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## TECHNICAL AND MINOR POLICY ISSUES

3.1 This chapter discusses three technical issues and one issue of a minor policy nature. TLIP is able to make minor policy changes when the law is ambiguous and can be clarified, where compliance costs can be reduced, and where there are no apparent losers as a result of the changes.

### **T e c h n i c a l   i s s u e s**

#### *Choices/elections*

3.2 The TIA observed that Subdivision 118-F and Division 123 were activated by a 'choice' rather than by a written taxpayer 'election'. The TIA argued there were several problems with the provisions:

- inconsistencies had arisen in the legislation because Division 42 required choices whereas Division 70 required elections;
- in Divisions 103 and 42 there were duplicates of general provisions dealing with the effect of taxpayer choices; and
- under subclause 118-425(4), controlling individuals must specify the percentage of each CGT asset's exempt amount to be attributed to them. It was unclear from the provisions how this was to be achieved.<sup>1</sup>

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1 TIA, *Submission*, pp. S563–4.

3.3 In addition, the TIA observed, the written election process, if retained, could discharge the taxpayer's onus of proof in the event of a dispute.<sup>2</sup>

3.4 TLIP responded that the words 'choice' and 'election' had the same meaning, the former being the plain English version of the more formal Latin-derived election. In later provisions it was intended to include rules for taxpayer choices that applied to the whole Act. This would remove the need for the existing and proposed separate provisions. When this occurred the term choice would be used as standard.<sup>3</sup>

3.5 TLIP acknowledged, however, the TIA's concerns about subclause 118-425(4) and commented that it was appropriate, in this case, for the amounts attributed to be specified in writing. There would also need to be note regarding this in subsection 103-25(3).<sup>4</sup>

3.6 **Recommendation 3**

***Subclause 118-425(4) be amended to require taxpayers making a choice under this subclause to specify the relevant amounts in writing. Subsection 103-25(3) should be amended accordingly.***

*Active asset*

3.7 The TIA questioned whether the meaning of 'active asset' had been faithfully reproduced in the new provisions.

3.8 In the existing legislation it was unclear whether it was necessary for an asset to be used in the taxpayer's own business for it to be considered an active asset. However, TIA argued, the omission of the phrase 'in the course of' in proposed subclause 123-80(1) suggested that an active asset had to be used in the taxpayer's own business.

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2 TIA, *Submission*, p. S564.

3 TLIP, *Submission*, p. S570.

4 TLIP, *Submission*, p. S570.

3.9 This change could potentially disadvantage farmers whose land was used by another business under a share farm arrangement while they themselves had not actually engaged in business during the qualifying period.<sup>5</sup>

3.10 TLIP did not agree that the rewritten provisions had made any change to the effect of the law. Nevertheless, because of the concern expressed, TLIP proposed to restore the original wording.<sup>6</sup>

3.11 **Recommendation 4**

***Subclause 123-80(1) be amended so that the phrase 'in the course of', used in the original legislation, be retained.***

*Grouping of provisions*

3.12 The TIA regretted the change in the grouping of provisions concerning small businesses. In the existing legislation, Division 17A (small business rollover concession) was followed by Division 17B (small business retirement concession). In the Bill, the rewritten provisions were now grouped separately in Division 123 and Subdivision 118-F respectively.<sup>7</sup>

3.13 TLIP responded that the rewritten legislation had grouped together all the provisions concerning rollovers which were spread throughout the legislation. The same had been done for the provisions relating to the various exemptions. As the operation of the small business rollover and retirement exemption did not effect each other, there was no 'compelling reason to collocate them.'<sup>8</sup>

3.14 The Committee agrees with the grouping of provisions in the proposed legislation.

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5 TIA, *Submission*, p. S565.

6 TLIP, *Submission*, p. S571.

7 TIA, *Submission*, p. S565.

8 TLIP, *Submission*, p. S572.

## Minor policy issues

### *Possible change to proposed Division 123*

3.15 Division 123 contains the small business rollover relief provisions. In responding to comments provided by stakeholders on the proposed Subdivision and Divisions, TLIP took the opportunity to canvass a possible change to the provisions of Division 123.

3.16 The change was designed to overcome possible confusion about the different treatment of depreciable and other assets under the rollover relief provisions. Currently, rollover relief for depreciable assets is achieved by a 'notional cost base adjustment' whereas for other assets, there is an actual cost base adjustment.

3.17 TLIP believed the confusion could be overcome if the legislation aligned the treatment of depreciable and other assets. This would be achieved by identifying an amount for which rollover could be claimed (called the 'quarantined small business rollover amount').

3.18 The change suggested by TLIP 'would have the effect of allowing in all cases indexation of the full amount of the cost base from the time the rollover asset is acquired'. As a result there would no longer be a need to distinguish depreciables from other assets or make actual cost base adjustments.

3.19 The simpler and more consistent operation of the law would reduce compliance and administration costs. Although there would be a cost to revenue from extending the availability of indexation, TLIP believed the impact would be minimal especially during the current economic environment of low inflation.<sup>9</sup>

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9 TLIP, *Submission*, pp. S576–7.

3.20 The Committee subsequently provided copies of TLIP's suggestion to all stakeholders from whom submissions had originally been invited. The TIA responded that TLIP's suggestion would 'be a desirable improvement.'<sup>10</sup>

3.21 The Committee endorses TLIP's proposal and considers it clearly falls within the TLIP mandate as described in paragraph 3.1.

3.22 **Recommendation 5**

***The now retitled Tax Law Improvement Act (No. 1) 1998 be amended to incorporate the Tax Law Improvement Project's proposed change to Division 123 concerning the alignment of the treatment of depreciable and other assets.***

Bob Charles MP  
Chairman

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10 TIA, *Submission*, p. S578.