# TAX TALKS

Australia's Tax News Podcast - The Podcast for Australian Tax Professionals

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## 66 | Subdiv 152-E

The rollover relief in subdiv 152-E is often overlooked.

### Subdiv 152-E

The spotlight is always on the generous 15-year exemption in Subdiv 152-B. The 50% deduction in Subdiv 152-C that you can get as soon as you pass the basic condition in Subdiv 152-A. And of course the retirement exemption in Subdiv 152-D.

The rollover relief in Subdiv 152-E on the other hand entices little interest. After all, it is only a rollover. It only postpones the taxation of a capital gain. It doesn't exempt it. So while it is nice to have – paying tax later is always better than paying tax now – anybody would take an exemption hands down over a rollover.

But the rollover relief in Subdiv 152-E deserves more attention. It can help you to get around the requirements in Subdiv 152-D to put the exempt amount into super. Or allows you to postpone tax until you qualify for a exemption you don't qualify for right now.

### Conditions

Like all other small business CGT concessions, you must meet the basic conditions in Subdiv 152-A. They can be a huge hurdle to get past.

But in addition, for Subdiv 152-E to apply, you must acquire a replacement asset equal to the capital gain within the replacement asset period.

### Mix and Match

The small business rollover in Subdiv 152-E is not an all or nothing decision. You can choose how much of the capital gain you want to defer through this rollover.

So you can mix and match the 50% discount, the small business 50% reduction, the retirement exemption and this rollover in any combination you like.

### Timing

You can choose to obtain a rollover even if you have not yet acquired a replacement asset or incurred expenditure on a capital improvement to an existing asset. You just need to get a replacement asset within the replacement asset period.

### Replacement Asset


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The term replacement asset covers a wide range of scenarios. You can acquire a new asset or you can make a capital improvement to an existing asset or both.

The replacement doesn't have to be just one CGT asset. It can involve one or several CGT assets.

The replacement asset can be a depreciating asset such as plant or machinery.  And it can be a share in a company or an interest in a trust.

### Replacement Asset Period

The replacement asset period is the period during which you need to get a replacement asset in order to not trigger another CGT event.

This period starts one year before and ends two years after the last CGT event that occurs in the income year for which you choose the rollover.

### Exempt

If you qualify and choose the rollover, the capital gain will not be included in your assessable income. It is exempt for now.

However, if you don't meet the conditions at the end of the replacement asset period, a subsequent CGT event will happen.

### Subsequent CGT Event

A subsequent CGT event happens if you previously chose the rollover and don't meet the conditions for this rollover by the end of the replacement asset period.

#### *CGT Event J5*

CGT event J5 happens if you don't get a replacement asset within the replacement asset period.

You also make CGT event J5 happen when the replacement asset is not an active asset at the end of the replacement asset period. For example you used the exempt amount to buy a privately used asset like a holiday house.

And CGT event J5 happens when the replacement asset is a share or trust interest and at the end of the replacement asset period you (or an enitty connected with you) are not a CGT concession stakeholder in the company or trust anymore. For example because you already sold the shares.

Or if you hold the shares or units indirectly through another company or trust, you as the CGT concession stakeholders do not have a small business participation percentage in the interposed entity of at least 90%.

Whenever CGT even J5 happens, there is a capital gain for the previously exempt amount.

Here is an example where CGT event J5 is not triggerd.

Bob owns 50% of Company A and Company B. This makes him a CGT concession stakeholder in both companies. All three are connected.

Company A sells land at a profit of $1m and buys shares in Company B with that $1m. So Company A is now a shareholder of Company B. All of Company B's assets are active assets.


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But CGT event J5 is not triggered since the shares are active assets and Bob is connected with Company A and is a CGT concession stakeholder in Company B.

### *CGT Event J6*

Whenever you don't spend the entire exempt amount on a replacement asset, you trigger CGT event J6. Whenever you have something left over, CGT event J6 covers that excess.

So at the end of the replacement asset period, the sum of the first element, second element and fourth element of the cost base of the replacement asset is less than the capital gain you rolled over.

The first element of the cost base of the replacement asset is the amount paid to acquire the replacement asset.

The second element is any incidental costs incurred in acquiring that asset, which can include giving property.

And the fourth element is the amount expended on capital improvements to one or more assets that were acquired or already owned.

Whenever there is an excess, the capital gain previously disregarded under the roll over comes back through CGT event J6.

## Extension of Time

The Commissioner has the discretion to allow a longer replacement asset period by granting an extension of time
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## Example

Let's go through an exemple to show you how you can use the rollover relief and CGT event J5 to your advantage.

Let's assume that you and your spouse are 53 and run a business in an existing discretionary trust as individual trustees but now want to change to a company.

### *Why?*

Maybe you are keen on the base rate entity tax rate. Or you want to have a fresh start without any skeletons in the closet. Or you want to bring an equity partner into the business, which you can't do in a discretionary trust.

### *Sale*

So you get the trust to sell its assets to the company for market value. Let's say the market value is $4m with a cost base of zero, so the capital gain is $4m.

### *CGT Discounts and Concessions*

The trust claims the 50% CGT discount in Div 115 and – let's assume it meets the basic conditions – also the small business 50% reduction. So the capital gain is down from $4m to $1m.

The trust distributed its entire distributable income to you in the year of the sale. So you are CGT concession stakeholders in the trust. If you haven't used the retirement exemption before, you can each claim another $500,000 as exempt. But you would need to put this $1m into super since under 55. Lets assume that you don't like that.


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***Rollover***

So you don't claim the retirement exemption just yet, and instead apply the rollover to the $1m. You wait 2 years, trigger CGT event J5 and now claim the retirement exemption. Since you are now 55, there is no longer a caveat that you need to put the exempt amount of $500,000 into super.

***What did you achieve with all this?***

The company now holds the assets at a new market value cost base without any tax payable on the realisation of the capital gain. You have locked in the current CGT cocnessions and will reduce the tax payable on any future capital gains.

You can no longer loose the the CGT concessions you just claimed. Even if your business grows so much that you will no longer pass the basic conditions later on.

And if you don't grow that much and still pass the conditions later on, then you can try and claim another round of small business CGT concessions later on.

The new company will give you limited liability for the company's debts. The company can retain its earnings and access the small business company tax rate. And they now have the option to give a business partner an equity interest..

**MORE**

Subdiv 122-B

Subdiv 122-A

Affiliates and Connected Entities

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