



Information for Trustees and Unit Holders of Unit Trusts

February 2006

High Court decision on taxing of unit trusts

As a result of a decision of the High Court of Australia on 28 September 2005¹ concerning the taxing of unit trusts under the *Victorian Land Tax Act, 1958*, unit trusts in NSW will now be assessed as 'special trusts' under section 3A of the *NSW Land Tax Management Act, 1956*.

What did the High Court rule?

The High Court ruled that the holders of units in a Victorian unit trust are not the owners of the land held by the trust.

What was the basis for the decision?

The High Court ruled that where a trust deed provides unit holders with an interest in the assets of the trust as a whole, it does not confer any ownership interest in any particular asset of the unit trust. Therefore, the unit holder does not own the land held by the trust.

Why is the calculation different this year?

The High Court decision therefore means most unit trusts will be taxed as special trusts in 2006 under the NSW land tax legislation. This will not affect assessments issued in earlier years.

Special trusts are assessed at the rate of 1.7 per cent on the combined taxable value of the land. The \$352 000 threshold is not applied.

How does this affect a secondary liability?

An individual unit holder's interest in the unit trust will no longer be included in any individual assessment they may receive.

Objection and appeal rights

If you believe in your particular case that the trust deed provides that the unit holders do have an ownership interest in land held by the trust, you have the right to object to the assessment. You should enclose a copy of the trust deed with your notice of objection.

More information

Phone

1300 556 814

Phone hours

8.30am – 5.00pm Mon – Fri

Internet

www.osr.nsw.gov.au

Help in community languages is available.



Office of State Revenue
NSW TREASURY

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¹ *CPT Custodian Pty Ltd v Commissioner of State Revenue; Commissioner of State Revenue v Karingal 2 Holdings Pty Ltd [2005] HCA 53*