

Update: 21 February 2007 Land Tax – opportunities for unit trusts



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Summary

A recent High Court decision has made more unit trusts liable for land tax. An opportunity exists to amend the deed and avoid the new liability, but care is needed to avoid a resettlement.

What's changed?

Unit trusts have, in the past, generally been regarded as fixed trusts for land tax purposes and entitled to the benefit of a land tax-free threshold. However, following a decision of the High Court most unit trusts will no longer be regarded as fixed trusts. This means that now the trustees of the unit trusts will generally be required to pay land tax on the value of all land.

In response to this decision, land tax laws have been amended to ensure that some family held unit trusts will still be treated as fixed trusts.

In addition, an opportunity is also available to allow land owning unit trusts to change their trust deed to become a fixed trust. If the trust deed is amended before midnight 31 December 2007 and satisfies certain criteria, the trust will be assessed or reassessed for the 2006 and 2007 tax years as a fixed trust.

What are the benefits?

If the unit trust is a family unit trust, or the deed is amended to make it a fixed trust, the trust will be entitled to the benefit of the land tax-free threshold.

What are the problems?

Amending the trust deed to obtain the land tax concession may constitute a resettlement of the trust and have the undesired consequence of triggering significant CGT and stamp duty liabilities for the trust.

How can Fleming Muntz help?

Fleming Muntz provides expert trust advice. We can assist clients to determine whether their unit trusts are affected and what steps they can safely take to minimise their land tax liability.

Important fine print

This update is for general information only. It is not a complete guide to the area of law. Competent advice should be obtained before taking any action.

We resent unwanted email as much as anyone – if you would prefer not to receive any further updates, please telephone us on (02) 6021 2222 or email to fmlaw@flemingmuntz.com.au.

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