THE TAX INSTITUTE

12 February 2021

Board of Taxation Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

By email: cgtrollovers@taxboard.gov.au

Dear Sir or Madam,

Review of CGT Rollovers – Comments on Second Consultation Paper

The Tax Institute refers to the Board of Taxation's (**Board**) review of the capital gains tax (**CGT**) rollover provisions contained in the Board's Second Consultation Paper of December 2020 (**Consultation Paper**). The Tax Institute welcomes the opportunity to make a submission to the Board in relation to the Consultation Paper. In preparing this submission, The Tax Institute has consulted with its Large Business & International Technical Committee and its SME and Tax Practitioner Committee to obtain a breadth of views on the Consultation Paper. This submission incorporates feedback received from members of these Committees.

The Consultation Paper follows the Board's initial consultation paper of February 2020 which was commissioned by the Assistant Treasurer to consider practical ways to simplify and rationalise Australia's system of CGT rollovers and associated provisions that have a substantially similar practical effect but are easier to use and interpret. The Tax Institute's submission in response to the initial consultation is available here.

The detail of our submission in response to the Consultation Paper can be found at **Appendix A**. All references to legislative provisions are to the *Income Tax Assessment Act 1997,* unless stated otherwise.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all. Please refer to **Appendix B** for more about The Tax Institute.

Summary

The Tax Institute has concerns about the proposed general business restructure rollover (**General Business Rollover**) and considers that the preferable pathway forward is to address issues within existing rollovers rather than replacing a number of rollovers with a single rollover.

We are of the view that the existing rollover provisions generally work and achieve their intended objectives. We acknowledge that there are certain aspects of existing rollovers that can give rise to undue complexity though this tends to be the exception rather than the rule. We have considered particular issues with certain existing rollovers and potential solutions to resolve them and would be pleased to engage with the Board separately to discuss these issues. We believe this would be preferable to eliminating these rollovers and replacing them with the General Business Rollover.

In the event that the General Business Rollover is pursued, we have outlined particular areas of concern which we consider require further consultation before any action is taken to implement it.

If you would like to discuss any aspect of this submission, please contact either myself or Tax Counsel, Julie Abdalla, on (02) 8223 0058.

Yours faithfully,

Peter Godber

President

APPENDIX A

Submission

Policy framework

The Tax Institute supports the concept of a principled framework outlined in the Consultation Paper. The clear statement of policy provides context to the rationale behind the availability of rollover relief as a general concept. However, we consider that certain principles go beyond the overarching policy of rollover relief. One of the fundamental principles underpinning rollover relief is that there should not be a taxing event where there is continuity in the economic ownership of a CGT asset. Importing a business requirement, for example, in referring exclusively to 'business transactions' in principle 1 and the 'pursuit of business efficiencies' in principle 2, limits the original intention of rollover relief.

In addition, we note that the objective of the proposal does not appear to include a broadening of the CGT base or increase in CGT revenue. However, we are of the view that certain mechanisms within the proposed General Business Rollover will, whether or not intentionally, have this effect. We consider this will occur in two key ways. Firstly, certain aspects of the General Business Rollover, as currently proposed, will have the effect of excluding a broad range of transactions. And, secondly, the different treatment of cost base may result in lower cost bases in certain cases and is likely to increase compliance costs, at a minimum during the initial years of implementation and likely until there is precedential guidance from the courts on key areas of complexity and uncertainty. We have considered these matters below.

Likewise, the policy does not contemplate increased safeguards around perceived integrity concerns beyond maintaining the integrity of CGT and the tax system more broadly. Yet there seems to be an increased focus through these measures on targeting potential anti-avoidance. Further, it appears that the integrity aspects are targeted particularly towards the small to medium enterprise (**SME**) market. We have outlined below areas in which we consider this manifests disproportionately in relation to SMEs.

We consider it is necessary that any proposed measure does in fact operate within the stated policy objective and does not extend beyond that framework.

