

Thanks for all the efforts of the team working on this. Well done.

I have noted that with many CGT rollovers, like this proposed one, the ultimate owners can lose the benefit of the 15 year exemption (subdiv 152-B) by using the rollover. For example a sole trader incorporates after 10 years using the incorporation rollover (div 122) to transfer the CGT assets to the company. Six years later the company sells the CGT asset and is unable to claim the 15 year exemption even though the underlying ownership has not changed.

The proposed rollover ensures the ownership period is maintained for the CGT discount (div 115) but not for the 15 year exemption. I would suggest you consider allowing the ownership period to be rolled over to the new owner for the 15 year exemption.

You might consider putting in an anti-avoidance rule to stop taxpayers using this rollover to effectively get the CGT discount for assets held in companies. For example, if I have a CGT asset owned by a company for a long time I am not going to get the CGT discount when I sell the asset. But if I use this rollover to move the CGT asset to a trust and sell the CGT asset out of the trust, I get the discount on the whole gain (the 12 month rule includes the time the company owned the asset under the proposed rollover) even though it was held in a company for most of its ownership period.

It is unlikely the Commissioner will be successful in applying Part IVA in many of these situations as there will often be non tax purposes for undertaking the rollover (moving the CGT asset away from the operative business for asset protection).

Regards

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