

Contents	Page
What this Ruling is about	1
Ruling and explanation	2
Date of effect	4
References	4

Public Ruling Land Tax Act:

ASSESSMENT OF TRUSTEES UNDER SECTIONS 20 AND 22A OF THE *LAND TAX ACT 2010*

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. A trust relationship may be created in a number of ways. The most common is an express trust created by a written declaration of trust. However, a trust relationship may be created in other ways. Where land is registered in the name of a person other than the beneficial owner, a fiduciary relationship arises. If no document or oral declaration sets out that relationship, a trust by implication arises.
2. For land tax purposes, a trustee includes a person administering or controlling land affected by an express or implied trust or acting in a fiduciary capacity or possessing, controlling or managing the land of a person under a legal or other disability.¹
3. Section 20(1) of the *Land Tax Act 2010* (the Land Tax Act) provides that the liability for land tax of a taxpayer who is a trustee of a trust must be separately assessed on the taxable land that is subject to the trust, as if that land were the only land owned by the taxpayer as trustee.
4. However, paragraph 3 does not apply if the taxpayer is trustee of more than one trust and the interests of the beneficiaries of two or more of the trusts are, when the taxpayer's liability for land tax arises, the same.² In this case, the taxpayer's liability for land tax as trustee for the trusts must be assessed on the total taxable value of all taxable land that is subject to those trusts.³

¹ Paragraph (c) of the definition of 'trustee' in Schedule 4 of the *Land Tax Act 2010*

² Section 20(2) of the Land Tax Act

³ Section 20(3) of the Land Tax Act

5. Section 22A(1) of the Land Tax Act provides that if land is owned by two or more trustees of the same trust the Commissioner must make one assessment as if the land were owned by one person.⁴
6. Under the *Taxation Administration Act 2001* (the Administration Act), the Commissioner will make an assessment of the land tax payable by the trustee.⁵
7. This public ruling provides guidelines for the assessment of land tax where land is held on trust.

Ruling and explanation

8. Where the registered and beneficial owners of land are not the same, land tax is assessed under s.20 of the Land Tax Act on the basis that the land is held on trust and the trustee is liable for the tax.

Example 1

A parcel of land is registered in the name of A who is a nominee for A, B and C. A, B and C are the beneficial owners of the land and are entitled to rents and profits. A is liable for land tax under s.20 of the Land Tax Act as if that land was the only land owned by A as trustee. One assessment is issued under the Administration Act.

9. Where the same persons are the registered and beneficial owners of land but their respective beneficial interests are not the same as their registered interests, land tax is assessed under s.20 of the Land Tax Act on the basis that the land is held on trust and the trustee is liable for the tax.

Example 2

A, B and C are the registered owners of a parcel of land, holding a one-third share each. When the land was purchased, A contributed only 20% of the purchase monies and, as such, is beneficially entitled to a 20% interest in the land. B and C are entitled to a 40% interest each. As trustees, A, B and C are liable for land tax under s.20 of the Land Tax Act. One assessment is issued under the Administration Act.

10. Where a person holds certain land as trustee but owns other land in their own right, separate assessments are made in relation to the trust and non-trust land.

Example 3

A is the registered owner of parcel 1, which is owned absolutely, and the registered owner of parcel 2, which is held as trustee for the A Family Trust. A, as owner, is liable for land tax in relation to parcel 1 and, as trustee, is separately liable for land tax under s.20 of the Land Tax Act in relation to parcel 2. Two assessments are issued to A under the Administration Act.

11. Where a trustee holds a parcel of land pursuant to several distinct trusts, separate assessments are made in relation to each trust because, even though the same person is the registered owner of the land, the capacity in which the person holds the land is different

⁴ Section 22A(2) of the Land Tax Act clarifies that s.22 which relates to assessment of co-owned land does not apply in these circumstances. Section 22A(3) provides that s.22A does not limit s.23 which relates to the assessment of beneficiaries of deceased estates.

⁵ Part 3 of the Administration Act

in relation to each trust. Where there is no reference to the separate trusts on the land title, documentary evidence will be required to establish the basis on which the land is held.

