

2109: JUNE 2021

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SECTION 1 – PROFESSIONAL DEVELOPMENTS

SMALL BUSINESS ROLLOVERS

The effect of a roll-over for capital gains tax (CGT) purposes is that any capital gain or loss made because a CGT event happens to a CGT asset is disregarded. A capital gain or loss later arises when a CGT event happens to the same asset or a replacement asset in respect of which the CGT rollover is made.

When a CGT rollover happens, the asset held by a taxpayer after the CGT rollover carries the same CGT characteristics as the asset held before the CGT rollover.

There are two types of roll-overs:

- ‘replacement-asset roll-overs’: these allow a taxpayer to ‘defer’ a capital gain or loss from one CGT event until a later CGT event happens where one CGT asset is replaced with another
- ‘same-asset roll-overs’: these allow a taxpayer to ignore a capital gain or loss from a CGT event happening in relation to an asset which changes hands from one taxpayer to another.

In a small business context, CGT rollovers are available under the following sections:

- Division 122: Rollover for disposal or transfer of assets to a wholly owned company
- Division 124: Replacement asset rollovers
- Division 126: Same asset rollovers
- Division 615: Business restructures
- Subdivision 328-G: Small business restructure rollover
- Division 152: small business CGT rollover.

For the purposes of this paper, we shall concentrate on Div 122, Div 152 and, firstly, Subdivision 328-G rollovers.

¶9.1 Subdivision 328-G Small Business Restructure Rollover

Using this rollover, any direct income tax consequences that would otherwise be triggered are disregarded. For example, there is no capital gain on the transferor of assets to the new entity and the original base cost of the assets is inherited by the recipient entity.

Subdivision 328-G applies to:

- CGT assets
- trading stock and other revenue assets, and
- depreciating assets.