
Chapter 1

Removing tax impediments to certain business restructures

Outline of chapter

1.1 Schedule # to this Bill amends the *Income Tax Assessment Act 1997* to extend the circumstances where an interest holder can defer their income tax consequences as a result of a business restructure. In particular, the amendments:

- provide revenue asset and trading stock roll-overs where interest holders exchange their units in a unit trust for shares in a company;
- broaden the existing revenue asset and trading stock roll-overs that apply where interest holders exchange their shares in a company for shares in another company, so that the roll-overs are not limited to ownership arrangements involving consolidated groups;
- provide adequate integrity by ensuring that the revenue asset and trading stock roll-overs are only available where the asset acquired under a restructure is of the same tax character as the asset exchanged under the restructure; and
- resolve technical defects relating to the revenue asset roll-over that applies where interest holders exchange their shares in a company for shares in another company and to certain capital gains tax (CGT) trust restructure roll-overs.

Context of amendments

Revenue asset and trading stock roll-overs

2011-12 Budget measure

1.2 Subdivision 124-G defers CGT consequences arising from a company restructure by providing a CGT roll-over where interest holders exchange all of their shares in a company for shares in an interposed company.

1.3 Subdivision 124-G also includes provisions to provide the deferral of a profit or loss on an interest holder's shares that are trading stock or revenue assets immediately before the company restructure. This deferral only applies where the original company and the subsequent company that is interposed are both head companies of a consolidated group.

1.4 The trading stock deferral under Subdivision 124-G works by including an amount in the taxpayer's assessable income for the shares realised under the restructure. The corresponding deduction provided for acquiring the replacement shares under the restructure (provided for under section 8-1) results in an effective deferral of income tax consequences.

1.5 Subdivision 124-G uses the same approach to provide income tax deferral for revenue assets. However, as the income tax provisions do not provide a corresponding deduction for revenue assets, interest holders would be required technically to include a profit or loss in their assessable income as a result of the realisation of their assets. This would result in an inappropriate outcome as the intent of these provisions is to defer the profit or loss until a later dealing with those assets.

1.6 The Government announced, as part of the 2011-12 Budget, that it would provide certainty for taxpayers by resolving this deficiency in the revenue asset roll-over in Subdivision 124-G.

2011-12 Mid-Year Economic and Fiscal Outlook measure

1.7 During consultation on the 2011-12 Budget measure, stakeholders sought to extend Subdivision 124-H, which provides a CGT roll-over for the exchange of units in a unit trust for shares in a company, to also provide revenue asset and trading stock roll-overs.

1.8 The lack of a revenue asset or trading stock roll-over in Subdivision 124-H may result in interest holders who hold units as revenue assets or trading stock incurring an income tax liability as a result of the unit trust restructuring.

1.9 To remove income tax impediments for unit trusts restructuring, the Government announced on 17 November 2011 that it would extend Subdivision 124-H to provide revenue asset and trading stock roll-overs.

2012-13 Budget measure

1.10 During consultation on the revenue asset and trading stock roll-over extensions to Subdivision 124-H, stakeholders were concerned that the revenue asset and trading stock roll-overs in Subdivision 124-G only apply to ownership arrangements involving consolidated groups.

Stakeholders noted that this restriction impedes non-consolidated groups from restructuring as their interest holders cannot access the revenue asset and trading stock roll-overs on the realisation of their shares in the original company.

1.11 To address this concern, as part of the 2012-13 Budget, the Government announced that it would ensure the revenue asset and trading stock roll-overs in Subdivision 124-G and the proposed roll-overs in Subdivision 124-H will be available in all cases where the asset can qualify for the CGT roll-over. This ensures the roll-overs are not limited to ownership arrangements involving consolidated groups.

1.12 Policy development also highlighted that the revenue asset and trading stock roll-overs in Subdivision 124-G do not require the replacement shares received under the restructure to be of the same tax character as the shares previously held in the original company. Not ensuring this treatment may allow interest holders to change the character of their assets, so the replacement shares are accounted for under the CGT provisions without an appropriate taxing point happening. A similar problem may arise in the context of the proposed revenue asset and trading stock roll-overs in Subdivision 124-H.

