

Update: 3 December 2008 Trust update: Cloning & stamp duty



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Summary

The opportunity for trust cloning or splitting without CGT consequences has been abolished.

We are also told that stamp duty will more than double for trusts created from 1 January 2009.

What's changed – trust cloning?

Until very recently, trust cloning or splitting had been a potentially useful way to divide assets between trusts without triggering a CGT event, often for business succession planning.

The exemption had arguably been of less use in NSW than in other jurisdictions, due to stamp duty costs when trust assets comprised dutiable property. However assets such as listed securities did not pose this problem and the CGT exemption had been useful in many cases.

However, a media release from the Assistant Treasurer on 31 October 2008 announced that the CGT exemption is to be legislated out of existence with retroactive effect from the date of the release. A consultation process is said to begin shortly, followed by draft legislation.

What's changed – trust stamp duty?

For as long as many lawyers can remember, trusts established in NSW with nominal assets had been subject to stamp duty of \$200.

The recent NSW mini-budget, however, has announced that this figure will rise to \$500 from 1 January 2009. This is only one of several major

increases in NSW Government charges announced on 11 November that will have a significant effect on the cost of business transactions for clients.

What are the consequences?

In the case of cloning, it cannot happen and, unless the legislation ultimately contains something unexpected, the topic is no longer of anything other than historical interest.

For stamp duty, it remains to be seen whether Victoria will also increase trust duty from the current level of \$200. If it does not, it seems likely that we will see an increase in the number of trusts that choose to be governed by Victorian, rather than NSW law.

How can Fleming Muntz help?

Fleming Muntz lawyers are qualified specialists in business law and well-equipped to advise clients on the effects these and other recent changes will have on their business operation and planning.

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 enquiries@flemingmuntz.com.au.

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