

### **Major Reasons for a Non-fixed Child Support Trust**

# To ensure funded child support arrangements are in place following a relationship breakdown. # To have child support payments (concessionally) taxed as excepted income in the hands of the child, rather than included in the obligated parent's income and taxed at the parent's marginal tax rate, eg 46.5%. # To set aside a capital sum for ultimate payment to the child – payment usually occurs when the obligated parent dies, but can be advanced to the child at an earlier or later date.

#### **Trustee**

Usually the obligated parent or a company controlled by the obligated parent.

#### **Ultimate Control**

Control is held by the appointor (usually the obligated parent) until the trust ends and the capital beneficiary takes over absolute ownership. The capital beneficiary cannot be changed and no additions can be made to the income beneficiaries.

#### **Income, Losses, Loans and Pension Benefits (if non-fixed option is chosen)**

The child and other income beneficiaries are taxed on all income spent on or allocated or paid to them, with credit for any tax already paid, eg dividend franking credits. Separate trust needed (usually within a single Deed) for each child for whom there are child support obligations. Loans to the trust need to be on arm's length rate terms. Income and assets can be counted for Centrelink means tests purposes both for the obligated parent and for non-excluded beneficiaries of the trust.

#### **Capital Profits**

Taxed as a capital gain for the child (but with a 50% discount). Unlike the more restrictive fixed alternative (included as part of the **Child Support Trust Pocket Summary**), a taxable CGT event may occur when the trust ends and the capital is distributed to the child.

## CST – Barriers

Need binding child support obligations

Transfer by obligated parent/associate of asset, eg

- cash (no transfer costs)
- listed shares (CGT may be payable)
- unlisted shares, land & buildings  
(CGT, State duty & GST may be payable)

Capital must endure and ultimately be received by the child, eg when obligated parent dies (often this is not perceived as a disadvantage)

### ***Binding child support obligations***

- Must be in consequence of a breakdown of marriage or de facto relationship.
- No requirement for parents to have cohabited.

### ***Assets to be Transferred***

- Cash (if available) minimises transfer costs and income can be generated by loans to related parties if the trustee wishes – depreciating assets are not usually suitable as the capital must have enduring value and eventually be paid to and benefit the child.
- Transfer of assets to the trust is a CGT event (not a problem for cash).
- GST is usually payable on assets that are not marketable securities.
- State duty is an establishment cost issue for land.
- Fully or partly paid preference or ordinary shares or units may be an appropriate trust investment (the use of partly paid and/or preference shares/units may minimise the amount of funding needed to get the trust going). Depending on the estate planning objectives of the obligated parent (see below), it may be preferable that any shares or units do not have the potential to appreciate, eg redeemable at par.

### ***Assets to be Acquired***

- Not essential to fully fund the trust from the outset – transfers can be in stages.
- Usually the objective during the years when child support funds are needed is to generate as much income as possible – note arm's length rate constraints on the amount of income that can be generated – see TR 2002/02.
- Whether any long term (or post child support years) capital growth is wanted depends on the estate planning objectives of the obligated parent.

## CST – Stages

- # While child support obligations are still in place – Child support obligations always have first priority, only surplus income can be discretionary
- # When child support obligations have finished – Trust operates as a discretionary income trust (or in the case of a fixed trust, interest is no longer charged)
- # When obligated parent dies/decides to end trust – Child receives trust capital

### ***2 or More Children – Need for Separate Trusts***

Where there is more than one child to be provided for, separate trusts are recommended for each child. The separate trusts are usually administered together and are often established by a single Deed. The definitions of income and capital in the Deed are the accounting definitions (because the requirement for “accounting” capital to eventually be paid to the child).

#### ***Death Benefits***

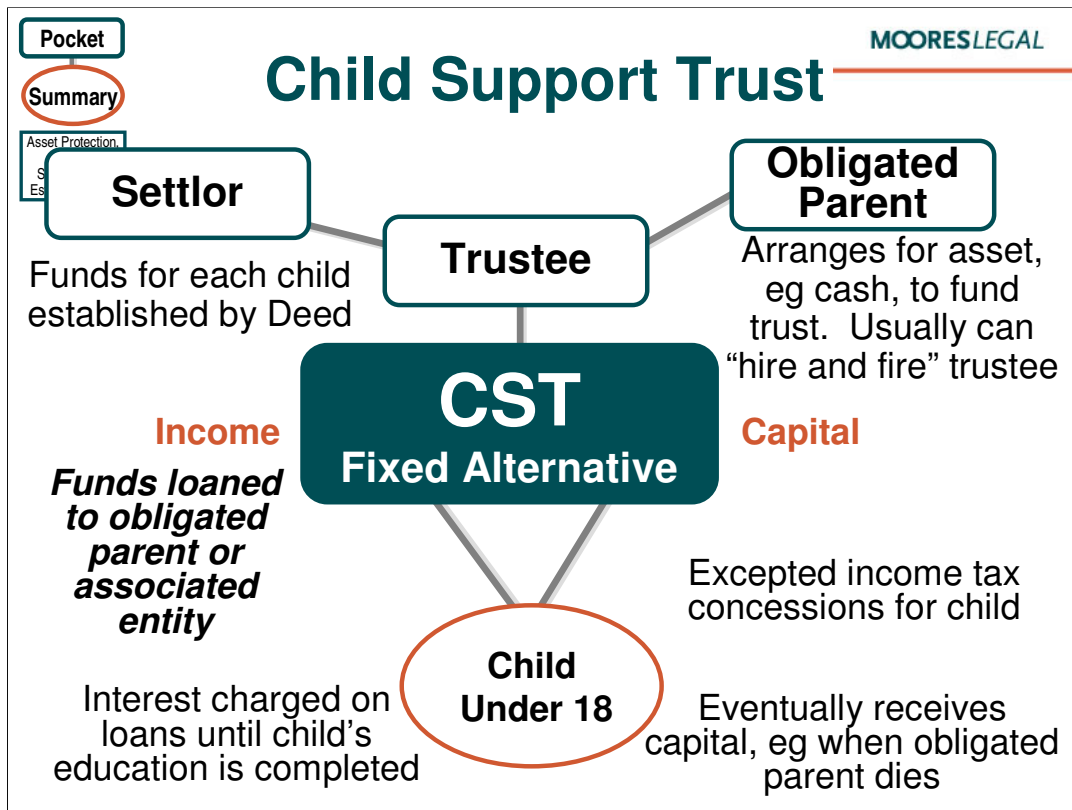
This type of trust is not recommended to receive death benefits, in view of CGT Event E4. Instead, financial support for the child can be achieved by the creation of:

