



STAMP DUTY – CHANGES TO CONVEYANCE DUTY – PART 2

As a result of the passing of the Business Tax Review (Assessment) Act (No.2) 2003 and the Business Tax Review (Taxing) Act (No.2) 2003, there have been a number of amendments made to the imposition of conveyance duty under the Stamp Act 1921 (WA).

In Part 2 of our three Part discussion on changes to conveyance duty, we will explore changes that specifically affect unit trusts. The changes discussed below are effective from 1 January 2004.

Wholesale Trusts

Stamp duty relief will now be provided for genuine “wholesale trusts” that are captured by the former private unit trust provisions which imposed stamp duty at conveyance rates on the disposition of units in a private unit trust (i.e. transfers, issues and redemptions, etc.).

Broadly, a “private unit trust” for stamp duty purposes is a trust in which:

1. units are not issued to the public; and
2. there are fewer than 50 members who are beneficially entitled to units in the trust, or 20 members or less who hold 75% or more of the total number of units issued.

The definition of a “pooled investment trust” has been extended by reference to a number of criteria that are indicative of a “wholesale” unit trust. Furthermore, the trust will not be excluded from the private unit trust provisions if it exhibits the characteristics of a “sub-trust”. The legislation now contains extensive criteria that determine whether a trust would be considered a “pooled investment trust” or a “sub-trust”.

If the Commissioner is satisfied that the trust meets the definition of a “pooled investment trust” and does not meet the definition of a “sub-trust”, then the trust may be registered as a “pooled investment trust” for a period of 3 years. Re-application is required upon expiry of that period. An interim registration process has been included to enable the unit trust that is being established a period of 12 months to meet the criteria necessary for registration.

Broadly, the relief is targeted at genuine wholesale trusts that provide investment services in the funds management industry.

Relief for Private Unit Trusts converting to Public Unit Trusts

Stamp duty relief is now available to private unit trusts that are intending to become public unit trusts. A private unit trust can be treated as a public unit trust for a period of 12 months from the date the first units in the trust are issued or from the date that an Information Memorandum or Prospectus is lodged with ASIC, where the Commissioner is satisfied that it is intended that the trust will be a public unit trust by the end of the 12 month start-up period.

If at the end of the start-up period the provisional public unit trust is still a private unit trust, the unit trustee will be required to notify the Commissioner and the status of the provisional public unit trust will be cancelled with effect from the beginning of the start-up period.

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Duty on Disposition of Units in Public Unit Trust that becomes a Private Unit Trust

When a public unit trust converts to a private unit trust, as a result of a disposition of units, the trust will be treated as being a private unit trust for the purposes of that disposition. This disposition is referred to as a “transitional disposition”. The trust will be treated as a private unit trust for the purposes of that disposition and conveyance duty will be charged under section 73D of the Stamp Act 1921 (WA) on the transitional disposition (at ad valorem rates of stamp duty).

The transitional disposition is aggregated with those dispositions that occurred while the trust was a public unit trust, and those that occurred after the conversion to a private unit trust, where the dispositions are taken to form substantially one disposition. These dispositions are referred to as the “aggregated dispositions”.

A dutiable statement is required to be lodged within 2 months after the transitional disposition, and the statement is to contain details of all the aggregated dispositions up to the transitional disposition.

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