

Description	This guide looks at the considerations and steps involved in establishing a NSW Land Tax Unit Trust.
Other relevant guides	<ul style="list-style-type: none">- <i>How to set up a discretionary trust</i>- <i>How to negative gear with a trust</i>
Documents required	<ul style="list-style-type: none">- <i>Resolution to establish a unit trust</i>- <i>Trust deed</i>- <i>Unit Certificate</i>
Notes	When forming a NSW Land Tax Unit Trust, a number of considerations need to be resolved before following the steps to its establishment.

Step 1 – Identify Trustee and Initial Unitholder(s):

a) The Trustees

The trustee of a trust controls its day-to-day operations and decides. Subject to certain restrictions, the trustee of a trust controls what happens to its assets. The trustee of a trust is the entity that enters into transactions on its behalf, including the borrowing of funds, entry into contracts and acquisition of assets.

SUGGESTION: The trustee is usually a senior person from the group of people who will benefit under it, more than one such person or a company controlled by such persons.

TIP: If a trust is merely a passive investor in income-producing assets, avoid using a company as its trustee. In these circumstances, it is recommended that senior people from the group of people who will benefit under the trust are made its trustees.

LAND TAX UNIT TRUST: If you are establishing a Land Tax Unit Trust and want the land tax threshold the unitholder has to be an individual or more than one individual. If the unitholder is a discretionary trust the land tax threshold will be lost until such time as the unitholder is an individual or self managed superfund.

b) The Unitholder

The Unitholders of a unit trust are entitled to receive proportional distributions of its income and/or capital. The Unitholders are normally issued with ordinary units that provide them with such entitlements.

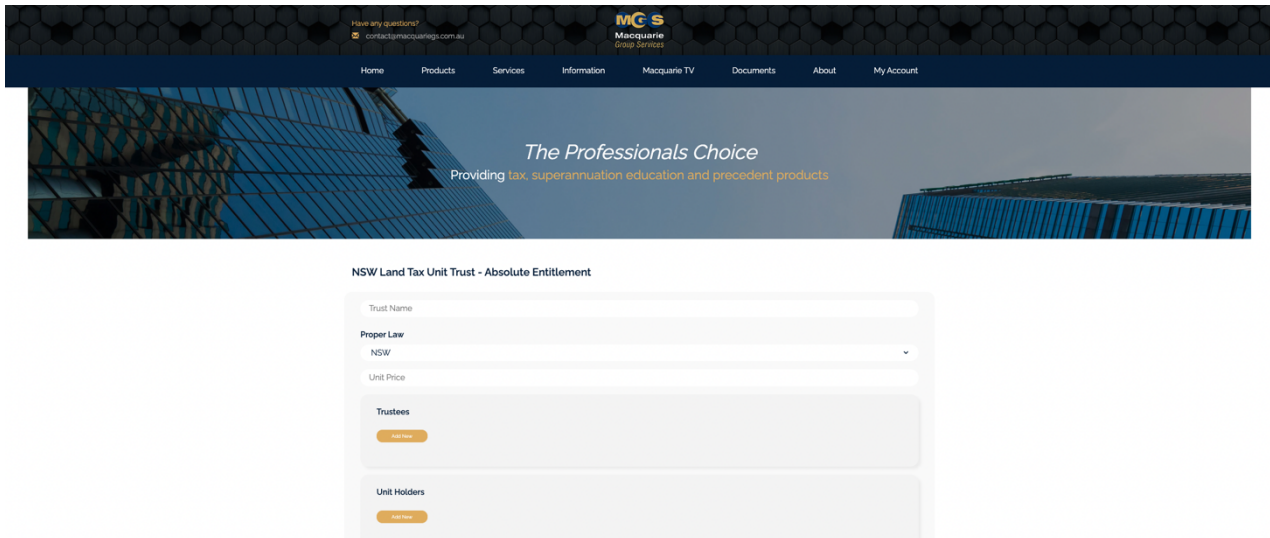
SUGGESTION: The initial Unitholder of a Land Tax Unit Trust is usually an individual so that the trustee receives the land tax threshold.

TIP: Before selecting who will be a unitholder check their land tax threshold in relation to other property they may own. A husband and wife should not hold units jointly.

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WARNING: The sole trustee of a trust and its sole Unitholder cannot be the same person.

Step 2 – Complete the instruction sheet or order online



The screenshot shows the Macquarie Group Services website. The header includes the MGS logo and navigation links: Home, Products, Services, Information, Macquarie TV, Documents, About, and My Account. A banner image with the text "The Professionals Choice" and "Providing tax, superannuation education and precedent products" is displayed. Below the banner, the form titled "NSW Land Tax Unit Trust - Absolute Entitlement" is visible. The form includes fields for "Trust Name", "Proper Law" (set to NSW), and "Unit Price". There are also sections for "Trustees" and "Unit Holders", each with a "nil fee" button.

NOTE: There are generally no restrictions in relation to the naming of a trust, e.g. There would be no prohibition on naming your trust the “Westpac Trust” or the “Mercedes Trust”.

Step 3 – Execute the documents

When the trust documentation arrives, ensure that the trustee executes and dates the resolution to establish the trust, and that the trustee and settlor execute and date the trust deed in the presence of a witness.

NOTE: At this point, the initial unitholders of the trust will have to give the initial sum (usually \$100) to the trustee.

WARNING: The signatures of the trustee and the initial unitholders need to be witnessed, and the witness will need to sign the deed.

Step 4 – Have the deed stamped

Have the trust deed and copies stamped at the relevant Office of State Revenue.

NOTE: The amount of stamp duty liability for the creation of a trust is different in each State and Territory and may be anywhere from nil to around \$500.

WARNING: Where stamping of a trust is required, you have a limited time to do so before penalties apply (in NSW, the period is 3 months from the date of the creation of the trust).

Step 5 – The trustee enters into transactions

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The Trustee is the one who enters into transactions for and on behalf of the trust. This includes borrowing and acquiring assets. For example, if a property is acquired it is held in the Trustees name.

NOTE: Step 3 must be completed before the trust conducts any business, including the exchange of contracts for the acquisition of real property.

Other Important Information

1. The perpetuity period for trusts is dependent upon the proper law of the trust. In Queensland the perpetuity period is 125 years. In South Australia the perpetuity period has been abolished. In all other states it is 80 years;
2. A sole trustee of a unit trust may also be one of its unitholders, but not the only one;
3. The unitholder of a Land Tax Unit Trust can call on its trustee to distribute the trust's income or capital to them;
4. Additional unitholders can be added at any time;
5. If a trust is acquiring real property, then the trust must have been in existence and evidenced in writing prior to the exchange of contracts for its purchase;
6. A Land Tax Unit Trust is eligible to receive the general 50% Capital Gains Tax discount;
7. The trustee of a unit trust is obliged to distribute its income and capital to its unitholders in proportion to their respective unitholdings;
8. Distributions of the income of a trust to minors (i.e. people under 18 years of age) are generally taxed at the penal rate of 66%;
9. If the trustee of a trust is sued for an amount representing more than the available assets of the trust, they will generally become personally liable;
10. If a business is conducted through a trust, then its trustee should be a company;
11. If a trust is merely a passive investor in income-producing assets, its recommended that senior people from the group of people who will benefit under it are made its trustees;
12. There are taxation concessions when a superannuation fund invests in a unit trust (subject to certain restrictions).

NOTE: The above information is meant as a general guide only, and the information applies to NSW Unit Trust deeds provided by Macquarie Group Services.

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