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Public Ruling Land Tax Act:

LAND TAX HOME EXEMPTION – TRUSTEES

A Public Ruling, when issued, is the published view of the Commissioner of State Revenue (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 or exemption, as the case may be, in accordance with the law.

What this Ruling is about

1. The *Land Tax Act 2010* (the Land Tax Act) provides that land used as a home is exempt land, subject to certain conditions.¹ In this Public Ruling, the exemption is referred to as the home exemption.
2. The conditions are that the land is—
 - (a) comprised in one parcel² and
 - (b) either—
 - (i) owned by a person, other than a trustee or the manager of a time-sharing scheme, and used as the person's home or
 - (ii) owned by a trustee of a trust, other than an absentee, and used as the home of all beneficiaries of the trust and
 - (c) not used for a non-exempt purpose.
3. This Public Ruling clarifies the operation of the home exemption in relation to a trustee of a trust.
4. The extent of the exemption available depends on whether the land is also used for purposes other than use as a home. For further information relating to the general operation of the home exemption please refer to Public Ruling LTA000.1 – *The land tax exemption for a home*.

¹ Section 41 of the Land Tax Act

² A 'parcel' means an area of land that is the subject of a separate valuation made by the Chief Executive under the *Valuation of Land Act 1944*: Schedule 4 of the Land Tax Act.

Ruling and explanation

Home exemption

5. A home exemption is available in respect of land owned by a trustee, other than an absentee, and used as the home of all the beneficiaries of the trust.

When is land used as a home?

6. Section 36 of the Land Tax Act outlines the tests which the Commissioner applies to determine if land is being used as a home. For further information regarding s.36 of the Land Tax Act, please refer to Public Ruling LTA000.1 – *The land tax exemption for a home*.

Who are beneficiaries?

7. A 'beneficiary' of a trust is defined in Schedule 4 of the Land Tax Act as a person entitled to a beneficial interest in land or income derived from land that is the subject of the trust.
8. For a discretionary trust³, the beneficiaries when a land tax liability arises are the persons in whose favour a power of appointment has been exercised during the 12 month period ending when the liability arises.⁴
9. 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).
10. To claim the home exemption, the trustee of a discretionary trust must provide the Commissioner with written evidence⁵ 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.
11. 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 home exemption 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.⁶

Beneficiaries who are trustees or companies

12. 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.⁷ 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 home exemption.

³ A discretionary trust means a trust over property for which a person has a power of appointment: s.24(2) of the Land Tax Act

⁴ Section 24(1) of the Land Tax Act

⁵ Evidence may include a minute

⁶ *Re Weekes Settlement* (1897) 1 Ch. 289

⁷ *Softcorp Holdings Pty Ltd v Commissioner of Stamps (SA)* (1987) 87 ATC 4737

13. If a beneficiary of a trust is a company (whether or not as trustee), the trustee of the trust is not entitled to the home exemption as a company can not use land as a home⁸. 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 home.

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 home. No home exemption is applicable 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 home. Mr and Mrs Z, who use the land as their home, are not beneficiaries of the trust that holds the land.

14. In the case of a beneficiary who is an individual trustee, an exemption may be allowable if all the conditions of the home exemption are met.

Who may use the land?

15. All the beneficiaries of the trust must use the land as their home for the home exemption to apply.
16. If other persons, who are not beneficiaries of the trust, also use the land as their home, the exemption may still be applicable. Section 36 of the Land Tax Act states that the land may be used by the person, whether alone or with another person.

Use of the land and its impact on the level of home exemption available

17. The use of the land for a purpose other than as a home may impact on the extent of the home exemption available, that is, whether the trustee receives the full home exemption or a partial exemption.⁹
18. Where all the beneficiaries of the trust use the land as their home:
- (a) a full home exemption will be available where the land is used exclusively as a home or also for a purpose that is not considered a non-exempt purpose and
 - (b) a partial home exemption will be available in cases where the land is also used for a non-exempt purpose.
19. For information regarding what constitutes using the land as a home or a non-exempt purpose, please refer to Public Ruling LTA000.1 – *The land tax exemption for a home*.

⁸ *Voss & Securus Pty Ltd v Commissioner of Land Tax (NSW)* (1973) 3 ATR 712

⁹ A full home exemption, given where there is no use of the land that is a non-exempt purpose, is the amount equivalent to the taxable value of the land. A partial exemption, given where the land is used also for a non-exempt purpose, is the proportion of the taxable value of the land used as a person's home.

Payments by beneficiaries to the trustee

20. 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 home 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 home and generally will not result in the land being considered to be used for a non-exempt purpose.
21. 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-exempt purpose.¹⁰

Date of effect

22. This Public Ruling takes effect from the date of issue and applies in respect of land tax liabilities arising on or after 30 June 2010.

David Smith
 Commissioner of State Revenue
 Date of Issue 30 June 2010

References

Public Ruling	Issued	Dates of effect	
		From	To
LTA041.1.1	30 June 2010	30 June 2010	30 June 2011

¹⁰ For guidance on how the Commissioner decides whether the use of the land is a non-exempt purpose refer Public Ruling LTA000.1– *The land tax exemption for a home*.