

Draft exposure legislation regarding 'look-through' CGT treatment to earnout arrangements released by Treasury

The Treasury has finally released long awaited draft exposure legislation regarding ['look-through' CGT treatment to earnout arrangements](#).

On 12 May 2010, the former Assistant Treasurer, Senator the Hon. Nick Sherry [disseminated a media release](#) announcing the previous Government's intention to amend the law to provide look-through capital gains tax (CGT) treatment for qualifying earnout arrangements entered into as part of the sale of business assets.

Following this, on 14 December 2013, the then Assistant Treasurer, Senator the Hon. Arthur Sinodinos put out a media release on [Integrity to restore Australia's taxation system](#), stating that the current Government would be proceeding with several announced by unenacted measures, including the look-through treatment of earnout arrangements.

The reforms to the present law will allow capital gains and losses arising in relation to eligible earnout rights to be disregarded. Under the Draft Bill, financial benefits received under these earnout rights will now instead affect capital proceeds and cost base of the underlying asset/s to which the earnout rights relate.

This will be a significant change allowing for greater ease for parties structuring the buying and selling of businesses, where there is uncertainty about the value of the business. In the draft Explanatory Memorandum released with the Draft Bill (Explanatory Memorandum), Treasury has said the *"proposed changes are intended to ensure that the CGT law does not present a barrier to a specific type of transaction – the sale of a business where disagreement about the value of the business going forward is resolved by at least one of the parties agreeing to provided future financial benefits linked to the performance of the business"*.

It should be noted under the Draft Bill the amendments are to not apply prior to 23 April 2015. However, taxpayers who have reasonably and in good faith anticipated these changes as a result of the announcement by the previous Government will have their current tax income position preserved.

Importantly, taxpayers will also be protected when a statement is made:

- in reliance on the previous announcement in a return lodged on or after 23 April 2015;
- when the return was not required to be lodged before that date;
- when no prior return had been lodged or assessment made for that income year; and
- the statement relates to either application of taxation law to events prior to 23 April 2015 or to which the taxpayer was committed prior to 23 April 2015.

Interested parties have until Thursday, 21 May 2015 to provide comment to the Treasury on the Draft Bill and Explanatory Memorandum.

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