

Board of Taxation Secretariat  
The Treasury  
Langton Crescent  
PARKES ACT 2600

5 February 2021

By email: [cgtrollovers@taxboard.gov.au](mailto:cgtrollovers@taxboard.gov.au)

## **EY submission**

### **Board of Taxation Review of CGT Roll-overs**

Dear all

Ernst & Young (EY) welcomes the opportunity to respond to the Board of Taxation's *Review of CGT Roll-overs, Second Consultation Guide, December 2020* (consultation paper) to share our views on implementing an efficient and simple framework for CGT roll-overs and on the development of a general roll-over for business restructuring.

We welcome the Government's initiative to engage the Board to undertake the review of CGT roll-overs to rationalise and simplify the existing CGT roll-overs and related provisions to make them more practical and easier to use and interpret. We support initiatives for red tape reduction in tax policies and agree that CGT roll-over is an area where there is opportunity for improvement.

The second stage of the Board's review to consider extending the general business restructure roll-over application to transactions not covered by existing reliefs will also be important. This should include examining expanding the proposed general business restructure rollover to include superannuation funds or else providing specific relief to allow superannuation funds to restructure investment holdings particularly as between wholly-owned entities.

Further we note that the Board's report and recommendations on the small business concessions including the small business CGT concessions must still be addressed by Government. It would be desirable for improvements to these rules as set out in Recommendation 4<sup>1</sup> of that report to be made as part of that response with a later review of the effectiveness of the changes.

If the Government is minded to introduce a general business restructure roll-over, it is important that such a roll-over does not add any new limitations to currently available roll-overs but rather focuses on providing greater certainty and flexibility and reducing complexity of the CGT roll-over regime. Otherwise we would not support such an initiative.

We have some limited observations on matters raised in the consultation paper, set out succinctly below.

- **Principle 6:** If Principle 6 is retained, it should not limit a foreign company from interposing a new Australian holding company (currently not permitted under Division 615-A of ITAA97 due to the

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<sup>1</sup> Reform the small business CGT concessions to make them simpler, fairer, and more sustainable, which would incorporate the following core elements:

- Integrating the eligibility criteria with the small business entity regime by raising the aggregated turnover threshold to \$10 million per annum;
- Repealing the maximum net asset value test;
- Collapsing the 15-year exemption, active asset reduction and retirement exemption and replacing them with one CGT exemption subject to a cap.

requirement that there be at least 2 shareholders). In other words, the rule should only apply to “consolidatable groups”, not “potential MEC groups.”

- **Additional integrity measures:** There should be no requirement that the “restructure must be carried out for a commercial purpose.” Existing anti-avoidance rules are sufficiently robust.

Introducing a new concept of “commercial purpose” would introduce new uncertainty, contrary to the objectives of the CGT roll-over reform and likely requiring rulings from the ATO which may frustrate the timely completion of transactions. We note similarly the “genuine business restructure” requirement in the small business restructure rollover in subdivision 328-G creates complexity and uncertainty and has been an impediment which has restricted the usefulness of that measure.

- **Cost base market value step up:** We agree that the removal of the market value cost base step up for scrip for scrip rollovers raises concerns whether the proposed new general business restructure roll-over would be an attractive/practical option in many transactions. We expect that if, as planned, the new roll-over is optional many will seek to still use the current Subdivision 124-M rules.
- **Demergers:** We recommend that the Board clarifies in the final report that the additional demerger relief in Subdivision 125-C would remain unchanged.
- **Provisional cost base model:** Where a business restructure results in a new head company of an existing tax consolidated group, we recommend that there should be no deconsolidation and reconsolidation (similar to subsection 615-30(2)).
- **Demonstration of model:** We recommend that during drafting of a model any uncertain concepts should be avoided to avoid confusion and substantial work to confirm roll-over is available. We are concerned for example whether the requirement to have “an eligible restructure” that is “under a restructure scheme” would result in uncertainty and the need to obtain ATO sign-off.

Also we seek further clarification on requirement 1(f) under section 4.1 (pg. 40) of the consultation paper which states “each entity that held an original asset just before the start time holds one or more replacement assets in respect of that original asset at the end of the start time.” The purpose of the statement is unclear because in the case of a demerger, the demerging entity will not own any replacement assets once it transfers the demerged entity.

- **Reconciling Division 615 income tax relief with the general model:** We submit that the relief should extend to assets held as trading stock or on revenue account, under the broader principle that there has been no realisation of a gain that should be subject to tax.
- **Eligible restructure period:** Setting a time based limitation on a restructure to qualify for the general roll-over should not unnecessarily deny access to the provisions nor should taxpayers be required to expend significant time and resources to seek formal extensions of time from the ATO. Exceptions to the standard period must be able to be easily self-assessed.

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To discuss these matters further please do not hesitate to contact either Alf Capito (+61 2 8295 6473) or Brian Lane (+61 3 8650 7250) in our Tax Policy Centre.

Yours sincerely,

Ernst & Young