



Australian Automotive Dealer Association Ltd.

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The Sir Jack Brabham Automotive Centre of Excellence

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Dear Division Head

AUSTRALIAN AUTOMOTIVE DEALER ASSOCIATION (AADA) SUBMISSION - TAX AND SUPERANNUATION LAWS AMENDMENT (2015 MEASURERS NO. 6) BILL 2015: SMALL BUSINESS RESTRUCTURE ROLLOVERS.

1. Introduction

1.1. AADA welcomes the opportunity to provide a submission to the Treasury in respect of the Exposure Draft and accompanying Explanatory Memorandum for the proposed *Tax and Superannuation Laws Amendment (2015 Measurers No. 6) Bill 2015: Small Business Restructure Rollovers* (the Bill).

2. Preamble

2.1. On 12 May 2015, the former Treasurer, the Hon Joe Hockey MP released the 2015-16 Federal Budget which included a proposal to amend the *Income Tax Assessment Act 1997*. The Treasury has produced an Exposure Draft and accompanying Explanatory Memorandum for these amendments for public consultation, submissions for which are due for lodgement by 4 December 2015.

2.2. The Bill proposes a number of amendments to the *Income Tax Assessment Act 1997*. The main amendment is the inclusion of Subdivision 328-G – Restructures of small businesses at the end of Division 328.

2.3. Further amendments of the *Income Tax Assessment Act 1997* are the extension of restructure rollovers under subsections 40-340(1), 115-30(1), 995-1(1).

2.4. The proposed amendments will apply to transfers of assets on or after 1 July 2016.

2.5. In making this submission, AADA has limited its scope to matters directly relevant to, and within the control of Australia's franchised dealer network.

3. Objectives of the Bill

3.1. As outlined in the Explanatory Memorandum, the objective of the Bill is to provide greater flexibility for a small business to change its legal structure. The amendments will make it easier for a small business owner to restructure by allowing a deferral of gains or losses that would otherwise be made on the transfer of business assets from one entity to another. The proposed new small business roll-over relief is in addition to roll-overs currently available, where a sole trader or partner in a partnership transfers assets to, or creates assets in, a company in the course of a business restructure.

3.2. The amendments will provide greater flexibility for a small business owner to determine if their legal structure remains suitable for their business. A small business can conduct business operations in Australia as a sole trader, partnership, trust, company or by utilising a combination of structures.

3.3. Currently, roll-over relief is only available in limited circumstances for business restructures. Under current laws, business assets transferred from one entity to another, such as from a company to a trust, can give rise to significant income tax and capital gains tax (CGT) liabilities. The impact of these liabilities on cash flow and available capital may create an impediment to restructuring.

3.4. AADA supports the objectives of the Bill and the wider commitment by the Government to address the regulatory burdens impacting the flexibility, productivity and profitability of Australian small businesses, and in particular Australia's franchised automotive dealers.

4. The Growing Jobs and Small Business Package

4.1. A key component of the 2015-16 Federal Budget, the Growing Jobs and Small Business Package, allowed a small business to change legal structure without triggering a CGT at the time of restructure. The Bill seeks to provide further flexibility for a small business owner by extending the roll-over to apply to gains and losses

arising from the transfer of assets including CGT assets, depreciable assets, trading stock or revenue assets between entities as part of a small business restructure.

4.2. AADA supports the Bill in extending the roll-over to apply to gains and losses arising from the transfer of such assets.

5. Entities Eligible for the Roll-over

5.1. There are two types of entities that are eligible for the roll-over relief. The first is an entity that is a small business entity in the income year in which the transfer takes place, and satisfies the maximum net asset value test. An entity will be a small business entity if the entity carries on a business and that the combined annual turnover of the entity, and other entities that are affiliated or connected with it, is less than \$2 million.

5.2. Furthermore, an entity must also satisfy the maximum net asset value test which requires the sum of the net values of the entity's CGT assets, together with the net values of CGT assets of other entities that are affiliated or connected with it, to be less than \$6 million.

5.3. Another kind of entity that may be eligible for the roll-over is an affiliate of, or connected with, a small business entity for the income year that satisfies the maximum net asset value test at the time of the transfer. These entities may access the roll-over in relation to CGT assets that satisfy subsection 152-10(1A) or (1B) of the *Income Tax Assessment Act 1997*, which relate to passively held assets that are used by the small business entity in its business.

5.4. AADA encourages the Government to extend the range of entities eligible for the roll-over. The franchised automotive dealer industry is highly diversified in its array of business structures. As a result, business restructuring is relatively common within the industry. AADA believes extending the roll-over to restructuring undertaken by all privately owned businesses, irrespective of their size, would enhance the overall objectives of the Bill. Extending the roll-over would assist all privately owned businesses to operate in their most suited structure resulting in improved business conditions and increased employment and economic growth.

5.5. AADA is concerned the maximum net asset value test will exclude a significant number of business owners who might otherwise benefit from the roll-over relief. Under the Exposure Draft a number of business owners will continue to operate their businesses in a less than efficient business structure, and be unable to restructure because of the maximum net value asset test.

6. AADA

6.1 AADA is the peak industry body representing franchised new car dealers in Australia. There are over 1500 new car dealers in Australia that operate over 2600 new vehicle outlets.

6.2 Dealerships range from family-owned small businesses to larger businesses and two public companies operating in the regions, metropolitan areas and across all States and Territories. The authorised dealer network generates revenue of more than \$72 billion, pays wages in excess of \$5.6 billion annually, employs on excess of 66,000 people and has invested around \$17 billion in facilities.

We would be pleased to provide further comment on matters raised. If we can be of further assistance please contact me on 0400 366 535, email bmcdonald@aada.asn.au or our Policy Director, Michael Deed on 0417 742 956, email mdeed@aada.asn.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'B. J. McDonald', written over a light grey rectangular background.

Bruce McDonald
Chief Executive Officer