

SOUTH AUSTRALIA



STATE TAXATION OFFICE

Land Tax

Circular No. 107

(Replaces Land Tax Circular No. 3)

TRUSTS

The Land Tax Act, 1936 and the Regulations contain provisions which allow for land which is held by a taxpayer on behalf of a trust to be assessed separately under certain circumstances from other land owned by that taxpayer.

The provisions are contained in Section 15 of the Act and in Regulation 9 of the Regulations.

Section 15(4) of the Land Tax Act, 1936 provides that:-

- where land is held in trust;
- where notice of the trust is given in accordance with the regulations; and
- where the legal owner or the prospective owner is the taxpayer in respect of the land;

the value of the land will not be aggregated for the purpose of calculation of tax with the value of other land owned by that taxpayer unless that other land is held in trust for the same beneficiary.

Section 15(5) of the Land Tax Act, 1936 provides that:-

- Where two or more trustees own land separately, but subject to the same trust, the Commissioner may treat any one or more of those trustees as the owner or owners of all the land subject to that trust.

Regulation 9 of the Regulations to the Land Tax Act, 1936 provides that:-

- (1) For the purpose of Section 15(4) of the Act, notice of a trust must be given to the Commissioner of Land Tax on or before 31 July in the financial year for which the tax is to be calculated.

In any particular case, where notification is not given within the time limit specified by regulation but notice of the trust is given before the close of the financial year for which the tax is to be calculated, the Commissioner should be advised of the reasons for the delay. Consideration will then be given to the possible re-assessment of the land tax liabilities arising in respect of that financial year notwithstanding the delay in giving notice of a trust.

- (2) For the purpose of determining whether land is held in trust and, if so, the nature of that trust, the Commissioner may require the equitable owner or legal owner of the land to produce to the Commissioner for inspection:-
 - (a) all written matter relating to the creation of the trust, and any variation of the trust after its creation; and
 - (b) such other evidence as the Commissioner may require.

The Commissioner may, in order to consider and assess its contents and effect, take possession of and retain for a reasonable period any written matter or other evidence produced under (a) or (b) above.

For the purposes of Section 15 of the Act and Regulation 9:-

"equitable owner" in relation to land means a person who is an owner of the land by virtue of a trust (not being a trust arising by operation of law in consequence of a contract to purchase or acquire an estate or interest in the land);

"legal owner" in relation to land means a person who is an owner of the land by virtue of a vested legal estate or interest in the land;

"prospective owner" in relation to land means a person who is an owner of the land by virtue of being entitled to purchase or acquire an estate or interest in the land.

April, 1994

COMMISSIONER OF STATE TAXATION

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