Australian Securitisation Forum

Welcome | Nau mai haere mai

ASF NEW ZEALAND MEMBER BRIEFING

New Zealand tax update

1. Outline

- Tax impacts on securitisation transactions
- Update on typical structures and tax consequences
- Topical issues
- Recent engagement with IRD
- Questions/comments

2A. Tax and securitisation transactions

- Important that securitisation vehicles are “tax neutral”
- Tax neutrality:
  - Tax is not payable within the vehicle itself, not a drag on cashflows
  - Structural and operational aspects
- Allows notes to be serviced/fees paid in priority to tax
- All securitisations require a tax neutrality opinion (usually a CP)

2B. Tax and securitisation transactions

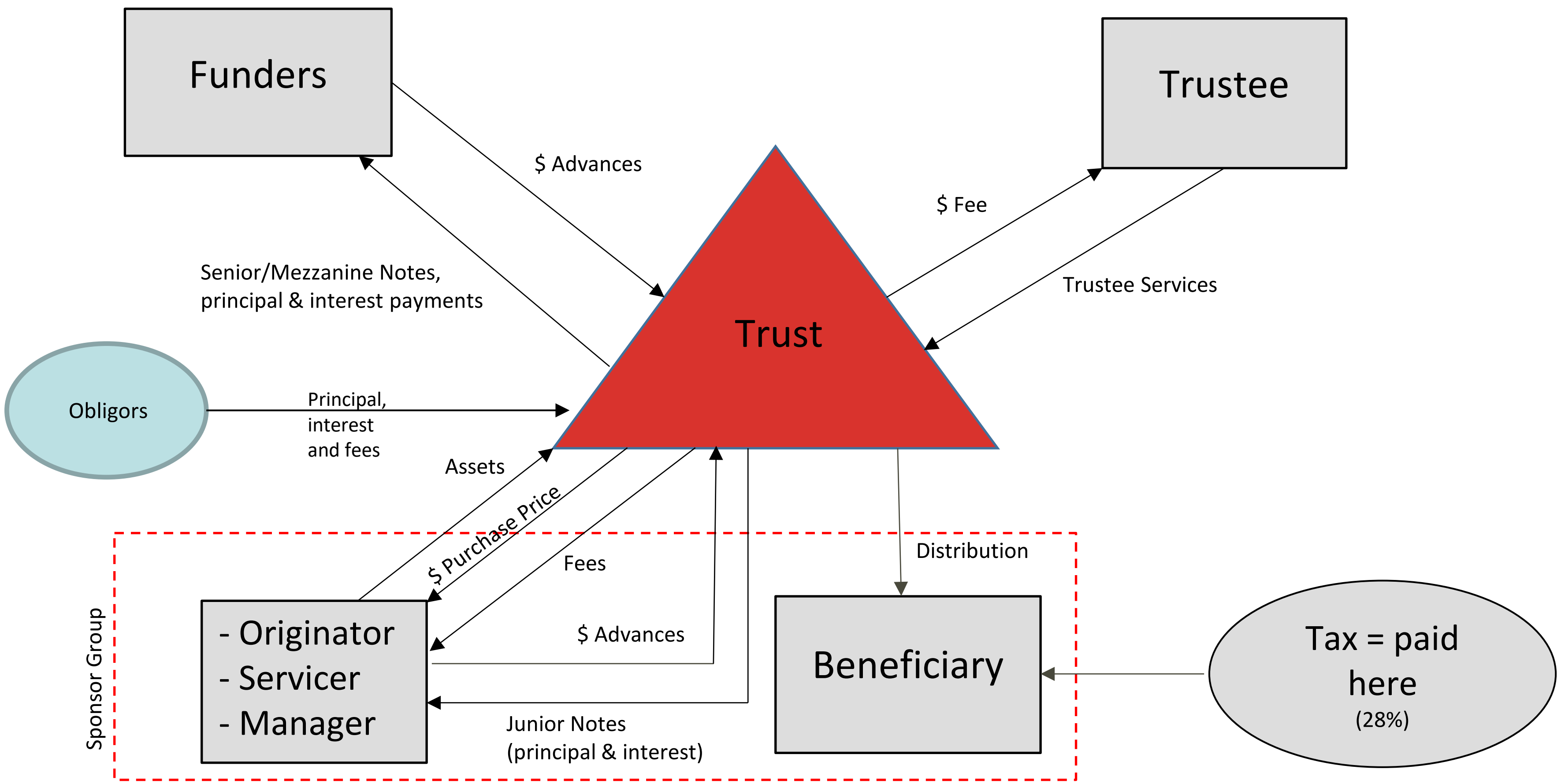
- Ingredients for tax neutrality vary depending on the trust
- Non-flow through vehicles
  - Needs to be a complying trust (NZ trustee, comply with tax obligations)
  - Minimise permanent differences between tax and accounting (e.g. non-deductible interest)
  - Minimise timing differences between tax and accounting (e.g. credit impairment)
  - Transaction documentation drafting required

