

4 March 2021

Board of Taxation Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

By email: cgtrollovers@taxboard.gov.au

Dear Sir / Madam

Review of CGT Roll-overs – Second Consultation Paper

Chartered Accountants Australia and New Zealand (CA ANZ) welcomes the opportunity to provide feedback on the Board of Taxation's review of CGT roll-overs second consultation paper (the Consultation Paper). CA ANZ commends the work done by the Board members to consult on the issues with the existing roll-overs available for restructures and supports the notion of rationalising the various CGT roll-overs into a single general business restructure roll-over.

However, the impact of COVID-19 on Australian businesses and the economy means that the reforms to the existing business restructure roll-overs has taken on greater urgency. With the JobKeeper Scheme ending on 28 March 2021, many businesses are starting to reconsider their business structures now so they can reset for 2021 and beyond.

Therefore, we recommend that rather than rushing a substantial reform of the CGT roll-over framework for restructures, the Board of Taxation should look at making targeted amendments to the existing CGT roll-over provisions that are causing practical issues with business restructuring as an *initial* step, with the goal of consolidating the CGT roll-overs further down the track.

Given the pressurised experience of implementing the Coronavirus Economic Stimulus measures is still fresh in the minds of the tax profession and Australian Taxation Office (ATO), CA ANZ is of the view that the tax profession and the ATO need to take this time now to get back on track with business-as-usual rather than learning and interpreting a whole set of new rules.

We understand a few of our member firms have already identified in their submissions certain areas of the existing roll-over rules which could be changed to improve business' access to key CGT roll-over rules that drive business restructuring.

Our general comments on the preliminary model is attached. Should you have any questions regarding our comments, please contact Karen Liew in the first instance on 02 8078 5483 or by email at karen.liew@charteredaccountantsanz.com.

Yours sincerely,

A handwritten signature in black ink that reads "Michael Croker". The signature is fluid and cursive, with a horizontal line at the end.

Michael Croker
Tax Leader Australia

Comments on the preliminary model

General observations

CA ANZ supports the design of the preliminary model. Focusing on the maintenance of ownership (with some practical exceptions) as the requirement for access to the roll-over will go long way towards simplifying applying the roll-over provisions – not having to examine each transaction under the restructure will cut the amount of work involved determining whether a roll-over is available. Also, this feature will allow back-to-back transactions to qualify for a roll-over. However, more consideration will be needed around the start and end time for a restructure period to ensure there is clarity.

The proposed model is more flexible than the existing CGT roll-overs. CA ANZ acknowledges that for the proposed general business restructure roll-over to be extended to situations that may have not qualified under the existing CGT roll-over rules, there will be other situations where the general business restructure roll-over will be less beneficial than the existing CGT roll-overs and this will be a necessary trade-off if the proposed general business restructure roll-over is to be accepted by the government in the post COVID-19, high budget deficit environment. CA ANZ believes further consideration should be given on the appropriate cost/benefit mix for the general business restructure roll-over so that it is not overly generous but also not so costly that it will be unattractive for business restructures.

Eligible restructure

12 month rule

CA ANZ is supportive of a bright-line approach of 12 months for a restructuring period with built in flexibility. That is, there should be some exceptions to the 12 months rules for where regulatory approvals or legal disputes has extended the length of time for implement the restructure or a discretion for the Commissioner to allow for an extension of time for the “restructure” where the parties can foresee that they will not be able to practically meet the 12 month rule for the restructure.

Dominant purpose of the restructure is a commercial purpose

CA ANZ does not support the requirement of the dominant purpose of the restructure is a commercial purpose. The current CGT roll-overs are available for restructures that are part of estate or succession planning of family businesses. Including the requirement for the commercial purpose being a dominant purpose will lead to interpretational issues as to whether the dominant purpose of a restructure of a family business group is commercial or for a private/family purpose. The existing Part IVA anti-avoidance rules are sufficiently robust to deal with any artificially contrived arrangements to access the roll-over.

Consequences of roll-over - proposal to abandon market value cost base uplift for takeovers

Feedback from our members is that this proposal should not proceed, particularly for the scrip-for-scrip deals where there are no significant or common stakeholders. There is concern that should this proposal proceed, scrip-for-scrip transactions for tax consolidated groups and large widely held groups will be untenable – there is the compliance issue with undertaking an entry ACA calculation for the acquiring tax consolidated group and practical issue with finding the target’s records for large widely held groups.

Treatment of pre-CGT assets

The proposal for a pre-CGT asset to lose its status after a business structure roll-over where the ultimate ownership has been maintained is a departure from the original policy underlying the CGT regime. We query whether there will be significant net benefits to the system to justify the loss of pre-CGT status of

those assets. The loss of pre-CGT status is likely to be a deterrent for those owners of significant pre-CGT assets to restructure and access the roll-over.

Proposal to extend the general business restructure roll-over to AMITs

Feedback from our members is that this proposal should proceed and CA ANZ agrees with the Board's reasons why the general roll-over may be extended to Attribution Managed Investments Trusts (AMITs). AMITs may seek to restructure their investments held due to overexposure to investments that are more risky post COVID-19 based on feedback from our members.

Reconciling Division 615 income tax relief with the general model

Member feedback suggests that this relief should extend to assets held as trading stock or on revenue account to provide maximum flexibility for businesses to restructure to a more commercially effective structure in a post COVID-19 environment.

Appendix A

Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand (CA ANZ) represents more than 128,000 financial professionals, supporting them to build value and make a difference to the businesses, organisations and communities in which they work and live.

Around the world, Chartered Accountants are known for their integrity, financial skills, adaptability and the rigour of their professional education and training.

CA ANZ promotes the Chartered Accountant (CA) designation and high ethical standards, delivers world-class services and life-long education to members and advocates for the public good. We protect the reputation of the designation by ensuring members continue to comply with a code of ethics, backed by a robust discipline process. We also monitor Chartered Accountants who offer services directly to the public.

Our flagship CA Program, the pathway to becoming a Chartered Accountant, combines rigorous education with practical experience. Ongoing professional development helps members shape business decisions and remain relevant in a changing world.

We actively engage with governments, regulators and standard-setters on behalf of members and the profession to advocate in the public interest. Our thought leadership promotes prosperity in Australia and New Zealand.

Our support of the profession extends to affiliations with international accounting organisations.

We are a member of the International Federation of Accountants and are connected globally through Chartered Accountants Worldwide and the Global Accounting Alliance. Chartered Accountants Worldwide brings together members of 13 chartered accounting institutes to create a community of more than 1.8 million Chartered Accountants and students in more than 190 countries. CA ANZ is a founding member of the Global Accounting Alliance which is made up of 10 leading accounting bodies that together promote quality services, share information and collaborate on important international issues.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents more than 870,000 current and next generation accounting professionals across 179 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications.