

63AA. Registered unit trust schemes

- (1) In this section —
 - “**land**” has the same meaning as in section 76;
 - “**scheme land**” means land held by a unit trustee in the unit trustee’s capacity as trustee of a unit trust scheme.
- (1a) A unit trustee may apply to the Commissioner in an approved form for registration of a unit trust scheme.
- (1b) An application may be made whether or not the unit trust scheme has previously been registered under subsection (2).
- (1c) An application for registration of a unit trust scheme as a pooled investment trust is to be accompanied by a statement by the unit trustee in an approved form of the unencumbered value of the interests in scheme land referred to in section 63AB(2)(f) and, if applicable, (g)(i).
- (2) The Commissioner may register the unit trust scheme as a pooled investment trust or an equity trust with effect from the date of the application if —
 - (a) the Commissioner is satisfied that the unit trust scheme is eligible for registration under section 63AB(2) as a pooled investment trust or section 63AB(3) as an equity trust;
 - (ab) in the case of an application for registration of a unit trust scheme as a pooled investment trust — the unit trust scheme is not to be treated as a sub-trust under subsection (2a); and
 - (b) the Commissioner is satisfied that registration is not being used and is not likely to be used as part of a scheme or arrangement with the collateral purpose of avoiding or reducing the duty that otherwise would be or might become payable.
- (2a) For the purposes of subsection (2)(ab) and sections 63AC(2)(ab) and 63AD(8), a unit trust scheme is to be treated as a sub-trust if —
 - (a) the scheme land comprises only one parcel of land;
 - (b) a unit holder in the scheme participated directly or indirectly (otherwise than by means of the unit holder’s subscription under the scheme) in the unit trustee’s acquisition of the scheme land;
 - (c) a unit holder in the scheme states in a financial report, or other document, provided to its members that the unit holder has an interest in the scheme land;
 - (d) a unit holder in the scheme beneficially owns an interest in any land otherwise than as a unit holder in a unit trust scheme; or
 - (e) a unit holder in the scheme makes an offer to the public for subscriptions principally by reference to the scheme land and not to units in a unit trust scheme,unless the Commissioner is satisfied that in the circumstances of a particular case it is not reasonable to treat the scheme as a sub-trust.
- (3) For the purpose of being satisfied as to a matter referred to in subsection (2)(b), the Commissioner may take into account any matter that the Commissioner considers to be relevant.

- (3a) Subject to this Part, registration of a unit trust scheme under subsection (2) has effect for a period of 3 years.
- (4) The Commissioner shall advise the unit trustee whether or not he has registered the unit trust scheme as a pooled investment trust or an equity trust.
- (4a) Subject to section 17 of the *Taxation Administration Act 2003*, if the Commissioner registers a unit trust scheme as a pooled investment trust or an equity trust the Commissioner shall make any reassessment necessary to give effect to that registration.
- (5) If the Commissioner decides not to register a unit trust scheme as a pooled investment trust or an equity trust he must give the unit trustee reasons for his decision.
- (6) If the Commissioner decides not to register a unit trust scheme as a pooled investment trust or an equity trust, the unit trustee may challenge the validity or correctness of that decision in accordance with Part 4 of the *Taxation Administration Act 2003* as if the unit trustee were a taxpayer and the decision were a decision affecting the trustee's liability to pay duty.

[Section 63AA inserted by No. 36 of 2001 s. 27; amended by No. 2 of 2003 s. 33; No. 66 of 2003 s. 18.]