2C. Tax and securitisation transactions

Flow-through vehicles (HR 9 / DFSPV)

- Tax neutrality by operation of law
- Tax paid by originators of the trust (i.e. outside the trust)

3A. Typical complying trust structure (non-flow through)



3B. Typical complying trust structure (non-flow through)

- Taxed as an ordinary complying trust. Taxable income is either:
  - beneficiary income (28% for corporate) or
  - trustee income (39% tax, if taxable income exceeds $10k)
- Objective = taxable income taxed as beneficiary income, in the hands of the beneficiary
- To be beneficiary income, income must vest in beneficiary within tax year, or paid to beneficiary by specified date (usually the due date for trustee tax return)
- Assessable income and deductible expenditure of the trust determined at the trustee level, applying ordinary rules

3C. Typical complying trust structure (non-flow through)

- Position of Trustee:
  - personally liable for tax on trustee income
  - liable as agent for tax on beneficiary income (statutory indemnity against beneficiary)
  - liable to make all withholdings on payments made by the trustee
- Trustee files tax return, has IRD number and other relevant tax registrations.
- Services provided by sponsor group to the Trustee have tax consequences
  - GST leakage if services are taxable for GST purposes
  - Trustee is usually not able to recover GST on its costs.

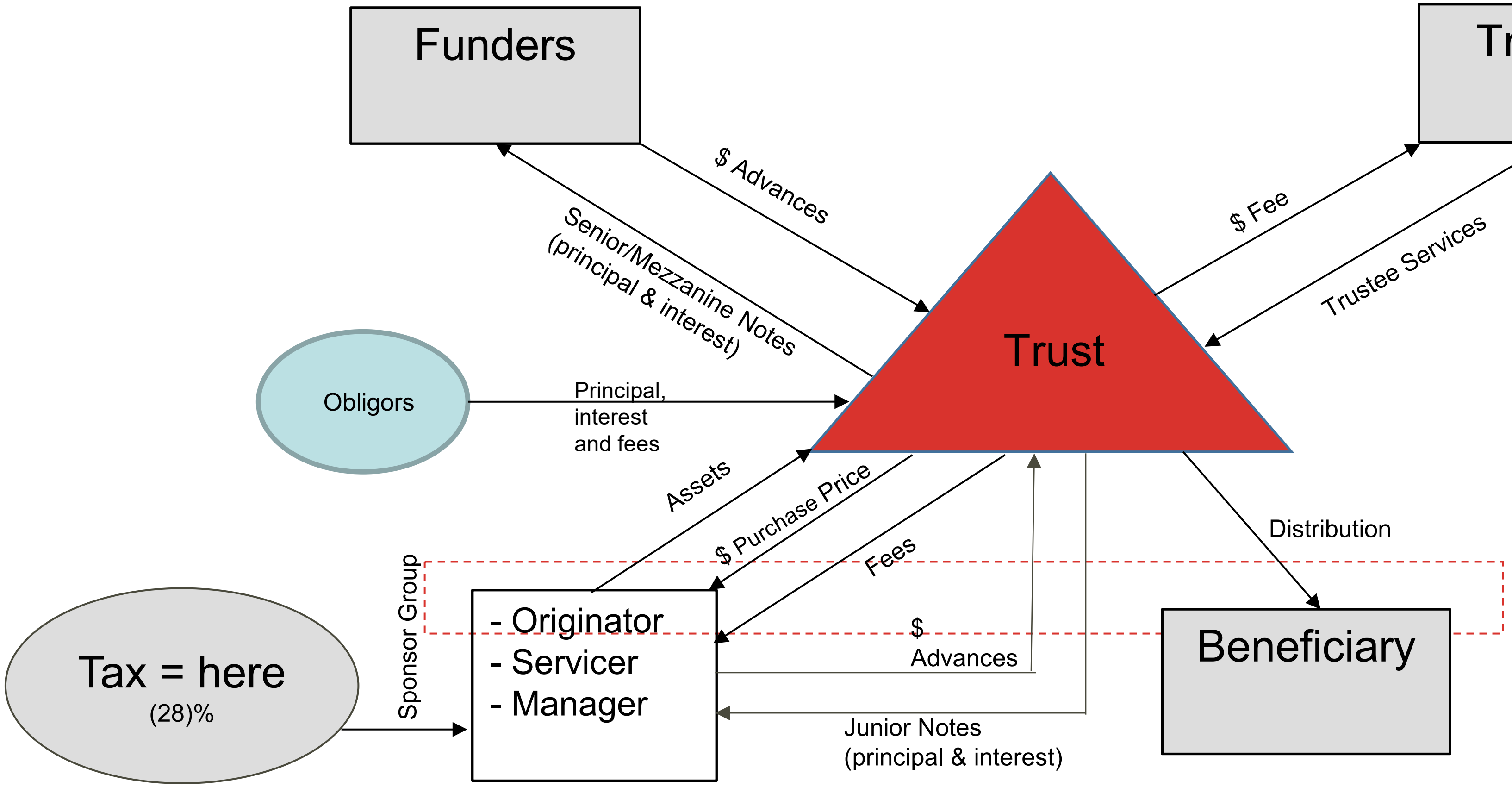
3D. Typical complying trust structure (non-flow through)

