Private & Confidential

12 February 2021

Board of Taxation Secretariat
C/-The Treasury
Langton Crescent
Parkes ACT 2600

By email: cgtrollovers@taxboard.gov.au

Dear Sir/Madam

Following our recent discussions, PricewaterhouseCoopers (PwC) welcomes the opportunity to make a submission in relation to the Board of Taxation's (the Board) review of capital gains tax (CGT) roll-over rules.

All references are to the *Income Tax Assessment Act 1997*, unless specified.

Executive Summary

The Board's aim to use a general roll-over, which would replace the existing range of transaction-based restructure roll-overs, with a single, principles-based set of rules that provides clear and consistent outcomes is an ambitious and commendable objective. Having the tax roll-over rules designed in a simple, comprehensive, consistent manner that is aligned with commercial practices that can enable either an "asset for scrip" or "scrip for scrip" roll-over will be welcomed by taxpayers. However, the overhaul of the CGT roll-over rules as proposed may present significant challenges for taxpayers and the ATO alike. It may lead to significant uncertainty at least in the short term and it may be prudent to adopt a more incremental approach to the reform of these rules.

It is our experience that businesses, particularly larger groups, are wanting immediate reform to many of the current suite of roll-over rules, particularly in the current COVID-19 environment where some are looking to restructure their operations and access additional funding sources. CGT roll-overs play a key role in ensuring that tax does not unreasonably impede commercially driven structuring and reform to make the rules easier to apply is necessary.

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We also note that there are some existing roll-overs that are commonly used by individuals, partnerships and trusts (e.g. Division 122) that are simple in their design and application and which have historically not created any undue complexity and apply to any CGT asset, not just business assets.

While we support the Board's objective to have a general business roll-over mechanism, we observe that further work may be required to consider the differing needs of public entities and their specific regulatory regimes (e.g. under Corporations law) and separate that from private companies, trusts and individuals.

Furthermore, it may become apparent during your review that balancing integrity and implementation factors may mean that it becomes too complex to replace all of the existing roll-over provisions as proposed within the ambit of the general restructure roll-over relief at the same time and as soon as possible. It is unclear why there are many other CGT roll-overs that are not included in the proposed general roll-over mechanism although they have similar features to those that have been included.

Accordingly, we submit that it may be necessary to undertake a staged approach such as dealing with a single set of rules that covers asset for scrip roll-overs and then potentially another set of common rules that deal with scrip for scrip transactions, and in the short term make modifications to the existing roll-over provisions to achieve certainty, equity or simplicity in their application.

Some immediately apparent areas of the existing roll-over rules where we see there is a need for immediate change include:

- extending all existing roll-over relief beyond CGT assets to depreciating assets, trading stock and other revenue assets;
- ensuring the rules can apply to AMITs;
- amending the demerger, trust restructure and scrip for scrip roll-over eligibility rules to provide greater certainty in their application (e.g. the concept of "restructure", single arrangement, "nothing else" requirements) and to remove impediments to legitimate commercial restructures; and
- potential reconsideration of the tax consolidation rules when it comes to demerged entities (i.e. maintain status quo of tax bases, no exit or entry calculations).

Appendix A to this submission contains more detailed consideration of the more important or critical questions raised in the Board's paper.

Please feel free to reach out to us should you wish to discuss our submission further.

Yours sincerely

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Appendix A
Responses to specific questions raised

General business restructure roll-over

Having general business roll-over rules that are simple to understand and apply and that also ensures that tax outcomes do not unreasonably impede commercially driven structuring is the ultimate objective. Against this objective, we agree there is a need to have consistent and simple roll-over rules that would enable:

- Neutrality so that arrangements that produce similar ultimate outcomes receive the same tax treatment;
- Equity in treatment across asset types, including extending roll-over relief beyond CGT assets but also for depreciating assets, trading stock and other revenue assets;
- Commercially desirable restructures that can also assist in creating a post-COVID business-led recovery;
- Certainty for all participants (e.g. no ambiguity in interpretation, enable the prompt issue of an ATO ruling for a taxpayer); and
- Reduced red tape in the tax system.

At this stage, the Board has chosen to focus on replacing seven existing roll-overs into a general business restructuring rule, covering both asset for scrip transactions and/or scrip for scrip transactions. It would be useful to understand the Board's reasoning for considering why these should form part of the same roll-over while other roll-overs were excluded at this time (e.g. Subdivisions 124-E, 124-G, 126-C, 126-G and 124-Q). Any general business restructure rule should also potentially capture other transactions that might not have fitted within the strict application of our existing roll-over rules (e.g. to cater for certain foreign law amalgamations).