1.13 As part of the 2012-13 Budget announcement, the Government indicated that it would improve integrity in the Subdivision 124-G revenue asset and trading stock roll-overs and the proposed roll-overs in Subdivision 124-H by requiring that the replacement interests in the interposed company be of the same tax character as the original interests that were exchanged under the entity restructure.

CGT roll-overs for a trust transferring an asset to a company or another trust

1.14 A CGT roll-over is available where a trust transfers a CGT asset to a company (Subdivision 124-N) or to another trust (Subdivision 126-G) as part of an entity restructure. A key condition for both of these roll-overs is that the company or trust receiving the asset must have no CGT assets other than a small amount of cash or debt.

- This condition ensures that the roll-overs cannot be used to 'share' losses from separate entities in a way that would not otherwise be permitted under the income tax laws.

1.15 Industry has identified that this condition is too onerous for certain entities to satisfy, as the entity may be required to hold rights, which are themselves CGT assets, to facilitate the transfer of assets from the original entity to the receiving entity. Entities that hold such rights would therefore be denied access to these roll-overs.

1.16 To address this concern, the Government announced in the 2011-12 Budget that it would allow access to the CGT roll-overs in Subdivisions 124-N and 126-G where the receiving entity holds rights that are used to facilitate the transfer of assets to that entity.

Summary of new law

1.17 These amendments improve the ability of businesses to restructure by extending the circumstances where an interest holder can defer their income tax consequences as a result of a business restructure.

1.18 In particular, these amendments:

- provide revenue asset and trading stock roll-overs where interest holders exchange their units in a unit trust for shares in a company;
- broaden the existing revenue asset and trading stock roll-overs that apply where interest holders exchange their shares in a company for shares in another company, so that the roll-overs are not limited to ownership arrangements involving consolidated groups;
- provide adequate integrity by ensuring that the revenue asset and trading stock roll-overs are only available where the asset acquired under a restructure is of the same tax character as the asset exchanged under the restructure; and
- resolve technical defects relating to the revenue asset roll-over that applies where interest holders exchange their shares in a company for shares in another company and to certain CGT trust restructure roll-overs.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Revenue asset and trading stock roll-overs are available where interest holders exchange their units in a unit trust for shares in a company.	Revenue asset and trading stock roll-overs are not available where interest holders exchange their units in a unit trust for shares in a company.
The revenue asset and trading stock roll-overs that are available where	The revenue asset and trading stock roll-overs that are available where

interest holders exchange their shares in a company for shares in another company are not limited to ownership arrangements involving consolidated groups.	interest holders exchange their shares in a company for shares in another company are only available for ownership arrangements involving consolidated groups.
The revenue asset and trading stock roll-overs that are available where interest holders exchange their shares in a company for shares in another company and for where interest holders exchange their units in a unit trust for shares in a company are only available where the replacement interests are of the same tax character as the interests that were exchanged under the restructure.	The revenue asset and trading stock roll-overs that are available where interest holders exchange their shares in a company for shares in another company do not require the replacement shares in the interposed company to be of the same tax character as the shares that were exchanged under the restructure.
The revenue asset roll-over that is available where interest holders exchange their shares in a company for shares in another company allows taxpayers to defer a profit or loss on the exchange of shares under a corporate restructure.	The revenue asset roll-over that is available where interest holders exchange their shares in a company for shares in another company is technically deficient in deferring the profit or loss on the exchange of shares under a corporate restructure.
A trust transferring an asset to a company or another trust can access a CGT roll-over if, amongst other requirements, the receiving entity holds rights that are used to facilitate the transfer of assets to that entity.	A trust transferring an asset to a company or another trust cannot access a CGT roll-over if the receiving entity holds rights that are used to facilitate the transfer of assets to that entity.

Detailed explanation of new law

1.19 These amendments improve the ability of entities to restructure by extending the circumstances where an interest holder can defer their income tax consequences as a result of an entity restructure.

