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Public Ruling
Land Tax Act:

**FOREIGN COMPANIES AND FOREIGN
TRUSTS—INTERESTS OF FOREIGN
PERSONS AND RELATED PERSONS**

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. This public ruling clarifies how interests of foreign persons and related persons will be considered when determining whether foreign persons have a controlling interest in a corporation or at least 50% of the trust interests in a trust for the purposes of Part 3, Division 4 of the *Land Tax Act 2010* (the Land Tax Act).
2. Each of the following are foreign persons:
 - (a) an individual who is not an Australian citizen or permanent resident¹
 - (b) a foreign company
 - (c) a trustee of a foreign trust.²
3. A 'foreign company' includes a corporation in which foreign persons have a controlling interest.³ A corporation is taken to be a corporation in which foreign persons have a controlling interest if, taking their interests together, one or more persons who are foreign persons or related persons of foreign persons:
 - (a) are in a position to control at least 50% of the voting power in the corporation
 - (b) are in a position to control at least 50% of the potential voting power in the corporationor

¹ Defined in Schedule 4 of the Land Tax Act

² Section 18D of the Land Tax Act

³ Section 18B(1)(b) of the Land Tax Act

- (c) have an interest in at least 50% of the issued shares in the corporation.
4. A trust is a 'foreign trust' if at least 50% of the trust interests in the trust are foreign interests.⁴ A foreign interest is any of the following:
- (a) a trust interest of an individual who is not an Australia citizen or permanent resident
 - (b) a trust interest of a foreign company
 - (c) a trust interest of a trustee of a foreign trust
 - (d) a trust interest held by a related person of a person mentioned in (a) to (c) above.
5. 'Trust interest' is a person's interest as a beneficiary of a trust, other than a life interest. For a discretionary trust, only a taker in default of an appointment by the trustee can have a trust interest. For a superannuation fund, a member of the fund has a trust interest in the fund.⁵
6. Persons are 'related persons' if:
- (a) for individuals—they are members of the same family⁶
 - (b) for an individual and a corporation—the person or member of the person's family is a majority shareholder, director or secretary of the corporation or a related body corporate⁷ of the corporation, or has an interest of 50% or more in it
 - (c) for an individual and a trustee—the person or a related person under another subparagraph is a beneficiary of the trust
 - (d) for corporations—they are related bodies corporate
 - (e) for a corporation and a trustee—the corporation or a related person under another subparagraph is a beneficiary of the trust
 - (f) for trustees—
 - (i) there is a person who is a beneficiary of both trusts
 - or
 - (ii) a person is a beneficiary of 1 trust and a related person under another subparagraph is a beneficiary of the other trust
 - (g) they are partners in a partnership.

⁴ Section 18C of the Land Tax Act

⁵ Section 18F of the Land Tax Act

⁶ See Schedule 4 of the Land Tax Act.

⁷ Section 18E(3) of the Land Tax Act

Ruling and explanation

Interests held by related persons

7. In determining whether foreign persons have a controlling interest in a corporation or at least 50% of the trust interests in a trust, a related person of the foreign person is only relevant if the following apply:
- (a) For a corporation, both the foreign person and the related person each:
 - (i) are in a position to control some voting power in the corporation
 - (ii) are in a position to control some potential voting power in the corporationor
 - (iii) have an interest in the issued shares in the corporation.
 - (b) For a trust, both the foreign person and the related person each have a trust interest in the trust.
8. The mere fact that a person who is in a position to control voting power or potential voting power or has an interest in the issued shares in a corporation is related to a foreign person who has no such control or interest, is not relevant for the purposes of determining whether the corporation is a foreign company. Also, the mere fact that a person who has a trust interest in a trust is related to a foreign person who has no trust interest in the trust, is not relevant for the purposes of determining whether the trust is a foreign trust.

