

Goodbye to Gift Duty—What does it mean?

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Special points of interest

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The Government has confirmed that Gift Duty will be abolished from 1 October 2011

This means;

You can make gifts without the previous \$27,000 per annum limit.

- Those with Trusts can either write off loans resulting from the transfer of assets to the Trust, or transfer more assets to the Trust without needing to record a loan.
- The abolition of Gift Duty will mean that the transfer of assets can be done in one transaction and there will not be the ongoing gift disclosure cost.

When can you act?

Unfortunately, the legislation is yet to be passed and will not be effective until 1 October 2011. This means that gifting programmes cannot be finalised until then and any new transfers will need to be after that date.

What should I do?

- If you are in an existing gifting programme, please discuss with us whether current gifting should be completed, or put on hold until the law change

It is not a case of one way suits all and in some cases retaining a loan and having the ability to ask for repayment may be an advantage

- If you wish to set up a Trust or transfer further assets to a Trust, you could do this at current values and then complete the gifting once the law has changed. Once again, we suggest discussing this with us

This is the perfect time to review your asset protection and/or distribution plan as the abolition of Gift Duty will make the formation of Trusts and transfer of assets simpler and less costly.





We recommend you call us to review your position in light of the law changes

Cont.

Some background and thoughts going forward

For many years, New Zealanders have transferred their assets to Trusts to reduce the risk of these assets being used or attacked in certain circumstances (insolvency, relationship claims, rest home subsidy claims etc) and to give them a vehicle to control and distribute assets after their death. The annual limit of \$27,000 per annum for any gifting severely restricted the ability to transfer assets to the Trust. Abolition of this limit solves this problem.

As with all law changes there are “fishhooks”. In abolishing the limit, the Government outlined rules that would allow some “claw back” and you need to take advice regarding these. Examples are:

- Creditor and tax avoidance, there are protections in place to allow tracing of assets where there is deliberate avoidance.
- Access to social assistance or residential care subsidy. There is the ability to look into the transfer of assets (particularly in the 5 years before subsidy application), check detail with us.
- Relationship Property issues. There is protection under the Property (Relationships) Act 1976 where transfer was intended to defeat the interests of another party. Our Property Relationship Lawyers should be consulted if there are concerns.
- Proper operation of a Trust is a must, if a Trust is challenged in relation to any of the above issues its assets will be threatened if it has not been administered in accordance with the Trust rules etc. Trustees must also beware of disaffected beneficiaries who can quickly turn on a Trust that has not been run properly.

Despite the above issues, Trusts remain a very useful vehicle to hold your assets and distribute these to family members. The abolition of Gift Duty will make this easier. We recommend you contact us to review your position in light of the law changes.



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