

TREASURY DISCUSSION PAPER

ABOLISH THE CAPITAL GAINS TAX TRUST CLONING EXCEPTION

NOTE TO PARTICIPANTS

This paper is a guide as to how the broad principles announced by the Government might operate.

1. Background

Generally, a capital gains tax (CGT) event happens when an asset is transferred to a new or existing trust. However, currently no event happens if the asset is transferred to the trust from another trust and the beneficiaries and terms of both trusts are the same. This is known as the 'trust cloning exception' (see paragraphs 104-55(5)(b) and 104-60(5)(b) of the *Income Tax Assessment Act 1997* (ITAA97)).

On 31 October 2008, the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, the Hon Chris Bowen MP, announced that the Government will abolish the trust cloning tax concession. The media release is available on the [Assistant Treasurer's website](#).

The Assistant Treasurer also indicated that the Government would undertake consultation on the design of these amendments, and subsequently on an exposure draft of the legislation.

2. Purpose

This discussion paper forms the basis for consultation on this proposal and sets out the way it may be implemented. The purpose of this discussion paper is to provide interested parties with an opportunity to comment on the design of the proposal.

3. Issues for discussion

The removal of the trust cloning exception is consistent with the policy principle of taxing capital gains that arise where there is a change in economic ownership of an asset.

This could be achieved by repealing paragraphs 104-55(5)(b) and 104-60(5)(b) of the ITAA97.

Mere change of trustee

A mere change of trustee of a single trust will continue not to trigger a taxing point.

To provide certainty, this could be achieved by providing an explicit exception to CGT events E1 and E2 for the mere change of trustee of a single trust. A similar provision is included in subsection 104-10(2) of the ITAA97 in relation to CGT event A1.

4. Submissions

We invite interested parties to lodge written submissions on the design of this proposal.

While submissions may be lodged electronically, by post or by facsimile, electronic lodgement is preferred.

The closing date for submissions is Wednesday 3 December 2008.

All information (**including name and address details**) contained in submissions will be made available to the public on the Treasury website unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information **marked** as such in a separate attachment. A request made under the *Freedom of Information Act 1982* for a submission marked 'confidential' to be made available will be determined in accordance with that Act.

Written submissions should be addressed to:

The General Manager
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PARKES ACT 2600

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Other enquiries should be directed to:

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