Moving property in **Queensland** between trusts without stamp duty

Christopher J. Batten July 2024

Subject	QLD Property Transfers between trusts without Stamp Duty
Alert	**High**
Topic	MGS can arrange the transfer of property in Queensland between trusts without stamp duty to save land tax, protect assets and for SMSF purposes.
Legislation/Other Material	Duties Act 2001, Land Tax Act 2021, Superannuation Industry (Supervision) Act 1993, Superannuation Industry (Supervision) Regs 1994
More info	www.macquariegs.com.au

The Queensland Office of State Revenue has confirmed that the transfer between trusts of dutiable property (i.e. real estate) will not attract stamp duty if certain conditions are met. MGS has undertaken the transfer and the Queensland Office of State Revenue have assessed the transfer with no duty payable.

The reasons why someone would consider undertaking such a restructure include:

1. To gain multiple land tax thresholds,
2. To separate assets for asset protections purposes,
3. To move property into the SMSF environment with minimum stamp duty costs,
4. To move property for estate planning purposes.
5. To move property for development purposes.

The following five examples are to provide a guide of what can be achieved by restructuring a taxpayer's affairs and the stamp duty and land tax savings:

Example	Description	Savings in 1st Year	Annual Saving
1	3 Properties in Queensland owned by the same discretionary trust	$10,800	$10,800
2	3 Properties in Queensland owned by the same unit trust	$10,800	$10,800
3	2 Properties in Queensland and 1 in New South Wales owned by the same unit trust	$21,700	$21,700
4	A business property held in a trust with the business being operated from the property	Asset Protection	Asset Protection
5	A business property held in a company with the business being operated from the property	Asset Protection	Asset Protection
6	Development site held in a trust where some of the developed properties are to be retained	Asset Protection/Separation	Asset Protection/Separation
7	Development site held in a company where some of the developed properties are to be retained	Asset Protection/Separation	Asset Protection/Separation

Example 1:

Smithco Pty Limited is the trustee of the Smith Family Trust. The trust owns 3 properties in Queensland. Each property has a taxable value of $300,000. Two additional trusts are established, and the properties separated with no stamp duty.

Before restructure:

Land Tax Assessment

Taxable Value = $900,000
Land Tax = $1,450 + 1.70 cents for each $1 more than $350,000

Land Tax = $10,800/annum

After restructure:

Land Tax Assessment

Taxable Value per Trust = $900,000
Land Tax = $0

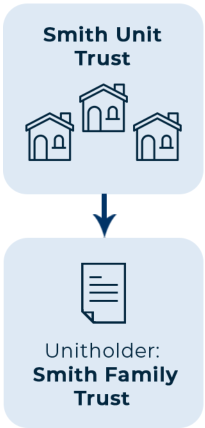
Land Tax = No land tax for each trust

By restructuring the properties into 3 trusts, the taxpayer saves $10,800.00 per annum. No stamp duty payable.

Example 2:

Smithco Pty Limited is the trustee of the Smith Unit Trust. The trust owns 3 properties in Queensland. Each property has a taxable value of $300,000. Two additional unit trusts are established, and the properties separated with no stamp duty.

Before restructure:

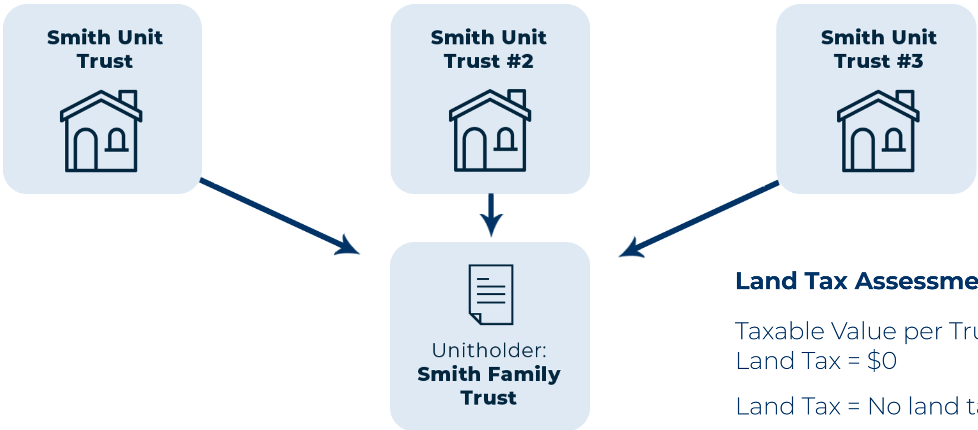


Land Tax Assessment

Taxable Value = $900,000
Land Tax = $1,450 + 1.70 cents for each $1 more than $350,000

