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Public Ruling Land Tax Act:

BENEFICIARIES OF SUPERANNUATION FUNDS

A public ruling, when issued, is the published view of the Commissioner of State Revenue (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 or exemption, as the case may be, in accordance with the law.

What this ruling is about

1. Section 7 of the *Land Tax Act 2010* (the Land Tax Act) provides that a liability for land tax for a financial year arises at midnight on 30 June immediately preceding the financial year.
2. This public ruling addresses whether:
 - (a) the members of superannuation funds are beneficiaries as defined in Schedule 4 of the Land Tax Act
 - (b) the following exemptions can apply to superannuation funds
 - (i) land or a part of land that is used solely for the business of primary production¹ (the primary production exemption)
 - (ii) land used as a person's home² (the home exemption).

Ruling and explanation

3. Generally, in order for there to be a valid trust, 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.
4. Schedule 4 of the Land Tax Act provides that a beneficiary of a trust means a person entitled to a beneficial interest in land or income derived from land that is the subject of the trust.

¹ Section 53 of the Land Tax Act

² Part 6 Division 1 of the Land Tax Act

5. With the exception of members of statutory superannuation funds³, a member of a superannuation fund is a beneficiary within the definition provided by Schedule 4 of the Land Tax Act.⁴ It is therefore possible for the primary production exemption and the home exemption to apply to the trustees of superannuation funds other than statutory superannuation funds.

Primary production exemption

6. Section 53 of the Land Tax Act provides an exemption in respect of land, or a part of land, that is used solely for the business of primary production—provided the land or the part of land is used for an activity prescribed by regulation that is carried on for the business—for trustees of trusts where all of the beneficiaries of the trust are individuals (who are not trustees or absentees), a relevant proprietary company⁵ or a charitable institution.
7. When claiming the exemption, a statutory declaration is required from the trustee of the fund declaring that all members of the fund are persons mentioned in s.53(2)(a), (c) or (d) of the Land Tax Act.

Home exemption

8. Part 6 Division 1 of the Land Tax Act provides for a home exemption for trustees of trusts—other than an absentee—where all the beneficiaries of the trust use that land as their home.⁶
9. For more information regarding the home exemption for trustees, refer to Public Ruling LTA041.1 *Land tax home exemption—trustees*.

Date of effect

10. This public ruling applies to land tax liabilities arising on or after 30 June 2018.

Elizabeth Goli
Commissioner of State Revenue
Date of issue: 29 June 2018

³ A scheme constituted by or under a law of the Commonwealth or of a state or territory

⁴ In *Fouche v. The Superannuation Fund Board* (1951–1952) 88 CLR 609 Dixon CJ, 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 53(5) of the Land Tax Act

⁶ Public Ruling LTA000.1 *The land tax exemption for a home* provides information on whether land is being used as a home.

References

Public Ruling	Issued	Dates of effect	
		From	To
LTA0002.2	29 June 2018	30 June 2018	Current
LTA000.2.1	30 June 2010	30 June 2010	29 June 2018