Queensland Government
Treasury

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Public Ruling
Land Tax Act:

PRINCIPAL PLACE OF RESIDENCE DEDUCTION—TRUSTEES

A Public Ruling, when issued, is the published view of the Commissioner on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue/s it addresses. Where a change in legislation or case law (the law) affects the content of a Public Ruling, the change in the law overrides the Public Ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant, subsidy or exemption, as the case may be, in accordance with the law.

What this Ruling is about

1. This Public Ruling clarifies the tax treatment and the availability of the principal place of residence (PPR) deduction for land owned by trustees under ss.11(6D), 11B(3A), 11BA(4) and 11C (the trustee PPR provisions) of the *Land Tax Act 1915* (the Land Tax Act).

2. The extent of the deduction available depends on whether the land is also used for non-PPR purposes. For further information relating to the operation of the PPR deduction please refer to Public Ruling LTA003EA.1 – *The land tax concession for a principal place of residence*.

Ruling and explanation

PPR deduction

3. The trustee PPR provisions of the Land Tax Act provide a deduction for land owned by a trustee where all the beneficiaries of the trust use the land as their PPR.

When is land a PPR?

4. Section 3E of the Act outlines the tests which the Commissioner applies to determine if land is being used as a PPR. For further information relating to s.3E of the Land Tax Act, please refer to Public Ruling LTA003E.1.

Who are beneficiaries?

Definition of beneficiaries

5. Section 3F of the Land Tax Act provides:

(1) Where for the purposes of this Act it is necessary to determine who were the beneficiaries of a trust at midnight on a 30 June—

(a) in the case of a trust other than a discretionary trust—the beneficiaries shall include every person who was a beneficiary of the trust during the period of 12 months immediately preceding that time; or

(b) in the case of a discretionary trust—the beneficiaries shall be those persons in whose favour a power of appointment has been exercised by any person during the period of 12 months immediately preceding that time.

(2) In subsection (1)—

***discretionary trust** means a trust over the property of which any person has a power of appointment.*

(3) In this Act, a reference to a beneficiary of a trust shall be taken to refer to a person entitled to a beneficial interest in land or income derived from land that is subject of the trust.

Discretionary trust – power of appointment

6. For land tax purposes, the beneficiaries of a discretionary trust are any persons in whose favour a power of appointment has been exercised during the 12 months immediately preceding the relevant 30 June.

7. A power of appointment is a power given under a trust authorising some person (usually the trustee) to appoint the income or assets of the trust to certain other persons (the discretionary beneficiaries).

8. To claim a deduction under any of the trustee PPR provisions, the trustee of a discretionary trust must provide the Commissioner with written evidence[1] of all appointments made during the 12 months prior to the relevant 30 June. The trustee must also provide the names and residential addresses of all beneficiaries in whose favour appointments were made at that 30 June.

9. Where the power of appointment has not been exercised during the 12 months prior to the relevant 30 June, the beneficiaries for the purposes of the PPR deduction are the default beneficiaries referred to in the default clause of the trust deed. Where the trust deed contains no express default clause, any class of beneficiary given preference under the deed may be considered to be default beneficiaries.[2]

1 Evidence may include a minute
2 *Re Weekes Settlement* (1897) 1 Ch. 289

<u>Beneficiaries who are trustees or companies</u>

10. Where a person (whether a company or an individual) is a beneficiary of a trust (Trust 1) and that beneficiary holds their interest in the capacity of trustee of another trust (Trust 2), the person is a beneficiary of Trust 1 regardless of the fact that the interest is held as trustee.[3] The beneficiaries of Trust 2 do not have a beneficial interest in the land the subject of Trust 1 and are not beneficiaries of Trust 1 for the purposes of the trustee PPR provisions.

11. If a beneficiary of a trust is a company (whether or not as trustee), the trustee of the trust may not claim the deduction under the trustee PPR provisions as a company can not use land as a PPR[4]. It is not relevant that the company may be a trustee of a sub-trust in which all the beneficiaries are individuals who use the land as their PPR.

Example

Residential land (Black Acre) is owned by X Pty Ltd as trustee for the AB Trust. The sole beneficiary of the AB Trust is Y Pty Ltd. Y Pty Ltd holds its beneficial interest as trustee for the CD Trust. The beneficiaries of the CD Trust are Mr Z and Mrs Z who use Black Acre as their PPR. No deduction under the trustee PPR provisions is allowable for Black Acre as the beneficiary of the trust that holds the land (Y Pty Ltd), being a company, can not use the land as a PPR. Mr and Mrs Z, who use the land as their PPR, are not beneficiaries of the trust that holds the land.

12. In the case of a beneficiary who is an individual trustee, a deduction may be allowable if the conditions of any of the trustee PPR provisions and s.3E of the Land Tax Act are met.

Who may use the land

13. All the beneficiaries of the trust must use the land as their PPR for the trustee to qualify for the deduction.

14. If other persons, who are not beneficiaries of the trust also use the land as their PPR, the deduction may still be allowed. Section 3E of the Land Tax Act states that the land must be 'continuously used for residential purposes by the person (whether alone or with other persons)'.

Use of the land and its impact on the level of PPR deduction available

15. The use of the land for a non-PPR purpose[5] may impact on the level of the PPR deduction available, that is, whether the trustee receives the full PPR deduction or a partial deduction.[6]

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[3] *Softcorp Holdings Pty Ltd v Commissioner of Stamps (SA)* (1987) 87 ATC 4737
[4] *Voss & Securus Pty Ltd v Commissioner of Land Tax (NSW)* (1973) 3 ATR 712
[5] Section 3EA(1)(b) of the Land Tax Act
[6] A full PPR deduction, given where there is no substantial non-PPR purpose, is the amount equivalent to the relevant unimproved value of the land. A partial deduction, given where the land is used for a substantial non-PPR purpose, is the amount equivalent to the proportion of the relevant unimproved value of the land used as a PPR: s.11EA of the Act

16. Where all the beneficiaries of the trust use the land as their PPR:

    (a) a full PPR deduction will be available where the land is used exclusively as a PPR or also for a non-PPR purpose and the non-PPR purpose is not substantial and

    (b) a partial deduction will be available in cases where the land is also used for a substantial non-PPR purpose.

17. For information regarding what constitutes using the land for a PPR purpose or a non-PPR purpose, please refer to Public Rulings LTA003E.1 and LTA003EA.1.

Payments by beneficiaries to the trustee

18. Usually the owner of land would pay normal costs of ownership such as rates and mortgage costs. However, the use of the land by the beneficiaries as their PPR may involve some payment by the beneficiaries to the trustee to cover such costs. In these cases, the payment of monies by the beneficiaries to the trustee may be considered to be ancillary to their use of the land as their PPR and generally will not result in the land being considered to be used for a non-PPR purpose.

19. However, each case will be considered according to its own particular circumstances. If payments made by the beneficiaries to the trustee are in excess of normal costs of ownership, the trustee may be considered to be using the land for a non-PPR purpose and the Commissioner would decide whether the non-PPR purpose is a substantial non-PPR purpose.[7]

Date of effect

20. This Public Ruling takes effect from the date of issue.

David Smith
Commissioner of Land Tax
Date of Issue 24 February 2009

References

Public Ruling	Issued	Dates of effect	
		From	To
LTA000.1.1	24 February 2009	24 February 2009	29 June 2009
Supersedes Practice Direction LT 3.4	18 July 2006	18 July 2006	23 February 2009

[7] For guidance on how the Commissioner decides whether a non-PPR use is substantial refer to paragraphs 10–18 of Public Ruling LTA003EA.1.