Providing revenue asset and trading stock roll-overs where interest holders exchange their units in a unit trust for shares in a company

1.20 The restructuring of a unit trust whereby interest holders exchange their units in a unit trust for shares in a company may result in an income tax liability for the interest holders where their units are held as trading stock (as defined in section 70-10) or as revenue assets (as defined in section 977-50).

1.21 These amendments insert a new section into Subdivision 124-H to provide revenue asset and trading stock roll-overs for interest holders

where they exchange their units in a unit trust for shares in a company. Providing revenue asset and trading stock roll-overs ensures income tax deferral is available under Subdivision 124-H, irrespective of whether the interest holders account for their units under the CGT, trading stock or revenue account provisions. *[Schedule #, items 7 and 12, subsection 124-440(6) and section 124-475]*

Conditions to access the revenue asset and trading stock roll-overs

1.22 In order for an interest holder to be eligible for the optional trading stock or revenue asset roll-over, two conditions must be satisfied by the interest holder:

- the CGT roll-over under Subdivision 124-H must be chosen in respect of the underlying CGT asset; and
- the unit realised and the corresponding share acquired under the restructure must maintain its character as either a revenue asset or trading stock.

[Schedule #, item 12, subsection 124-475(1)]

1.23 These amendments insert a note for disposals, and one for redemptions or cancellations informing interest holders that where they account for their units under the trading stock provisions, the operation of the trading stock exemption in section 118-25 does not prevent them from accessing a CGT roll-over in respect of their trading stock. *[Schedule #, items 8, 9, 10 and 11, note 2 to section 124-445 and note 2 to subsection 124-455(1)]*

1.24 Requiring the CGT roll-over to be chosen ensures the general conditions under Subdivision 124-H, which specify that the interest holders have to be the same just before and just after the restructure, will be satisfied irrespective of whether the interest holders account for their interests under the CGT, trading stock or revenue account provisions. *[Schedule #, item 12, paragraph 124-475(1)(a)]*

1.25 Furthermore, requiring the interest holders to choose the CGT roll-over will ensure that where the interest holders hold their interests as revenue assets, they will not incur a CGT liability on the realisation of their original units.

- Without a CGT roll-over, a CGT liability may arise as the anti-overlap provisions in section 118-20 are not available to reduce the CGT liability, as no income would have been assessed under the revenue account provisions at the time of the restructure due to the availability of the revenue asset roll-over.

[Schedule #, item 12, paragraph 124-475(1)(a)]

1.26 Requiring the unit realised and the corresponding share acquired under the restructure to be of the same tax character provides integrity by ensuring that the revenue asset and trading stock roll-overs cannot be used to change the income tax characteristics of an interest holder's asset, without an appropriate taxing point occurring. [Schedule #, item 12, paragraph 124-475(1)(d)]

Consequences of accessing the trading stock roll-over

1.27 To ensure the income tax consequences are deferred for the realisation of an interest holder's units in a unit trust that are trading stock, the interest holder is required to include in their assessable income an amount for the realisation of each unit as set out in Table 1.1.

Table 1.1 Amount to be included in the interest holder's assessable income for trading stock realised under Subdivision 124-H

<i>If the trading stock is ...</i>	<i>The amount to be included in assessable income is ...</i>
Trading stock that was on hand at the start of the income year of the restructure and continued to be held as trading stock until the restructure.	The trading stock's value at the start of the income year plus any amounts by which its cost has increased since the start of that income year.
Trading stock that was acquired (or started to be held as trading stock) by the interest holder during the income year of the restructure.	The cost of the trading stock immediately before the time of the restructure.

[Schedule #, item 12, subsection 124-475(2)]

1.28 To determine the value of a trading stock asset, the interest holder is required to use the trading stock concepts in Division 70. In particular, section 70-45 provides that interest holders can determine the value of an asset based on its cost, market value or replacement value.