- account based or other pensions or annuities can be established, providing that the trustee of the superannuation fund is willing and able to assist with creating the pension or annuity;
- a fixed trust, eg along the lines of the fixed child support trust alternative; or
- any of range of different types of testamentary trusts within the Will of the person wishing to provide the support.

#### ***Potential for Use of Child Support Trusts***

Child support trusts are not frequently established because they must satisfy the particular requirements of s102AG(2)(c)(viii).

For many salary and wage earners, these trusts are not worth considering because of the difficulty in finding a suitable asset to transfer to and fund the trust. Some salary and wage earners (or their parents) and many self employed obligated parents are, however, able to provide the necessary funding and a child support trust provides an opportunity to tax effectively fund their child support obligations.



### **Major Reasons for a Fixed Child Support Trust**

# To achieve most of the advantages of a non-fixed child support trust (other than flexible income distributions). # To be certain that assets will pass to the child with a CGT event occurring when the trust ends.

#### **Trustee**

Usually the obligated parent or a company controlled by the obligated parent.

#### **Ultimate Control**

Control is held by the appointor (usually the obligated parent) until the trust ends and the capital beneficiary takes over absolute ownership. The beneficiary cannot be changed and, unless the assets of the trust are ones that prevent a handover, eg a documented lifetime loan, (unlike the non-fixed version) the child can demand payment of the capital on attaining 18 years.

#### **Income, Losses, Loans and Pension Benefits (if fixed option is chosen)**

The child is taxed on all income spent on or allocated or paid to them, with credit for any tax already paid. Separate trust needed (usually within a single trust deed) for each child for whom there are child support obligations. Loans to the trust need to be on arm's length rate terms.

#### **Capital Profits**

Taxed as a capital gain for the child (but with a 50% discount). Unlike the non-fixed alternative (included as part of the **Child Support Trust Pocket Summary**), a CGT event does not occur when the trust ends and the capital is distributed to the child.

## Child Support Trusts – Further Reading

**Australian Master Estate  
Planning & Succession  
Guide – Chapter 7**

**You Can't Take It  
With You –  
Chapter 13**

**The latest version of this Pocket Summary is at  
[www.mooreslegal.com.au/services/epss/pocket-summaries](http://www.mooreslegal.com.au/services/epss/pocket-summaries)**

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### **Further Reading**

- The 1<sup>st</sup> edition of the ***Australian Master Estate Planning and Succession Guide*** by Allan Swan is scheduled to be published by **CCH** in 2011.
- The 1<sup>st</sup> edition of ***You Can't Take It With You*** by Andrew Simpson was published by **Wrightbooks** in 2009.
- The 5<sup>th</sup> edition of ***Tax Issues in Family Law Property Settlements*** – The Difference Between Hacking and Carving by Peter Szabo was published by **MOORESLEGAL** in 2008.

### **About the Author of the Pocket Summaries – Allan Swan**

In addition to his main role as a principal of the **MOORESLEGAL** estate planning team (working in the areas of **Asset Protection, Trusts, Superannuation, Tax and Estate Planning**) Allan is also the principal of **APTSTEP**, a provider of training and materials. Allan's current presentation topics are:

- Asset Protection Planning (includes page 1 of this Pocket Summary)
- Blended Families (all)
- Business Structures Overview
- Estate Planning – Key Cases and Rulings
- Estate Planning – Practical Case Studies for 2010
- Estate Planning – Tax and Strategic Issues
- Ruling from the Grave
- SMSFs – Planning Issues
- Superannuation Death Benefits
- Superannuation Overview
- Testamentary Trusts
- Trusts – Income and Capital Distributions
- Trusts – The A-Z.

Contact Allan on 03 9843 2153 for further information regarding on the content of the topics, the fees charged and to schedule a presentation, workshop or seminar.