

# Explanatory Memorandum

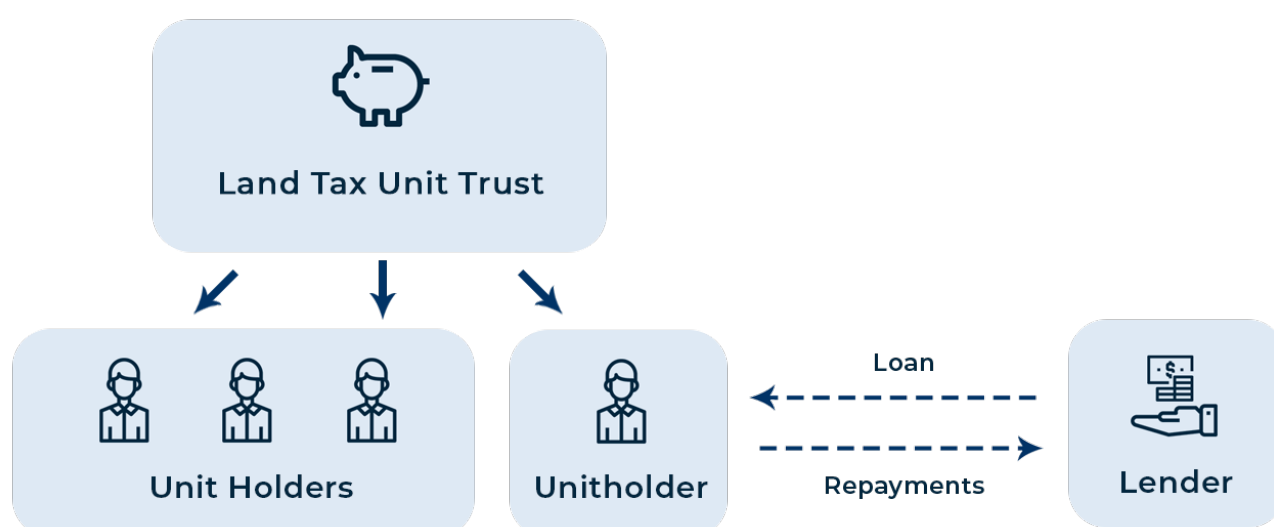
## NSW Land Tax Unit Trust

October 2023

Subject	NSW Land Tax Unit Trust
Alert Status	<b>High</b>
Topic	Land Tax
Legislation	Land Tax Management Act 1956 (Sections 3A and 3B)
Case Law	N/A
Comments	This memorandum looks at the benefits of using a unit trust which is deemed a fixed trust for the purposes of the Land Tax Management Act 1956.
More info	<a href="http://www.macquariegs.com.au">www.macquariegs.com.au</a>

Unit trusts are a recommended structure to hold property with a view to changing the ownership by changing the unit holder. They are effective for negative gearing and for use with self managed superannuation funds. One of the disadvantages of a Unit trust is that for Land Tax purposes they are classified as a “Special Trust” which results in loss of the Land Tax property value threshold. As a consequence, *annual* land tax costs in NSW can be as much as \$15,504 more expensive than if the property were to be owned by individuals.

Macquarie Group Services has approval from the NSW Office of State Revenue for its “NSW Land Tax Unit Trust” to be classified as a fixed trust. This unit trust provides a lower annual land tax cost whilst retaining features of flexibility that a trust offers beyond ownership in names of individuals. Macquarie Group Services recommend that this EM be read in conjunction with other documents including:



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## NSW Land Tax Unit Trust Land Tax – NSW Summary (2023)

October 2023

Land Tax is applied at a rate of 1.6% *up to* a land value of \$5,925,000. From \$5,925,000 the *premium property rate* of 2% applies. Land Tax is applied to the average land value. The unimproved value provided by the NSW Valuer General of the prior three years is averaged.

Example:

a) Mary owns an investment unit. The average land value is \$1,100,000.

Mary's Land Tax Assessment is:

$$\$100 + ((1,100,000 - 969,000) \times 1.6\%) = \$2,196$$

b) Jim owns four houses. Their average land value is \$6,500,000.

Jim's Land Tax Assessment is:

$$\$100 + ((5,925,000 - 969,000) \times 1.6\% + (6,500,000 - 5,925,000) \times 2\%) = \$90,896$$

### Land Tax and Trusts

Most unit trusts, discretionary trusts and hybrid discretionary trusts are regarded as "special trusts". Land owned by the trustee of a "special trust" will be subject to land tax at a flat rate of 1.6% on each dollar of land value.

Example:

*The Bilgola Trust is a discretionary trust. It owns Land valued at \$900,000. Land Tax is assessed as follows:*

$$\$900,000 \times 1.6\% + \$100 = \$14,500$$

If an NSW Land Tax Unit Trust had owned this same parcel of land in NSW, the Land Tax would have been nil.

### MGS NSW Land Tax Unit Trust

The MGS NSW Land Tax Unit Trust satisfies the requirements of the NSW Office of State Revenue for a "fixed trust" under Section 3A(3B) of the *Land Tax Management Act 1956 (NSW)*. The NSW Land Tax Unit Trust is taxed on the value of the property reduced by the threshold. This may translate into an annual saving on land tax of up to \$15,504.