Land Tax = $10,800/annum

After restructure:



Land Tax Assessment

Taxable Value per Trust = $900,000
Land Tax = $0

Land Tax = No land tax for each trust

By restructuring the properties into 3 trusts, the taxpayer saves $10,800.00 per annum. No stamp duty payable.

Example 3:

Smithco Pty Limited is the trustee of the Smith Unit Trust. The trust owns 2 properties in Queensland and 1 property in New South Wales. The NSW property has a taxable value of $1,000,000. The two properties in Queensland have a taxable value of $300,000. The trustee wishes to minimise the land tax payable. The Queensland properties are separated into separate trusts and the original trust converted into a Land Tax Unit Trust.

Macquarie Group Services
Macquarie Group Services Pty Ltd
Level 7, 77 Castlereagh St, Sydney NSW 2000
(02) 9231 5111 contact@macquariegs.com.au www.macquariegs.com.au

Before restructure:

NSW Land Tax Assessment

Taxable Value = $1,000,000
Land Tax = 1.60 cents x Taxable Value

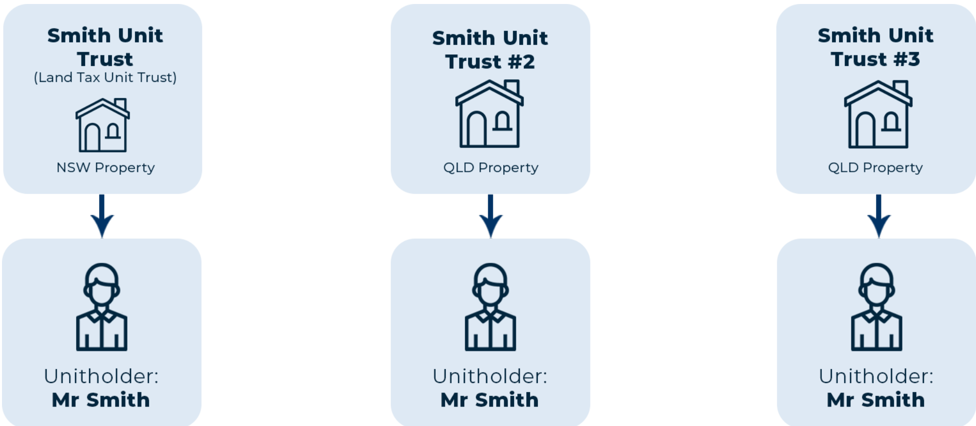
Land Tax = $16,000/annum

QLD Land Tax Assessment

Taxable Value = $600,000
Land Tax = $1,450 + 1.70 cents for each $1 more than $350,000

Land Tax = $5,700/annum

After restructure:



NSW Land Tax Assessment

Taxable Value = $1,000,000
Land Tax Threshold = $1,075,000

NSW Land Tax = No land tax

QLD Land Tax Assessment

Taxable Value per Trust = $300,000
Land Tax = $0

QLD Land Tax = No land tax for each trust

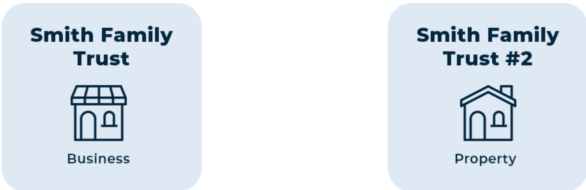
By restructuring the properties into 3 trusts and converting the original trust into a Land Tax Unit Trust the taxpayer saves $21,700.00 per annum. No stamp duty payable.

Example 4:

Smithco Pty Limited is the trustee of the Smith Family Trust. The trust owns 1 property in Queensland and operates a business in Queensland. The business has creditors and has normal business risks. It is desired to move the property to a separate trust to protect the property from the creditors of the business.

