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Public Ruling Land Tax Act:

JOINT OWNERS—APPLICATION OF SECTION 25(2A)

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. Sections 25(1) and (2) of the *Land Tax Act 1915* (the Land Tax Act) provide that joint owners shall be separately assessed and liable to land tax in respect of their share of the land that they jointly own. Under these provisions the value of each owner's share of the jointly owned land is added to the value of all other land that he or she owns. However, s.25(2A) provides an exception to that rule.
2. Section 25(2A) of the Land Tax Act provides that, in the following circumstances, the Commissioner may, if the Commissioner considers it advisable to do so, make one assessment as if the land were owned by one person:
 - (a) where jointly owned land is of a relevant unimproved value of \$50 000 or more or
 - (b) where there are five or more joint owners of the land.
3. Where the Commissioner exercises the discretion under s.25(2A) of the Land Tax Act to make only one assessment, the proportional assessment on the shares in the land is not added to the individual assessments of the joint owners.
4. Section 25(3) of the Land Tax Act provides that the Commissioner may appoint any of the joint owners to be agent or trustee of the other owners for the purposes of issuing one assessment of land tax. Note that, as the land is deemed to be held in a trust situation, tax rates for trustees apply.

5. The purpose of this Public Ruling is to provide some guidance as to the circumstances under which the Commissioner will exercise the discretion under s.25(2A) of the Land Tax Act to make one assessment as if the land were owned by one person.

Ruling and explanation

6. Although s.25(2A) of the Land Tax Act was originally introduced as an anti-avoidance measure, its application is not limited to circumstances involving tax avoidance¹.
7. The Commissioner's consistent practice is to exercise the discretion under s.25(2A) of the Land Tax Act in the following circumstances:
 - (a) the land is held by five or more persons
 - (b) the land is used predominantly for commercial or investment purposes and
 - (c) having regard to the circumstances, including the factors mentioned in paragraph 8, the Commissioner considers that the ownership of the land would normally be structured through the use of a company, trust or partnership rather than merely as tenants in common or joint tenants (joint owners).
8. In considering whether the ownership of the land would normally be structured through the use of a company, trust or partnership, the Commissioner may consider a number of factors. Such factors include but are not limited to:
 - (a) the purpose for which the land is owned or used
 - (b) the number of joint owners (ie. the larger the number of joint owners, the more likely it is that the Commissioner would consider the arrangement to be an alternative to a company or trust structure)
 - (c) whether the joint ownership arrangement results in treatment of investors involved in the arrangement in a manner that is inconsistent with the treatment of other investors with similar landholdings held through a company, trust or partnership
 - (d) the scale of commercial or investment use, including the nature and size of the property, number of properties owned and level of income from the property
 - (e) the value of the land
 - (f) the circumstances under which the land was acquired by the joint owners and
 - (g) the relationship between the joint owners.
9. The examples provided below provide only basic guidance. The decision in each example relates only to the particular circumstances specified in the example on the basis of there being no other circumstances that the Commissioner considers relevant. Every case is to be considered in accordance with its own particular circumstances.

¹ *SK Property Syndication Ltd v Commissioner of Land Tax (Qld)* 97 ATC 4742

Example 1

A residential property jointly owned by five persons is used solely by the owners and their families as a holiday home.

The Commissioner would not exercise the discretion to apply s.25(2A) of the Land Tax Act, as the arrangement is not one under which the parties are engaging in commercial or investment activities.

Example 2

A residential property, jointly owned by five persons, is rented to third parties.

The Commissioner would generally not exercise the discretion to apply s.25(2A) of the Land Tax Act because, while the owners are using the land for investment purposes, that use is of a relatively small scale and is not necessarily the kind of ownership arrangement that would normally be structured as a company, trust or partnership.

Example 3

Several residential properties or a block of units are jointly owned by the same five persons and used for rental purposes.

The Commissioner may exercise the discretion to apply s.25(2A) of the Land Tax Act as the scale of the commercial/investment activity is significantly greater than the arrangement in Example 2.

Note that, if each of the properties is held by the joint owners in the same shares, one assessment is to issue for all the properties. If each of the properties is held in different shares, separate assessments are to be issued for each property.

Example 4

A substantial commercial property is owned by five persons who are siblings. The property was acquired pursuant to the will of their deceased father.

The owners are using the land for commercial or investment purposes and it would not be uncommon for such a property to be held by a company, trust or partnership. However, the Commissioner would generally not exercise the discretion to apply s.25(2A) of the Land Tax Act. Taking into consideration the close family relationship of the joint owners and that the joint ownership was established under a will, it would not be unusual for the property to be held by joint owners and the Commissioner would not consider this to be the kind of ownership arrangement that would normally be structured as a company, trust or partnership.

Note that if the property is held in a trust created by a will, the land will be assessed under the trust provisions of ss.26A or 26B of the Land Tax Act.

Example 5

A commercial property is owned by five persons and is used for rental/investment purposes. A number of investors were invited to purchase the property due to it being particularly valuable.

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The Commissioner would generally exercise the discretion to apply s.25(2A) of the Land Tax Act. Because of the high value of the property, this is a commercial or investment arrangement of a significant scale. As other investors were sought to enable the purchase of the property, the joint ownership arose under similar circumstances to a syndicate or partnership. Having regard to these circumstances, the Commissioner would consider that the ownership of the land would commonly be structured through the use of a company, trust or partnership.

Date of effect

10. 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
LTA025.1.1	24 February 2009	24 February 2009	29 June 2009
Supersedes Practice Direction LT 16.1	29 September 2005	29 September 2005	23 February 2009