1.29 Under the restructure, interest holders are taken to have paid an amount for each of their replacement shares in the interposed company equal to the amount worked out under the following formula:

$$\frac{\text{The total amount included in the interest holder's assessable income under Table 1.1}}{\text{The total number of shares the interest holder acquires in the company that are trading stock}}$$

[Schedule #, item 12, subsection 124-475(3)]

1.30 The net effect of interest holders including an amount in Table 1.1 in their assessable income and an amount in paragraph 1.29 as a deduction for acquiring a replacement share (available through the

operation of section 8-1) results in interest holders not incurring an income tax liability at the time of the restructure. This produces a trading stock deferral. *[Schedule #, item 12, subsections 124-475(2) and (3)]*

1.31 Providing interest holders with an acquisition cost for each of their shares based on the formula in paragraph 1.29 ensures the amounts that have been recognised under the trading stock provisions before the restructure will continue to be recognised by the trading stock provisions after the restructure. This provides taxpayers with the same income tax outcome on their replacement trading stock as they would have had if the unit trust had not undergone a restructure. *[Schedule #, item 12, subsection 124-475(3)]*

1.32 To remove any doubt about the extent to which interest holders can access these amendments, the realisation of the interest holder's units and the subsequent acquisition of the replacement shares are taken to have occurred at arm's length and in the ordinary course of business for the purposes of the trading stock provisions.

- This treatment ensures section 70-20 (about non-arm's length transactions) and section 70-90 (about disposals outside the ordinary course of business) that treat the interest holder as disposing of the asset at market value will not apply. If these provisions were to apply, they would deny the trading stock roll-over provided by these amendments.

[Schedule #, item 12, subsection 124-475(4)]

Example 1.1

Coffee is a publicly listed unit trust and restructures for commercial reasons by interposing a new company, Decaf Pty Ltd (Decaf) between itself and its unit holders.

Chai Traders Pty Ltd (Chai) holds 10,000 units in Coffee Unit Trust (Coffee). Chai has held these units as trading stock since the start of the income year and has accounted for these units using the cost method under the trading stock provisions.

As a result of the restructure, all of the units in Coffee are cancelled and as consideration for this cancellation, the former unit holders are issued one share in Decaf for every two units they held in Coffee. Chai therefore is issued 5,000 shares in Decaf.

Chai chooses to access the CGT roll-over in Subdivision 124-H and the trading stock roll-over provided by these amendments.

As Chai has elected the cost method to account for its trading stock, Chai is to include in its assessable income the total cost of the units at the start of the income year plus any cost incurred since the start of that income year. In the case of Chai, this cost is \$1 per unit and as it holds 10,000 units in Coffee, Chai includes \$10,000 in its assessable income.

For Chai to determine the cost of each share it acquires in Decaf (and subsequently for Chai to determine the income tax deduction it receives as a result of acquiring shares in Decaf), Chai is required to use the formula in paragraph 1.29.

The cost of each of the shares in Decaf is \$2 using the formula. This cost is calculated as follows:

$$\frac{\text{The total amount included in the interest holder's assessable income under Table 1.1}}{\text{The total number of shares the interest holder acquires in Decaf that are trading stock}}$$

$$\frac{\$10,000}{5,000} = \$2$$

As Chai received 5,000 shares in Decaf and the cost of each of the shares in Decaf is \$2, Chai is entitled to an income tax deduction of \$10,000.

Therefore, by Chai including \$10,000 in its assessable income for the realisation of the units in Coffee, and by receiving a \$10,000 income tax deduction for acquiring shares in Decaf, this has the net effect of producing a trading stock deferral for Chai.

Consequences of accessing the revenue asset roll-over

1.33 To ensure the income tax consequences are deferred on the realisation of a unit in a unit trust that is a revenue asset, the interest holder is taken to have realised the unit for an amount that would result in them not making a profit or loss on the realisation of that unit. [Schedule #, item 12, subsection 124-475(5)]

1.34 To calculate a future profit or loss on the subsequent realisation of a share that is acquired under the restructure and to ensure the interest holder is in the same income tax position as they were in just before the restructure, the interest holder is taken to have paid an amount for each share as determined under the following formula:

$$\frac{\text{The amount determined under paragraph 1.33}}{\text{The total number of shares the interest holder acquires in the company that are revenue assets}}$$

[Schedule #, item 12, subsection 124-475(6)]

Example 1.2

Continuing on from Example 1.1, Debbie also holds 20,000 units in Coffee. These units are revenue assets for Debbie, as she buys and sells these units for the purposes of earning income.