Our initial reaction to the Board's proposed single general restructure roll-over rule was that it was complex. For instance, the proposed model seems far more complex to understand and apply than the existing Division 122 roll-over rules which are used by individuals and private groups and have traditionally not caused any major interpretational issues.

Furthermore, the single model requires an undoing of the existing knowledge in understanding the requirements, parameters, consequences and interactions with other areas of the law for each existing roll-over. This may also mean that when specific integrity and implementation issues are fully considered in the design of the general restructure rule, it may be difficult to get the final law into place as quickly as taxpayers might like. There will be considerable education and upskilling required for stakeholders to understand the ambit of a single general business restructure roll-over relief and potentially the need for a transitional period, and this should also be factored into the Board's overall recommendations.

Whilst simple language and principle-based rules might be used to develop the legislation for the general restructure roll-over relief, we strongly submit that any such law needs to be

drafted in a manner that there is little confusion, scope for ambiguity or alternative interpretations. For example, the concept of a “restructure” is not necessarily easy to define (see the recent release of the ATO’s Taxation Determination TD 2020/6 which has considerable discussion on the meaning of restructuring in the context of demerger relief). Legislative mechanisms that can reduce the scope for uncertainty as to eligibility are necessary.

Any reforms that can be implemented sooner rather than later and contribute to the objectives of having consistent and simple roll-over rules would be welcomed, such as:

- extending all existing roll-over relief beyond CGT assets to depreciating assets, trading stock and other revenue assets; and
- ensuring the existing rules can apply to AMITs.

Identifying the restructure

In identifying the eligible restructure, the Board has suggested the concept of a “restructure scheme” to define the eligible restructure. As previously noted, the concept of a “restructure” in existing law is not necessarily easy to define and the reference to whether it is explicit or objectively inferred from the circumstances leaves scope for ambiguity. We consider that including the concept of a restructure scheme would not deliver the proposed simplification advantages and would lead to future uncertainty for taxpayers. Defining the transaction subject to roll-over relief without reference to this concept would be preferred.

We agree that having a clearly defined bright-line restructure period will assist in dealing with aspects of identifying the steps to a staged and complex restructure, particularly for those which have historically sought to rely on multiple roll-overs to achieve the desired ultimate ownership structure.

Some comments in adopting a bright-line approach that is used to assist in defining the timing of the transaction(s) which is eligible for the roll-over include:

- The start time - should that be based on the time of the CGT event (generally contract date) or the later time of beneficial ownership of any asset transaction?
- The end time - there could be multiple end times (and presumably multiple roll-overs) depending on how the restructure is defined (e.g. the identifiable end time in Example 1 in the Board’s paper could easily be said to be immediately after the shares in the transferee company are issued to Mr X and then there is a second restructure which starts when the new company acquires shares in the transferee company and ends with the issue of the replacement shares in the new holding company).
- Managing overlap with income years, i.e. the first CGT event for which roll-over might be sought occurs in one year but it is not apparent if the arrangement would qualify for roll-over within the restructure period at the time the relevant income tax return for year one is prepared

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- Multiple transactions - presumably roll-over relief would be available for what would currently be considered back to back roll-over transactions provided the ultimate restructure occurred within the eligible restructure period, i.e. there would be no confusion regarding whether a series of steps in a transaction was a "single arrangement" or failed to meet the "nothing else" requirements as a genuine restructure and it would be possible to undertake separate "back to back" restructures, each occurring in separate restructure periods and for each to qualify.

7. Do you agree with limiting the eligible restructure period to 12 months? If not, please explain your rationale and identify any alternate approaches.

An eligible restructure period of 12 months should be appropriate to capture the majority of large (and public) group restructures with respect to which roll-over relief would be sought. However, we are concerned that the 12 month limitation period would not cover some of the more complex restructures that can occur in a number of stages (particularly for private groups which may need to undertake multiple roll-overs of numerous entities) involving a global transaction or delayed for regulatory reasons. To cater for these scenarios, in the absence of a greater time period being allowed, while it would be useful for the Commissioner of Taxation to have a discretion to allow for an extension of the time period, it must be able to apply in a manner that affected taxpayers are not left with uncertainty due to delays in its exercise or the absence of clear factors that would need to be taken into account. For example, there might be an automatic extension of the 12 month period where the restructure is delayed due to regulatory approvals or legal disputes.

