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TAXATION OF TRUSTS

On 21 November 2011 the Assistant Treasurer released a consultation paper titled "Modernising the Taxation of Trust Income – Options for Reform".

The legislation, which is expected to be introduced in November 2012, will rewrite Division 6 of the 1936 Tax Act.

The paper can be found at: <http://www.treasury.gov.au/contentitem.asp?NavId=037&ContentID=2215>

UPDATE ON TRUST RESETTLEMENTS

In a postscript to the ATO's failed attempt to appeal to the High Court in relation to its loss in FCT v Clark [2011] FCAFA 5 the Full Federal Court has ordered the ATO to pay the Clark's costs on an indemnity basis, rather than the more common party party basis.

While the fact that the Clark's offered the ATO \$5,000 to settle the matter before the Full Federal Court appeal influenced the Court's decision regarding costs it is also hoped the Court was gently suggesting to the ATO that, in light of the High Court's swift disposal of its special leave application, it needs to rethink its view on trust resettlements.

It will be interesting to see what happens if the rewrite of Division 6 results in the need to amend trust deeds and the ATO takes the view that amending the deeds to comply with the new taxation provisions results in a resettlement.

jmalegal | business lawyers

Cootamundra | 46 Cooper St, Cootamundra NSW 2590 | DX 5552 Cootamundra | T 02 6942 1655 | F 02 6942 3692
Canberra | 11/60 Marcus Clarke St, Canberra ACT 2601 | T 02 6243 3610 | F 02 6243 4848
Gundagai | 195 Sheridan St, Gundagai NSW 2722 | T 02 6944 1755 | F 02 6944 1850
Sydney | 3 Spring St, Sydney NSW 2000 | T 02 8249 4028 | F 02 8249 4872
www.jmalegal.com.au | Call 1800 618 869

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