



Land Tax – Trusts

For owners where land is held under a trust

What is a trust?

A trust is an arrangement whereby property (including real, tangible and intangible) is managed by one person (or persons, or organisations) for the benefit of another. The trustees hold legal title to the trust property, but are obliged to hold the property for the benefit of one or more individuals or organisations (the beneficiary). The trustees owe a fiduciary duty to the beneficiaries, who are the 'beneficial' owners of the trust property.

What should I do if land is owned by a trust?

If your liability to land tax is affected by the existence of a trust, you must advise the Office of State Revenue by:

- using our online services at www.osr.nsw.gov.au
- downloading a land tax registration form
- contacting us on 1300 139 816.

If you believe the trust is entitled to receive the benefit of the land tax threshold (i.e. the trust is not a special trust), you will need to supply a copy of the stamped deed of trust or probate of a will and the beneficiary details (e.g. name, address and percentage interest. This information should be provided when you register for land tax).

How is a trust defined for land tax purposes?

What land tax rates apply?

For land tax purposes, trusts can be divided into seven categories:

- Special trusts
- Fixed trusts
- Superannuation trusts
- Trusts created by a will
- Family unit trusts
- Concessional trusts
- Charitable trusts.

A **special trust** is a trust where the trustee is the only person who meets the definition of 'owner' for land tax purposes, and the beneficiaries are not considered to be owners. If a trust does not meet one of the following trust definitions, it is a special trust. Examples of special trusts include most family trusts, discretionary trusts, most unit trusts, and some trusts created by a will. The land tax threshold **does not apply** to special trusts. (Special trust has the meaning given by Section 3A of the *Land Tax Management Act, 1956* (the Act)).

MORE INFORMATION



www.osr.nsw.gov.au



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Phone enquiries
8.30 am – 5.00 pm, Mon. to Fri.

*Interstate clients please call (02) 9689 6200.
Help in community languages is available.

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The following trusts do receive the land tax threshold:

A **fixed trust** is a trust where the beneficiaries are considered to be owners of the land at the taxing date of midnight on 31 December prior to the tax year. This is because they are presently entitled to the income and capital of the trust and these entitlements cannot be varied by the trustee in any way. Fixed trusts include some unit trusts and bare trusts. (Fixed trust has the meanings given by Section 3A (2) and Sections (3A) and (3B) of the Act).

A **superannuation trust** is a complying superannuation fund, a complying approved deposit fund or a pooled superannuation trust under Sections 42, 43 and 44 respectively of the *Superannuation Industry (Supervision) Act 1993*. If a superannuation trust is not a complying or pooled trust and is not a fixed trust, it is a special trust. (Section 3A (5) of the Act applies).

A **trust created by a will** is entitled to the threshold. However, if the trust is a testamentary discretionary trust, it will become a special trust two years after the date of death of the testator, as approved by the Chief Commissioner. (Section 3A (4) (e) of the Act applies).

A **family unit trust** is a trust that held land at midnight on 31 December 2005 with a taxable value of \$1 000 000 or less, the unit holders have fixed entitlement to income or capital, and 95 per cent or more of the units were family-owned. Certain criteria must be met to continue to qualify as a family unit trust. (Family unit trust has the meaning given by Schedule 1AA (2) of the Act).

A **concessional trust** is a trust where the land in the trust is held for the benefit of a person who is:

- under 18 years of age, or
- subject to a guardianship order under the *Guardianship Act 1987*, or
- in the 'target group' under the *Disability Services Act 1993*
- the principal beneficiary of a special disability trust (within the meaning of section 1209L of the *Social Security Act 1991* of the Commonwealth).

(Concessional trust has the meaning given by Section 3B of the Act).

A **charitable trust**, which includes trusts, is created for the relief of poverty, advancement of education or religion or for the benefit of the community. An application for exemption is available from www.osr.nsw.gov.au

How are unit trusts assessed?

A unit trust may be a special trust, a fixed trust or a family unit trust. To be a fixed trust, certain criteria apply. If these criteria do not apply, the trustee may restructure the trust deed to meet the criteria but the threshold will only apply from the next tax year. An information for trustees factsheet is available from www.osr.nsw.gov.au

If the trust does receive the benefit of the land tax threshold, how does it affect the beneficiaries or unit holders as secondary taxpayers?

If a beneficiary or a unit holder 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.

Interest and penalties

Lodging your registration form after the due date, not supplying full details or not lodging a form at all, is considered a tax default and interest may be charged.

Under the *Taxation Administration Act 1996*, we may impose penalties for providing misleading and/or false information, or for deliberately avoiding our requests for information.