

CAN YOUR UNIT TRUST TAKE ADVANTAGE OF THE LAND TAX BREAK?

The NSW government has recently changed the law relating to taxation of Unit Trusts for Land Tax purposes. The government has granted a period in which certain unit trusts can obtain concessional treatment for Land Tax purposes, provided that action is taken to make the relevant Trust Deed compliant with the Law.

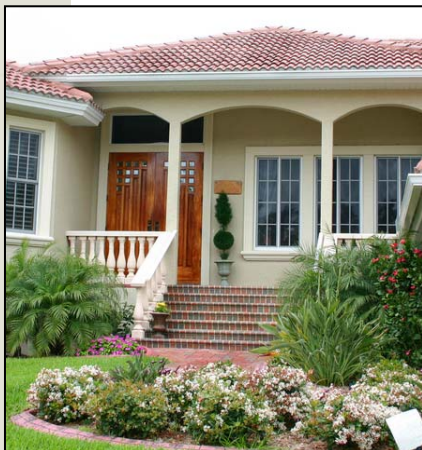
These amendments provide a unique opportunity for accountants (and their clients) to take pro-active action to take advantage of the concessional treatment.

The Amendments came in mid 2006 and were made to the Land Tax Management Act 1956 (NSW). These amendments allow certain unit trusts to be treated on a concessional basis for Land Tax purposes by being treated by the NSW Office of State Revenue, ("OSR") as a "Fixed Trust".

The benefit of the concessional treatment is that the Land Tax threshold is applied to the trust's land holdings, thus reducing the Land Tax payable (but not eliminating it). If a unit trust is not treated as a Fixed Trust, then the Land Tax Threshold is not available and the amount of Land Tax payable will be higher.

To be treated as a Fixed Trust, the following relevant criteria must be satisfied (see Section 3A of the Land Tax Management Act 1956):-

(3B) For the purposes of this section, the "relevant criteria" are as follows:



(a) the trust deed specifically provides that the beneficiaries of the trust:

(i) are presently entitled to the income of the trust, subject only to payment of proper expenses by and of the trustee relating to the administration of the trust, and

(ii) are presently entitled to the capital of the trust, and may require the trustee to wind up the trust and distribute the trust property or the net proceeds of the trust property,

(b) the entitlements referred to in paragraph (a) cannot be removed, restricted or otherwise affected by the exercise of any discretion, or by a failure to exercise any discretion, conferred on a person by the trust deed.

Taxpayers and their accountants who believe that they may be able to take advantage of the concessional treatment, should arrange to have the relevant Trust Deed reviewed to see what amendments are required to ensure that the relevant criteria are satisfied. If amendments are required, an amending Deed will need to be entered into.

Rankin Nathan Lawyers is able to assist in undertaking reviews of trust deeds and drafting appropriate amending deeds. We can also assist in liaising with the OSR to ensure that the amendments proposed to the trust deed are satisfactory to the OSR.

To take advantage of the concessional treatment, the Trust Deed must satisfy the relevant criteria **before 1 January 2008**. Prompt action is therefore required to ensure all requirements are met by the deadline.

Rankin Nathan Lawyers

NEWCASTLE • SYDNEY • PERTH • CANBERRA
47 Bolton Street, Newcastle NSW 2300

1300 727 813

www.rankinnathan.com.au

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