We have set out below some examples of restructures that we have seen that were not completed within the 12 month period contemplated by the Board's consultation paper.

Example 1: Our client acquired a substantial portion (greater than 80%) of shares in a company via a scrip for scrip transaction. Further negotiations were required with the remaining shareholders before all of the remaining shares in the company were ultimately acquired. These two tranches of share acquisitions occurred more than 12 months apart. The ATO had issued a private binding ruling in this scenario confirming that the requirements of the Subdivision 124-M scrip for scrip roll-over were satisfied, including the requirement that the transaction was undertaken under a 'single arrangement' in spite of the transaction taking longer than 12 months in two tranches.

Example 2: Our client was a global multinational enterprise headquartered overseas. A contract to begin the process of a global restructure was signed offshore, triggering a CGT event in Australia. The restructure was then carried out over a period of greater than 12 months due to its complexity and the need for the Australian subsidiaries to manage their own arrangements in accordance with the global plan.

Example 3: A privately owned group with multiple trusts and companies sought to rationalise their operations under a single corporate structure in order that the group was more appealing to a potential buyer. While it would be typical to undertake the internal

restructuring within a 12 month period, the subsequent scrip for scrip transaction with a third party may not be able to be undertaken before the end of the 12 months from the time of the first CGT event in the internal reorganisation. In this case, would the rules apply to treat the subsequent scrip for scrip transaction as a separate restructure?

Example 4: The completion of an internal restructure of a privately owned group seeking to operate under a single corporate structure that involved multiple transactions. This restructure was prolonged as a result of delays in obtaining private rulings from the ATO as to the eligibility for roll-over relief. This example also highlights the need to ensure that any new rules are easy to understand and apply so there is less risk of delays in seeking taxpayer certainty.

Eligibility requirements

It is our view the following proposed eligibility requirements may create some complexity (and/or additional compliance burdens) and any mechanisms to alleviate those concerns when weighing up issues of integrity should be carefully considered:

- The dominant purpose of the restructure must be a commercial purpose - This is an unnecessary narrowing of the existing roll-over rules where it is possible for roll-over relief to apply as part of an ordinary family dealing (e.g. estate planning). We strongly believe that it is not necessary to explicitly require commerciality of purpose in the definition of an eligible restructure. The existing Part IVA rules can adequately address any inappropriately devised roll-over restructure rather than a specific integrity rule embedded into the definition of an eligible restructure. Also refer to our comments below under Item 9 in relation to Corporations Law requirements.
- The market value of the original asset just before the start time must be substantially the same as the market value of the replacement asset(s) (or capital proceeds where ineligible proceeds have been received) at the end time - there may be a considerable period of time that transpires between the start time and end time (potentially up to 12 months under the eligible restructure period) where the assets' values may change for reasons unrelated to the transaction - query whether this requirement is less relevant in a restructure involving widely held entities or whether a de minimis rule might best deal with valuation variations.
- The maintenance of underlying ownership rule - While this may be appropriate for many basic commercial settings, we agree that it is important to have exceptions as proposed for employee share schemes, de minimis interests and to enable subsequent capital raisings, particularly for public entities. However, when it comes to a merger scrip for scrip transaction, it is proposed to allow for the roll-over even if the underlying economic ownership of the original assets have not been maintained. It is unclear whether the relief would apply in a private equity or trade sale context where it is desirable from a business continuity and efficiency perspective to retain the original management who hold shares in the target (i.e. the requirement that all owners be able to participate in the merger on substantially the same terms is restrictive and these shareholders would not be covered by the employee share

scheme exception - see our comments in our previous submission of August 2020 and our comments below under item 9).

9. Where the restructure involves only publicly listed groups, what modifications should be made to further streamline the eligibility conditions? For example, where certain integrity provisions are not relevant or are commercially impractical to apply.

In considering the application of the roll-over rules to publicly listed groups, we consider that the tax law should avoid duplication of policy outcomes that are already achieved under the *Corporations Act 2001* and ASX Listing Rules. In particular, the *Corporations Act* already provides significant protections for securityholders that ensure:

- the total market value of all securities issued or acquired under the scheme should be the same; and
- the transaction must be carried out for a commercial purpose.

As the *Corporations Act* is particularly focused on ensuring fairness for all shareholders we consider that a requirement for all securityholders to participate on substantially the same terms is unnecessary in transactions involving a listed entity.