Existing rollover provisions proposed to be abolished

The General Business Rollover is intended to replace rollovers contained in Subdivisions 122-A, 122-B, 124-N, 124-M and 126-B, and in Divisions 125 and 615.

Subdivision 122-A applies where a sole trader or trustee disposes of a CGT asset to a company in exchange for 100% of the shares in the company. Similarly, Subdivision 122-B applies where partners of a partnership dispose of a CGT asset to a company in exchange for 100% of the shares in the company. Importantly, the rollovers contained in Subdivisions 122-A and 122-B apply to assets generally, and not exclusively to assets used in business. This is a fundamental difference between the existing provisions and the proposed General Business Rollover, which is explored further below.

The remaining rollovers are more commonly used in a purely commercial or business context, though it is not inconceivable for some to be applicable in a private or domestic scenario. Subdivision 124-N relates to the disposal of CGT assets by a unit trust to a company in exchange for shares in a company whereas Subdivision 124-M requires a like for like exchange of either shares or units (among other conditions).

Subdivision 126-B provides rollover in relation to asset transfers between two companies that are members of the same wholly group where at least one of those companies is a non-resident. Division 125 contains rollover relief in the context of demergers and Division 615 provides for rollover relief in relation to the interposition of a holding company between shareholders and a company or unit trust.

Importantly, in most cases, the underlying economic ownership of the relevant assets is preserved, which is consistent with the policy underpinning rollover relief. As offered during our discussion with the Board, we would be pleased to provide case studies outlining the treatment of certain transactions and particular outcomes under existing rollovers as compared to the proposed General Business Rollover.

Improving the existing rollovers

The Tax Institute is of the view that on the whole, the existing rollover rules work reasonably well. We consider that it would be preferrable to address irritants and problem areas within those regimes rather than replacing them entirely with a new rollover. On the whole, we consider that, while some of the rollovers may not work as effectively as they could, for the most part they do achieve their intended objectives. There are a number of substantive changes that could be made to the existing rollovers, which we consider would encourage business activity by enhancing flexibility and reducing the costs associated with restructure transactions. Simplified record keeping requirements would also assist to reduce the compliance burden and costs associated with restructure transactions. Should the Board be open to considering these pathways, we would be pleased to separately engage on our specific thoughts.

In addition, we would suggest that a restatement of policy, similar to the proposed policy framework contained in the Consultation Paper, would be valuable in respect of the existing rollovers. We envisage that this could extend beyond an overarching policy to address specific aspects of the rollover rules such as the interaction between earn outs and scrip for scrip transactions.

Simplified record keeping requirements would also assist to reduce the compliance burden and costs associated with restructure transactions.

Proposed General Business Rollover

The remainder of our submission outlines our main concerns in relation to the proposed General Business Rollover.

Principles based drafting

As outlined in our submission in response to the Board's initial consultation, The Tax Institute has reservations about the use of principles based drafting in respect of CGT rollovers. We consider that the use of principles based drafting leads to greater uncertainty and complexity. This is heightened in circumstances where a broader rollover is intended to replace several distinct rollovers.

For this reason, noting that this is an area of the tax law where taxpayers require higher levels of certainty, we would recommend that if the proposed General Business Rollover is to proceed, it is drafted using clear and prescriptive language.

12-month rule[1]

The Tax Institute is of the view that the 12-month rule is an unnecessary restriction which has the potential to cause a significant number of transactions to fall outside the scope of the General Business Rollover. This would have the effect of denying rollover relief in circumstances where it would otherwise be available under the existing rules.

We understand that this is intended to provide certainty, in circumstances involving a series of transactions (such as, for example, a demerger followed by another transaction), around which transactions are captured for the purposes of the General Business Rollover. However, other than addressing issues in demergers and shorter term or successive rollovers, and risks associated with such transactions, we consider this condition is unnecessarily restrictive. Further, while this rule is intended to provide certainty where it may otherwise be difficult to determine which transactions are within the scope of the rollover, we consider this could be better resolved through prescriptive rather than principles based drafting.

