

Alert

TAX

Good News for SME Business

By Jule Van der Velde

Today, precisely three months from the release of the original Exposure Draft the Government has introduced a Bill to effect the small business rollover announced in the 2015 budget. After much lobbying by professional bodies the Bill is an improvement on the Exposure Draft.

The Bill still allows CGT assets or an entire business to be moved to another entity without CGT or income tax on the transfers of trading stock, depreciating assets or other revenue assets. It also widens the range of businesses that may access the concession. In the Exposure Draft small business entities were eligible only if they also met the \$6 million 'maximum net assets test'; the Bill introduced today no longer contains the assets test requirement.

Any small business entity may use the new rollover, subject to meeting the required criteria. A small business entity is one which has, together with its connected entities and affiliates, a turnover under \$2 million.

Widening the range of potentially eligible entities will benefit Australian business. A business can be transferred to a more appropriate or more economic structure as it grows, scales down or changes its mode of operation. Poor structuring decisions can be remedied and asset protection enhanced by ensuring passive assets are not held in a structure that carries business risk. In our [Tax Alert of 12 November 2015](#) we discussed advantages for a business using this rollover.

The rollover may be used by any small business entity; company, trustee, partnership or individual¹ to roll assets or a business to any other small business entity provided certain criteria are met. The asset being rolled over must be an asset used in a business that is carried on by the owner of that asset or one of its associates² and the ultimate economic ownership of the asset or assets involved must not change materially. There is also a requirement that the rollover be in relation to a transaction that is a genuine business restructure. While clearly what constitutes a 'genuine' business restructure is a question of fact the legislation also contains a safe harbour.

¹ Tax exempt bodies and superannuation funds are specifically excluded.

² An 'active asset'.

This provides that the transaction will automatically be considered a genuine business restructure if for three years after the transaction there is no change in the ultimate economic owners of the assets transferred (apart from any trading stock) and the assets all continue to be used in a business with no, or only insignificant, private use.

Even if the transaction does not come within the safe harbour, for example because some of the plant used in the business is replaced with new technology, it may still be a 'genuine' business restructure. The Bill is very clear that the safe harbour is there to give certainty and simplicity not to limit the factual nature of what is or is not a genuine business restructure.

Special provision is made for discretionary trusts as generally no individual has any ultimate economic ownership of any asset held by the trustee of a discretionary trust. The trustee of a discretionary trust must make a Family Trust Election and all the members of the family group covered by that election will be considered ultimate economic owners of the assets held by the trustee.

The potential benefits of the restructures allowed by the new rollover are greatly enhanced for South Australian businesses by the abolition of stamp duty on business assets other than real property from 1 July 2015, the 1/3 reduction in duty on transfers of commercial property from 7 December 2015 and the promised reduction and finally abolition of duty on transfers of commercial property from 1 July 2017 and 1 July 2018 respectively. The new law is expected to apply from 1 July 2016. For more information on the possibilities the roll-over could open up for your business please contact Julie Van der Velde or any member of the DW Fox Tucker tax team.

For further information or for assistance, please contact a member of DW Fox Tucker's Tax team.



MORE INFO

Julie Van der Velde Senior Associate

p: +61 8 **8124 1958**

julie.vandervelde@dwfoxtucker.com.au

DW Fox Tucker Lawyers

L14, 100 King William Street, Adelaide, SA 5000

p: +61 8 **8124 1811** e: info@dwfoxtucker.com.au dwfoxtucker.com.au