For similar reasons, we consider that a maintenance of ownership requirement is unnecessary in transactions involving a listed company as the *Corporations Act* is designed to ensure that the transaction occurs on arm's length terms.

These factors also support the consideration that the needs and regulatory environment of public entities need to be distinguished from private companies, trusts and individuals when designing the roll-over rules.

Cost base

We agree with the proposal set out in Item 1 and 3 of Table 1 in the Board's paper concerning the cost base of the original asset or replacement asset following a roll-over.

However, it is our view that the proposal to deny market value cost base for takeovers raises many concerns, particularly in relation to transactions such as a scrip for scrip takeover (in the sense of Subdivision 124-M) where there are no significant or common stakeholders, which do not warrant that this apply in the breadth of situations as proposed at Item 2 of Table 1 in the Board's paper.

While we appreciate that the use of market value results in a significant policy disparity between the existing suite of roll-overs where the tax cost of the former interest holders is preserved, the practicalities with large widely held groups and the tax consolidation interactions also needs to be considered.

10. Do you consider that the adoption of a single 'push-up' cost base rule for the acquiring entity would deliver simplification advantages?

We do not consider that the adoption of a single 'push-up' cost base rule would deliver the anticipated simplification. When compared to the alternative of having a cost base transfer between the original equity holders and the acquiring entity, we agree that although it would be a more practical approach, especially where the target entity is widely held, it raises additional complexity and inappropriate outcomes, particularly for tax consolidated groups where the recreated cost base of the acquired interests serves no purpose other than for the consolidation tax cost setting of the assets of the acquired entity. Having to perform two calculations - firstly, the push-up to create the cost base of the acquired shares and secondly, an entry allocable cost amount (ACA) calculation to determine the tax cost of the joining entity's assets - is not simpler than the current approach.

The majority of scrip for scrip transactions where there is no common or significant stakeholder are undertaken by tax consolidated groups, where there is no choice but for the acquiring group to undertake an entry ACA calculation to determine the tax cost setting amounts for the assets of the acquired joining entity. The use of a "push up" would create the step 1 amount of the entry ACA that would feature in that calculation and there would also remain the usual adjustments for losses and inherited deductions. The result of the ACA allocation to the assets of the joining entity would result in different tax bases for those assets and most likely result in a skewing towards the goodwill of the entity. It is also conceivable that, due to the existence of retained cost base assets, there is insufficient cost capable of being allocated to reset cost base assets of the joining entity.

11. Does it represent a reasonable trade-off in light of the other benefits of a general roll-over?

Having regard to the practicalities, it is not fully apparent whether and why there is a need to deny the market value cost base in cases that extend beyond the current common or significant stakeholder or restructure rules in section 124-784A.

For those transactions which would currently be covered by the section 124-784B "push up" mechanism, the circumstances in which that would apply and the consequences are well understood. However, we feel that there are many unrelated widely held scrip for scrip transactions where this application would not be desirable and potentially could result in distorted tax outcomes, particularly if there were no changes made to the tax consolidation rules (see below). This also needs to be considered in the context of where the original interest holders' choice to use the roll-over causes this outcome which is out of the control of the acquiring group. The prospect that the deemed "push up" outcome might result in acquiring entities adopting alternative acquisition approaches rather than scrip for scrip to undertake takeovers should also be considered along with the result that there might not actually be a "step up" using the market value of the acquired interests.

12. If preserved, how could the existing market value 'step up' be incorporated into the general roll-over without importing excessive complexity?

In the event that the proposed ‘push up’ approach is adopted in all cases where ownership interests collectively, with other ownership interests under the restructure, represents 80% or more of the interests in an entity, there needs to be adjustments to the tax consolidation rules to ensure that there is not additional undue complexity and inappropriate outcomes.

Specifically, we strongly recommend that an acquiring tax consolidated group have the ability to make a ‘stick’ election - i.e. where the tax costs of the assets (and liabilities that are financial arrangements) of the joining entity be retained. In particular, the addition of this election should be simple to adopt, remove additional compliance burdens and additional inappropriate tax outcomes.

The resulting tax consolidation outcomes that currently arise in the case of a demerger transaction when the demerged entities typically exit a tax consolidated group and are then most likely to form another tax consolidated group should also be considered as part of the above. Specifically, we recommend that consideration be given to the option of maintaining the status quo of the tax costs of the assets of the demerged entity, rather than the current process of undertaking exit ACA and then entry ACA calculations.

