

# EXPOSURE DRAFT

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Inserts for  
**Tax and Superannuation Laws  
Amendment (2015 Measures No. 6) Bill  
2015: Small business restructure  
rollovers**

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>

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1. Schedule #	The day this Act receives the Royal Assent.	
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## Schedule #—Small business restructure rollovers

### Part 1—Main amendment

#### *Income Tax Assessment Act 1997*

#### # At the end of Division 328

Add:

#### Subdivision 328-G—Restructures of small businesses

#### Guide to Subdivision 328-G

#### 328-420 What this Subdivision is about

There are tax-neutral consequences for a small business entity that restructures the ownership of the assets of the business, without changing the ultimate economic ownership of the assets.

#### Table of sections

328-425	Object of this Subdivision
328-430	Effect of small business restructures on transferred cost of assets
328-435	Effect of small business restructures on acquisition times of pre-CGT assets
328-440	Requirements for a roll over under this Subdivision
328-445	Cost base of membership interests in transferors
328-450	Small business restructures involving assets already subject to small business roll-over

#### Operative provisions

#### 328-425 Object of this Subdivision

The object of this Subdivision is to facilitate flexibility for owners of small business entities to restructure their businesses, and the way their business assets are held, while disregarding tax gains and losses that would otherwise arise.

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## 328-430 Effect of small business restructures on transferred cost of assets

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- 3 (1) The \*income tax law applies to an entity in relation to the transfer  
4 of an asset by the entity, or to the entity, as if the transfer takes  
5 place for the asset's \*roll-over cost if:  
6 (a) each party to the transfer is:  
7 (i) a \*small business entity, for the income year during  
8 which the transfer occurred, that satisfies the maximum  
9 net asset value test under section 152-15 at the time of  
10 the transfer; or  
11 (ii) an \*affiliate, or an entity \*connected with, such a small  
12 business entity for that income year; and  
13 (b) the transfer occurs under a transaction in relation to which a  
14 roll-over under this Subdivision is available under  
15 section 328-440; and  
16 (c) the asset is a \*CGT asset that is:  
17 (i) if subparagraph (a)(i) applies—an asset of a \*business  
18 carried on by the small business entity; or  
19 (ii) if subparagraph (a)(ii) applies—an asset in relation to  
20 which subsection 152-10(1A) or (1B) is satisfied in that  
21 income year.
- 22 (2) The asset's *roll-over cost* is such amount as would, in relation to  
23 the transfer, give rise to whichever of the following is applicable:  
24 (a) in relation to the application of subsection (1) to the asset as a  
25 \*CGT asset (other than \*trading stock, a \*revenue asset or a  
26 \*depreciating asset)—the entity transferring the asset (the  
27 *transferor*) making neither a \*capital gain nor a \*capital loss;  
28 (b) in relation to the application of subsection (1) to the asset as  
29 \*trading stock—the transferor having sold the asset (in the  
30 ordinary course of \*business and dealing at \*arm's length) at  
31 the time of the transfer for:  
32 (i) the \*cost of the item for the transferor; or  
33 (ii) if the transferor held the item as trading stock at the start  
34 of the income year—the \*value of the item for the  
35 transferor then;  
36 (c) in relation to the application of subsection (1) to the asset as a  
37 revenue asset—the transferor not making a profit or a loss on  
38 the transfer.

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Note: The application of subsection (1) to the asset as a depreciating asset is addressed in item 8 of the table in subsection 40-340(1).

## 328-435 Effect of small business restructures on acquisition times of pre-CGT assets

For the purposes of applying subsection 328-430(1) to the asset as a \*CGT asset (other than a \*revenue asset) that the transferor acquired before 20 September 1985, the entity to whom the asset is transferred is taken to have \*acquired the asset before that day.

## 328-440 Requirements for a roll over under this Subdivision

- (1) A roll-over under this Subdivision is available in relation to a transaction if:
- (a) under the transaction, an entity (the *transferor*) transfers to one or more other entities (*transferees*) a \*CGT asset, or all of the assets, of its \*business; and
  - (b) the transferor chooses to apply a roll-over under this Subdivision in relation to the transaction; and
  - (c) the transaction is, or is a part of, a restructure of the business that has either or both of the following effects:
    - (i) changing the type of any or all of the entities through which all or part of the business is operated;
    - (ii) changing the number of the entities through which all or part of the business is operated; and
  - (d) no consideration is provided in relation to the transfer, or any of the transfers; and
  - (e) both the transferor and each transferee meet the residency requirement of subsection (2) for an entity; and
  - (f) in relation to each of the assets referred to in paragraph (a)—the transaction does not have the effect of changing:
    - (i) which individual has, or which individuals have, the ultimate economic ownership of the asset; and
    - (ii) if there is more than one such individual—each such individual's share of that ultimate economic ownership; and
  - (g) in relation to each of the assets referred to in paragraph (a)—every individual who, just after the transfer takes effect, has the ultimate economic ownership of the asset is an Australian resident; and

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- 1 (h) the transferee is not an \*exempt entity or a \*complying  
2 superannuation entity, or none of the transferees are exempt  
3 entities or complying superannuation entities.

