



Land tax liability when property is held in a trust

Author: [Lauren Weatherley](#)

Email: lauren@ealawyers.com.au

Date: Monday November 2, 2020

Please note that this blog is provided for your general information only concerning land owned by a trust. If you have queries with respect to land tax generally (such as registering for land tax, assessing your liability to pay land tax, understanding your land tax assessment, challenges to land tax assessments, eligibility for land tax exemptions and the like) please refer to the [Revenue NSW website](#) or [contact them directly here](#).

If property is held in a trust, then depending on the type of trust, there are different rules and requirements in respect of how land tax is treated.

What is land tax?

Land tax is a tax that is levied each calendar year in respect of property, commercial or residential that you own in NSW. Any property that you own that is your principal place of residence is exempt from land tax.

For more information on land tax generally please refer to our blog 'Who pays land tax and how is it calculated?'.

Land tax and trusts

When an individual, or potentially a company, is liable for land tax, generally they will receive the benefit of a land tax threshold. There is a general threshold and a premium threshold.

This threshold means that land tax is only paid if the value of your property is over a certain threshold. If the value of the property is over the threshold then the tax is only payable on the difference between the value of the property and the land tax threshold.

Some types of trusts also receive the benefit of the land tax threshold and some do not. Those that are not eligible will be required to pay land tax on the whole value of the property.

Does the property in my trust receive the land tax threshold?

Whether the property receives the land tax threshold depends on the type of trust you set up. There are many different kinds of trusts.

- Special trusts;
- Fixed trusts;
- Superannuation trusts;
- Trusts created by a Will;
- Family unit trusts;
- Concessional trusts; and
- Charitable trusts.

In this article, we will only be looking at special trusts, fixed trusts, superannuation trusts and trusts created by a Will in this blog.

Special trust

If the trust is a "special trust" then it does not receive the benefit of the land tax threshold and land tax is payable on the whole of the land value for the property.

A special trust is taxed at a flat rate of 1.6% for land value. If the land value reaches the premium, then the special trust is taxed at a rate of 2%.

Most family trusts, discretionary trusts, unit trusts and trusts created by a Will are special trusts mainly due to their discretionary nature. A trust is a special trust if:

1. the trust property includes land, and
2. the trustee of the trust is the owner of the legal estate in the land; and
3. the trust is not a fixed trust.

Fixed trust

A fixed trust receives the land tax threshold.

A fixed trust is one which the trust deed specifically provides that the beneficiaries of the trust:

1. are presently entitled to the income of the trust;
2. are presently entitled to the capital of the trust; and
3. the above two entitlements cannot be removed, restricted or affected by any discretion of the decision-maker for the trust.

Superannuation trust

A superannuation trust will generally receive the land tax threshold so long as certain requirements are met.

A trust created by a Will

A trust created by a Will receives the land tax threshold.

However, a discretionary testamentary trust turns into a special trust two years after the date of the death of the testator (the Will-maker).

How can I find out what sort of trust I have?

We can review your Trust Deed and provide advice as to the type of trust and therefore your land tax liability and whether you obtain the benefit of the land tax threshold.

Sometimes we will also work together with your accountant to ensure that we advise you from a legal and taxation perspective in respect of the trust.

Getting help from a Wills and Estates lawyer

If you have any queries specifically concerning your trust and the issue of land tax, we would be pleased to assist.

However, we will not provide free advice by telephone. If you wish us to consider your concerns, then please email us at info@ealawyers.com.au outlining your concerns and provide us with a copy of your Trust Deed, your land tax assessment and a copy of any correspondence recently received from Revenue NSW. We will then provide you with an estimate of our fees to advise you on your matter.

Alternately, you may want to [contact Revenue NSW](#) which has a customer service team who can answer your queries and you may remain anonymous if you wish. Or you may wish to speak with your accountant.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

[02 9997 2111](tel:0299972111)

info@ealawyers.com.au

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact E&A Lawyers.