

# AUSTRALIAN TAX REVIEW

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## EDITORIAL

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## ARTICLES

### **Dissecting trusts and trusteeship: CGT and stamp duty consequences – *Dr John Glover***

Possibilities of trust dissection confound regulators and revenue-gatherers. Trusts’ minimal “core” obligations and few definitional requirements explain the continued use of the device for revenue-efficient purposes. Trusts can be dissected, or “split,” in an indeterminate number of ways. Five means are considered here, together with capital gains tax and the stamp duties consequences in Australian State and Territory jurisdictions. First, trust assets may be appropriated to specific beneficiaries proportionally to their interests in the device. Second, co-trustees’ duties and responsibilities, control of trust assets and associated liabilities can be separated. Third, subtrusts can be created, for purposes including the transfer of beneficial interests. Fourth, trusts can be “cloned”, splitting aspects of control and liability into separately administered funds. Fifth, “umbrella” trusts can be created, with sectionalised custody, management and risk functions relevant in the avoidance of land rich duty. ....	201
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### **The movement of tax preferences through trusts and the causes of tax law complexity – *C John Taylor***

There is a high degree of complexity involved in the interaction of CGT event E4, the calculation of the non-assessable part of a trust distribution in s 104-71, the gross up rules for capital gains flowing through trusts in s 115-215; the operation of the CGT discount rules in Div 115, the application of the small business concessions in Div 152; and the operation of the rules for applying capital losses and net capital losses against capital gains. Moreover, these rules potentially affect any investor in a unit trust. This article reviews the academic literature concerned with definitional and conceptual issues in tax law complexity, and then examines a series of examples illustrating the interaction of various causes of tax complexity in the operation of CGT event E4. An attempt is then made to redraft CGT event E4 and associated sections with a view to reducing the degree of complexity involved in their operation and interaction. The conclusion is reached that, while complexity is inevitable when income and tax preferred capital gains flow through an intermediate entity, redrafting these provisions in a manner which makes the policy intent of provisions and their constituent elements and their relationship to other provisions more apparent could some remove some unnecessary complexity in their interaction. ....	222
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**Purpose in consolidation – no more purpose? – Sunita Jogarajan**

This article argues that the current test of purpose used to characterise a gain or loss on disposal of an asset as being on capital or revenue account is inappropriate in a tax consolidated environment. The article focuses on the sale of shares in a subsidiary member of a consolidated group and argues that the test should be abolished in this context. It suggests that all such disposals should be treated as being on capital account to provide taxpayers with certainty and to achieve the policy objectives of the tax consolidation regime. .... 253

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5. Austin, n 4, p 56.

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