TAX TALKS

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

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165 | Small Business CGT Concessions for Big Business

Nobody designed the small business CGT concessions for big business. The two are not meant to meet. But there are ways.

Small Business CGT Concessions for Big Business

When you want to claim the small business CGT concessions for a small business that really is small, passing the basic conditions for the small business CGT concessions is usually not that complicated. The business is below the turnover test or the net value assets are clearly below $6m. There might be a question around the 15-year exemption and whether the sale really happened in connection with retirement of the significant individual, but usually things are relatively straight forward.

Where it gets complicated is when you get close to the thresholds – when the business doesn’t look like a small business. Or to use a metaphor: When you try to squeeze a foot into a shoe, but the foot is much bigger than the shoe. That is where the small business CGT concessions can get really tricky.

And so in this episode of Tax Talks we ask Andrew Henshaw of Velocity Legal in Sydney for more insights.

Here is what we learned but please listen in as Andrew Henshaw explains all this much better than we ever could.

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Basic Conditions

To qualify you must either pass the $6 million net asset value test or pass the $2 million small business entity turnover test. It is an either – or test. So you can be asset-rich and still pass with a low turnover.

The CGT asset must be an ‘active asset’. This means it must be used in a business for at least half of the period of ownership or 7.5 years.

Shares and units must satisfy the 80/20 test, meaning at least 80% of the assets of the company/trust must be ‘active’. And the significant individual shareholder or unit holder must hold at least 20% of the shares or units, either directly or indirectly.

Four Concessions

Once you pass the basic conditions. there are four concessions waiting for you.

15 year exemption (Subdivision 152-B) – this is the most generous concession in the entire Australian tax system. If you held the CGT asset for 15 years, are at least 55 and retiring, you receive a full exemption of the entire capital gain.

Small business 50% reduction (Subdivision 152-C) – this is the easiest of the four. There are no further strings attached. You get a 50% exemption of your capital gain.

Retirement exemption (Subdivision 152-D) – you don't need to retire. There is $500,000 lifetime limit. And if you are under 55, you must contribute the exempt amount to super.

Small business rollover (Subdivision 152-E) – You can park the deferred capital gain in a 'replacement asset'.

And then there is another one. The unofficial 5th one. The Small Business Restructure Rollover (Subdivision 328-G).

What Changed

The Treasury Laws Amendment (Tax Integrity and Other Measures) Bill 2018 passed by both houses on 20 September 2018 and applies to CGT events happening on or after 8 February 2018. So here is what it changed.

 # 1 Carrying on a Business – s 152-10(2)(b)

Before: Can carry on a business at any time in the relevant income year.

Now: Must carry on a business at the time of the sale, so just prior to the CGT event, unless $6m maximum net asset value test met.

 # 2 $2m turnover / $6m maximum net asset test – s 152-10(2)(c)

Before: Tests imposed only on the taxpayer (i.e. owner).

Now: If CGT asset is shares or units, the test is imposed on the company or trust itself. The modified test considers the turnover and assets of entities that are 'connected with' the taxpayer (with a 20% threshold).

 # 3 80% active asset test – s 152(2A)-(2B)

Before: Consider active asset test at each 'tier'. Cash / financial instruments included.

Now: Exclude shares/units with less than 20% participation percentage. Need to 'look through' underlying assets to the Object Entity if the taxpayer's participation percentage is 20% or more; and may exclude cash / financial instruments.

What Hasn't Changed

 # 1 Active Asset Test for Other Assets

The active asset test only changed for shares and units. For other assets there is no change.

 # 2 $6m Net Asset Value Test

The net asset value test only changed when holding 20% to 40% interest in an entity. For interests below 20% and over 40% there is no change.

3 Individual concessions

If there are no shares or units involved, then there is no change.

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The 4 Small Business CGT Concessions

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