For the most part, taxpayers do not tend to undertake significant numbers of transactions within a 12-month period due to reasons unrelated to CGT. This includes, in certain jurisdictions, post transaction association periods of 12 or 36 months in order to remain eligible for corporate reconstruction relief from state duties. This can also encompass reasons relating to the mitigation of business disruption and public perception of a business in the process of a restructure. The issues stemming from the proposed 12-month rule are exacerbated in the context of a global restructure, where the signing of a contract can trigger a CGT event which can drag out the timing over 12 months. We understand that the Board has received feedback that most restructures complete within 12 months with a small exception exceeding that time frame. However, our understanding from our members is that it can be quite common for restructure transactions to extend beyond 12 months, often for reasons completely unrelated to Australian tax, including regulatory processes (onshore and offshore) that must be satisfied in order for transactions or aspects thereof to proceed.

Further, note the significance of the principle arising from the decision in *FC of T v Sara Lee Household & Body Care (Australia) Pty Ltd* [2000] HCA 35. In that case, the taxpayer had disposed of assets under a contract as part of a global reorganisation and, due to various iterations of agreements, the issue arose as to the income year in which the relevant contract had been made. In that case, the High Court held the essential elements of the contract were contained in the earlier agreement. A CGT event can therefore be taken to have occurred under an earlier version of an agreement, even where that agreement is subsequently amended significantly, prior to settlement. The effect of this principle is that, in the present context, the 12-month period could commence at an earlier time than anticipated.

We consider that, if this aspect of the proposed General Business Rollover is to be retained, one way to address such cases is to introduce a materiality threshold (qualitative de minimis). This could apply, for example, in the context of a demerger, if there is a significant level of continued ownership and for an immaterial reason or one that is unrelated to Australian tax, certain people do not qualify for the demerger, there can be an overriding policy that it was not done for the purposes of tax avoidance. This would retain the integrity of the rollover without significant contraction.

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1 Board of Taxation, Review of CGT Roll-overs Consultation Paper, December 2020, pp 20-1.

In addition, we understand that the Board is yet to consider how rollovers that transgress a year-end should be managed. We recommend that further consultation is undertaken should this condition be pursued. In essence, however, we are of the view that the problem is no greater than, or different to, that posed by ordinary contracts for sale with extended settlement periods, or transactions which occur under the aegis of the look through earn out right rules. In both cases, amendment to the earlier return, which must include a gain because of a subsequent event, can be made without penalty or interest being imposed, where it is done within a reasonable time of the subsequent event.

Commissioner's discretion unsuitable as a potential solution to matters falling outside the 12-month rule

In circumstances where a restructure does not meet the 12-month rule for reasons unrelated to tax, we do not consider that providing the Commissioner with discretion in such cases would be an appropriate solution.

While in some administrative areas such as the remission of penalties and interest, the exercise of the Commissioner's discretion can be relatively straight forward, there is not always a clear path for the process of discretions and how they may be engaged. In many other areas of the law there remains uncertainty about the way in which the Commissioner can practically exercise his discretion. Depending on the issue at hand, the exercise of the Commissioner's discretion can take significant periods of time. In certain cases, this can be well over 12 months. The extended time frame can be driven by a range of factors.

Businesses undertaking commercial transactions must often operate quickly due to commercial sensitivities. The exercise of the Commissioner's discretion introduces another layer of ambiguity and uncertainty which can lead to unnecessary delays which hinder commercial transactions and decision making. We envisage that introducing a discretion would give rise to a significant increase in applications to the Commissioner for certainty. This will require greater resourcing within the ATO which could be allocated to other projects.

Taxpayers need absolute certainty about the operation of the law in respect of transactions they undertake. This includes the availability of rollover relief. Businesses should not be required to seek the Commissioner's discretion which itself can take over 12 months to be exercised. We consider that this would be better addressed by greater certainty in the legislation itself, and that this would be best achieved through prescriptive rather than principles based drafting.

