is, not just a mere doorway addition), and continuous land featuring a pool or garden (on the condition there is no separate dwelling on it).

***Example 1:** The Smith Family resides in a suburban house in Belconnen. Mr Smith's mother, Joan, occupies a granny flat constructed in the garden. Joan actively participates in the family activities like cooking, dining together, and garden maintenance. Given the proximity and integration of activities, the entire property is recognised as the principal place of residence.*

***Example 2:** The Razzi Family owned a large residential block on Mugga Way. After the children graduated from university, Mr Razzi subdivided the land and erected a new dwelling, which he provides to his children rent-free. The family gathers every Sunday night when everyone is in town. Following the subdivision, the newly erected dwelling is considered a separate property.*

Absence from a principal place of residence

19. A home does not automatically cease to be a person's principal place of residence merely because the person is temporarily absent from the home. A temporary absence could arise in several ways, such as a holiday, a stay in the hospital, caring for a relative or friend, or travelling for work.
20. The ACT Revenue Office will consider whether the home continues to be occupied as the person's '*settled or usual home*' despite of the absence. Factors that may be considered include:
 - Whether the home was actually occupied as a principal place of residence before the absence.
 - Whether the absence is for reasons outside the person's control (for example, health reasons).
 - The expected length and nature of the absence.
 - The extent of personal effects removed from the property.
 - Where the person is living or staying during the absence.
 - How the home is being used during the absence.
 - Whether the person intends to, or has, resumed living at the home after the absence.
 - The permanency of the individual's new residence.

Exemptions and discretions

21. Exemptions and discretions may be available under relevant laws.

Duty

22. Where applicable under law, the Commissioner for ACT Revenue may approve alternate residency requirements – that is, extensions of time for commencing occupation and reductions or exemptions in the required period of occupation. Exemptions or extensions can only be granted if applied for, in writing, within 18 months of the completion of an eligible transaction or completion of the construction of a home (whichever is relevant) and the Commissioner is satisfied that they are unable to occupy the eligible property due to unforeseen circumstances.

FHOG

23. The FHOG provides similar exemptions and extensions to duty concessions. However, for FHOG, the exemption or extension must be given within 18 months after completion of the eligible transaction, given the Commissioner be satisfied of ‘good reasons to do so’. The ACT Revenue Office will look to similar unforeseen circumstances as duty concessions.

Land tax

24. In relation to land tax, a principal place of residence exemption may continue to apply to a parcel of land where the owner(s) is absent from their principal place of residence on extended holidays.

25. For owners absent outside of the above parameters, a determination will be subject to a case-by-case consideration. If an owner’s intention for occupying a principal place of residence changes at any time such that it would cause land tax to become payable, the Commissioner for ACT Revenue must be notified within 30 days of that change.

26. An owner of a property may also be granted an exemption from land tax if the Commissioner is satisfied that the owner is temporarily absent because of compelling compassionate reasons². This exemption is available for a period of up to 2 years.

27. Similar, exemptions may also be available in the event of the death of the owner³ or if the owner has lost the ability to live independently⁴.

Commissioner’s power to review the residence period

28. The Commissioner will only review the residence period if specifically requested in writing to do so. For example, for duty concessions, the Commissioner will review the residence period if requested in writing within 18 months of the residence start date.

29. Ordinarily, an exemption or extension requires the applicant to prove that they cannot reside in the property primarily because of an unforeseen circumstance. The Commissioner will determine whether the circumstances put forth are unforeseen. Common scenarios involving circumstances that would not allow an individual to reside in the property include:

- Events that make the property uninhabitable, such as fire or flood.

² See *Land Tax Act 2004*, section 13.

³ See *Land Tax Act 2004*, section 11D.

⁴ See *Land Tax (Non-independent) Exemption 2019*, NI2019-30.

- People who have lost the ability to live independently (that is, hospital requirements, requirements for specialist disability accommodation)—they must have been able to live independently at the completion date of the transaction.
- An immediate family member (who resided in the property) has a newly diagnosed health-related issue requiring them to reside somewhere other than in the property—for example, specialist long-term medical treatments only available outside of the ACT Region.
- Involuntary job transfers requiring residence outside of the ACT Region.⁵
- Divorce or separation from another individual.
- Serious neighbourhood dispute—evidence would be requested.