Typical issues:

- Ensuring the trust is not a “unit trust” (taxed as a deemed company)
- International tax rules and interest deductibility (thin cap, transfer pricing, hybrids)
- Mismatches between tax and accounting that impact vesting of income as “beneficiary income”
- Dealing with operating leases
- GST leakage
- Trustee protection for tax

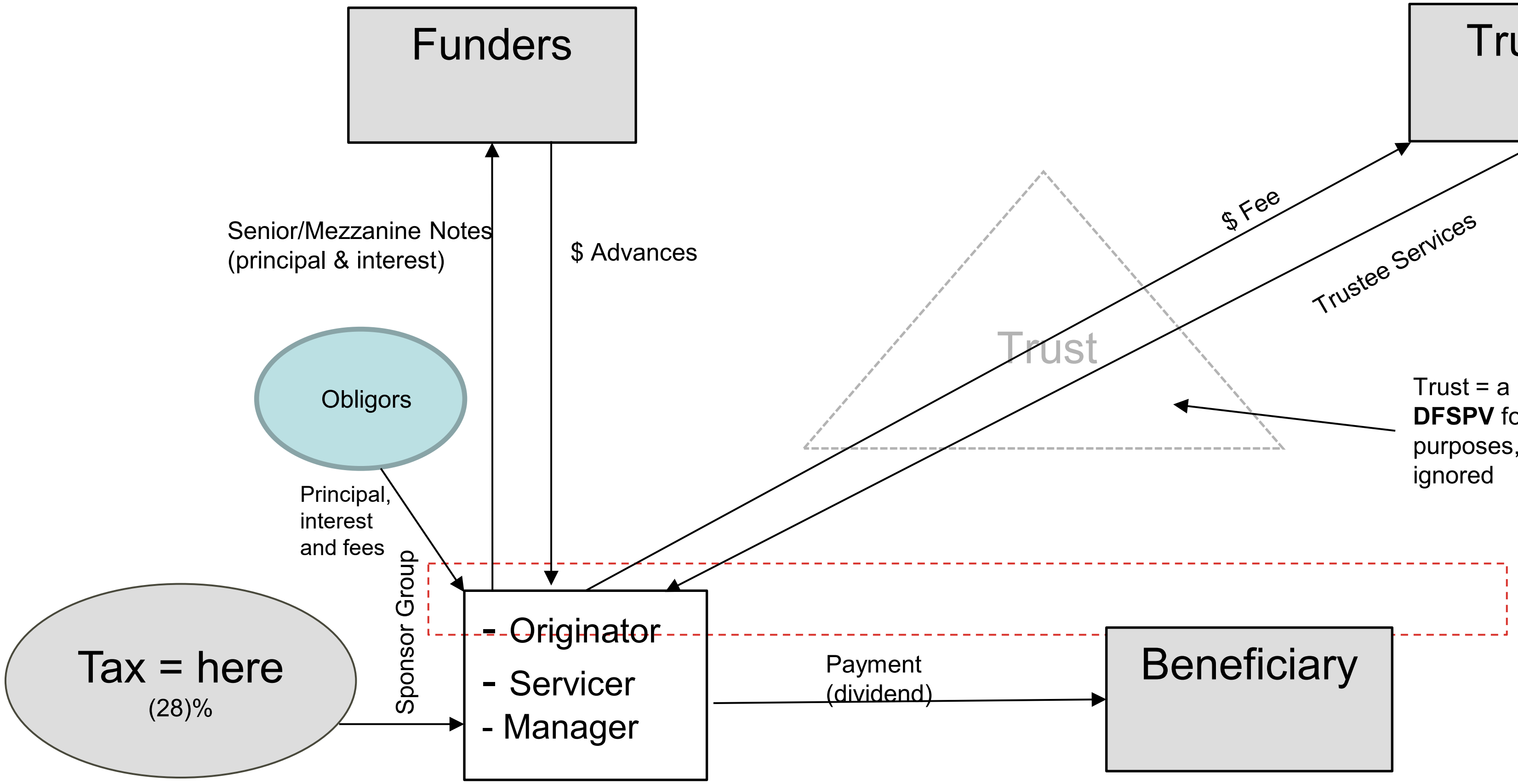
3E. Typical flow-through structure

Legal structure



3F. Typical flow-through structure

Tax structure - DFSPV



3G. Typical flow-through structure

- Eligibility requirements – on balance sheet, assets transferred by companies (the **Originator**) within the same wholly-owned group
- Originator(s) deemed to carry on activity of trust, trust is a non-entity for tax purposes (income tax, GST, tax administration)
- Taxable income from trust assets included in tax return of originator(s) – tax paid by the originator(s).
- No tax on disposal of assets to the trust (disposal ignored)
- Possible to eliminate GST leakage on services supplied by sponsor group
- Reduced tax compliance costs over life of trust
- Tax bankruptcy remoteness
- Available to new and certain legacy vehicles, vehicle can be a company

3H. Typical flow-through structure

Typical issues:

- Most centre around eligibility
- Transfers from other trusts
- Transfers from non-wholly-owned group companies
- Self-originating trusts
- Trusts that acquire from third parties

3I. Other structures

- Complying trust with non-resident beneficiary
  - Withholding tax on beneficiary income distributions
- Limited partnerships:
  - Statutory tax neutrality for income tax purposes
  - Flow-through structure is superior