Example 1

AB Co Pty Ltd is incorporated in Australia. A and B are both directors and 50% shareholders of AB Co. A and B are both Australian citizens. B's spouse, C, is a foreign person. C is not in a position to control any voting or potential voting power in the corporation. To determine whether AB Co is a foreign company, it does not matter that C is a foreign person because C does not have any control or interest in AB Co, in the relevant sense. Based on these facts, AB Co will not be a foreign company.

Example 2

DE Co Pty Ltd is incorporated in Australia. The shareholders of DE Co are D (30%); D's spouse, E (30%); and F (40%). D and F are Australian citizens. E is a foreign individual. F is not a related person of D or E. In determining whether DE Co is a foreign company, D and E's interests will be considered together (60%) because D and E are related persons and both are shareholders of the corporation. The company is considered to be foreign controlled, and therefore a foreign company.

Example 3

F, G and H are siblings and are all Australian citizens. They collectively own 100% of the units in FGH Trust. Their mother is a foreign person, but she has no trust interest in the Trust. FGH trust is not a foreign trust.

Interests held by unrelated foreign persons

9. In determining whether foreign persons have a controlling interest in a corporation or at least 50% of the trust interests in a trust, the interests of all foreign persons will be aggregated, regardless of whether the foreign persons are related persons.

Example 4

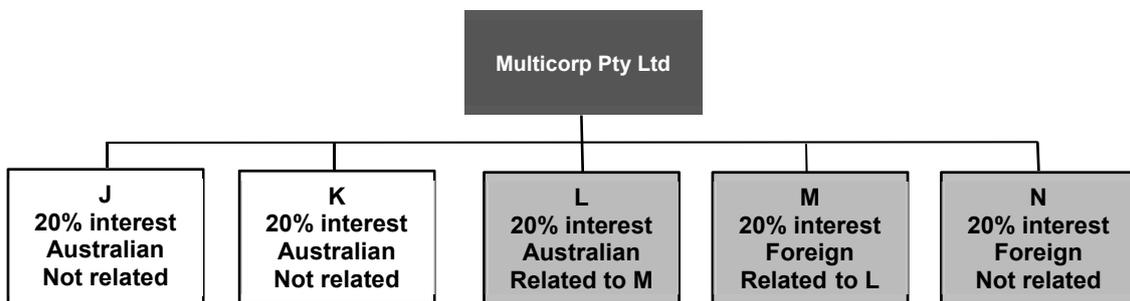
X Co Pty Ltd (X Co) is the trustee of the X Unit Trust. U, V and W hold units in the following proportions in X Unit Trust respectively: 35%, 40% and 25%. U and V are unrelated foreign persons; whereas W is an Australian citizen, unrelated to either U or V. The X Unit Trust is a foreign trust because at least 50% of the trust interests in the trust are foreign interests (U and V collectively holding 75% of the interests in the trust).

Composite scenarios

10. In some circumstances there may be a combination of the scenarios outlined above.

Example 5

J, K, L, M and N are all 20% shareholders in Multicorp Pty Ltd. J, K and L are Australian. M and N are foreign, but unrelated to each other. L is related to M. J, K and N are not related to any other shareholders. Multicorp Pty Ltd is a foreign company because the interests of L (related to a foreign person), M (foreign person) and N (foreign person) total 60%.



Together form 60% interest—therefore a foreign company

Discretionary trusts

11. A discretionary trust will not necessarily be a foreign trust merely because one of its default beneficiaries is a foreign person.
12. Whether a discretionary trust with a foreign person as a default beneficiary is a foreign trust will depend on the facts and circumstances of each matter. The Commissioner will consider the likelihood of distribution to a foreign person, taking into account the terms of the trust deed concerning any priority or proportion for sharing between default beneficiaries.

Date of effect

13. This public ruling takes effect from 30 June 2019.

Elizabeth Goli
Commissioner of State Revenue
Date of issue: 1 July 2019

References

Public Ruling	Issued	Dates of effect	
		From	To
LTA000.3.1	1 July 2019	30 June 2019	Current