17. It is important that the benefits of the preliminary roll-over model are also well understood. Compared to the current suite of roll-overs, what are the key simplifying features that would provide the most value in a general restructure roll-over? What other features of the preliminary roll-over model provide important benefits?

We consider that the most important simplifying feature that could be delivered in relation to the roll-over provisions is designing a roll-over using easy to understand language that defines the scope of the roll-over itself. For example, the concepts of ‘single arrangement’ in Subdivision 124-M, ‘a scheme for reorganising its affairs’ in Division 615 and ‘restructuring’ in Division 125 are not easy concepts to understand and often result in uncertain or inconsistent treatments between taxpayers (as noted in our previous submission to the Board in August 2020).

This ‘boundary’ language is the largest source of uncertainty and scope for alternative interpretation in the existing roll-over provisions. We consider that, to the extent possible, the transaction subject to roll-over relief should be defined without reference to these concepts. This would provide the largest simplification benefits without expanding the scope of transactions that are subject to roll-over relief.

The above reform would provide increased certainty to taxpayers and resolve the most common area for disputes between the ATO and taxpayers.

Demergers and capital raisings

22. Are any ongoing impacts of COVID-19 expected to change the nature of future capital market and demerger transactions?

Recent changes made under the *Foreign Acquisitions and Takeovers Act 1975* and the approach taken by the Foreign Investment Review Board (FIRB) in relation to transactions involving foreign residents has resulted in changes to capital market transactions and are expected to continue for some time. In particular, we have seen the length of time required to complete capital market transactions increase significantly as a result of regulatory approvals, including the time for FIRB approval.

The increased time required to complete certain capital market transactions should be considered by the Board in its review. We consider that this would be particularly relevant to the design of the 12 month eligible restructure period (see our comments earlier).

Pre-CGT assets

We do not see any reason to overturn the consequences that currently apply in the existing law when it comes to pre-CGT status.

There are existing roll-overs that by design, specifically preserve the pre-CGT status to the resulting replacement ownership interests (e.g. asset for scrip roll-overs by individuals, trusts and partnerships covered by existing Division 122 or Subdivision 124-N), while others do not (e.g. scrip for scrip roll-overs such as Subdivision 124-M and Division 615). The taxpayers who typically use the existing roll-overs that preserve pre-CGT status (i.e. Subdivisions 122-A, 122-B or 124-N) are only individuals and private groups and rarely public entities. There would be very few (if any) pre-CGT assets held by public entities due to the existing Division 149 integrity measures in the law.

The Board's proposal for a rule to render any assets received in exchange for pre-CGT assets a post-CGT asset with a cost base equal to their market value at the time of the restructure runs counter to an original design feature of our CGT regime and should not be considered for revocation lightly.

23. Would you support a general rule that assets received by way of replacement for pre-CGT assets will be taken to be post-CGT assets with a market cost base? Why? Why not?

Although the existence of pre-CGT assets is diminishing, it is our experience that there still remain many forms of CGT assets (shares, real property and business goodwill) held by individuals, trusts or private companies that continue to be pre-CGT assets. Although we see the similarity in this proposal with that which currently applies to pre-CGT assets held by a deceased individual, where the beneficiary of the deceased estate is taken to have acquired the asset at the time of death for its market value, the inability to preserve the pre-CGT status of an asset that was subject to a roll-over is too significant a change. Even

though there may be a diminishing number of potential restructures involving pre-CGT assets, loss of pre-CGT status would be seen as a major departure and overturning of the policy of the existing CGT regime that has existed for over 35 years.

It should also be noted that the existing law has operated to retain the pre-CGT status in cases where the original asset owner becomes the sole ultimate owner of the replacement asset (which typically will only occur in an individual or private business context) and the reason for the restructure is often asset protection or creating a more commercial and permanent legal structure. This should be contrasted with for example, the denial of the ability to roll-over a pre-CGT asset under a Subdivision 124-M roll-over where there will be changes in the underlying ownership.

While our view is that there should be no change to limit pre-CGT status consequences on a roll-over beyond those existing provisions, if this is not going to be the case, perhaps in line with the broad design principle that roll-over should allow taxpayers the freedom to choose how they restructure their businesses based on commercial reasons, the taxpayer be given the choice to retain pre-CGT status for a roll-over asset (i.e. the rolled-over gain is not permanently removed) or forgo pre-CGT status with a deemed acquisition at market value.

