

Extending the roll-over for exchange of units in a unit trust for shares in a company

Proposals Paper
November 2011

© Commonwealth of Australia 2011

ISBN 978-0-642-74764-8

This publication is available for your use under a Creative Commons Attribution 3.0 Australia licence, with the exception of the Commonwealth Coat of Arms, the Treasury logo, photographs, images, signatures and where otherwise stated. The full licence terms are available from <http://creativecommons.org/licenses/by/3.0/au/legalcode>.



Use of Treasury material under a Creative Commons Attribution 3.0 Australia licence requires you to attribute the work (but not in any way that suggests that the Treasury endorses you or your use of the work).

Treasury material used 'as supplied'

Provided you have not modified or transformed Treasury material in any way including, for example, by changing the Treasury text; calculating percentage changes; graphing or charting data; or deriving new statistics from published Treasury statistics – then Treasury prefers the following attribution:

Source: The Australian Government the Treasury

Derivative material

If you have modified or transformed Treasury material, or derived new material from those of the Treasury in any way, then Treasury prefers the following attribution:

Based on The Australian Government the Treasury data

Use of the Coat of Arms

The terms under which the Coat of Arms can be used are set out on the It's an Honour website (see www.itsanhonour.gov.au)

Other Uses

Inquiries regarding this licence and any other use of this document are welcome at:

Manager
Communications
The Treasury
Langton Crescent Parkes ACT 2600
Email: medialiaison@treasury.gov.au

CONSULTATION PROCESS

Request for feedback and comments

We invite interested parties to lodge written submissions on the design of this measure.

We also encourage the identification of any other issues, including interaction issues with other parts of the tax law that may be relevant to the design of this measure. While submissions may be lodged electronically, by post or by facsimile, electronic lodgement is preferred.

Submissions will be made available on the Treasury website unless you clearly indicate that you would like all or part of your submission to remain confidential. Automatically generated confidentiality statements in emails do not suffice for this purpose. A request made under the *Freedom of Information Act 1982* for access to a submission marked confidential will be determined in accordance with that Act.

Closing date for submissions: 16 December 2011

Email: cgt_restructures@treasury.gov.au

Mail: The General Manager
Business Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Enquiries: Enquiries can be initially directed to Jordan George.

Phone: 02 6263 3244

Fax: 02 6263 4471

CONTENTS

- SUMMARY V**
- 1. PURPOSE 1**
- 2. THE ROLL-OVER FOR THE EXCHANGE OF UNITS IN A UNIT TRUST FOR SHARES IN A COMPANY 1**
- 3. EXTENDING THE ROLL-OVER 1**
 - 3.1 Revenue assets.....2
 - 3.2 Trading stock.....2
- 4. CONSULTATION QUESTIONS 3**

SUMMARY

The Government proposes to extend the capital gains tax (CGT) roll-over for the exchange of units in a unit trust for shares in a company (Subdivision 124-H of the *Income Tax Assessment Act 1997*) to provide roll-over where units in a unit trust undergoing a restructure are held as revenue assets or trading stock.

This will remove income tax impediments for unit trusts that undertake a simple restructure by interposing a company between itself and its unit holders.

This proposed measure is a response by the Government to issues raised in consultation on the changes to the treatment of revenue assets under the roll-over for the exchange of shares in a company for shares in another company, which was announced in the 2011-12 Budget.

All legislative references in the paper are to the *Income Tax Assessment Act 1997*.

1. PURPOSE

This proposals paper forms the basis for consultation on this change and sets out, in broad terms, the way they may be implemented. The purpose of this proposals paper is to provide interested parties with an opportunity to comment on the policy design of this change.

2. THE ROLL-OVER FOR THE EXCHANGE OF UNITS IN A UNIT TRUST FOR SHARES IN A COMPANY

The CGT roll-over for the exchange of units in a unit trust for shares in a company (Subdivision 124-H) defers CGT consequences where a unit trust restructures by interposing a company between itself and its unit holders and the unit holders exchange their units for shares in the interposed entity. Where this roll-over applies, the economic ownership of the unit trust does not change but the owners now hold shares rather than units in the unit trust.

