

LCG 2016/2A1 - Addendum - Small Business Restructure Roll-over: consequences of a roll over

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Addendum

Draft Law Companion Guideline

Small Business Restructure Roll-over: consequences of a roll-over

This Addendum amends Draft Law Companion Guideline LCG 2016/D2 following consultation.

LCG 2016/D2 is amended as follows:

1. Page status (all pages)

At the top of all pages, omit:

Page status: **draft only – for comment**

insert:

Page status: **legally binding**

2. First page header and all footers

Omit 'Draft Law Companion Guideline LCG 2016/D2'; substitute 'Law Companion Guideline LCG 2016/2'.

3. Preamble

Omit the preamble; substitute:

Relying on this Guideline

This publication is a public ruling for the purposes of the *Taxation Administration Act 1953*.

This Guideline describes how the Commissioner will apply the law as amended by the [Tax Laws Amendment \(Small Business Restructure Roll-over\) Act 2016](#) to entities that rely on this Guideline in good faith.

If you rely on this Guideline in good faith, you will not have to pay any underpaid tax, penalties or interest in respect of matters covered by the Guideline if it does not correctly state how a relevant provision applies to you.

4. Table of contents

Omit:

What this draft Guideline is about

1

| | |
|------------------------------|-----------|
| Explanation | 4 |
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| Insert: | |
| What this Guideline is about | 1 |
| Background | 4 |

5. Paragraph 1

- (a) Omit 'draft' from the paragraph and heading.
- (b) Before 'consequences', insert 'income taxes'.

6. Paragraph 2

- (a) Omit 'draft' in all instances from the paragraph.
- (b) Omit '2016/D3'; substitute '2016/3'.
- (c) At the end of the paragraph insert '*and related matters*'.

7. Footnote 1

Omit 'draft' from the footnote.

8. Paragraph 3

- (a) Omit 'Proposed date' from the heading, substitute 'Date'.
- (b) Omit 'draft' from the first line.
- (c) Omit 'assets', substitute 'asset'.

9. Paragraph 4

- (a) Omit 'Explanation' from the heading, substitute 'Background'.
- (b) After the first instance of 'businesses' omit 'and', substitute 'which alter'.

10. Paragraph 5

After the paragraph insert;

5A. The SBRR does not affect other tax liabilities (for example, fringe benefits tax or goods and services tax), or prevent any liability for stamp duty from arising under State legislation. Existing obligations under other regulatory regimes, such as the corporations law, must still be complied with. Furthermore, care should be taken that any transactions involving a trust are within the power or duties of the trustee. The following examples are provided to illustrate these consequences.

11. Paragraph 7

- (a) In the first dash of the first dot point omit 'No'; substitute 'no'.
- (b) In the second dash of the first dot point omit 'The'; substitute 'the'.
- (c) In the final dot point, after 'the' insert 'current'.

12. Paragraph 10

Omit (except petty cash)'; substitute '(except petty cash^{4A})'.

13. Paragraph 11

- (a) In the first sentence omit 'rollover'; substitute 'roll-over'.
- (b) In the final dot point, omit '(that are not depreciating assets)'; substitute '(that are not depreciating assets^{6A})'.

14. Paragraph 12

Omit '(,' ; substitute '(.

15. Paragraph 23

After the paragraph insert:

23A. If Pep and Sally transferred their shares in Vitamin Pty Ltd to the trustee of the newly established P&S Trust, Pep and Sally would not be able to choose to apply the SBRR for those shares.^{16A}

16. Paragraph 28

In the second dot point, omit 'Assumption'; substitute 'assumptions'.

17. Paragraph 30

- (a) Omit 'Where'; substitute 'Generally where'.
- (b) Omit 'roll over costs'; substitute 'tax values^{17A}'.
- (c) After the paragraph insert new heading;
Step 1 – Tax values of assets

18. Paragraph 31

After the paragraph insert new heading;

Step 2 – Liabilities

19. Paragraph 32

After the paragraph insert new heading;

Step 3 – Consideration other than membership interests

^{4A} See paragraph 328-430(1)(d).

^{6A} There is some uncertainty about whether or not a transfer of a depreciating asset under the SBRR will have direct consequences under the income tax law, notwithstanding section 328-450. As a matter of practical administration, the Commissioner will treat transfers of depreciating assets in the same way as other assets for the purposes of compliance with section 328-450.

^{16A} The shares are not active assets relevantly under paragraph 328-430(1)(d).

^{17A} These are nil for pre-CGT assets, the adjustable value of depreciating assets and the roll-over cost for other assets.

20. Paragraph 34

- (a) Omit 'calculated sum', substitute 'calculated sum^{20A}'.
- (b) After the paragraph insert new heading;
Step 4 – Cost base for new membership interest

21. Paragraph 38

In the second sentence omit 'rents out to'; substitute 'rents out'.

22. Footnote 25

After '328-180(6)'; insert 'of the'.

23. Paragraph 48

In the final sentence omit 'Trust'; substitute 'trustee'.

24. Paragraph 49

Omit 'Subdivision 328-G', substitute 'Subdivision 328-G^{25A}'.

25. Paragraph 62

Omit 'This is because'; substitute 'This consequence is recognised because'.

26. Paragraph 65

At the second instance omit 'trust'; substitute 'trustee'.

27. Paragraph 70

Omit heading and paragraph.

28. Legislative references

Omit:

ITAA 1997 40-345(2)
ITAA 1997 328-455(2)(a)

Insert:

ITAA 1936 109N
ITAA 1997 40-85
ITAA 1997 40-340
ITAA 1997 Subdiv 328-D
ITAA 1997 328-190
ITAA 1997 328-210
ITAA 1997 328-247
ITAA 1997 328-430(1)(d)
ITAA 1997 328-450(2)(b)

^{20A} Step 1 amount less Step 2 amount.

^{25A} See also footnote 9.

IT(TP)A 1997
IT(TP)A 1997 328-180(6)
TAA 1953

29. Related Rulings/Determinations

Omit 'LCG 2016/D3'; substitute 'LCG 2016/3'.

This Addendum applies on and from 13 July 2016.

Commissioner of Taxation
13 July 2016

References

ATO references

BSL: IND

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