

REVENUE CIRCULAR GEN011

Principal Place of Residence

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Introduction

The concept of a principal place of residence is important to several taxes and schemes run by the ACT Revenue Office. A person may be required to occupy and use a home as a principal place of residence to be eligible for certain tax exemptions and other benefits.

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* (FHOG Act);
- the Home Buyer Concession Scheme (HBCS), and similar home buyer assistance schemes with principal place of residence requirements;
- the *Land Tax Act 2004*;
- the *Payroll Tax Act 2011*;
- the *Rates Act 2004*; and
- the *Taxation Administration Act 1999*.

The appendix to this circular contains a list of provisions referring to a principal place of residence.

Summary

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.

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.

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, but intention is neither determinative of the issue, nor is it a dominant consideration.

Relevant person

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 FHOG and HBCS, 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.
- In relation to land tax, it is the owner of the property.

Unless permitted by the relevant law, a parcel of land cannot be occupied by a person on someone else's behalf. Under some relevant laws, however, exemptions may be available if a person cannot occupy a home themselves.

Meaning of occupy

Occupy ordinarily means to inhabit, live in or reside at a home. The *Macquarie Dictionary* defines occupy as '*to be resident or established in (a place) as its tenant*'.

A home is considered occupied by a person if the person actively uses and lives in the home, with a degree of permanence, for the purpose of using it as a residence. Actual occupation is required, not merely an intention to occupy.

A home that is never occupied by a person cannot be that person's principal place of residence. However, exemptions and discretions may be available under the relevant laws.

Occupancy factors

The ACT Revenue Office will consider the following factors in determining whether a person has occupied a place of residence. If the person has multiple places of residence these factors also help to establish which residence has been occupied as the person's principal place of residence.

- **Address**
The person's address on the electoral roll, mailing address, and other addresses they use—especially for driver licence or vehicle registration purposes.

- **Family**
Where the person's immediate family members live.
- **Finance and insurance**
For example, whether the home is financed under an owner-occupier loan or investment loan.
- **Intention**
Whether the person intends the home to be their principal place of residence, measured objectively.
- **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 (e.g. family members, guests, boarders or lodgers). However, the ACT Revenue Office will presume that a rented home is not its landlord's principal place of residence.
- **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.
- **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 occupation of the home.

Place of residence

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 being constructed on the land:

- A recipient of the FHOG or HBCS is not required to begin occupation of a parcel containing a new home until the Certificate of Occupancy and Use has been issued.
- A parcel of land can be exempted from land tax if it is unfit for occupation as a place of residence, due to construction or substantial renovation, until the Certificate of Occupancy and Use has been issued or the parcel has become fit for occupation.

In relation to land tax, a parcel of land with multiple dwellings can contain multiple places of residence. 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 principal place of residence

The ordinary meaning of 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*).

Most people only occupy one residence at a time. In such cases, the currently occupied residence is the principal place of residence.

If a person has multiple places of residence, the person's principal place of residence is determined as a question of fact, having regard to all the circumstances, including consideration of the occupancy factors as they relate to each property. A person cannot have more than one principal place of residence at a time.

Absence from a principal place of residence

A home does not 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 hospital, caring for a relative or friend, or travelling for work.

The ACT Revenue Office will consider whether the home continues to be occupied as the person's '*settled or usual home*' in spite of the absence. Factors that may be taken into account 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 (e.g. health reasons);
- the expected length and nature of the absence;
- where the person is living or staying during the absence;
- how the home is being used during the absence; and
- whether the person clearly intends to, or has, resumed living at the home after the absence.

Exemptions and discretions may be available under relevant laws.

In relation to the FHOG and HBCS, the Commissioner for ACT Revenue may approve exemptions or extensions of time in relation to a person's residence requirements. Exemptions or extensions can only be granted within 18 months after completion of an eligible transaction or completion of construction of a home (whichever is relevant).

In relation to land tax, if the person's intention to resume occupying a principal place of residence changes, the Commissioner for ACT Revenue must be notified within 30 days as land tax may become payable.

Compliance

Grants, concessions and exemptions are generally granted prospectively in anticipation that people will comply with any principal place of residence requirements. In relation to the FHOG and HBCS, 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
6 July 2018

Appendix: Legislative provisions

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.

Home Buyer Concession Scheme

To be eligible for the Home Buyer Concession scheme, a person acquiring a new 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 completion of the transaction (for a new home) or completion of construction of the home (for vacant land).

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, 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.)

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.

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 (e.g. pensioners) for their principal place of residence.