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Public Ruling Land Tax Act:

APPLICATION OF SECTION 3F TO SUPERANNUATION FUNDS

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. Section 12 of the *Land Tax Act 1915* (the Land Tax Act) provides that land tax shall be charged on land as owned at midnight on 30 June immediately preceding the financial year in and for which the tax is levied.
2. This Public Ruling addresses whether:
 - (a) the beneficiaries of superannuation funds are beneficiaries as defined under s.3F of the Land Tax Act and
 - (b) the following deductions can apply to superannuation funds:
 - (i) the deduction for land used solely for the business of agriculture, pasturage or dairy farming¹ (the primary production deduction) and
 - (ii) the deduction for land used as a principal place of residence² (the principal place of residence deduction).

Ruling and explanation

3. In order for there to be a valid trust, generally there must be a trustee, a beneficiary, trust property and a personal obligation annexed to the trust property. Superannuation funds are usually structured as a form of trust relationship.

¹ Sections 11(5) and (6) of the Land Tax Act

² Sections 11(6D), 11B(3A), 11BA(4) and 11C of the Land Tax Act

4. Section 3F(1)(a) of the Land Tax Act applies to superannuation funds which are trusts. This section provides that, for the purposes of determining who were the beneficiaries of a trust as at midnight on 30 June, the beneficiaries shall include every person who was a beneficiary of the trust during the period of 12 months immediately preceding that time.
5. With the exception of members of statutory superannuation funds³, a member of a superannuation fund is a beneficiary for the purposes of s.3F(3) of the Land Tax Act⁴. It is therefore possible for the primary production deduction and the principal place of residence deduction to apply to the trustees of superannuation funds other than statutory superannuation funds (relevant superannuation funds).

Primary production deduction

6. Sections 11(5) and (6) of the Land Tax Act provide a deduction in respect of land used solely for the business of agriculture, pasturage or dairy farming for trustees of trusts where the beneficiaries are individuals (who are not absentees), relevant proprietary companies⁵ or exempt charitable institutions.
7. In applying s.3F(1)(a) of the Land Tax Act to a relevant superannuation fund, a statutory declaration is required from the trustee of the fund declaring that no member of the fund is, or has been, of the type excluded by s.11(5)(b) within the preceding 12 months.

Principal place of residence deduction

8. Sections 11(6D), 11B(3A) and 11BA(4) and 11C provides for a deduction for trustees of trusts where all of the beneficiaries of the trust use that land as their principal place of residence as at midnight 30 June immediately preceding the financial year in and for which the tax is levied.
9. For further information regarding the operation of the principal place of residence deduction to trustees, please refer to Public Ruling LTA000.1—*Principal place of residence deduction—trustees*.

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

³ A scheme constituted by or under a law of the Commonwealth or of a State or Territory.

⁴ A beneficiary of a trust is defined in s.3F(3) to refer to a person entitled to a beneficial interest in land or income derived from land that is the subject of the trust. In *Fouche v The Superannuation Fund Board* (1951 – 1952) 88 CLR 609 Dixon C.J., McTiernan and Fullagar JJ described (at 640) a trust, constituted by statute, of a superannuation fund into which contributions by members of the Tasmanian public service and the State of Tasmania were paid as ‘not a trust for persons but for statutory purposes’. The contributors were said not to have ‘such a beneficial interest in the fund as has an ordinary cestui que trust (beneficiary)’.

⁵ Defined in s.3 of the Land Tax Act

References

Public Ruling	Issued	Dates of effect	
		From	To
LTA003F.1.1	24 February 2009	24 February 2009	29 June 2009
Supersedes Practice Direction LT 6.1	23 July 1999	23 July 1999	23 February 2009