



Australia's property industry  
**Creating for Generations**

Property Council of Australia  
ABN 13 00847 4422

Level 1, 11 Barrack Street  
Sydney NSW 2000

T. +61 2 9033 1900  
E. [info@propertycouncil.com.au](mailto:info@propertycouncil.com.au)

[propertycouncil.com.au](http://propertycouncil.com.au)  
[@propertycouncil](https://twitter.com/propertycouncil)

12 February 2021

Board of Taxation Secretariat  
The Treasury – Melbourne Office  
Level 6, 120 Collins Street  
Melbourne VIC 3121

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

Dear Craig and Ann-Maree,

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

The Property Council welcomes the opportunity to provide comments to the Board of Taxation in relation to the Review of CGT Roll-overs (the Review) and the second consultation paper released in December 2020.

As outlined in our previous submission to the Review in June 2020, CGT roll-over treatment provides much needed temporary relief to taxpayers in the event of various circumstances, such as business re-organisations or involuntary asset disposals. The CGT roll-over provisions ensure that CGT is only levied at the point in time when the ultimate disposal of the asset is made. They are an important part of a fair and efficient tax system, helping our economy to remain attractive and compete globally with other jurisdictions.

While the Board of Taxation's proposal for a general business restructure roll-over may seem like the most expedient way of achieving a principles-based policy framework, we are concerned that the proposal may not be viable in practice or may take a long time to develop. We would therefore encourage the Board to consider making supplementary recommendations to the Government to clarify the policy underpinning existing roll-overs and to address any legislative issues such that the policy objectives can be achieved in the short term.

This submission outlines our responses to the consultation questions regarding the application of a general roll-over to AMITs. If you would like to discuss any aspect of this submission, please contact Kosta Sinelnikov on 0422 168 720 and [ksinelnikov@propertycouncil.com.au](mailto:ksinelnikov@propertycouncil.com.au), or myself on 0400 356 140 and [bngo@propertycouncil.com.au](mailto:bngo@propertycouncil.com.au).

Yours sincerely



Belinda Ngo  
**Executive Director, Capital Markets**

## Responses to relevant consultation questions

*25. Would extending general roll-over to trusts that satisfy CGT event E4 or E10 make relief practically available to AMITs? What additional obstacles, if any, would prevent relief being accessed?*

Yes, the CGT rules should apply to allow general roll-over relief for trusts to which E4 and E10 apply. Such an option presents an opportunity to ensure structural and operational efficiency in numerous scenarios.

Appendix A sets out several examples of transactions under realistic scenarios which would currently involve utilisation of a series of roll-overs or that are currently restricted by CGT roll-over not being available, outlining the issue in each example and possible solutions to solve the issues. This set of examples is not an exhaustive list but is provided for illustrative purposes; there are other types of realistic structures and entities where the availability of CGT roll-over is restricted that are not covered in Appendix A.

In our view, there is no policy grounds upon which roll-over relief should not be extended to trusts to which E4 or E10 apply. We consider that integrity concerns addressed in the Consultation Paper relating to the difference in tax treatment between companies and trusts can be adequately addressed through the eligibility criteria.

*26. For what types of arrangements would AMITs contemplate using general roll-over?*

There are a broad range of arrangements for which AMITs (and other non-discretionary trusts) may use a general roll-over, including a variety of restructures within a wholly owned economic group that facilitate commercial activity. By way of illustration, this may include demerger arrangements, intra-group and cross-staple restructuring, restructuring amongst subsidiary entities for asset protection or packaging for future sell-down. Refer also to the examples in Appendix A.

Providing the greatest scope for commercial flexibility and efficiency without tax barriers, including for AMITs and other non-discretionary trusts, should be the prevailing objective when making reform recommendations.

*27. Would giving AMITs access to general roll-over be inconsistent with the requirement for an irrevocable decision to enter the AMIT regime? How could this concern be addressed?*

The Property Council does not foresee any circumstances in which the irrevocable decision to enter the AMIT regime would be inconsistent with access to general roll-over relief. The AMIT election applies in respect of an entity and not the assets it holds and therefore the relevant trust would remain an AMIT. The purpose of a roll-over is to ensure taxpayers can conduct their operations efficiently without unintended tax law consequences adversely impacting optimal commercial decisions whilst economic ownership remains unchanged.

Access to the general roll-over for an AMIT with different classes of units that has made a further election for separate AMIT treatment would need to be considered but could be accommodated through the maintenance of ownership eligibility requirements. Any concerns regarding the potential for obtaining a permanent tax advantage can be dealt with through targeted measures if required (for example similar to the "choices" rule in section 126-235(3) of the *Income Tax Assessment Act 1997* (ITAA)).

As a general comment we would expect that an AMIT is typically the most tax efficient structure and rolling assets out of the structure is likely to be done for commercial reasons rather than tax avoidance.

For completeness, we note that while an AMIT election is irrevocable, AMIT status (once elected) is not necessarily permanent. AMIT status can, among other things, be lost due to a change in the composition of ownership, change in activities of the entity or change of trustee. If there was a particular concern identified, which we are not aware of, the concern could be addressed by only allowing roll-overs between AMITs or interests in AMITs. Such a measure already exists within subdivision 126-G of the ITAA which requires common elections to be made between transferor and transferee entities.