
Chapter #

Beneficial interests in the scrip for scrip roll-over and small business provisions

Outline of the chapter

1.1 Schedule 1 to this Bill amends the *Income Tax Assessment Act 1997* to provide a more consistent application of the scrip for scrip roll-over and the small business provisions.

Context of amendments

1.2 Tests governing access to the scrip for scrip roll-over and the small business provisions consider whether an entity, along with its associates or affiliates respectively, has a certain percentage interest in the voting rights, income or equity of another entity or entities.

1.3 In the case of the stakeholder tests in the scrip for scrip provisions, the taxpayer and their associates must have a right to receive income or capital ‘for their own benefit’.

1.4 In the case of the connected entity test in the small business provisions, the taxpayer or its affiliates must ‘beneficially own or have the right to acquire beneficial ownership of’ the interest.

1.5 It has been argued that the beneficial ownership requirements prevent the tests from applying to trusts, life insurance companies and superannuation funds as they do not own interests for their own benefit, but rather for the benefit of their beneficiaries, policy holders or members.

Summary of new law

1.6 These amendments ensure that the scrip for scrip roll-over and small business concessions apply to structures involving trusts, life insurance companies and superannuation funds in the same way as they apply to structures involving other types of entities by looking to the ownership of the interest or right, rather than who benefits from that ownership or right.

Detail explanation of new law

Scrip for scrip roll-over provisions

1.7 The stakeholder tests in section 124-783 seek to establish whether stakeholders have the potential to influence the parties to a scrip for scrip transaction (that is, the original and replacement entities).

1.8 The stakeholder tests are used to prevent the deferral of a CGT liability arising from the on-sale of interests in an entity (rather than its assets) acquired in a scrip for scrip transaction where the original interest holder uses the scrip for scrip roll-over in Subdivision 124-M.

1.9 The amendments base the stakeholder tests on the right to vote, or receive income or equity regardless of who benefits from those rights. *[Schedule 1, item 1, 2 and 3, paragraphs 124-783(6)(b) and (c), subsection 124-783(7), and paragraphs 124-783(9)(b) and (c), and (10)(a) and (b)]*

Small business concessions provisions and the wine equalisation tax

1.10 The connected entity test in section 328-125 seeks to establish whether one entity controls another entity for the purposes of the small business concessions.

1.11 The connected entity test restricts access to the small business concessions to small businesses based on the size of the turnover or net assets of the entity and its affiliates and connected entities.

1.12 The connected entity test also allows active asset status for assets owned by one entity and used by another entity that is connected with (or an affiliate of) the asset owner.

1.13 The connected entity test also restricts access to rebates under the *A New Tax System (Wine Equalisation Tax) Act 1999* (WETA 1999) and impacts on liability for excess rebates claimed.

1.14 The amendments base the connected entity test on ownership rather than beneficial ownership. *[Schedule 1, items 4 and 5, paragraphs 328-125(2)(a) and (b), and paragraph 328-125(8)(e)]*

Application provisions

The amendments apply to CGT events happening after 7:30 pm (AEST) on 10 May 2011. The amendments also apply in relation to assessments under the WETA 1999 for the 2011-2012 financial year and later financial years and otherwise in relation to assessments for the 2011-12 income year and later income years. *[Schedule 1, item 6]*