Before Restructure:

After restructure:



By restructuring the property into a separate trust, the property is protected from the creditors of the business. A capital gain could be disregarded either under Subdivision 126G, Subdivision 152A or Subdivision 328G of the Income Tax Assessment Act 1997.

Example 5:

Smithco Pty Limited owns 1 property in Queensland and operates a business in Queensland. The business has creditors and has normal business risks. It is desired to move the property to a separate company to protect the property from the creditors of the business.

Before Restructure:

After Restructure:

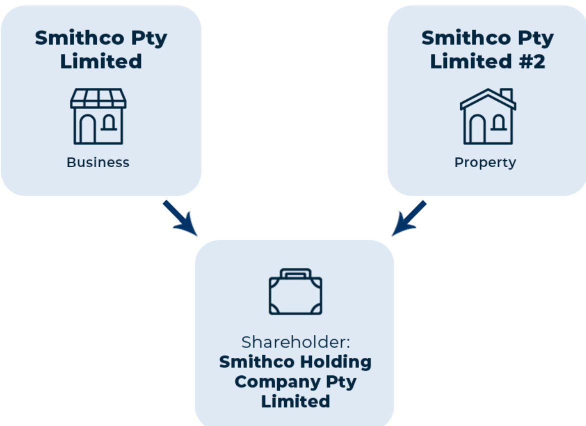


Diagram showing property in a company and business in a separate company. Both companies should have the same company as the shareholder.

By restructuring the property into a separate structure, it is protected from the creditors of the business. This may have to be achieved by undertaking a corporate consolidation/reconstructions transaction under Part 1 of Chapter 10 of the Duties Act 2001.

Example 6:

Smithco Pty Limited as trustee for the Smith Unit Trust owns several properties in Queensland and wants to develop one of the properties. It is preferable to transfer the property to a company so that the other properties of the trust are not exposed to the development risk.

Before Restructure:

After Restructure:

Macquarie Group Services Pty Ltd
Level 7, 77 Castlereagh St, Sydney NSW 2000
(02) 9231 5111 contact@macquariegs.com.au www.macquariegs.com.au

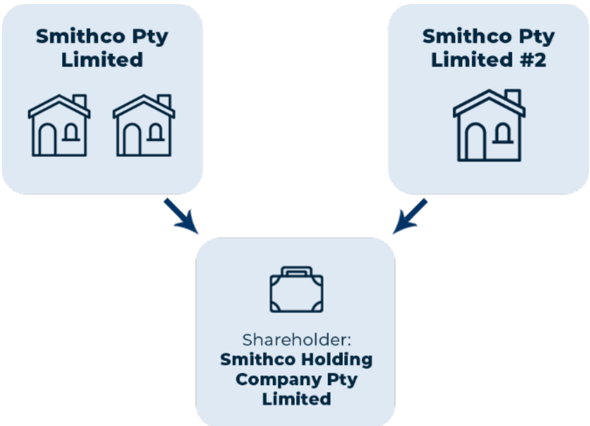
By restructuring the property into a separate structure, the development risks are taken away from the other assets of the unit trust. This can be also important in relation to funding where a financier wishes to take a charge over all assets of the company borrower. This may have to be achieved by undertaking a corporate consolidation/reconstructions transaction under Part 1 of Chapter 10 of the Duties Act 2001.

Example 7:

Smithco Pty Limited owns several properties in Queensland and wants to develop one of the properties. It is preferable to transfer the property to a new company so that the other properties of Smithco Pty Limited are not exposed to the development risk.

Before Restructure:

After Restructure:



By restructuring the property into a separate structure, the development risks are taken away from the other assets of Smithco Pty Limited. This can be also important in relation to funding where a financier wishes to take a charge over all assets of the company borrower. This may have to be achieved by undertaking a corporate consolidation/reconstructions transaction under Part 1 of Chapter 10 of the Duties Act 2001.

MGS Private Pty Limited
Level 7, 77 Castlereagh Street
SYDNEY NSW 2000
PH: 02 9231 5111
FAX: 02 9231 5122
EMAIL: chris.batten@macquariegs.com.au