Debbie chooses to access the CGT roll-over in Subdivision 124-H and the revenue asset roll-over provided by these amendments.

At the time of the restructure, all of Debbie's units in Coffee are valued at \$40,000. In addition, at this time, the total cost of Debbie's units is \$30,000.

To ensure Debbie does not make a profit or loss on the realisation of her units in Coffee, using the principle in paragraph 1.33, Debbie is taken to have received \$30,000 for the realisation of her units and not the market value of \$40,000.

To determine a profit or loss on the future realisation of Debbie's shares in Decaf, Debbie is taken to have acquired each share for an amount as determined using the formula in paragraph 1.34. This amount is calculated as follows:

The amount calculated under paragraph 1.33

The total number of shares the interest holder acquires in Decaf that are revenue assets

$$\frac{\$30,000}{10,000} = \$3$$

As Debbie is taken to have received \$30,000 on the realisation of her units in Coffee and as she subsequently receives 10,000 shares in Decaf, she is taken to have acquired each share in Decaf for a cost of \$3. This puts Debbie in the same income tax position in respect of her shares in Decaf as compared with her position in holding units in Coffee just before the restructure.

Extending the revenue asset and trading stock roll-overs for exchanging shares in a company for shares in another company

1.35 Subdivision 124-G provides a CGT roll-over where interest holders exchange their shares in a company for shares in an interposed company. A revenue asset or trading stock roll-over is also available where the original company and the subsequent company that is interposed are both head companies of a consolidated group.

1.36 These amendments broaden the revenue asset and trading stock roll-overs in Subdivision 124-G so that they are available for all cases where the underlying CGT asset can qualify for the CGT roll-over. This ensures the revenue asset and trading stock roll-overs are not limited to

ownership arrangements involving consolidated groups. *[Schedule #, items 1 and 6, subsection 124-355(6) and section 124-390]*

Conditions to access the revenue asset and trading stock roll-overs

1.37 In order for an interest holder to be eligible for the trading or revenue asset roll-over under Subdivision 124-G, two conditions must be satisfied by the interest holder:

- the CGT roll-over under Subdivision 124-G must be chosen in respect of the underlying CGT asset; and
- the share realised must be either a revenue asset or trading stock and the corresponding share acquired under the restructure must maintain its character as either a revenue asset or trading stock.

[Schedule #, item 6, subsection 124-390(1)]

1.38 These amendments insert a note for disposals, and one for redemptions or cancellations informing interest holders that where they account for their shares under the trading stock provisions, the operation of the trading stock exemption in section 118-25 does not prevent them from accessing a CGT roll-over in respect of their trading stock.

[Schedule #, items 2, 3, 4 and 5, note 2 to subsection 124-360(1) and note 2 to subsection 124-370(1)]

1.39 Where an interest holder owns shares in a company that is the head entity of a consolidated group, the existing CGT, revenue asset and trading stock roll-overs under Subdivision 124-G apply automatically for such interest holders. This outcome is maintained for such interest holders under these amendments. However, for interest holders who own shares in a company that is not the head entity of a consolidated group, the interest holders are required to choose the CGT roll-over before they are able to access the revenue asset and trading stock roll-overs. *[Schedule #, item 6, paragraphs 124-390(1)(a) and (b)]*

1.40 Paragraphs 1.24 to 1.26 provide further details on the rationale for requiring the CGT roll-over to be chosen and the integrity rules relating to the revenue asset and trading stock roll-overs in respect of Subdivision 124-H cases. These descriptions apply equally to Subdivision 124-G cases, although they apply in respect of the original shares in the company rather than the original units in the unit trust.

Consequences of accessing the trading stock roll-over

1.41 The core mechanics that provide income tax deferral for trading stock assets are updated as a consequence of the new requirement that

stipulates that the replacement shares acquired as a result of the restructure must be of the same tax character as the shares realised under the restructure. However, the remaining mechanics that provide the income tax deferral for trading stock remain unchanged under these amendments.

- Paragraphs 1.27 to 1.32 describe how the trading stock roll-over applies to Subdivision 124-H cases. These descriptions apply equally to Subdivision 124-G cases, although they apply in respect of the original shares in the company rather than the original units in the unit trust.

