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INFORMATION NOTES
TRANSFER OF LAND FROM FAMILY TRUSTS

The information contained in these notes is general in nature and is intended only to cover transactions involving the transfer of property from a family trust to a beneficiary of the trust. Prior to transferring the property from a family trust, the trustees should have regard to the following (which is not an exclusive list of considerations):-

TAXATION & DUTY ISSUES

Transfer Duty

Transfers of Victorian land are dutiable transactions under the Duties Act. If the property is purchased by the family trust beneficiaries, duty will be payable on the market value or sale price (which ever is higher) of the property.

The property transfer should be exempt from duty provided it is made as a distribution in specie whereby:

- no consideration is paid by the trust beneficiary
- any duty payable by the trust when it first acquired the property has been or will be paid
- the person receiving the property was a beneficiary of the trust when the property was acquired by the trust.

Although a formal transfer is not required where all the trustees are also the beneficiaries receiving the property, it is still necessary for duty and superannuation purpose to prepare a Statement of Change of Beneficial Ownership. The Statement is exempt from duty on the same conditions as a transfer of land.

Goods & Services Tax

If the property is sold by the Trust, GST will be payable on the sale if the Trust is registered or required to be registered for GST unless an exemption is available. A "going concern" exemption may be available if the Trust is registered for GST and the property is sold subject to an existing written lease. You should discuss GST registration and exemption issues with your accountant.

If the family trust is not registered or required to be registered for GST, there are no GST implications for the Trust. If the Trust is registered for GST, where property is distributed to a trust beneficiary, the GST implications of the property transfer will be determined by the GST status of the property and the GST status of the beneficiary.

If the property is residential property, it is input taxed and there is no requirement to account for GST. Farm land is exempt from GST and therefore has no GST implications for the Trust. Generally speaking, GST implications for the transfer of all other property is as follows:-

- GST is payable by the trust, if the beneficiary is not registered or required to be registered for GST.
- GST is not payable by the trust, if the beneficiary is registered or required to be registered for GST.

It is presumed that the property being transferred is an investment property providing investment income and is being used for "creditable purposes" as defined in the GST Law. As a rule of thumb, if the rental from the property exceeds $75,000.00 per annum, the beneficiary will be required to register.

To ensure that there are no GST implications for the Trust, the beneficiary must be registered for GST prior to receiving the trust property. The beneficiary should receive income from the property and properly account for the GST received.

Capital Gains Tax

The disposal of the property by the family trust can have CGT implications for the Trust. It is expected that you will have sought and obtained advice on any CGT implications from your accountant or financial adviser prior to instructing the offices of MJHC Legal to transfer property to the Fund. You should not take any steps to transfer the property until you are aware of any CGT implications.

Other Important Financial and Accounting Issues

It is important that you and your accountant consider all other financial and accounting implications associated with transferring out trust property. Your accountant must ensure that for accounting purposes the trust actually has sufficient profits or capital to make a trust distribution without causing a deficiency in the trust fund. This can arise where the trust distributes property but there are also trust liabilities such as (but not limited to) unpaid present entitlements owed to beneficiaries.

Issues can also arise where there are unpaid distributions to a corporate beneficiary of the trust and the beneficiary receiving the property is a shareholder of that corporate beneficiary. A distribution of property may be caught under the ITAA as a reduction in the corporate beneficiary loan account with consequential Division 7A “deemed dividend” issues.