



Land Tax Information for Trustees and Unit Holders of Unit Trusts

High Court decision on taxing of unit trusts

A decision of the High Court of Australia on 28 September 2005, concerning the taxing of unit trusts under the *Victorian Land Tax Act 1958*, ruled that holders of units in a Victorian Unit Trust are not the owners of the land held by the trust.

Where a trust deed provides unit holders with an interest in the assets of the trust as a whole, it does not give any ownership interest in any particular asset of the unit trust. Therefore, the unit holder does not own the land held by the trust. Instead, the trustee is considered the sole legal and beneficial owner of the trust assets including land, which means the trust is a special trust.

As a result of this decision, most unit trusts in NSW from the 2006 tax year are a 'special trust' under section 3A of the *NSW Land Tax Management Act 1956* (the Act). Special trusts are not entitled to receive the threshold.

Concessions for family unit trusts

In response to the High Court decision, provisions were made so that certain family unit trusts are assessed as fixed trusts from the 2006 tax year if the following criteria are met:

1. The Chief Commissioner is satisfied that at least 95 per cent of units in the unit trust were owned by members of the same family group at midnight, on 31 December 2005. A family group consists of persons:
 - who are related to each other by blood, as well as adopted children and their spouses.
 - If any of the units are owned by a trustee, the ultimate beneficiary must also be a member of the same family group. This excludes discretionary trusts.

Note: if a person holds units as trustee (e.g. as trustee of a complying superannuation trust) and the members of the trust are all members of the same family group, the units will be regarded as being owned by members of the same family group for the purposes of determining whether the 95 per cent test is satisfied.
2. The trust owned land with a combined taxable value of less than \$1 million at midnight, 31 December 2005.
3. If the trust purchased additional land after midnight 31 December 2005, the combined taxable value of land owned must not exceed \$1 million. If the total taxable value of the land exceeds \$1 million after the acquisition of additional land, the trust will be assessed as a special trust, for the tax year following the purchase.

MORE INFORMATION



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4. The unit holders are entitled to a fixed proportion of any distribution of income or capital of the trust made by the trustee, based on the proportion of income or capital units which each person owned in the trust.
5. If any new units are issued, redeemed or cancelled, the trust will continue to be assessed as a fixed trust, provided the proportion of units owned by members of the same family group remains at least 95 per cent. The trust must meet this requirement at all times or it will become liable as a 'special trust' for the following land tax year.

Unit Trusts that are not a family unit trust or a fixed trust

If a unit trust is not a family unit trust or a 'fixed trust' under section 3A of the Act, the trust deed can be amended to introduce the 'relevant criteria' referred to below. It will then be assessed as a fixed trust for the following tax year and receive the benefit of the threshold.

First of all, the trust deed must provide that unit holders are entitled to a fixed proportion of income and capital distribution from the trust.

The trust deed must also satisfy the following 'relevant criteria':

1. the unit holders are presently entitled to all the income of the trust, after the payment of the expenses properly incurred by the trustee in the authorised administration of the trust
2. the unit holders are presently entitled to the capital of the trust and may require the trustee to wind up the trust and distribute the trust property or the net proceeds of the trust
3. these entitlements cannot be removed, restricted or otherwise affected by the exercise of any discretion or by a failure to exercise any discretion, conferred on a person by the trust deed.

Newly created unit trusts

To receive the threshold for the tax year which follows the creation of a new unit trust owning taxable land, the trust deed must provide that unit holders are entitled to a fixed proportion of income and capital distribution from the trust and it must satisfy the 'relevant criteria'.

How does this affect the unit holders of a family unit trust or a fixed trust?

If a unit holder in a family unit trust or a fixed trust owns other taxable land, or is a special trust, they are assessed on the combined value of their interest of the land held in the trust and any other taxable land owned. They may be entitled to a secondary deduction to prevent double taxation.

Objections and appeal rights

The *Taxation Administration Act 1996* allows clients who are dissatisfied with an assessment or a decision of the Chief Commissioner to object. An objection must be made in writing and within 60 days of the issue of the assessment or decision. The objection must include your detailed reasons for objecting.