

Revenue Ruling

Land Tax Act 1936

LT004

LAND HELD ON TRUST - SECTION 13(3)(b)

Preamble

Section 2 of the *Land Tax Act 1936* (the "Act") provides that the "aggregation principle means the principle under which the taxable value of all land owned by the same taxpayer is aggregated for the calculation of land tax".

Section 13(3)(b) of the Act provides:

"(3) *The aggregation principle is subject to the following qualifications:*

(b) subject to subsection (3a), if land is held on trust (other than a trust arising because of a contract to purchase or acquire an estate or interest in the land), notice of the trust is given as required by regulation, and the trustee is the taxpayer for the land, the taxable value of the land will not be aggregated with the taxable value of other land owned by the same taxpayer unless the other land is held in trust for the same beneficiary."

In accordance with Section 26(b) of the *Acts Interpretation Act 1915*, the word 'beneficiary' in Section 13(3)(b) of the Act is to be read as including 'beneficiaries'.

Regulation 7 of the *Land Tax Regulations 2010* provides that notice of trust is to be given in writing to the Commissioner of State Taxation (the "Commissioner") and the Commissioner may require the owner of the land to produce to the Commissioner for inspection all written material relating to the creation of the trust, any variation and such other evidence as the Commissioner may require.

Ruling

This Ruling clarifies RevenueSA's interpretation and application of Section 13(3)(b) of the Act, primarily in respect to discretionary trusts, but equally applicable to fixed trusts, unit trusts, hybrid trusts and self-managed superannuation funds (and any combination of trust(s)/fund(s) that have the same trustee).

Subject to the clarifying points below, where two (or more) parcels of land are held by the same taxpayer on trust for the same beneficiaries - irrespective of whether the parcels are held in trusts established at different times - the land will be aggregated.

For disaggregation to occur, the Commissioner must be satisfied that two or more trusts have different beneficiaries. This will involve considering the broad range of beneficiaries of each trust in order to ascertain whether there are, in fact, different beneficiaries included or excluded under each trust. In that

regard, it is insufficient that the primary/specified beneficiaries are different as, in most cases, family members are inevitably included in the broad range of beneficiaries, resulting in no difference between beneficiaries as a whole. The paramount question is whether the beneficiaries are different between trusts in order to prevent aggregation of land.

Where the terms of a trust differentiate between rights to income and capital and the beneficiaries are different, it is the rights to capital which are relevant and require comparison. This is because land tax is a tax on land (capital) and not income.

The identity of 'default beneficiaries' or 'takers in default' in some trust relationships is also irrelevant for the purposes of a determination under Section 13(3)(b) of the Act, even if the relevant trust provisions apply to capital. The Commissioner will look at the beneficiaries who potentially qualify for a distribution of capital at the discretion of the trustee.

Also irrelevant is the distribution history of the trust. A trustee's historical exercise of its distribution discretion in favour of a particular beneficiary does not alter the ongoing expectancies of each beneficiary within the defined range.

It is impossible here to address the potential permutations of all discretionary trusts and the variances of beneficial rights that may arise under all trust relationships. However, the general premise is that land will be aggregated if the beneficiaries under each trust are the same and the taxpayer is the trustee of each trust.

When applying for disaggregation, the taxpayer (i.e. the owner of the land) should highlight for RevenueSA the differences in capital beneficiaries between trusts.

A determination as to whether two or more parcels of land held in trusts are held on behalf of the same beneficiaries will then be made having regard to the beneficial rights under each trust and any relevant facts and circumstances of the matter.

History

This is the first Revenue Ruling issued on this topic.

Graeme Jackson
COMMISSIONER OF STATE TAXATION

25 February 2016

Further Information

Further information can be obtained from RevenueSA.

Location	RevenueSA State Administration Centre 200 Victoria Square East ADELAIDE SA 5000	Postal	Commissioner of State Taxation RevenueSA GPO Box 1647 ADELAIDE SA 5001	Telephone	(08) 8204 9870
				Email	landtax@sa.gov.au
				Website	www.revenuesa.sa.gov.au



**Government of
South Australia**

Revenue Rulings do not have the force of law.