While we would recommend that the 12-month rule is not pursued, if it is to remain as part of the proposal, we would recommend that further consultation is undertaken to consider possible solutions for circumstances beyond the taxpayer's control which cause delays in completing a restructure.

Ultimately, there remains the constraint of economic ownership needing to remain essentially the same. For this reason, it is our view that the timing should not be so critical.

Cost base impact on acquired shares

The proposal to deny market value cost base for certain replacement ownership interests raises a number of concerns.[2] The Tax Institute is of the view that there is no compelling reason 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. Further, we do not agree that the adoption of a single 'push-up' cost base rule for the acquiring entity would the deliver simplification benefits proposed.

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2 Board of Taxation, Review of CGT Roll-overs Consultation Paper, December 2020, p 33.

Although this may be a more practical approach for the acquiring entity of a former widely held entity where it would be extremely difficult, if not impossible, to obtain the cost bases of the original interest holder's interests in the acquired entity, we are of the opinion that this provision must be considered in the context that many of these transactions would typically be undertaken by tax consolidated groups.

For a scrip for scrip takeover transaction undertaken by a tax consolidated group, the acquiring group must perform an entry allocable cost amount (**ACA**) calculation to determine the tax cost setting amounts for the assets of the joining entity. This does not result in the assets of the joining entity having the same tax cost as they did prior to the transaction. The cost base 'push up' is used to determine the entry ACA which then would be reallocated to reset the tax costs of the assets of the joining entity, most likely resulting in significant skewing to goodwill. This approach also results in a higher compliance burden due to the requirement to perform two calculations.

If the 'push up' approach is adopted, we consider that the tax consolidation rules will require amendment. This may be resolved by allowing an acquiring tax consolidated group the ability to choose to retain the tax costs of the assets (and liabilities that are financial arrangements) of the joining entity. The addition of this election should be relatively simple to implement and would remove additional compliance burdens and costs associated with the proposed rule. Importantly, this would resolve potentially inappropriate tax outcomes resulting from the cost base 'push up'.

We also consider that further thought should also be given to the tax consolidation outcomes that arise on a demerger transaction, where a demerged entity typically exits a tax consolidated group and an exit ACA calculation is therefore required. In many cases, the demerged entity is likely to form or join another tax consolidated group, such that entry ACA calculations will be required. In such cases, options such as the ability to retain the tax costs of the assets of the demerged entities could also be useful.

Treatment of pre-CGT assets

The Consultation Paper considers the treatment of pre-CGT assets and whether rollover relief generally, should allow for retention of pre-CGT status or if a rollover should always result in a market value cost base in the replacement interests.[3]

The Consultation Paper proposes that under the General Business Rollover, any assets received by way of replacement for pre-CGT assets as part of a rollover will be taken to be post-CGT assets with a cost base equal to their market value at the time of the restructure. While this proposal could potentially result in the simpler application of certain tax laws in the future, including some integrity measures such as Division 149, this is a fundamental change in the existing CGT policy and rules that have dictated that a general consequence of a rollover is that pre-CGT status is maintained.

Over time, it is clear that the extent of pre-CGT assets will gradually reduce. However, currently, there are still many pre-CGT assets owned by individuals, trusts and private groups in Australia, and that are often the subject of one form of rollover or another. This is particularly the case in asset for scrip transactions such as those to which the rollovers under Subdivision 122-A or Subdivision 124-N may apply).

A loss of pre-CGT status may have the practical effect of exacerbating the 'lock in effect' the proposal intends to overcome. In addition to our concerns in relation to the deviation from the existing policy, we consider that this proposal may give rise to additional compliance costs associated with obtaining valuations (particularly for unlisted entities) to determine market value.

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[3] Board of Taxation, Review of CGT Roll-overs Consultation Paper, December 2020, p 45.