[Schedule #, item 6, subsections 124-390(2) and (3)]

1.42 To remove any doubt about whether an interest holder can access the trading stock roll-over in Subdivision 124-G, these amendments ensure the realisation of the interest holder's shares and the subsequent acquisition of the replacement shares are taken to have occurred at arm's length and in the ordinary course of business for the purposes of the trading stock provisions.

- This treatment ensures the provisions in section 70-20 (about non arm's length transactions) and section 70-90 (about disposals outside the ordinary course of business) that treat the interest holder as disposing of the asset at market value will not apply where the roll-over is chosen or taken to be chosen. If these provisions were to apply, they would deny taxpayers access to the trading stock roll-over. *[Schedule #, item 6, subsection 124-390(4)]*

Consequences of accessing the revenue asset roll-over

1.43 These amendments remove the current defect in the revenue asset roll-over in Subdivision 124-G (as described by paragraphs 1.4 and 1.5) by inserting a new mechanism to provide income tax deferral for revenue assets. This approach is consistent with the revenue asset roll-over in Subdivision 124-H. *[Schedule #, item 6, subsections 124-390(5) and (6)]*

1.44 These amendments ensure that where an interest holder realises a share that is a revenue asset, they are treated as having realised the share for an amount that would result in them not making a profit or loss on that realisation. Therefore, by aligning the interest holder's proceeds with the cost of the share, this results in the interest holder not incurring any immediate income tax consequences as a result of the company restructure. *[Schedule #, item 6, subsection 124-390(5)]*

1.45 In order for an interest holder to calculate a future profit or loss on the subsequent realisation of a replacement share and to ensure they are in the same income tax position as they were in just before the restructure, the interest holder is taken to have paid an amount for each share, as determined under the following formula:

$$\frac{\text{The amount calculated under paragraph 1.44}}{\text{The total number of shares the interest holder acquires in the company that are revenue assets}}$$

[Schedule #, item 6, subsection 124-390(6)]

Modifications to the CGT roll-overs where a trust transfers an asset to a company or another trust

1.46 A CGT roll-over is available where a trust transfers a CGT asset to a company (Subdivision 124-N) or another trust (Subdivision 126-G) as part of an entity restructure. A key condition for both of these roll-overs is that the company or trust receiving the asset must hold no CGT assets other than a small amount of cash or debt (see paragraphs 124-860(4)(b) and 126-225(1)(b)).

1.47 These amendments will modify these conditions, ensuring that the roll-overs will also be available where the entity receiving the asset holds rights under an arrangement that facilitate the transfer of assets to that entity. These rights, when treated collectively, must only be used to facilitate the transfer of assets from the transferring entity to the receiving entity. *[Schedule #, items 13 and 14, paragraphs 124-860(4)(b) and 126-225(1)(b)]*

1.48 This amendment would be satisfied where the receiving entity holds any of following rights that facilitate the transfer of assets to that entity:

- rights that stipulate that particular assets will be transferred to the receiving entity;
- rights that are required to be held by the receiving entity, to the extent they are required to facilitate the transfer of assets to that entity; and
- ancillary rights arising from other rights, whereby these other rights facilitate the transfer of assets to the receiving entity.

This list is not an exhaustive list of where this amendment would be satisfied.

[Schedule #, items 13 and 14, paragraphs 124-860(4)(b) and 126-225(1)(b)]

1.49 Where an entity has more than one arrangement with rights that facilitate the transfer of assets to that entity, these amendments will apply separately for each of the arrangements. This ensures that all rights that facilitate the transfer of assets to the receiving entity are ignored for the purposes of determining whether an entity satisfies the CGT roll-over requirements. *[Schedule #, items 13 and 14, paragraphs 124-860(4)(b) and 126-225(1)(b)]*

Example 1.3: New company under Subdivision 124-N

Green Trust (Green) plans to dispose of its assets to a newly established company, Yellow Pty Ltd (Yellow).

Yellow holds a deed which stipulates that as a result of the restructure the ownership of Green's assets will be transferred to Yellow at a particular point in time.

