

TAX REGULATION IMPACT — PRELIMINARY ASSESSMENT

CHANGES TO TRUST CLONING — CGT EXEMPTION

PART 1: POTENTIAL COMPLIANCE COST IMPACTS

STEP 1 DESCRIBE THE PROPOSAL

See costing request

STEP 2: INDICATE TAX TYPES AFFECTED

Select tax type(s)	Income tax	PAYG / withholding	FBT	CGT	GST	Super	Excise
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

STEP 3: IDENTIFY AFFECTED GROUPS

Client Group	Characteristics and potential population
Individuals	Key characteristics Individuals that are beneficiaries or trustees of trusts that have used or could use trust cloning.
	Estimated number of taxpayers/clients or proportion of population Taxation Statistics 2005-06 reports that over 2.1 million individuals received income from a trust distribution, but it is not known how many individuals are beneficiaries of trusts that have used or could use trust cloning. It is also not known how many individuals are trustees.
Businesses, superannuation funds and other entities	Key characteristics Corporate trustees or beneficiaries of trusts that have used or could use trust cloning.
	Estimated number of taxpayers/clients or proportion of population Taxation Statistics 2005-06 reports around 430,000 discretionary trusts but it is not known how many trusts transferred assets using trust cloning, or how many trusts have corporate trustees.
Tax practitioners	Key characteristics Tax agents with clients that use discretionary trusts.
	Estimated number of taxpayers/clients or proportion of population Number of active tax agents — 22,000. A significant proportion of these would be expected to have some clients that have used or could use trust cloning.
Other intermediaries	Key characteristics

- Software

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developers - Bookkeepers - Financial Planners	Estimated number of taxpayers/clients or proportion of population
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STEP 4: IDENTIFY POTENTIAL BEHAVIOURAL RESPONSES THAT MIGHT AFFECT TAXPAYER COMPLIANCE COSTS

Taxpayer group(s)	Expected change(s)
Individuals Trustees	There is some potential that the use of trusts will decrease because some of the purposes for using trusts will be removed. However, this is unlikely, because trust cloning applies to assets already in a trust, and there are many other reasons for setting up trusts.

STEP 5: PROVIDE AN OVERVIEW OF THE POTENTIAL COMPLIANCE COST IMPACTS

Initial and ongoing compliance costs are expected to be nil/minimal. The proposal will predominantly affect trustees that are considering transferring assets to another trust.

STEP 6: PROVIDE A DETAILED DESCRIPTION OF THE POTENTIAL IMPLEMENTATION AND ONGOING COMPLIANCE COST IMPACTS

Implementation Impact	Magnitude	Explanation
Learning and education	Low	Trustees and tax agents would need to be made aware of the changes and this would be expected to be done through the Tax Office website and publications.
Evaluation and planning	Low	Individuals and tax agents already use trust structures for various purposes. These changes are unlikely to have any significant change in the use of trust planning.
Purchases – equipment/ software/supplies/advice	No Change	The changes are too small to require any purchases.
Record keeping systems and procedures	No Change	It is likely that trustees would already be keeping records
Forms and payments	No Change	
Rulings, audits, disputes and litigation	No Change	The change may lead to less disputes and litigation because of the significant uncertainty of the current Tax Office approach under the current law.
Associated (non-tax) compliance cost impacts	No Change	
Legislative complexity	Low	These changes would slightly reduce legislative complexity

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Cash flow impact	No Change	
Start date capacity	No Change	
Overall rating	Low	

Ongoing Impact	Magnitude	Explanation
Learning and education	Low Increase	Once taxpayers are made aware of the changes there will be no further impact other than remedial.
Evaluation and planning	No Change	There is unlikely to be much change in trust planning, but it will likely reduce the use of trust cloning
Purchases – equipment/ software/supplies/advice	No Change	
Record keeping systems and procedures	No Change	It is likely that trustees would already be keeping records
Forms and payments	No Change	This is not likely to be any change in lodging requirements, except potentially fewer forms because of fewer trusts
Rulings, audits, disputes and litigation	Low Decrease	The change may lead to less disputes and litigation because of the significant uncertainty of the current Tax Office approach under the current law.
Associated (non-tax) compliance cost impacts	No Change	
Legislative complexity	Low Decrease	These changes would slightly reduce legislative complexity
Cash flow impact	No Change	
Overall rating	Low Decrease	The potential reduction in disputes and litigation, combined with the slight decrease in legislative complexity, might decrease overall compliance costs.

STEP 7: SUMMARISE THE POTENTIAL COMPLIANCE COST IMPACT OF THE PROPOSAL

Based on the preliminary assessment, this proposal is expected to result in a **Low** overall compliance cost impact, comprised of a **Low** implementation impact and a **Low Decrease** in ongoing compliance costs relative to the affected group.

