

REMOVING IMPEDIMENTS TO SCRIP-FOR-SCRIP TAKEOVERS

The Government will provide capital gains tax rollover relief when there is an exchange of interests in companies or fixed trusts because of a takeover. As a result, capital gains tax liability will be deferred at the time of a takeover until ultimate disposal of the replacement asset.

This measure enhances the efficiency of capital markets and brings Australia into line with other countries.

Key features

Key design features are as follows (more detail is attached).

- The relief applies only where the acquiring entity takes over another entity by owning at least 80 per cent of the voting interests of the target entity, as a result of a takeover offer to all the holders of those interests.
- It applies irrespective of whether the entities are widely or non-widely held, and to both companies and fixed trusts.
- The interests that can be exchanged include shares/units and interests that provide a right to acquire shares/units in the future — for example, options-for-options (but not, say, shares-for-options).
- The effectiveness of the measure is to be reviewed five years after introduction.

Commencement date

The measure commences on the date of Royal Assent of the legislation.

Current arrangements

A capital gains tax liability may arise where there is an exchange of interests in companies or fixed trusts at the time of a takeover.

Why change is needed

The approach to be implemented by the Government:

- enables start-up and innovative enterprises to undergo capital restructuring during the development phase without triggering a capital gains tax liability;
- encourages such businesses to remain in Australia, rather than to relocate offshore;
- removes a major impediment to mergers and takeovers; and
- improves economic efficiency by enhancing the functioning of, and value-creation by, the corporate sector.

A Tax System Redesigned recommended that the scrip-for-scrip rollover relief be limited to takeovers where at least one of the entities is widely held. A widely held entity is one that has at least 300 members and where ownership is concentrated in the hands of 20 or fewer individuals. The Government has, however, decided to extend eligibility for scrip-for-scrip rollover relief to takeover transactions involving any type of entity.

- This approach is consistent with that adopted in other countries including the United States and the United Kingdom.

Removing Impediments to Scrip-for-Scrip Takeovers — Further Details

Key design features of the scrip-for-scrip rollover relief are as follows.

- Capital gains tax rollover is available for shares or interests that confer entitlement to acquire shares, or units or other fixed interests in a trust or interests that confer entitlement to acquire such trust interests.
 - It applies irrespective of whether the entities are widely or non-widely held although there are some differences between these cases (see below).
- This measure applies to a takeover if:
 - an offer is made by an entity to all the holders of voting shares in a company, or trust voting interests or, if there are none, units or fixed trust interests in the trust; and
 - in consequence of the takeover offer, the entity that made it becomes the owner of at least 80 per cent of the interests covered by the offer.
- In the case where either the entity making the takeover offer or the target entity is widely held, there is no requirement that the replacement interest must confer the same rights and obligations as the original interest. However, the replacement interest must be of the same broad kind as the original interest. For example, ordinary shares could be exchanged for preference shares and options could be exchanged for options. However, shares could not be exchanged for options.
- In the case where both entities are not widely held, the replacement interest must confer the same rights and obligations as the original interest. For example, ordinary shares need to be exchanged for ordinary shares.
- A company or trust is widely held if it has at least 300 members. There are special rules that prevent an entity being treated as widely held if interests are not concentrated in the hands of 20 or fewer individuals.
- An interest acquired in exchange for a pre-capital gains tax interest is not treated as retaining that status. The cost base of the replacement interest is its market value at the time of acquisition.
- The cost base of a replacement interest is determined by allocating the cost base of the original interest to the replacement interest.
- Rollover relief is available to residents or non-residents of Australia. However, special rules apply to non-residents.
 - A non-resident seeking rollover for an interest must have a replacement interest in an Australian resident entity treated as having the ‘necessary connection with Australia’. This ensures that a non-resident can make a capital gain or loss on the asset when a capital gains tax event occurs. Rollover is not available for a non-resident acquiring an interest in an entity that is not a resident of Australia.

- The date of commencement for this measure is Royal Assent. This means that the rollover relief applies to capital gains tax events that occur after the date of Royal Assent.