4 *Residency requirement*

- 5 (2) For the purposes of paragraph (1)(e), the residency requirement for  
6 an entity is:
- 7 (a) if the entity is an individual or a company—the entity is an  
8 Australian resident; or
- 9 (b) if the entity is a trust—it is a \*resident trust for CGT  
10 purposes; or
- 11 (c) if the entity is a partnership (other than a \*corporate limited  
12 partnership)—at least one of the partners is an Australian  
13 resident; or
- 14 (d) if the entity is a \*corporate limited partnership—it is, under  
15 section 94T of the *Income Tax Assessment Act 1936*, a  
16 resident for the purposes of the \*income tax law.

17 *Ultimate economic ownership—discretionary trusts*

- 18 (3) For the purposes of paragraph (1)(f), a transaction does not have  
19 the effect of changing the ultimate economic ownership of an asset,  
20 or any individual's share of that ultimate economic ownership, if:
- 21 (a) either or both of the following applies:
- 22 (i) just before the transaction took effect, the asset was  
23 included in the property of a \*non-fixed trust that was a  
24 \*family trust;
- 25 (ii) just after the transaction takes effect, the asset is  
26 included in the property of a \*non-fixed trust that is a  
27 \*family trust; and
- 28 (b) every individual who, just before the transfer took effect, had  
29 the ultimate economic ownership of the asset was a member  
30 of the family group (within the meaning of Schedule 2F to  
31 the *Income Tax Assessment Act 1936*) relating to that trust;  
32 and
- 33 (c) every individual who, just after the transfer takes effect, has  
34 the ultimate economic ownership of the asset is a member of  
35 that family group.

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## 1 328-445 Cost base of membership interests in transferors

2 If:

3 (a) section 328-430 applies to in relation to the transfer by an  
4 entity (the *transferor*) of an asset of the transferor's business  
5 to one or more entities (*transferees*); and

6 (b) another entity holds a \*membership interest in the transferor;  
7 reduce (but not below zero) the \*cost base and the \*reduced cost  
8 base of that membership interest by the amount worked out as  
9 follows:

10 Asset value × Membership interest percentage

11 where:

12 *asset value* is the \*market value of the asset at the time of the  
13 transfer.

14 *membership interest percentage* is the other entity's \*membership  
15 interest in the transferor, expressed as a percentage of all of the  
16 membership interests in the transferor.

## 17 328-450 Small business restructures involving assets already subject 18 to small business roll-over

19 If:

20 (a) section 328-430 applies to in relation to the transfer by an  
21 entity (the *transferor*) of an asset of the transferor's business  
22 to one or more entities (*transferees*); and

23 (b) the transferor chooses a small business roll-over under  
24 Subdivision 152-E for a \*capital gain arising from the  
25 transfer;

26 sections 104-185, 104-190, 104-197 and 104-198 apply to each  
27 transferee (to the extent of the transferee's interest in the asset) as  
28 if the transferee, and not the transferor, made that choice.

29 Note: Sections 104-185, 104-190, 104-197 and 104-198 provide for capital  
30 gains to arise under CGT events J2, J5 and J6, after the choice of a  
31 small business roll-over under Subdivision 152-E has deferred the  
32 making of a capital gain.

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1 **Part 2—Other amendments**

2 ***Income Tax Assessment Act 1997***

3 **# Subsection 40-340(1) (at the end of the table)**

4 Add:

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|---|--|---|
| 8 | Transfer of asset under a transaction for transfer of all of the assets of the transferor's business | The transferor chooses under paragraph 328-440(1)(b) to apply a roll-over under Subdivision 328-G in relation to the transaction, and (if the asset were not a *depreciating asset) section 328-430 would apply in relation to the transfer of the asset. |
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5 **# Subsection 115-30(1) (at the end of the table)**

6 Add:

- |    |   |  |
|----|---|--|
| 12 | A *CGT asset the acquirer *acquired in circumstances giving rise to a roll-over under Subdivision 328-G | (a) when the entity that owned the CGT asset before the roll-over *acquired it; or<br>(b) if the asset has been involved in an unbroken series of roll-overs—when the entity that owned it before the first roll-over in the series *acquired it |
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7 **# Subsection 995-1(1)**

8 Insert:

9 *roll-over cost* has the meaning given by subsection 328-430(2).

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1 **Part 3—Application of amendments**

2 **# Application of amendments**

3 The amendments made by this Schedule apply to transfers of assets  
4 occurring on or after 1 July 2016.