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Mr Peter Mulherin  
Land Covenantors Victoria

**By email only: viclandcovenantors@gmail.com**

Dear Mr Mulherin

**Land Covenantors Victoria (LCV)  
Queries relating to land tax on properties with conservation covenants**

I refer to your email dated 18 July 2022 and attached document, by which you made several queries in relation to the assessment of land tax on covenanted properties.

Please find attached our document addressing the queries raised in your correspondence.

If you have any queries, please contact me. Alternatively if there is a specific factual situation that requires a private ruling (see Revenue Ruling GEN-009v3<sup>1</sup> - for more information on private rulings), please contact our Technical Advice and Review Team.

Yours sincerely

Andrew Hosken  
Branch Manager

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<sup>1</sup> <https://www.sro.vic.gov.au/legislation/general-information-private-rulings-0>

## Land tax generally

The *Land Tax Act 2005 (LTA)* imposes land tax on all Victorian land (that in aggregate is above the taxable threshold) each year unless an exemption applies. An exemption applies for land used and occupied as your principal place of residence (**PPR**) and for land used for primary production. The eligibility criteria for the primary production exemption depends upon the location of the land.

- For land located outside greater Melbourne or wholly or partly within greater Melbourne, but not in an urban zone, an exemption applies if the land is ***used primarily for primary production***.
- For land located wholly or partly within greater Melbourne, that is wholly or partly in an urban zone, an exemption applies if the land is ***used solely or primarily for a business of primary production***. Further, the owner(s) of the land must also satisfy the ownership criteria, which broadly requires the owner (or where the land is owned by a company the shareholders, or where the land is owned by a trustee of a trust, the beneficiaries) to be engaged in a substantially full-time capacity in the business of primary production conducted on the land.

Primary production is defined in section 64(1) of the LTA. It includes:

- cultivation of the land for the purpose of selling the produce of cultivation (whether in a natural, processed or converted state);
- the maintenance of animals or poultry for the purpose of selling them or their natural increase or bodily produce; and
- the keeping of bees for the purpose of selling their honey.

Further information about land tax and the PPR and primary production exemption is available on the State Revenue Office website.

## The questions posed by Land Covenantors Victoria

Land Covenantors Victoria (**LCV**) have posed have asked a number of questions about the application of land tax on land with covenants in place. The questions are addressed in turn below.

Please note that the responses provided are relatively generic as the questions were broad and did not provide much detail. If a more detailed response to a particular situation is required via in the form of a private ruling, all the material facts and relevant documents in respect of the situation will need to be provided (See Revenue Ruling GEN-009v3<sup>2</sup> on our website for more information on private rulings).

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<sup>2</sup> <https://www.sro.vic.gov.au/legislation/general-information-private-rulings-0>

## 1. Definition of primary production<sup>3</sup>

### 1.1. Is seed collection/harvesting for sale considered primarily production? Seed collection can be from trees, shrubs, herbs and can also be from harvesting seed from grasses. Plants may be naturally occurring or planted specifically for the purpose of seed collection (native seed orchard or revegetation)

Collecting or harvesting seeds for sale may be considered primary production if the activities associated with the seed collection amounts to cultivation of the land.

Cultivation refers to the process of production from the soil and to all aspects of husbandry. Land may be cultivated by breaking up the soil, by ploughing, or by activities that may or may not be associated with the breaking up of the soil e.g. making improvements to the water supply to plants, fertilizing, spraying plants with insecticides and fungicides, and establishing wind breaks.

Simply collecting the seeds of naturally growing plants without any cultivation activities is not considered primary production.

### 1.2. Is “crash-grazing” considered primary production? Crash-grazing involves the use of high stocking rates of sheep or cattle for a short-period of time to reduce biomass. Crash grazing is often used to manage weeds on conservation properties. Where crash-grazing is included on a property management plan, would the property be considered primary production and exempt from land tax? What is the minimum duration or frequency that land would need to be crash-grazed from a land tax exemption perspective? One week per year?

Crash grazing is unlikely to be considered production because the primary production exemption requires the land to be used *primarily* for primary production i.e. primarily for the maintenance of animals for the purpose of selling them or their natural increase or bodily produce.