30. The ACT Revenue Office would not consider unforeseen circumstances leading an applicant to be unable to reside in the property to include scenarios, such as:

- An applicant sought, applied, or expressed an interest in an employment position that involved travel, postings or transfers and was subsequently offered a position in a new location.
- Loss of employment, when alternate local employment was found within three months.
- The property is not suitable for the needs of the person (for example, due to property size and/or family growth).
- Financial difficulties incurred due to the cost of purchasing and retaining the property (for example, higher mortgage repayments due to rising interest rates).
- Off the plan purchases, where minor variations to the plan have been accepted.⁶

Compliance

31. Grants, concessions, and exemptions are generally granted prospectively in anticipation that people will comply with any principal place of residence requirements.

32. In relation to the duty concessions and FHOG, the ACT Revenue Office will check to establish whether residence and other requirements have been met. A person bears the onus of proving residency to the Commissioner for ACT Revenue on the balance of probability. Mere assertion of residency is not sufficient, and a person may be required to support a claim of residency by providing documentary evidence of occupancy for the relevant period.

SIGNED

Kim Salisbury
Commissioner for ACT Revenue

11 September 2023

⁵ Note, this only applies if the transfer has been employer-driven and is unexpected, not where an application for a job has been approved or that movements are common in your chosen career.

⁶ Off the plan purchases have sunset clauses, which enable a buyer to withdraw from a property purchase should the property no longer meet an individual's requirements.

Legislative provisions⁷

Acts

Duties Act 1999

Under section 72 of the *Duties Act 1999*, no duty is payable in relation to a transfer from one partner to another of an interest in both partners' principal place of residence. The *Duties Act 1999* defines a partner as including a person's spouse or someone with whom the person has a domestic relationship.

First Home Owner Grant Act 2000

Section 12 of the *First Home Owner Grant Act 2000* requires that, to be eligible for the First Home Owner Grant, an applicant is required to occupy the home to which the grant application relates as their principal place of residence. The occupation must be for a continuous period of at least one year, starting within one year after completion of the eligible transaction. The grant is paid prospectively in anticipation of compliance with these requirements. The First Home Owner Grant is unavailable for applicants who enter into a transaction on or after 1 July 2019.

Land Tax Act 2004

Under section 11A of the *Land Tax Act 2004* a parcel of residential land is exempt from land tax for a quarter if, on the first day of the quarter, the land is owned by someone other than a corporation or trustee, and it is used and occupied by one or more owners of the parcel as their principal place of residence.

If at least one owner satisfies this requirement, the principal place of residence exemption will apply for the benefit of all owners (even those with other principal places of residence). However, if two owners are in a domestic partnership, only one parcel of land owned by both partners is eligible for exemption under section 11A. (The partners may nominate which parcel of land receives the exemption.)

Payroll Tax Act 2011

Under section 11A of the *Payroll Tax Act 2011*, the jurisdiction in which an employee is based is the jurisdiction in which their principal place of residence is located. If the employee has no principal place of residence, the employee is taken not to be based in an Australian jurisdiction.

Rates Act 2004

Under sections 63, 64 and schedule 1, section 3.2 of the *Rates Act 2004*, rebates of general rates and Fire and Emergency Services Levy may be granted to certain eligible people (for example, pensioners) for their principal place of residence.

Instruments

Disability Duty Concession Scheme; Home Buyer Concession Scheme; Off the Plan Unit Duty Concession Scheme; Owner Occupier Duty and Pensioner Duty Concession Scheme

To be eligible for these schemes, a person acquiring a home or vacant land must occupy the property as their principal place of residence for a continuous period of at least one year, starting within one year after the date of completion of the transaction (for a home) or the date that a Certificate of Occupancy and Use (COU) has been issued (for vacant land).

⁷ All ACT tax laws are available on the [ACT Legislation Register](#). The ACT Revenue Office website also maintains a listing of instruments related to tax laws, see [Disallowable Instruments | ACT Revenue Office - Website](#).