

# Guideline

## Definition of a registered trustee company for the purpose of the Principal Residence Land classification in Tasmania.

### Preamble

This guideline steps through the legislative provisions that define a “registered trustee company” for the purposes of the Principal Residence Land classification under the [Land Tax Act 2000](#) (the Land Tax Act) available at [legislation.tas.gov.au](http://legislation.tas.gov.au).

[Section 6\(3\)\(a\)\(i\) of the Land Tax Act](#) allows for a principal residence land classification to be applied to land held by a “registered trustee company” where other additional requirements are satisfied:

- 6(3) The Commissioner, on application by a trustee of a trust, is to determine that land is principal residence land for a financial year if –
- (a) the land is held by –
    - (i) a registered trustee company...

### Analysis of definition of “Registered Trustee Company”

1. A *registered trustee company* is defined in [section 3 of the Land Tax Act](#):

*registered trustee company* means –

- (a) a trustee company as defined in the [Trustee Companies Act 1953](#) (available at [legislation.tas.gov.au](http://legislation.tas.gov.au)) or in a similar law of another State or a Territory of the Commonwealth; or
- (b) the Public Trustee as defined in the [Public Trustee Act 1930](#) (available at [legislation.tas.gov.au](http://legislation.tas.gov.au)).

2. The Trustee Companies Act provides a definition for a *trustee company* in [section 3 of that Act](#) as follows:

*trustee company* means a “licensed trustee company” within the meaning of [Chapter 5D of the Commonwealth Corporations Act 2001](#) (available at [legislation.gov.au](http://legislation.gov.au)).

3. The relevant part of [Chapter 5D of the Corporations Act](#) is the Definition in section 601RAA which defines the following key terms:

*licensed trustee company* means a “trustee company” that holds an “Australian financial services licence” covering the provision of one or more “traditional trustee company services”.

4. The definition of a *trustee company* is provided in section 601RAB of the Corporations Act:

Meaning of trustee company and client of trustee company

(1) A *trustee company* is a company:

- (a) that is a corporation to which paragraph 51(xx) of the Constitution applies; and
- (b) that is prescribed by the regulations as a trustee company for the purpose of this Act.

Note: These regulations are referred to at point 8.

5. *Australian financial services licence*, section 9 definition of Corporations Act, provides that when the term is used in a provision outside Chapter 7, its meaning is the same as it is in Chapter 7.

Chapter 7 section 761A defines *Australian financial services licence* as a licence under section 913B that authorises a person who carries on a financial services business to provide financial services.

Section 913B(1) deals with when a licence may be granted; it states:

- (1) ASIC must grant an applicant an Australian financial services licence if (and must not grant such a licence unless):
- (a) the application was made in accordance with section 913A; and
  - (b) ASIC has no reason to believe that the applicant is likely to contravene the obligations that will apply under section 912A if the licence is granted; and
  - (c) the requirement in whichever of subsection (2) or (3) of this section applies is satisfied; and
  - (d) the applicant has provided ASIC with any additional information requested by ASIC in relation to matters that, under this section, can be taken into account in deciding whether to grant the licence; and
  - (e) the applicant meets any other requirements prescribed by regulations made for the purposes of this paragraph.

6. *Financial service* is defined in [subsection 766A\(1A\) of the Corporations Act](#).

7. *Traditional trustee company services* has the meaning given by subsection 601RAC(1).

Note: Traditional trustee company services are financial services for the purposes of Chapter 7: see subsection 766A(1A) (refer point 6 above).

Subsection 601RAC(1) of the Corporations Act provides:

Meaning of “traditional trustee company services” and estate management functions:

- (1) The following are traditional trustee company services:
- (a) performing estate management functions (see subsection (2));
  - (b) preparing a will, a trust instrument, a power of attorney or an agency arrangement;
  - (c) applying for probate of a will, applying for grant of letters of administration, or electing to administer a deceased estate;
  - (d) establishing and operating common funds;
  - (e) any other services prescribed by the regulations for the purpose of this paragraph.

For a complete definition of traditional company services, please refer to the entire [subsection 601RAC\(1\)](#).

8. The regulations referred to in [section 601RAB](#) are effective from 1 January 2001 and state:

Chapter 5D Licensed trustee companies

Part 5D.1 Preliminary

5D.1.01 Meaning of *trustee company*

- (1) For paragraph 601RAB (1) (b) of the Act, a company that is listed in Schedule 8AA is prescribed as a trustee company for the purpose of the Act.
- (2) A company that performs the function of the Public Trustee of a State or Territory may only be listed in Schedule 8AA if:
- (a) the State or Territory requests the Minister to prescribe the company as a trustee company; and
  - (b) the Minister agrees to the request.

A full listing of Trustee companies can be found within [Schedule 8AA](#) at [www5.austlii.edu.au](http://www5.austlii.edu.au).

## Summary

The factual question that dictates whether a trustee company is a licensed trustee company is whether the trustee company has an *Australian financial services licence*.

The onus of establishing that a trustee company is a licensed trustee company rests with the taxpayer.

## More information from the State Revenue Office

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