Currently, the roll-over only provides relief for taxpayers who hold the units in the unit trust as CGT assets. Taxpayers who hold the units as revenue assets or as trading stock cannot access a roll-over.

This results in taxpayers that hold units as CGT assets accessing a roll-over (deferring the tax outcome until the shares are later realised) when they exchange units for shares. However, taxpayers that hold units as revenue assets or trading stock cannot defer the tax outcome and may be subject to a tax liability.

As no cash is generated in this transaction, taxpayers that hold units as revenue assets or trading stock may find it hard to meet this tax liability. This impedes the restructure of unit trusts in these circumstances where the trust and the company have the same economic ownership.

3. EXTENDING THE ROLL-OVER

The Subdivision 124-H roll-over for the exchange of units in a unit trust for shares in a company will be expanded to include roll-overs for units in the unit trust that are held as revenue assets or trading stock.

This extension will remove income tax impediments from trusts that restructure by interposing a company between itself and its unit holders and where the economic ownership of the trust is the same before and after the restructure.

3.1 REVENUE ASSETS

A taxpayer holding units in a unit trust as revenue assets will defer any tax gains or losses arising when they exchange their units in the unit trust for shares in the interposed company.

Where a taxpayer is eligible to choose the Subdivision 124-H roll-over under section 124-445 (disposal case) or section 124-455 (redemption or cancellation case), they will be able to choose a revenue asset roll-over where the units they hold in the unit trust undergoing the restructure are revenue assets.

Revenue asset is defined in section 977-50 as an asset for which a profit or loss on disposal or ceasing to own the asset is taken into account in calculating assessable income other than as a capital gain or capital loss and is neither trading stock nor a depreciating asset.

The revenue asset roll-over will have effect by deeming the taxpayer to have received certain gross proceeds for the disposal of their units to deliver an appropriate tax outcome.

The roll-over will take place by:

- Making the taxpayer's gross proceeds for ceasing to own a revenue asset (a unit) as being the amount the taxpayer would need to have received to have a nil profit and nil loss for ceasing to own the asset; and
- Making the taxpayer's amount it is taken to have paid for the received revenue asset (a share) at the time of becoming the owner of the asset equal to proceeds the taxpayer is taken to have received from disposing of the units. This amount will then be the cost of the shares from which any subsequent gain or loss on disposing of the shares will be calculated.

The tax cost for the shares received in the interposed company will be equal to the total of the amounts taken to have been received described above divided by the number of shares received in the interposed company in exchange for the units that were revenue assets.

This will provide the correct tax value for the shares in the interposed entity for determining the taxpayer's profit or loss upon later disposing of, ceasing to own it or otherwise realising the share.

3.2 TRADING STOCK

A taxpayer holding units in a unit trust as trading stock will defer any tax gains or losses arising when they exchange their units in the unit trust for shares in the interposed company.

Where a taxpayer is eligible to choose to obtain a roll-over under section 124-445 (disposal case) or section 124-455 (redemption or cancellation case), they will be able to choose a trading stock roll-over, where the units they hold in the unit trust undergoing a restructure are trading stock.

The member's proceeds for ceasing to own the trading stock will be taken to be the amount they would need to have received in order to have a nil profit and nil loss for disposing of, or ceasing to own, that unit in the unit trust at that time.

This can be done by treating the consideration for the trading stock as:

- its cost, if it was acquired during the income year that includes the restructure; or
- its opening value for trading stock purposes if the trading stock was held by the taxpayer at the start of that income year.

The trading stock roll-over will provide that the tax cost for the shares received in the interposed company is equal to the total of the amounts of consideration taken to have been received described above divided by the number of shares received in the interposed company in exchange for the units that were trading stock.

The transaction will be taken to have occurred in the ordinary course of business by entities that are dealing with each other at arm's length.

This will allow the taxpayer to have the same tax outcome for the shares in the interposed company (assessable income or deduction depending on the closing value of the trading stock) as the units in the unit trust as if no exchange of units for shares had taken place.

4. CONSULTATION QUESTIONS

1. Will the new roll-overs remove impediments to trusts restructuring by interposing a company between itself and its unit holders?
2. Are there any problems with the suggested amendments that could adversely affect taxpayers?