Practically, we consider that if the consequence of a roll-over of a pre-CGT asset has the mandatory result of a loss of pre-CGT status, there will be many instances where the restructure will simply not occur at all, i.e. the loss of pre-CGT status is a significant deterrent to result in no restructure of the existing ownership of the asset and potentially breach the Board's Principle 2 that roll-over should be available to relieve inefficient asset 'lock-in' for business where there is strict continuity of economic ownership. Furthermore, the timing of any change should be carefully considered so as not to cause unnecessary precautionary transactions by some taxpayers to preserve the pre-CGT status of an asset in a different structure and/or to enable a suitable long lead-time in advance of the removal of preserved pre-CGT status.

AMITs

We recommend that regardless of the Board's proposal to extend general roll-over to attribution managed investment trusts (AMITs), legislative changes be made as soon as possible to allow AMITs to participate in the existing roll-overs in the same manner as any other fixed trust could.

25. Would extending general roll-over to trusts that satisfy CGT event E4 or E10 make relief practically available to AMITs? What additional obstacles, if any, would prevent relief being accessed?

We agree that extending roll-over relief to trusts that are capable of having CGT event E10 apply would make roll-over relief available to AMITs. The requirement in existing roll-overs that CGT event E4 (and not E10) be capable of applying to interests in the trust is the single largest impediment to AMITs accessing roll-over relief.

The Board's broad Principle 2 that roll-over should be available to relieve inefficient asset 'lock-in' for business where there is strict continuity of economic ownership should be sufficient to recommend that roll-over relief should apply to restructures involving AMITs where the interests of those beneficiaries capable of benefiting under the trust are fixed.

We do not consider that there are further obstacles to obtaining roll-over relief for AMITs that are required to be addressed as part of the Board's review.

26. For what types of arrangements would AMITs contemplate using general roll-over?

In one example we have seen, an investment unit trust was overweight in holding of certain assets in its main fund and that needed to reduce its exposure to these investments for risk management purposes and to comply with its investment policy. To ensure that the trust could continue to maintain these investments for its unitholders, it sought to transfer the overweight positions to a series of new subtrusts. The trust may need to undertake similar roll-overs for other overweight investment positions in the future. Such transfers would not have qualified for roll-over had the investment trust elected into the AMIT rules.

There are many other circumstances in which an AMIT (or any other fixed trust) would use a general roll-over, including restructures within a wholly owned economic group or demergers.

27. Would giving AMITs access to general roll-over be inconsistent with the requirement for an irrevocable decision to enter the AMIT regime? How could this concern be addressed?

We do not consider that giving AMITs access to the general roll-over would give rise to significant integrity concerns. The lack of roll-overs for AMITs is potentially undermining the use of the AMIT regime itself. We have seen instances where a MIT chose not to elect into the AMIT regime because AMITs are not eligible to undertake roll-overs.

While the election into the AMIT regime is an irrevocable election, continued access to the AMIT regime is subject to ongoing eligibility criteria that must be satisfied. That is, the failure of an eligibility requirement means that the relevant trust is no longer eligible to apply the AMIT provisions.

We also make the following comments in relation to certain existing roll-overs:

- Subdivision 124-N is a roll-over into a company structure, generally considered to be a less concessionary tax environment when compared to an AMIT (so unlikely to practically happen)
- Subdivision 126-G requires both trusts to have made the same elections so the assets of an AMIT may only be transferred to another AMIT.

28. What implementation issues should be taken into account in extending relief in this way?

If the Board has particular concerns with the transfer of assets from an AMIT to a non-AMIT then these concerns potentially may be addressed by the introduction of requirements similar to section 126-235 in relation to mirror choices.

Consolidatable groups

31. Should the policy surrounding the application of business restructure roll-over relief to arrangements involving consolidatable groups be revisited? On what grounds?

There are many privately owned corporate groups which are consolidatable and hence would fail to qualify for existing and proposed roll-over relief. Our experience is that the key reason why these groups have not chosen to form a consolidated group is due to the initial compliance costs and outcomes of the tax consolidation regime.

In this respect, we support further consideration of the Board of Taxation's Recommendations from its *Post Implementation Review into Certain Aspects of the Consolidation Regime*, June 2012, that "ongoing simplified formation rules should be available for wholly-owned corporate groups …". The recommended changes included the 'stick concession' and a simplified loss utilisation rule. The consequences of a proposal such as this may go some way to preserve the existing integrity rule denying roll-over access to consolidatable groups but at the same time provide small to medium wholly-owned corporate groups the opportunity to obtain the full compliance benefits of forming a consolidated group and ability to restructure their affairs.