Further, when dealing with pre-CGT shares and units, in many cases taxpayers will be required to consider the extremely complex application of CGT event K6 each time. This is because it would be unlikely that the rule would allow for full market value cost base on the basis that this would avoid the unrealised or embedded CGT event K6 gain in the share or unit.

To illustrate how this issue would manifest by way of example, if a pre-CGT share has a market value of $100 and the sale of that share would result in a $70 capital gain under CGT event K6, it would be too generous to allow the gain to be disregarded on rollover with a $100 cost base given in the replacement share. It would be more appropriate to allow a $30 cost base such that the $70 unrealised gain is preserved and deferred, rather than eliminated. Subsection 124-800(2) already operates in this way for scrip for scrip rollovers. That is, under that provision, the cost base in the replacement entity would be reduced by $70 in this example. However, if the proposed rule were incorporated into all business restructures, including for example, an otherwise straightforward interposition of a holding company, it would greatly increase the need to perform a costly CGT event K6 analysis each time a pre-CGT share or unit is involved in a rollover.

Market value of replacement shares condition

We refer to section 4 of the Consultation Paper which sets out how the General Business Rollover is intended to operate. We note that one of the asset requirements for an eligible restructure which must be satisfied, contained in subparagraph 2(c) is that:

> … the market value of each original asset just before the start time is substantially the same as the market value or capital proceeds where partial roll-over of the replacement asset or replacement assets in respect of that original asset at the end time.[4]

We consider that this requirement will be difficult, if not impossible, to satisfy. In the context of an on-market acquisition, market values can change significantly between the time of entering into a contract (triggering the CGT event) and the time at which the transaction completes. Volatility in the market due to various reasons mean that it is difficult to predict the market value of a replacement asset at the end time which can be 12 months later as currently proposed. The issue would also manifest in off-market transactions.

Under existing rollovers, the practical implication of the market value requirement is that it only applies in circumstances where the parties are not dealing at arm's length. If the proposed paragraph 2(c) is intended to operate for the same purpose, we would recommend that it is confined to circumstances in which the relevant parties are not dealing at arm's length. Alternatively, consideration should be given to reconciling differences that may arise between the start time and end time in paragraph 2(c).

Narrowing of scope in relation to capital raisings

Paragraph 6(c)(ii)(2) introduces another limitation to accessing rollover relief in the context of capital raisings. Specifically, it provides that if the asset is an ownership interest in an entity [**emphasis added**]:

> … at the time of the CGT, a change to ultimate economic ownership arises as a result of a capital raising and integrity requirements are satisfied and **the entity is a public entity**.[5]

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[4] Board of Taxation, Review of CGT Roll-overs Consultation Paper, December 2020, p 41.

[5] Board of Taxation, Review of CGT Roll-overs Consultation Paper, December 2020, p 42.

Again, if the purpose of the condition is to address an integrity concern, it should only apply where there is such a potential concern, for example, where the parties are not dealing at arm's length. Here, the condition specifically requires integrity requirements to be satisfied. If such requirements are satisfied, we see no basis for restricting relief to public entities.

Narrowing of the concession base by introducing a business/commercial purpose

The Tax Institute is concerned about the potential limitation on the availability of rollover relief for transactions to which the existing rollovers can apply, resulting from the narrowed scope of the General Business Rollover.

Most of the existing rollovers, as currently drafted, apply to the ownership of assets whether or not they are used in the carrying on of a business. We understand that the intention is to repeal the existing rollovers mentioned above and replace them with the General Business Rollover. We further understand that for the most part, transactions to which the existing rollovers may be applied, are intended to be covered by the General Business Rollover. However, unlike the existing provisions, the new rollover appears to be limited to business restructures.

Our main concerns in this regard are firstly that, the proposal significantly narrows the scope of the assets to which rollover relief can apply; and secondly, when considering the detailed design of the proposal, we envisage uncertainty about fundamental aspects including what is taken to be the carrying on of a business, what is an active or business asset, and even more complex considerations such as the treatment of a passive asset held by one entity and used in the active business of a related entity.

