

# Farm Transfer Trust



## ▶ Key definitions (Vic)

“Primary production”

“Relative” – narrower definitions in other States, (eg Qld)

- ▶ Recipient trusts can be fixed or non-fixed
- ▶ (Vic) only possible beneficiaries are relatives and charities – companies/other trusts not permitted
- ▶ Limitation on variation clause in Deed
- ▶ Can receive farming land free of GST & (*in Vic*) State duty (but CGT may still apply)

### **Key Definitions – Farm Transfer Trusts (Extracts from Victorian legislation)**

For the purposes of this exemption, “primary production” means:

- cultivating land for the purpose of selling the produce of such cultivation; maintaining animals or poultry for the purpose of selling them or their natural increase or bodily produce;
- keeping bees for the purpose of selling their honey;
- commercial fishing, including the preparation for such fishing and the storage and preparation of fish and fishing gear; or
- cultivating or propagating for sale, plants, seedlings, mushrooms or orchids.

A “relative”, in relation to a natural person who wishes to transfer a family farm, means:

- a child or remoter lineal descendant (grandchild, great-grandchild and so on) of the person, or of the partner of the person;
- a parent or remoter lineal ancestor of the person or of the partner of the person;
- a brother or a sister of the person or of the partner of the person;
- the partner of the person or a partner of any person referred to above;
- a child of a brother or sister of the person or of the partner of the person; and
- a brother or sister of a parent of the person or of a parent of the partner of the person.

For the purposes of the family farm exemption, a partner includes a person’s spouse or domestic partner (irrespective of gender) and a deceased partner.

A child includes a legally adopted child or an illegitimate child. The stepchild or step-grandchild must be a direct lineal descendant of the spouse of the transferor, so not all stepchildren or step-grandchildren will be relatives under this definition.

## Farm Transfer Trust – Duty Exemption

- ▶ More limited exemptions ex Vic
- ▶ Only applies to **farm land** (*other exemptions may apply, eg member to super fund in Vic, WA & Tas*)
- ▶ **Vic** Legislation (**s56**) provides:
  - ▶ Transferor must be individual or company (*trustee to beneficiary exemption in s36*)
  - ▶ Transferee must be “relative”, fixed trust or specially limited family “farm transfer” trust
  - ▶ “Relative” includes child/stepchild, remoter descendant, domestic partner, sibling and parent

### ***Duties Act 2000 (Vic) – S56 Exemption – Farm Transfers to Relatives/Charities***

(1) No duty is chargeable under this Chapter in respect of a transfer of dutiable property if the Commissioner is satisfied that

- (a) the dutiable property is an estate in fee simple in land referred to in section 9(1)(ga), (h) or (ha) of the *Land Tax Act 1958*; and
- (b) the transferor is a person referred to in sub-section (2); and
- (c) the transferee is a person referred to in sub-section (3); and
- (d) the transfer does not arise from arrangements or a scheme devised for the principal purpose of taking advantage of the benefit of this section.

(2) The transferor must be

- (a) a natural person; or
- (b) a trustee for a natural person; or
- (c) a company all the shares in which are owned by natural persons who are relatives of each other.

(3) The transferee must be

- (a) a relative of a natural person referred to in sub-section (2); or
- (b) a trustee under a fixed trust, the beneficiaries of which are limited to
  - (i) a present or future relative of a natural person referred to in sub-section (2); or
  - (ii) a charitable institution; or.....
- (c) a trustee under a discretionary trust the terms of which do not allow the distribution of the whole or any part of the capital of the trust that comprises land referred to in section 9(1)(ga), (h) or (ha) of the *Land Tax Act 1958* to any person or body other than a person or body referred to in paragraph (b); or
- (d) a natural person referred to in sub-section (2)(c).

# Farm Transfer Trust – Further Reading

## Australian Master Estate Planning & Succession Guide – Chapter 21

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

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.