

Our Ref: AJL:GT

8 February 2021

Board of Taxation Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

By Email: cgtrollovers@taxboard.gov.au

Dear Sir or Madam

Review of CGT Rollovers – Comments on Consultation Guide

Rockwell Bates (**RB**) refers to the Board of Taxation (**BoT**) review of the capital gains tax (**CGT**) rollover provisions detailed in the BoT's December 2020 consultation paper (**Paper**).

Detailed below are our comments and views about the proposed general restructure roll over relief.

Response to Consultation Questions

Broadly, RB agrees with the proposed general restructure roll-over concept as outlined in the Paper as well as the benefits that may flow from it. In principle the concept is sound but further clarity around its application, the grandfathering of the various roll-overs to be combined into the general restructure roll-over concept as well as any integrity measures that will be built into this measure. Further clarity could include various rulings and documents from the Australian Taxation Office (**ATO**) and worked examples showings its application to various scenarios.

However, any general restructure roll-over needs to be considered in light of the following policy considerations:

1. Rollover relief should be available where there is no real change in the underlying economic position of the taxpayer (in a substantive or economic sense, as opposed to an apparent or legal sense); and
2. Rollover relief should promote flexibility, economic efficiency and productivity in the investment and allocation of capital by businesses, so as to support a strong Australian tax base.

We would further urge that the BoT, Treasury and the ATO undertake a detailed consultation process when designing and implementing such a change with stakeholders at all levels. In particular, with private clients, businesses as well as industry and professional associations.

Why a general restructure roll-over?

Broadly, RB agrees with proposed benefits for a general restructure. Doing so will reduce costs to small-to-medium businesses (**SMEs**) in seeking professional tax advice about the application of the CGT rollovers to their circumstances. Tax advice of this nature is generally expensive to many SMEs, in

particular the mum and dad type businesses. For the SMEs who are able to access such advice, the costs can be significant to them. In particular, where the business has been in existence for many years or there is a transfer as part of succession planning or intergenerational wealth transfer, this type of advice is important to businesses and should be readily available and accessible to them.

A general restructure rollover may also reduce the red-tape and compliance cost to businesses and may also reduce the issue of back to back roll overs being used inappropriately. Furthermore, a general restructure roll over may allow more businesses (other than SMEs) to access the benefits of the restructure roll over, as they may not be eligible to access the currently legislated roll overs.

As an integrity measure, the general restructure roll-over should contain the following tests to ensure that the roll-over is not abused:

1. The “genuine restructure” test as contained in the small business restructure roll-over (**SBRR**) under Subdivision 328-G of the *Income Tax Assessment Act 1997 (ITAA97)*. As outlined in LCR 2016/3, what is considered to be a general restructure can apply to many situations but it is primarily underpinned by the concept of commerciality and economic growth for the business.
2. A bright-line test of 12 months for the structure to remain in existence after the restructure to ensure that the roll-over is not being abused. There would need to be exemptions or carve-outs in situations of marriage breakdowns/divorce as well as death of an individual.

Designing the general restructure roll-over?

The proposal to define what a relevant ‘business restructure’ is may limit the purpose and intention for the general restructure rollover, although it may provide greater certainty than the current regime in limited instances. RB believes that doing so is unlikely to provide greater certainty as there would be too many variables that could apply to what is a business restructure, which will most likely complicate utilising and applying the general restructure roll-over. This could defeat the purposes of combining and forming a general restructure roll-over.

The policy intent for designing the general restructure roll-over needs to be considered in light of the following policy considerations:

1. Rollover relief should be available where there is no real change in the underlying economic position of the taxpayer (in a substantive or economic sense, as opposed to an apparent or legal sense); and
2. Rollover relief should promote flexibility, economic efficiency and productivity in the investment and allocation of capital by businesses, so as to support a strong Australian tax base.

RB believes that an alternative approach would be to incorporate the “genuine restructure” test as contained in the SBRR under Subdivision 328-G of the ITAA97, instead of trying to define what a business restructure is. In order to address this issue, it would make more sense to adopt the current concept of a “genuine restructure” test as in the SBE restructure rollover and add some further modifications to it. A further modification could be to add a timing aspect for how long the restructure is required to be in existence for. This additional test would prevent businesses from trying to apply the roll-over relief to avoid paying CGT.

Doing so would require further updates to the ATO guidance as well as additional examples as to what a “genuine restructure” is and how it would apply.

This would mean that there would have to be a feature within the general restructure roll-over that allows for specific CGT events to be excluded from the ‘eligible restructure’ in order to avoid giving rise to any integrity concerns or other practical difficulties. In particular, this would be prevalent in the situations of death of owner, family/marriage breakdowns and divorce as well as international ownership situations.

Another alternative approach could be applying a similar no change in ownership test as under the SBRR but with a discretionary element built into it. This would mean that subject to any unforeseen circumstances say for instance death of a business owner or marriage breakdown then the rollover relief will still apply as intended.

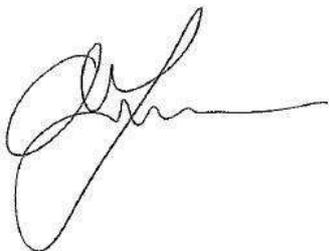
RB believes that the current roll-over election rules should be retained. This is to assist with the retaining the integrity measures associated with the use of such elections. It is noted that further guidance could be provided in the legislation or from other materials of particular wording to be used when parties are electing to apply the rollover relief. This would assist in reducing the compliance cost to businesses and simplify the process.

Other questions in the Paper

In relation to the other questions posed by the BoT in the Paper, RB does not have any comments on these at this time and would be happy to provide further comments once any draft legislation has been released.

If you have any questions about any of our comments, please contact Giang Tran.

Yours faithfully,



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