



OUT15/32525

Division Head
Law Design Practice
The Treasury
Langton Crescent
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By email: taxlawdesign@treasury.gov.au

Dear Sir or Madam,

Comments on the Tax and Superannuation Laws Amendment (2015 Measures No. 6) Bill 2015: Small business restructure rollovers Exposure Draft & Explanatory Materials

Thank you for giving the Office of the NSW Small Business Commissioner (OSBC) the opportunity to comment on the Tax and Superannuation Laws Amendment (2015 Measures No. 6) Bill 2015: Small business restructure rollovers Exposure Draft (ED) and Explanatory Materials (EM).

The OSBC is focused on supporting and improving the operating environment for small businesses throughout NSW. The role of the OSBC is to:

- provide dispute resolution services;
- deliver quality business advice through Small Biz Connect; and
- speak up for small business within government.

The OSBC supports the identification of regulatory systemic features that are unreasonably or unnecessarily hindering or preventing small businesses from pursuing and achieving their commercial goals.

The OSBC offers the following comments on Tax and Superannuation Laws Amendment (2015 Measures No. 6) Bill: Small business restructure rollovers ED and EM.

Decision making & tax treatment

As mentioned in the EM, a small business operator considers a number of factors when choosing their business structure: asset protection, tax benefits, regulatory burden and succession planning. These factors and their level of influence on a small business operator change over time. As such, the appropriateness of a particular business structure for a small business operator may change over time.

A concern is that decisions made regarding the type of business structure to be used can be heavily based upon tax implications rather than economic merit. In particular, the ability to transfer assets between business entity types becomes especially relevant where small business operators are nearing the age of retirement and the focus becomes succession planning.

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The Australian Productivity Commission, in their draft report on 'Business Set-up, Transfer and Closure', fittingly noted the following:

With a decreasing proportion of business owners aged less than 35 years and an increased proportion over 65 years, there is likely to be a shortage of potential new business owners to accommodate a flood of 'baby boomers' exiting from their ownership in businesses over the next decade. Options for realising income from the sale of these businesses may be limited with only 40 per cent of listed businesses reported to actually sell.¹

Given greater emphasis should be placed on economic merit in the decision making process of a small business operator when choosing a business structure, the OSBC supports in-principle the proposed amendments to the *Income Tax Assessment Act 1997* which aim to provide greater flexibility for small business operators to change the legal structure of their business.

Stakeholder Engagement

It is important that any changes to the small business tax regime is clearly communicated to small businesses through appropriate channels. Changes which affect a small business operator's decision with regard to business structure type are particularly important given the numerous factors a small business operator considers when deciding upon a business structure type.

The OSBC can assist the Australian Taxation Office and Australian Treasury to disseminate information to small businesses through its network of Small Biz Connect business advisors, the Small Biz Bus, website, and social media channels.

Should you wish to discuss any of the issues raised in this submission, please contact Magdalena Kaczmarek, Advisor, Advocacy on (02) 8222 4853 or at magdalena.kaczmarek@smallbusiness.nsw.gov.au.

Yours sincerely

A handwritten signature in blue ink that reads "Robyn A Hobbs". The signature is stylized with a large loop at the top.

Robyn Hobbs OAM
NSW Small Business Commissioner

25 November 2015

¹ Productivity Commission 2015, *Business Set-up, Transfer and Closure*, Draft Report, Canberra, page 17