



Paul McMahon
The General Manager
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600
E-Mail: cgt_minoramendments@treasury.gov.au

6 July 2011

Attention: Paul McMahon

Dear Paul,

Amendments to the Capital Gains Tax Law

Thank you for the opportunity to provide the Property Council's views on the May 2011 Proposals Paper (**Proposals Paper**) including amendments to the capital gains tax law in relation to CGT rollovers for the transfer of assets between certain trusts.

The Property Council is the peak body representing the interests of owners and investors in Australia's \$400 billion property investment sector. The Property Council serves the interests of companies across all four quadrants of property investment, debt, equity, public and private.

The industry supports the proposed amendments. The amendments will ensure that roll over relief works more appropriately where trusts transfer CGT assets to facilitate a restructure.

These amendments are important to help ensure that business can efficiently restructure and remain nimble in the current market.

However, there are concerns that the CGT rollover rules may not work as intended if the drafting does not cater for the variety of documents and rights that would commonly be involved in a restructure transaction, including transfer and financing documents.

To ensure that the law operates effectively and increases certainty for business without undue compliance costs, it is important that the changes cover two types of rights:

- rights that arise under more than one document facilitating the transfer; and
- rights under financing and other documents to facilitate the transfer of assets to the new trust.

1) Rights that arise under more than one deed or document facilitating the transfer

The amendments should ensure that the CGT roll over relief applies to all deeds or documents related to the transaction. This will ensure that the amendments operate effectively.

The Voice of Leadership

Asset transfers often involve more than one deed or document.

It is important that the amendments ensure that roll over is available to all asset transfers and not just those that have one deed or document. Otherwise, the measure's effectiveness will be limited and many legitimate asset transfers will not be able to access the roll over relief.

To make it clear that the roll over relief includes asset transfers with more than one deed or document, an example should be included in the Explanatory Memorandum to the legislation.

2) Rights under financing and other documents to facilitate the transfer of assets to the new trust

It is important to ensure all documents that are commonly part of asset transfers are included in the roll over relief.

(a) Financing agreements

Transfers of assets commonly involve financing arrangements. These financing agreements may include guarantees. It is important that rights under these financing agreements are ignored to determine whether an arrangement qualifies for rollover relief.

(b) Documents associated with capital-raising.

Asset transfers may also involve capital raising documents. The transferee trust may hold rights relating to documents associated with capital raising. These documents are necessary to establish the trust and facilitate the transfer of assets. Rights created under these documents should be ignored to determine whether an arrangement qualifies for rollover relief.

To make it clear that the roll over relief includes financing agreements and documents associated with capital-raising, an example should be included in the Explanatory Memorandum to the legislation.

Addressing these key issues will ensure that the roll over relief applies appropriately to real estate income.

This will reduce compliance costs and increase certainty to facilitate investment decisions for Australian business.

The attached submission outlines our recommendations for appropriately dealing with these issues. We are keen to discuss them with you further at your convenience.

Please do not hesitate to contact Elaine Abery on (02) 9033 1929 or myself if you have any queries.

Yours sincerely



Andrew Mihno
Executive Director International & Capital Markets
Property Council of Australia
0406 45 45 49



Minor CGT Amendments

*Property Council of Australia
July, 2011*



The Property Council supports the proposed amendments to ensure the availability of roll-overs where a trust transfers CGT assets to a company or to another trust as part of a trust restructure by ensuring that rights associated with contracts or deeds which are only held to facilitate the relevant transaction are ignored for the purpose of the satisfying the roll-over requirements.

However, to ensure that the law operates effectively and increases certainty for business without undue compliance costs, we outline two key recommendations that need to be addressed.

1. Rights arising under more than one deed or document facilitating the transfer

To ensure the effectiveness of the measures, the amendments should not be limited to one deed or document and should include all deeds or documents in relation to the transaction.

While the background discussion in the Proposal Paper provides that the intention is for the holding of rights associated with contracts or deeds to facilitate the transfer of assets from one entity to another should not prevent access to the roll-over, the proposed amendment refer to "rights (CGT assets) associated with a deed or similar document designed to facilitate the transfer of assets" [emphasis added].

The transfer of assets would often involve more than one deed or document, in particular large public transactions and transactions involving co-ownership of assets would involve complex documentation requirements, for example an implementation deed, co-ownership agreements, co-operation agreements, property management agreements and services agreements, in addition to the relevant transfer deeds.

The enhanced measures should facilitate the availability of the roll-over in these situations. Limiting the roll-over to cases involving a single deed or document will severely limit the effectiveness of the measure and will act to impede the underlying objectives of the proposed amendments.

There should be an example included in the Explanatory Memorandum making it absolutely clear that rights under all deeds and documents associated with the transfer (including the types of documents noted above) are ignored for the purposes of the roll-over.

2. Rights under financing documents and documents associated with the establishment of the new trust to facilitate the transfer of assets

To facilitate the transfer of assets, the acquiring trust will need to have in place financing arrangements, which may include guarantees. Rights under such agreements should clearly be ignored for the purpose of the satisfying the roll-over requirements.

Similarly, the transferee trust may also hold rights relating to documents associated with the raising of capital from investors, such as an underwriting agreement and other documents relating to its capital structure, for example a stapling deed. Since these documents are necessary for the establishment of the trust to facilitate the transfer of assets, the related rights should be ignored.

The amendments need to clearly exclude rights in relation to financing documents and documents associated with the establishment of the new trust and there should be an example included in the Explanatory Memorandum that such rights are ignored.

We are keen to discuss or expand on any of the above comments.