Example 4

X is the registered owner of a rental property that is held as trustee for three separate trusts for each of X's three children. X is liable for land tax as trustee under s.20 of the Land Tax Act in relation to each trust. Three separate assessments are issued to X under the Administration Act in relation to each trust.

12. Where a trustee holds several parcels of land, each on trust for a different group of beneficiaries, the same principles apply as for paragraph 10. That is, separate assessments are made in relation to each trust.

Example 5

X is the registered owner of three parcels of land. X holds parcel 1 as trustee for the Feather Trust, parcel 2 as trustee for the Coin Trust and parcel 3 as trustee for the Paper Trust. Each trust has a different set of beneficiaries. X is liable for land tax as trustee under s.20 of the Land Tax Act in relation to each trust. Three separate assessments are issued to X under the Administration Act.

13. Where a trustee holds several parcels of land, each in the name of a different trust, but the beneficiaries of those trusts, at the time when the land tax liability arises, are the same, one assessment will issue to the trustee including all the taxable land that is subject of the trusts.

Example 6

Y is the registered owner of three parcels of land. Y holds parcel 1 as trustee for the Gold Trust, parcel 2 as trustee for the Silver Trust and parcel 3 as trustee for the Bronze Trust. At the time of determining land tax liability, each trust has the same beneficiaries. Y is liable for land tax as trustee under ss.20(2) and (3) of the Land Tax Act. One assessment is issued to Y under the Administration Act.

14. Where land is owned by two or more trustees of the same trust one assessment will issue to the trustees of the trust.

Example 7

M Co and N Co are the registered co-owners of one or more parcels of land. They hold the land as trustees for the Marble Trust. One assessment will issue to the trustees⁶ under the Administration Act.

15. Where parcels of land are held by separate trustees under trusts where the beneficiaries are the same, separate assessments are issued to each trustee.

Example 8

A is the registered owner of parcel 1 and B is the registered owner of parcel 2. A holds parcel 1 as trustee for the Beaver trust and B holds parcel 2 as trustee for the Bear Trust. Each trust has an identical set of beneficiaries. A and B are liable for land tax as trustees under s.20 of the Land Tax Act. Separate assessments are issued to A and B under the Administration Act.

16. Where a parcel of land is held by more than one trustee and each trustee's interest is subject to a separate trust for a different group of beneficiaries, separate assessments are made in relation to each trust.

⁶ Section 22A of the Land Tax Act

Example 9

The registered owners of a parcel of land are A as trustee for the 123 Trust, B as trustee for the 456 Trust and C as trustee for the 789 Trust (one-third share each as tenants in common). Each trust has a different set of beneficiaries. A, B and C are each liable for land tax as trustees under s.20 of the Land Tax Act.⁷ Three separate assessments are issued to A, B and C under the Administration Act.

17. Where some interests in a parcel of land are held on trust and others are not and there is only one registered proprietor, one assessment would issue as there is an implied trust over the whole of the land.⁸ Where the interests are separately registered, the trust interests would be separately assessed from the non-trust interests.

Example 10

JJ is the registered proprietor of a caravan park. Although the sole registered proprietor, JJ's family trust provided 25% of the purchase money and receives rents and profits in the same proportion. The equitable owners are JJ (75%) and the trustee for the JJ Family Trust (25%). As trustee, JJ is liable for land tax under s.20 of the Land Tax Act. One assessment would issue under the Administration Act.

If the registered proprietors instead were JJ (75%) and the trustee for the JJ Family Trust (25%) ss.20 and 22 of the Land Tax Act would apply. Separate assessments would issue to JJ and the trustee for the JJ Family Trust under the Administration Act.

Date of effect

18. This public ruling takes effect from the date of issue.

Elizabeth Goli
Commissioner of State Revenue
Date of Issue 22 June 2017

References

Public Ruling	Issued	Dates of effect	
		From	To
LTA020.1.2	22 June 2017	22 June 2017	Current
LTA020.1.1	30 June 2010	30 June 2010	21 June 2017

⁷ The joint ownership provisions in s.22 of the Land Tax Act also apply.

⁸ See *John J Little and the Trustees for the J J Little Trust v Commissioner of Land Tax [1991]*, Queensland Land Court (Barry P), A90-58, 8 March 1991.