We further note that the concept of carrying on a business is distinct from the concept of a commercial purpose, a term that is also used in the Consultation Paper and one of the criteria used in determining whether a restructure is an 'eligible restructure' for the purposes of the General Business Rollover. A commercial purpose is a potentially more ambiguous concept which we consider will cause a higher level of uncertainty as to whether a transaction may be in scope. In either case, these concepts narrow the scope of rollover relief beyond excluding transactions undertaken for tax avoidance purposes which, as outlined above, we consider is beyond the scope of the objectives of restructure rollovers.

Particularly in an SME context, not all rollovers relate to assets used in the carrying on of a business or to equity interests in a business operating entity. For example, in circumstances where real property is held by one entity and used in a business conducted by another entity, whether related or unrelated, there are numerous cases of such groups being 'aggregated' by way of scrip for scrip or other rollovers. This occurs, in our members' experience, in both primary production and non-primary production settings, and in our view, meets the principle of encouraging business efficiency. To deny rollover on the 'passive' assets brought into such aggregations is, in our view, counter-intuitive and inconsistent with the principles outlined in the policy framework.

The concept of a commercial purpose is different to other integrity measures and safeguards throughout the tax law. If a commercial purpose necessarily excludes a private or domestic purpose, then it follows that to satisfy this requirement, a number of transactions that are not business related but simply asset related will be excluded.

We understand that this was not necessarily an intended outcome and is something that the Board continues to consider, particularly since its terms of reference are largely to maintain the existing policy around the availability of rollover relief. For this reason, it is of utmost importance that the limiting effect of inserting a business condition to rollover relief be reconsidered. If the proposal is to be pursued, we recommend that it is redesigned as a general restructure rollover rather than a general *business* restructure rollover.

Narrowing of scope to exclude certain rollovers involving interests in entities other than companies

We note that one of the requirements for an eligible restructure, contained in subparagraph 2(b)(iii) provides that [**emphasis added**]:

> …if the eligible restructure involves the disposal of assets that are not ownership interests or if the ownership interests disposed of make up less than 80% of the ownership interests in the relevant entity [the replacement asset] – is an ownership interest **in a company**.[6]

If the ownership interest disposed of is not in a company, for example, units in a unit trust, it would seem that the asset requirement contained in subparagraph 2(b)(iii) would not be satisfied. If that is the case, unit for unit rollovers where fewer than 80% of the units not already owned are acquired will not qualify for CGT rollover under the new model whereas a unit for share rollover in the same circumstances would qualify under this condition. We cannot see a justification to distinguish between interests in companies and unit trusts in this context.

80% rule

We understand from our discussions with the Board that the modified 80% rule is intended to require an acquiring entity to obtain 80% of the shares that it does not already hold in an entity (not an 80% interest overall). We further understand from the Board that it has not been readily apparent to participants in consultation precisely how this provision is intended to operate and we note that this intention does not appear to be clearly reflected in the proposed model. Notwithstanding, in our view, the proposed rule is both unnecessarily complex and restrictive. We consider that it could have the effect of changing the behaviour of transacting parties and could cause manipulation of shareholdings such as situations of greenmailing by the holders of relatively small parcels of shares in partly owned subsidiaries. We do not consider that this proposed rule adds sufficient value to the proposal to justify its potential adverse outcomes.

Interaction with consolidation regime

We refer to the section of the Consultation Paper entitled 'Interaction with the consolidation regime'.[7] The Board has previously considered issues relating to the interaction between CGT rollovers and consolidations in its earlier consultation in relation to consolidation.[8] One aspect of that interaction which was considered in the Board's earlier consultation was whether the single entity rule should extend to the operation of CGT event K6 (Pre-CGT shares or trust interest).[9]

Although this has been considered by the Government, this change has never been legislated.[10] It is unclear whether this is because Government has decided not to proceed with resolving the issue, or whether it remains under consideration. We consider that it would be useful if the Board could clarify the status of this issue, in its next report.