The short-term nature of crash grazing is unlikely to be regarded as the primary use of the land.

To determine whether land is used *primarily* for primary production, various factors are taken into account, including the actual intensity of the primary production activities compared to the potential intensity of that use or capacity of the land, the scale, extent and intensity of each use and the length of time that each use has been conducted on the land. There is no minimum duration or frequency that land would need to be crash-grazed. However, using the land for crash grazing one week per year would not be regarded as used primarily for primary production.

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<sup>3</sup> The responses to these questions assume that where the land is located wholly or partly in greater Melbourne and is wholly or partly in an urban zone, the activities constitute a business and that the owners satisfy the ownership requirements.

**1.3. Is the cultivation of native vegetation through revegetation (planting tubestock and direct seeding) considered primary production? Carbon and biodiversity markets are developing rapidly. Revegetation underway now will likely be eligible for future payments and therefore income in these markets. There is both the purpose and prospect of profit, repetition and regularity of action, and revegetation is carried on in a business-like manner utilising significant knowledge and skill.**

Cultivation of native vegetation through revegetation is not considered primary production because the cultivation in this case is not for the purpose of selling the produce of that cultivation.

**1.4. Is the keeping of bees on or adjoining a conservation property considered primary production? Regardless of whether the bees are housed on or adjoining the conservation property, they will forage within an approximately 5km area, thus using the conservation property. Two scenarios were presented:**

**1.4.1. Our bees produce honey for sale.**

**1.4.2. We receive payment from those involved in the commercial provision of pollination services to horticultural industries such as almonds. Bees are typically agisted on an annual return interval for a period of one month.**

Land used primarily for the keeping of bees for the purpose of selling their honey is primary production.

Land adjoining the land where the bees are housed is not considered primary production because the adjoining land is not used primarily for the keeping of bees. However, where the land on which the bees are kept and the adjoining land are owned by the same person, the lands could be regarded as a parcel and the parcel may be considered primary production if the parcel is used primarily for the keeping of bees for the purpose of selling their honey. This turns on whether the parcel is considered to be used primarily for the keeping of bees.

**1.5. Is the production of timber or firewood for sale considered primary production? Conservation properties sometimes employ “ecological thinning” of trees to forma multi-aged stand and allow larger trees to develop for habitat.**

Production of timber or firewood for sale may be considered primary production if the activities associated with the timber production/firewood amounts to cultivation of the land.

Cultivation may occur if work is carried out for the protection and improvement of the growing timber, including maintenance of firebreaks, removal of undergrowth or thinning of the trees to allow healthier growth of the remaining timber.

**1.6. Is harvesting bushtucker for sale considered primary production? Bushtucker involves the collection of fruits, seeds, leaves or roots from a variety of plants that may be naturally occurring or grown for that purpose.**

Harvesting bushtucker for sale may be considered production if the activities associated with the harvesting of the bushtucker amount to cultivation of the land.

However, simply collecting the fruits, seeds, leaves or roots of naturally growing plants without any cultivation activities is not considered primary production.

**2. Portion of property in 'exempt' land category: How is land tax applied when part of the property is exempt from land tax?**

A partial exemption may apply for land located outside greater Melbourne, if only part of the land is used for primary production.

For land located wholly or partly within greater Melbourne, a partial exemption may apply for a part of the land if that part is:

- occupied separately from, or is obviously adapted to being occupied separately from, other land in the parcel; and
- is used primarily for primary production<sup>4</sup>.

**2.1. The land I own is 240 acres valued at around \$500,000 plus the capital improved value of another \$180,000 on top of that. 100 acres of the 240-acre title is under TfN protection, the remainder is primary production land.**

In this scenario, for land located outside greater Melbourne, the land is likely to be exempt fully as primary production land on the basis it is used primarily for primary production i.e. 140 of the 240 acres are used for primary production. To determine whether land is used *primarily* for primary production, various factors are taken into account, including the area of the land used for the primary production activities.