As all of these rights under the deed facilitate the transfer of assets from Green to Yellow, they are ignored for the purposes of determining whether the roll-over conditions in Subdivision 124-N are satisfied.

Example 1.4: Existing trust under Subdivision 126-G

Apple Trust (Apple) is in the process of transferring an asset to Banana Trust (Banana) under the CGT roll-over in Subdivision 126-G. Banana has already been established and holds a small amount of cash and debt just before the asset is transferred to it.

Before Apple transfers the asset to Banana, Banana is required to have in place a financing agreement in relation to that asset.

As having the financing agreement in place facilitates the transfer of the asset from Apple to Banana, the financing agreement is ignored for the purposes of determining whether the roll-over conditions in Subdivision 126-G are satisfied.

Application and transitional provisions

Revenue asset and trading stock roll-overs

Subdivision 124-H roll overs

1.50 The extension of Subdivision 124-H to provide revenue asset and trading stock roll-overs and the 'same tax character' integrity rule take effect for units disposed of, redeemed or cancelled from 7.30 pm (by

legal time in the Australian Capital Territory) on 8 May 2012. *[Schedule #, item 15 and subitem 16(2)]*

1.51 However, transitional rules allow interest holders to access the extension to Subdivision 124-H from 7.30 pm on 10 May 2011 until just before 7.30 pm on 8 May 2012, without having to satisfy the ‘same tax character rule’.

- Paragraphs 1.20 to 1.34 provide further details on revenue asset and trading stock roll-overs in respect of Subdivision 124-H cases where the ‘same tax character’ integrity rule applies. Therefore interest holders accessing the transitional rules are required to satisfy the conditions in those paragraphs, except for the ‘same tax character’ integrity rule.

[Schedule #, items 15 and 18]

Subdivision 124-G roll-overs

1.52 The broadening of the existing revenue asset and trading stock roll-overs in Subdivision 124-G, the ‘same tax character’ integrity rule and the amendments resolving the technical deficiency in the revenue asset roll-over, take effect for shares disposed of, redeemed or cancelled from 7.30 pm on 8 May 2012. *[Schedule #, item 15 and subitem 16(1)]*

1.53 However, transitional rules allow interest holders access to the revised revenue asset roll-over from 7.30 pm on 10 May 2011 until just before 7.30 pm on 8 May 2012, without having to satisfy the ‘same tax character’ integrity rule.

- Paragraphs 1.37 to 1.40 and 1.43 to 1.45 provide further details on the revised revenue asset roll-over in Subdivision 124-G where the ‘same tax character’ integrity rule applies. Therefore interest holders accessing the transitional rules are required to satisfy the conditions in those paragraphs, except for the ‘same tax character’ integrity rule.

[Schedule #, items 15 and 17)]

1.54 The rule described in paragraph 1.42 that ensures the trading stock roll-over in Subdivision 124-G is not overturned by the trading stock provisions takes effect from 7.30 pm on 10 May 2011 to align with the application date of the trading stock roll-over in Subdivision 124-H where this rule also applies. However, as the revised roll-over provisions in Subdivision 124-G take effect from 8 May 2012, the Subdivision 124-G transitional rules ensure that interest holders accessing a trading stock

roll-over using the provisions that apply between 10 May 2011 and 8 May 2012 are also able to access the rule described in paragraph 1.42. This transitional provision provides interest holders with certainty in regards to their ability to access the trading stock roll-over during this period. *[Schedule #, item 15 and subitems 16(1) and 17(3A)]*

Rationale for application dates

1.55 The amendments expanding access to revenue asset and trading stock roll-overs are retrospective so as to ensure transactions that have taken place are covered by the amendments. The amendments are beneficial for interest holders as they provide additional situations where they can access an income tax deferral as a result of an entity restructure. *[Schedule #, item 15, subitems 16(1) and 16(2), and item 18]*

1.56 The ‘same tax character’ integrity rule applies from the time of announcement in order to introduce integrity for the revenue asset and trading stock roll-overs so that they cannot be used to change the income tax character of an interest holder’s asset, without an appropriate taxing point happening. As such, the integrity rule has no impact on transactions that happened prior to its announcement. *[Schedule #, item 15, subitems 16(1) and 16(2)]*

