Summary of feedback from targeted consultation – CGT look through treatment to earnout arrangements

Issues	**Comments**
Some taxpayers anticipated that the scope of the measure was broader than what had been announced. Stakeholders have raised concerns that some of these taxpayers may be disadvantaged and asked that the protection measure for 'announced but unenacted measures' be extended to this measure.	The measure is proposed to apply from the day when the exposure draft is released. Prior to this time, taxpayers who have acted on the announcement will be protected under the same rules that were used in relation to 'announced but unenacted measures' that did not proceed - that is, taxpayers will be protected in the event that they self-assessed their tax liabilities in reasonable anticipation of the announcement.
Some stakeholders are concerned that the earnout measure does not apply to depreciating assets. Mining tenements and intellectual property were raised as examples of assets that can be either a depreciating or capital gains asset.	This measure reflects the May 2010 Press Release and accompanying Treasury Proposal Paper, which limited the earnout measure to the disposal of a business or business assets. Expanding this measure to include depreciating assets could substantially increase the scope and cost of the measure.
The definition of a 'look-through earnout right' requires that rights to the future payments be contingent on economic performance. Stakeholders consider that this requirement is overly narrow and many arrangements may fail to access the measure. They recommend that the reference to the type of contingency be removed.	It was the announced intention of the measure to provide concessional treatment only where payments are linked to the future economic performance of a business.
The definition of a 'look-through earnout' right also requires all payments to be made within four years. • Stakeholders argued for a longer time limit of five or more years. • The earlier Treasury Proposal Paper contemplated a five year limitation period.	Four years period is a reasonable limitation period going forward as it aligns with the standard period for amending assessments. Given the proposed change to the transitional arrangements (i.e. the protection measures) taxpayers will not be disadvantaged if they have reasonably anticipated a different period.
The measure would only cover sales to which CGT event A1 (disposal of a CGT asset) applies.	CGT event A1 will generally happen if a taxpayer disposes of an asset, even if other CGT events also happen, in which case the 'look-through earnout' rules will apply. The definition is limited to event A1 so as to be consistent with what was stated in the original May 2010 Press Release.

The measure would also only apply to sales of active assets. Some stakeholders argue that this requirement should only be applied prospectively (grandfathering existing earnout arrangements).	The requirement reflects the policy intent that the measure only applies to the sale of a business or business assets. A number of clarifications about its operation have been included in the explanatory materials. Taxpayers that have reasonably anticipated a different scope of the measure will be protected by the extension of the protection measure.
Stakeholders are concerned that, in most cases, shares in a company or interest in a trust will not be an active asset unless the shareholder held a holding of 20 per cent or more.	The new earnout measure is intended to apply to the sale of a business, not the sale of a passive investment. However, it is not uncommon for taxpayers to instead sell their interests in the entity carrying on the business. The 20 per cent threshold is a mechanism to ensure that the measure is not inappropriately available to sales other than businesses or business assets.