For land located wholly or partially within greater Melbourne, the part of the land under the covenant protection may be regarded as a separate parcel and hence a partial exemption may only apply for the part of the land used for primary production.

**2.2. The site value of my land according to my rates notice is \$800,000. I do not live on the property. The property is on three adjoining titles, one of which is used for primary production (grazing), one is covenanted entirely, and one is covenanted in part. The partially covenanted land is not used for primary production. How is the site value attributed to "exempt" primary production land, versus non-exempt covenanted or non-covenanted land?**

The land used for grazing is eligible for exemption as primary production land.

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<sup>4</sup> For land wholly or partly in an urban zone, the part of the land must be used solely or primarily for the business of primary production and the owner must meet the ownership criteria.

The adjoining lands that are covenanted entirely and covenanted in part are not eligible for exemption because neither is used for primary production.

Where one valuation has been provided for all three titles and it is necessary for the Commissioner of State Revenue (**Commissioner**) to determine the taxable value of a part of the land. The LTA provides a formula for determining the taxable value of the taxable part of the land (see section 22 of the LTA). The formula is based on the area of the part of the land relative to the total area. Hence, if the area of the taxable lands represents 50% of the total area, then 50% of the valuation is attributed to the taxable land.

**2.3. The land I own is 260 acres valued at \$450,000 plus the capital improved value of another \$100,000. I live on 30 acres (one title) and across the road (another title) is the other 230 acres. Both titles are on the same property, linked to the same rates notice. 100 acres of the 230 acre title is under TfN protection. Is the entire 260 acres considered my principle place of residence? How is this apportioned?**

The entire 260 acres across two titles is not considered to be your PPR. For the PPR exemption, each title is considered separately. The 30 acre land on one title used is eligible for exemption as your PPR.

The 230 acre land on the other title may be eligible for exemption as land contiguous to the PPR land if both the PPR land and contiguous land are wholly in regional Victoria and if the contiguous land enhances the PPR land and is used solely for the private benefit and enjoyment of the owner of the PPR land.

Alternatively, the 230 acre land may be eligible for exemption if it is used primarily for primary production. If part of the land is used for primary production, the land may be eligible for a partial exemption.

### **3. Valuation of covenanted properties**

**3.1. Does the valuation of covenanted properties account for the potential value reduction of having a binding covenant in place? How is this value-reduction calculated?**

Land valuations in Victoria for land tax (as well as for council rates and fire services property levy) are made annually in accordance with the *Valuation of Land Act 1960*. These valuations are undertaken, or overseen, by the Valuer-General. Victorian land is required to be valued each year as at 1 January. Supplementary valuations may be conducted between the annual valuations.

The types of values undertaken include site value (**SV**) (i.e. value of the land with no improvements, such as buildings), capital improved value (**CIV**) (i.e. value of the land including all improvements) and net annual value (generally 5% of the CIV).

Land tax is assessed on the SV of the land and is based on the SV made on 1 January of the previous calendar year. Therefore, the value used for the 2022 land tax assessment is the SV made as at 1 January 2021.

The State Revenue Office is not involved in the valuation process. Questions regarding land valuations should be directed to the Valuer-General.

If you disagree with the site valuation of your land listed in the land tax assessment, you may lodge an objection within two months of receiving the assessment. Our website provides more information about objections to the site valuations.<sup>5</sup> Your objection is forwarded to the Valuer-General for determination.

### **3.2. How can we as the landowners understand if the value-reduction has been applied to our covenanted land and by how much?**

As mentioned above, questions regarding land valuations should be directed to the Valuer-General.

### **4. Reasoning behind application of land tax to covenanted properties**

LCV have posed various questions in relation to the policy intentions of land tax being imposed on covenanted properties. The following response is provided for all the questions collectively.

As mentioned above, land tax applies to all land in Victoria unless an exemption applies. ~~The LTA does not provide an exemption for land on which a covenant is in place.~~

The SRO can provide information about how the LTA applies to certain situations. The role of the SRO is to administer Victoria's taxation legislation and collect taxes, duties, and levies. It is not the SRO's role to set land tax policy.

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<sup>5</sup> <https://www.sro.vic.gov.au/land-valuations>