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Public Ruling Land Tax Act:

ASSESSMENT OF DEEDS OF GRANT IN TRUST

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. Generally, the *Land Tax Act 1915* (the Land Tax Act) is applicable to all land alienated from the Crown for an estate in fee simple. Specifically, s.7 of the Land Tax Act provides that the Land Tax Act:
 - (a) applies to all lands within Queensland which have been alienated from the Crown for an estate in fee simple and
 - (b) does not apply to any land in the process of alienation from the Crown or which has been contracted to be so alienated until a deed of grant in fee simple for the same has been issued.
2. The purpose of this Public Ruling is to clarify that land subject to a deed of grant in trust is land which has been alienated from the Crown for an estate in fee simple.

Ruling and explanation

3. A deed of grant in trust is defined in Schedule 6 of the *Land Act 1994* as:
 - (a) land granted in fee simple in trust by the State or
 - (b) the document evidencing the grant, including an indefeasible title under the *Land Title Act 1994*.
4. The provisions of the Land Tax Act apply to such lands.

5. A deed of grant in trust restricts the usage of the land to the specified purpose of the trust. The trustee is entitled to the rents and profits from the land, although such land is to be used for the purposes set out in the trust. The terms of such a trust are not that the land is held for another beneficial owner, but relate to specifying the use of the land.
6. The Crown retains a degree of control over land the subject of a deed of grant in trust in that the land cannot be sold by the trustee, but must revert to the Crown if it is to be sold.
7. Alienation and alienate are words of general import denoting the act of passing or transferring an interest in property.¹ A deed of grant in trust is an instrument which transfers such an interest in property for the purposes of s.7 of the Land Tax Act.
8. A fee simple is simply an interest in a type of property known as land. Estates in fee simple are limited by the nature of the grant from the Crown. For example, a freehold interest is a particular form of an estate in fee simple where the restrictions imposed by the Crown are not as great as other grants, however restrictions may still exist.
9. The fact that the Crown may retain substantial levels of control over land held under a deed of grant in trust is irrelevant to the question of whether s.7 of the Land Tax Act applies to the land.

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
LTA007.1.1	24 February 2009	24 February 2009	29 June 2009
Supersedes Practice Direction LT 5.1	16 February 1999	16 February 1999	23 February 2009

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¹ Peter Butt, Land Law, fifth edition, Law Book Company Limited, 2006, at page 7.