



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 to be 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, from the 2006 tax year, nearly all unit trusts in NSW are liable to be assessed as 'special trusts' under section 3A of the *NSW Land Tax Management Act 1956*. Special trusts are assessed at the rate of 1.7 per cent on the combined taxable value of the land and are not entitled to receive the 2006 threshold of \$352 000.

Concessions for family unit trusts

In response to the High Court decision, the NSW Government has announced that certain family unit trusts will be assessed as a fixed trust for the 2006 and following tax years, provided the following criteria are met:

1. The Chief Commissioner is satisfied that at least 95 per cent of units in the trust are owned by members of the same family group at midnight, on 31 December 2005.
2. 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 (eg 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.
3. The trust owned land with a combined taxable value of no more than \$1 million at midnight, 31 December 2005.
4. If the trust purchases 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.
5. 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.



MORE INFORMATION



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Help in community languages is available.

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6. If any unit or 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.

Members of the same family group

A family group consists of people who are related to each other by blood, as well as adopted children and their spouses.

A person is the spouse of another member if they are:

- legally married to each other
- living together in a de facto relationship within the meaning of the *Property Relationship Act 1984*.

Trusts that do not meet the criteria for families

An opportunity is also available to allow unit trusts that do not meet the family criteria to change their trust deed to become a fixed trust under the *Land Tax Management Act 1956*. If the trust deed is amended before midnight, 31 December 2007 to satisfy the criteria, the trust will be assessed or reassessed for the 2006 and 2007 tax years as a fixed trust. These changes to the trust deed will be exempt from stamp duty, provided the changes do not directly or indirectly result in a change in the proportion of any capital or income distribution to which any unit holder is entitled.

If the unit trust is not a fixed trust and the trust wishes to take advantage of this concession, consult with adviser/s about the necessary changes to the trust deed. 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 provide that:

1. The unit holders are presently entitled to all of 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 may require the trustee to wind up the trust and distribute the trust property or the net proceeds of the trust property.

How the concessions affect unit holders?

If a unit holder in a unit trust also owns taxable interests in other land, the unit holder will be assessed separately on the combined value of their interest in the unit trust and other land for the 2006 tax year.

What happens next?

If the trust has already been assessed or is liable to be assessed as a 'special trust' for the 2006 land tax year the Office of State Revenue (OSR) will send you a unit trust declaration form. If you are claiming a concession, complete the form and return it to OSR. If the trust qualifies for the concession, it will be assessed and issued a new 2006 land tax assessment. You will also be notified if you do not qualify for the concession.

Objections and appeal rights

The *Taxation Administration Act 1996* allows clients who are dissatisfied with an assessment or with 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.

An objection can be lodged by email: objections@osr.nsw.gov.au, by post or fax.

Review Branch

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