Refer to the *Bilgola Trust* example opposite for an example of a simple scenario where a land owner could save up to \$15,504 each year (subject to annual adjustment of thresholds, land values and land tax rates)

### When to use an NSW Land Tax Unit Trust

Most practitioners would consider the most flexible structure to own property in to be a trust. A trust will provide flexibility with regards to stamp duty on sale or transfer, eligibility for CGT concessions and permit residential property to be acquired wholly or in part at a future date by a SMSF as well as provide asset protection not available to individuals.

# NSW Land Tax Unit Trust

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The most limiting factor that practitioners and clients encounter when using trusts to own property in NSW is the high annual cost of land tax. The NSW Land Tax Unit Trust has equivalent land tax outcomes to owning property in the names of individuals.

## **Not owning residential property in your own name.**

If a client purchases a residential investment property in the name of individuals it is impossible to transfer that property at a later stage to a self managed superannuation fund. The SIS Act provides for a jail term for any party being involved in such a transaction.

Acquiring a residential investment property in a unit trust with the taxpayer borrowing to acquire the units lost most of its appeal with the changes that treated unit trusts as special trusts. Now with the N.S.W. Land Tax Unit Trust a taxpayer can enjoy all the benefits of negative gearing in his or her own name, pay the same land tax bill as if it was owned in their name and have the flexibility of transferring the property into their self managed superfund.

MGS recommend an NSW Land Tax Unit Trust be considered when buying property in NSW.

However, it is not the sole structure recommended by MGS to own property in NSW. Other structures may be recommended especially when a high land value property is involved. As land values increase the impact of the tax-free threshold reduces to become negligible. (i.e., On property worth \$millions)

## **ATO Taxation Determination TD 2009/17**

The NSW Land Tax Unit Trust contains a single class of units and no discretionary elements. MGS is of the opinion that the Commissioner's concerns regarding deductibility of interest on borrowed money to buy units in a trust in TD 2009/17 have no application to a "fixed" trust. Borrowed monies where they are used to acquire units in a NSW Land Tax Unit Trust would be deductible to the borrower in the circumstances where the trust utilises the Trust monies to acquire a property and generate arms-length revenue.

## **FAQs**

### Can a discretionary trust be a unitholder?

Yes, However, NSW secondary land tax assessment may result in loss of that proportion of the land tax threshold.

### Can an existing Trust use any of the NSW Land Tax Unit Trust Deed terms?

We recommend that all NSW Unit Trusts that hold land contact MGS for review of the present structure. MGS will require a copy of the Trust Deed, the latest Land Tax Notice of Assessment, and details of existing Trust units on issue. MGS will charge a consultation fee to provide an opinion. If changes can be affected without triggering adverse tax consequences MGS may charge a further fee to effect the recommended changes. MGS will provide a quotation of expected costs.

## Does MGS guarantee future Land Tax savings?

No. MGS warrants only that the Trust is *presently* accepted by the NSW OSR. Like all aspects of tax, the Land Tax legislation could change at any future time.

## Can the NSW Land Tax Unit Trust be used in another State?

No. At this time the Trust is accepted by the NSW OSR only. WA & VIC property investors may consider our WA & VIC Property Trusts to access similar benefits.

QLD investors should not use a trust without seeking advice.

## With an MGS NSW Land Tax Unit Trust can I do the following without losing the Land Tax “Fixed Trust” element:

1. **Transfer Units?** Yes. Units may be sold / transferred. It is not recommended as transfer of units may be subject to stamp duty in some cases. MGS recommend redemption and re-issue of units. Where trust property exceeds \$2m specific advice should be obtained as duty concerns arise.
2. **Transfer of Units on death or bankruptcy?** Yes. The deed refers to this as a transmission of units.
3. **Redemption of units?** Yes. Units may be redeemed by any unitholder. The value that will be used for redemptions will be the “Calculated Unit Value” at the date of the redemption. Calculated unit value will be based on accounting principles, net asset values and may require an approved valuer to be engaged by the trustee. The cost of valuation will be borne by the unit-holders in the same proportion as their unit-holding.
4. **Issue new units?** Yes. New units will be issued based on the calculated Unit value adjusted to the nearest cent. An issue of units may be made for consideration other than money.
5. **Issue Units with special rights?** No. The NSW Land Tax Unit Trust may only issue one class of units. All unit holders are presently entitled to the income of the trust and the capital of the trust in the same proportion as their holding is to the total number of units issued.

MGS can provide guidance on the use of other trusts (i.e., Discretionary, Hybrid Discretionary, Unit, Hybrid Unit trusts, Class, Capital Vested) to own units in a NSW Land Tax Unit Trust.

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**NOTE:** The above information is meant as a general guide only, and the information applies to NSW Land Tax Unit Trusts provided by MGS.

**Advice Warning:** This document is intended to provide general information only and has been prepared by Macquarie Group Services Pty Ltd ABN 70 090 831 039 (AFSL 399059) without taking into account any particular person's objectives, financial situation or needs. Investors should, before acting on this information, consider the appropriateness of this information having regard to their personal objectives, financial situation or needs. We recommend investors obtain financial advice specific to their situation before making any financial investment or insurance decision.