1.57 The amendment resolving the technical deficiency in the revenue asset roll-over in Subdivision 124-G applies from the time of announcement (that is, 7.30 pm on 10 May 2011), in order to provide certainty for interest holders in regards to their ability to access a revenue asset roll-over. *[Schedule #, item 15, subitem 16(1) and item 17]*

Minor technical changes to the CGT restructure roll-over provisions

Subdivision 124-N roll-over

1.58 The amendments to Subdivision 124-N that allow a company to hold rights that facilitate the transfer of assets to that company apply in relation to CGT events happening after 7.30 pm on 10 May 2011. This change applies from the time of announcement in order to ensure the technical defect does not inhibit interest holders from accessing the CGT roll-over. *[Schedule #, item 15 and subitem 16(3)]*

Subdivision 126-G roll-over

1.59 The amendments to Subdivision 126-G that allow a receiving trust to hold rights that facilitate the transfer of assets to that trust apply in relation to CGT events happening on or after 1 November 2008. This amendment, which is beneficial for taxpayers, applies retrospectively to

align with the application date of the Subdivision 126-G fixed trust roll-over. *[Schedule #, item 15 and subitem 16(4)]*

1.60 The operation of section 170 of the *Income Tax Assessment Act 1936* is modified for taxpayers accessing the amendments to Subdivision 126-G. This ensures taxpayers are able to seek an amended assessment to take advantage of the amendments where their original assessment was made before the commencement of the amendments but their period for seeking an amendment to their tax return has expired. Broadly, taxpayers are able to seek an amended assessment in these circumstances within two years of that commencement. *[Schedule #, clause 4]*

Requirement for trustees to notify beneficiaries of the Subdivision 126-G roll-over being chosen

1.61 If the CGT roll-over under Subdivision 126-G is applied, section 126-260 requires that the trustee of the transferring trust must, within three months after the end of the income year in which the transferring trust transferred the asset to the receiving trust, send written notice to each of the trust's beneficiaries providing them with certain information so they can meet their obligations. Section 126-260 imposes a penalty on the transferring trustee if they do not meet this condition.

1.62 As the amendment to Subdivision 126-G applies from 1 November 2008, some taxpayers will not be able to benefit from the amendment by amending prior completed tax returns without the relevant trustee contravening section 126-260. This is because, in some cases, it would not be possible for the trustee to provide each of the trust's beneficiaries with the written documentation within three months after the end of the income year in which the asset transfer occurred, as this time period would have already lapsed.

1.63 Therefore, where the transferring trust transfers an asset to the receiving trust between 1 November 2008 and the income year that ends before these changes obtain Royal Assent, the amendments allow a trustee to provide the relevant beneficiaries with certain documentation within three months of the roll-over being chosen without the trustee breaching subsection 126-260(1). *[Schedule #, item 19]*

Chapter 2 Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Removing tax impediments to certain business restructures

2.1 This Schedule is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

2.2 Schedule # to this Bill amends the *Income Tax Assessment Act 1997* to extend the circumstances where an interest holder can defer their income tax consequences as a result of a business restructure. In particular, the amendments:

- provide revenue asset and trading stock roll-overs where interest holders exchange their units in a unit trust for shares in a company;
- broaden the existing revenue asset and trading stock roll-overs that apply where interest holders exchange their shares in a company for shares in another company, so that the roll-overs are not limited to ownership arrangements involving consolidated groups;
- provide adequate integrity by ensuring that the revenue asset and trading stock roll-overs are only available where the asset acquired under a restructure is of the same tax character as the asset exchanged under the restructure; and
- resolve technical defects relating to the revenue asset roll-over that applies where interest holders exchange their shares in a company for shares in another company and to certain CGT trust restructure roll-overs.

[Click here and insert the name of the Bill]

Human rights implications

2.3 This Schedule does not engage any of the applicable rights or freedoms.

Conclusion

2.4 This Schedule is compatible with human rights as it does not raise any human rights issues.

Assistant Treasurer, the Hon David Bradbury