  - Many have transitioned away from these structures
- Company “tax consolidation” structures
  - Company used as SPV, company consolidated for tax purposes with sponsor
  - Sponsor is nominated company and pays tax on behalf of the group, including the SPV.
  - GST grouping used
  - Joint and several liability issues for SPV
  - Flow-through structure is superior

4. Topical issues

- Trustee tax rate increase (33% to 39%)
- International tax rules and overreach
  - Largely impacting non-flow through vehicles
  - Focus on interest deductibility (thin cap, transfer pricing, hybrids)
  - Most regimes apply to notes/debt from associated or related parties
  - Association rules are not fit for purpose for securitisations
  - Complex, many risks of technical association (e.g. security trusts)
  - Can impose restrictions on true third-party debt
  - Tax neutrality risks / withholding
- Flow-through eligibility
- Pillar 2 and tax neutrality / bankruptcy remoteness
- *Minerva* case (Australia) and trusts with non-resident beneficiaries

5. Recent engagement with IRD

- ASF has been an active submitter on tax issues impacting securitisations (bill submissions, May 2024 letter to the Minister)
- Starting to see results, increasing IRD support for securitisation
- Carve out from 39% trustee tax rate avoidance rule for securitisation trusts
- August tax bill - proposal to broaden the flow-through regime:
  - Extension to trusts that receive assets from other trusts
  - But other extensions not covered (as yet)
- Discussions with IRD on international tax rules overreach and Pillar 2
- Opportunities to submit on the August tax bill

8. Questions / comments?

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