6 Board of Taxation, Review of CGT Roll-overs Consultation Paper, December 2020, p 41.

7 Board of Taxation, Review of CGT Roll-overs Consultation Paper, December 2020, p 48.

8 Board of Taxation, Post-implementation review into certain aspects of the consolidation regime (Position Paper, October 2010), and Board of Taxation, Post-implementation review into certain aspects of the consolidation regime, (Report to Assistant Treasurer, June 2012).

9 Section 104-230 *Income Tax Assessment Act 1997*.

10 See Assistant Treasurer's Media release No. 50, 8 May 2007 where this was announced as policy.

Increased red tape

As outlined above, The Tax Institute is of the view that the proposal to replace the existing rollovers with a single general business rollover has the potential to give rise to increased levels of uncertainty. Higher levels of uncertainty necessarily lend themselves to increase red tape.

We envisage that the replacement of existing rollovers which are generally, widely understood, by the proposed General Business Rollover, could potentially increase the costs of undertaking restructure transactions twofold. Firstly, particularly in the initial years and until there is guidance available from the courts with precedential value on particularly complex or uncertain aspects of the General Business Rollover, taxpayers will need to invest more in obtaining professional advice to navigate uncertainty around their eligibility for the proposed General Business Rollover. Secondly, as noted above, they will require higher levels of certainty from the ATO (such as through private binding rulings or other assurance products depending on the complexity of the transaction). Overall, this may hinder commercial transactions and exacerbate the 'lock in effect' the proposal intends to overcome. We consider these outcomes are heightened if the proposed General Business Rollover proceeds in its current form without amendment in light of the issues raised above.

Positive aspects of the proposal

The Tax Institute is of the view that the main positive outcome of the proposal is the removal of uncertainty around 'back to back' rollovers. Subject to our comments above in relation to the 12-month rule, the increased certainty and reduced compliance cost of merely having to compare the starting position and final position under the rollover is to be welcomed. However, as outlined throughout this submission, we consider that this kind of certainty and reduction in compliance costs could be achieved in other ways also, including in respect of the existing rollovers. We recommend that alternatives are further explored and we would be pleased to participate in further consultation on such pathways.

We also support the exclusions to subparagraph 6(c)(i) contained in paragraph 7.[11] Particularly in the SME context, businesses often undertake restructures to enable external investment, to issue shares to employees or to allow for management buyouts and clean exits over time. The exclusions contained in paragraph 7 should facilitate restructures for these purposes without inadvertently triggering of CGT on introduction of third parties to the structure.

11 Board of Taxation, Review of CGT Roll-overs Consultation Paper, December 2020, p 42.

APPENDIX B

About The Tax Institute

The Tax Institute is the leading forum for the tax community in Australia. We are committed to representing our members, shaping the future of the tax profession and continuous improvement of the tax system for the benefit of all, through the advancement of knowledge, member support and advocacy.

Our membership of more than 11,000 includes tax professionals from commerce and industry, academia, government and public practice throughout Australia. Our tax community reach extends to over 40,000 Australian business leaders, tax professionals, government employees and students through the provision of specialist, practical and accurate knowledge and learning.

We are committed to propelling members onto the global stage, with over 7,000 of our members holding the Chartered Tax Adviser designation which represents the internationally recognised mark of expertise.

The Tax Institute was established in 1943 with the aim of improving the position of tax agents, tax law and administration. More than seven decades later, our values, friendships and members' unselfish desire to learn from each other are central to our success.

Australia's tax system has evolved, and The Tax Institute has become increasingly respected, dynamic and responsive, having contributed to shaping the changes that benefit our members and taxpayers today. We are known for our committed volunteers and the altruistic sharing of knowledge. Members are actively involved, ensuring that the technical products and services on offer meet the varied needs of Australia's tax professionals.