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PART 2: POTENTIAL COMPETITION AND OTHER IMPACTS

This part of the assessment will not be validated by the Australian Taxation Office (ATO). The ATO may, however, use this information when assessing the potential compliance cost impacts of the proposal.

STEP 8: ASSESS THE PROPOSAL FOR POTENTIALLY SIGNIFICANT COMPETITION IMPACTS

Will the proposal potentially affect the number and range of businesses?	No
Change the ability of businesses to provide a good or service Change the requirements for a licence, permit or authorisation process as a condition of operation Affect the ability of some types of firms to participate in public procurement Significantly alter costs of entry or exit to an industry Change geographic barriers for businesses	
Will the proposal potentially change the ability of businesses to compete?	No
Control or substantially influence the price at which a good or service is sold Alter the ability of businesses to advertise or market their products Ban certain types of products or business practices Set significantly different standards for product/service quality Significantly alter the competitiveness of some industry sectors	
Will the proposal potentially alter the incentive of businesses to compete?	No
Create a self-regulatory or co-regulatory regime Impact on the mobility of customers between businesses Require/encourage the publishing of data on company outputs/price, sales/cost Exempt an activity from general competition law	
Will the proposal potentially impact on consumers?	No
Alter the choices available to consumers Directly affect the quality of consumer products or services Create or remove restrictions on access to a product Promote or restrict information dissemination to consumers Add to or reduce the complexity of consumer products or services	
Overall assessment of the potential impact on competition	No/Low

STEP 9: ASSESS THE PROPOSAL FOR OTHER POTENTIALLY SIGNIFICANT IMPACTS

Are there other potential impacts on business and individuals or the economy?	
Mandatory payments from one party to another (excluding taxes)?	<input type="checkbox"/>
Environmental or social impacts (including distribution of resources)?	<input type="checkbox"/>

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Create or amend government cost recovery arrangements?	<input type="checkbox"/>
Impact on Australia's international capital flows or trade?	<input type="checkbox"/>
Impact on mobility of labour?	<input type="checkbox"/>
Impact on resource allocation, saving or investment?	<input type="checkbox"/>
Transfer risk between business, individuals and government?	<input type="checkbox"/>
Impose any other financial costs?	<input type="checkbox"/>
Overall assessment of potential other impacts	No/Low

STEP 10: EXPLAIN THE REASONS FOR A NO/LOW ASSESSMENT OR CONTACT THE OBPR

The proposal changes the tax treatment of asset transfers from one trust to another. This will affect the ability of some trusts to transfer assets without triggering a taxing point. This might reduce the potential for individuals to protect passive assets from business liabilities. However, this should not have any effect on the ability of businesses to compete in the market place.

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PART 3: NEXT STEPS

STEP 11: FORWARD THIS PRELIMINARY ASSESSMENT TO CQAU/RIMU FOR ATO VALIDATION/QUANTIFICATION

Requested by:		Phone No.:	02 6263
Division:	Business Tax Division	Unit:	Capital Gains Tax Unit
Date of request:	10/06/2008	Date required:	
Urgency:	Routine	Sensitivity:	Medium

The ATO will undertake an independent assessment of the compliance cost impact of the proposal, prepare a quantitative estimate where required, and draft the Tax Compliance Cost Calculator (Tax CCC) Summary Report (attached).

Final accountability for the compliance cost assessment rests with the Division responsible for the proposal.

The ATO does not validate the assessment of competition and other impacts.

STEP 12: CONTACT THE OBPR AND PREPARE A RIS WHERE REQUIRED

If you are uncertain about the impact of the proposal you should forward a copy of this preliminary assessment, along with a clear outline of the proposal and its possible impacts, to the OBPR which will determine the level of assessment required. If you incorrectly assess the impact of the proposal, it may not be allowed to proceed to the decision maker.

If you are required to prepare a quantitative TAX CCC report or a RIS you should contact the Office of Best Practice Regulation early in the development of the proposal. This will help the timely progress of the proposal through key decision making forums, such as Cabinet; avoid the need for post implementation reviews within 1-2 years; and ensure compliance with the regulatory assessment requirements.

You should keep this form and any supporting documents, including a clear outline of the proposal to which it relates and its impacts, on file.

STEP 13: FORWARD A COPY OF THE COMPLETED PRELIMINARY ASSESSMENT TO THE TREASURY BEST PRACTICE REGULATION OFFICER & TAX DESIGN DIVISION

You are required to forward a copy of your preliminary assessment to the Treasury Best Practice Regulation Coordinator in Markets Group (currently Manager Competition Policy Framework Unit). You should also forward a copy of your preliminary assessment to the Legislation Management Unit in Tax Design Division.

Signature:

Name:

Date:

10/06/2008