Australian Government
Australian Taxation Office

Small business restructure rollover

The small business restructure rollover allows small businesses to transfer active assets from one entity (the transferor) to one or more other entities (transferees), on or after 1 July 2016, without incurring an income tax liability.

This rollover applies to the transfer of active assets that are CGT assets, trading stock, revenue assets or depreciating assets.

You can access this concession if your aggregated turnover is less than $10 million.

Next steps:

- Eligible entities
- When the rollover is available
- Tax implications

Eligible entities

The rollover applies if each party to the transfer is one of the following in the income year in which the transfer occurs:

- a small business entity
- an entity that has an affiliate that is a small business entity
- an entity that is connected with a small business entity
- a partner in a partnership that is a small business entity.

This means that an entity not carrying on a business, but holding assets for a small business entity, may be able to apply the rollover. For example, where one entity owns a property in which another connected entity is carrying on a business.

See also:

- Small business entity concessions (/business/small-business-entity-concessions/eligibility/)
- Affiliates (/general/capital-gains-tax/small-business-cgt-concessions/basic-conditions-for-the-small-business-cgt-concessions/affiliates/)
- Connected entities (/general/capital-gains-tax/small-business-cgt-concessions/basic-conditions-for-the-small-business-cgt-concessions/connected-entities/)

When the rollover is available

Part of a genuine restructure

The rollover is available where the transfer of assets forms part of a genuine restructure as opposed to an artificial or inappropriately tax-driven scheme.

Determining whether a restructure is 'genuine' depends on all the facts surrounding the restructure.

To provide certainty to small business owners, a safe harbour rule is included that provides an alternative way of satisfying the requirement that a restructure is genuine.

See also:

- Small Business Restructure Rollover: genuine restructure of an ongoing business (/law/view/document?DocID=COG/LCG20163/NAT/ATO/00001&PiT=99991231235958)

No change to ultimate economic ownership

To be eligible for this rollover, the transaction must not result in a change to the ultimate economic ownership of transferred assets.

The ultimate economic owners of an asset are the individuals who, directly or indirectly, own an asset. Where there is more than one individual with ultimate economic ownership, there is an additional requirement that each individual's share of ultimate economic ownership be maintained.

Example: Ultimate ownership unchanged

Penny runs a small furniture manufacturing business as a sole trader. She wishes to run the business through a unit trust.

Penny sets up the Just Me Unit Trust with herself as sole unit holder, and transfers the active assets of the business to the trust. This would not result in a change in ultimate economic ownership of those assets.

Example: Changed share of ownership

Amy, Joanna and Remy run a delivery business as equal partners and want to transfer their interests in the assets of the partnership to a company. Joanna and Remy are a couple.

Amy, Joanna and Remy establish a company, whereby 300 identical shares are issued

- 100 shares are issued to Amy
- 150 shares are issued to Joanna
- 50 shares are issued to Remy.

This is because Remy has other income and Joanna and Remy, as a couple, want to lower their overall income tax bill.

While this doesn't change the individuals who have the ultimate economic ownership of the asset, there is a change in the proportionate share of that ultimate economic ownership. Accordingly, Amy, Joanna and Remy cannot use the small business restructure rollover.

However, if the shares were distributed equally between the partners, the ultimate economic ownership of the assets would be unchanged, and Amy, Joanna and Remy could use the rollover, subject to satisfying the other conditions.

Discretionary trusts

Non-fixed (discretionary) trusts may be able to meet the requirements for ultimate economic ownership, for example, where there is no practical change in which individuals economically benefit from the assets before and after the transfer.

Family trusts may meet an alternative ultimate economic ownership test where:

- the trustee has made a family trust election, and
- every individual who had ultimate economic ownership of the transferred asset before the transfer, and every individual who has ultimate economic ownership after the transfer, must be members of the family group relating to the family trust.

See also:

- Small business restructure roll-over: consequences of a roll-over (/law/view/document?DocID=COG/LCG20162/NAT/ATO/00001&PiT=99991231235958)
- Family Trust elections (FTEs) (/general/trusts/in-detail/family-trusts---concessions/?page=1#Family_trust_elections__FTE_)

Eligible assets

This rollover applies to active assets that are CGT assets, depreciating assets, trading stock or revenue assets transferred between entities as part of a genuine restructure of an ongoing business.

Active assets are assets used, or held ready for use, in the course of carrying on a business.

The rollover is not available for any other business assets. Assets such as loans to shareholders of a company are not active assets of the business carried on by the creditor, and as such are not eligible.

Tax implications

There are a number of tax implications you need to consider if you choose to apply the small business restructure rollover. Generally:

- assets transferred under the rollover will not result in an income tax liability arising for either party at the time of the transfer
- the transferor is taken to have received an amount for the transferred asset equal to the transferor's cost of the asset for income tax purposes
- the transferee will be taken to have acquired the asset at the time of the transfer for an amount that equals the transferor's cost just before transfer.

CGT assets

The following apply to transferred CGT assets:

- Pre-CGT assets will retain their pre-CGT status after the transfer.
- To be eligible to claim the CGT discount for any subsequent sale of the asset, you will need to wait at least 12 months before a CGT event happens to that asset.
- For the purposes of determining eligibility for the 15 year CGT exemption, the transferee is taken as having acquired the asset when the transferor acquired it.

See also:

- General depreciation rules (/Business/Depreciation-and-capital-expenses-and-allowances/General-depreciation-rules---capital-allowances/)
- Working out your capital gain (/general/capital-gains-tax/working-out-your-capital-gain-or-loss/working-out-your-capital-gain/)

Trading stock

The rollover cost of an asset that is trading stock is either the:

- cost of the item for the transferor at the time of the transfer, or

- value of the item for the transferor at the start of the income year, if the transferor held the item as trading stock at that time.

Depreciating assets

The rollover prevents the transferor from having to make a balancing adjustment when assets are transferred. This allows the transferee to deduct the decline in value of the depreciating asset using the same method and effective life as the transferor was using.

Revenue assets

If the asset is a revenue asset, the rollover cost is the amount that would result in the transferor not making a profit or loss on the transfer. The transferee will inherit the same cost attributes as the transferor just before transfer.

Other implications

You may also need to consider the following:

- There may be potential liabilities such as stamp duty or GST consequences to consider prior to restructuring.
- Even though a restructure may satisfy the rollover requirements, this does not prevent the general anti-avoidance rule from applying to a scheme involving the application of the rollover.
- For shares or interests in a company or trust
  - this rollover does not require that market value consideration, or any consideration, be given in exchange for the transferred assets.
  - where membership interests are issued as consideration for the transfer, the cost base or reduced cost base of those new membership interests should be worked out based on the following formula:
    (Sum of rollover costs and adjustable values of the rollover assets minus liabilities the transferee assumes for the assets) divided by number of new membership interests
  - an integrity rule is included to ensure that a capital loss on any direct or indirect membership interest in the transferor or transferee that is made subsequent to the rollover will be disregarded.

See also:

- Small business restructure roll-over: consequences of a roll-over (/law/view/document?DocID=COG/LCG20162/NAT/ATO/00001&PiT=99991231235958)
- *Income Tax Assessment Act 1997* Subdivision 152-A (/law/view/document?docid=PAC/19970038/152-75)

Last modified: 17 Jul 2017 QC 48586

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