TAX TALKS

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71 | New Basic Conditions When Selling Shares or Units

There are major changes for the small business CGT concessions in the pipeline. The basic conditions when selling shares or units are about to change.

New Basic Conditions When Selling Shares or Units

The most significant, quantifiable tax concessions for small businesses are the capital gains tax concessions. Their aim is to provide small business owners with access to funds for their retirement.

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What happened so far

The 2017 budget saw the first attack on taxpayers' ability to access these concessions. The government announced back then:

> *[It] will amend the small business capital gains tax (CGT) concessions to ensure that the concessions can only be accessed in relation to assets used in a small business or ownership interests in a small business. This measure will take effect from 1 July 2017.*

The consultation period re the exposure draft legislation and explanatory memorandum ended on 28 February 2018. The legislation was introduced on 28 March 2018 and it is expected to become law shortly.

The Government has heralded the changes as an enhancement to the integrity measures in the small business CGT regime.

Only shares and units

The changes only apply to shares and units. So to CGT events where the CGT asset is parcel of shares in a company or units in a trust. The changes have no effect on other CGT assets.

Retrospective

The changes are to apply retrospectively from 1 July 2017. This means that some taxpayers may have already implemented certain steps which are now retrospectively impossible.

What Changes

With the changes comes a new 'old' concept called the "object entity". The object entity is the company or trust in which the taxpayer holds the shares or units.

The draft legislation will repeal section 152-10(2) of the *Income Tax Assessment Act 1997. And* replace it with a new subsection. This subsection will include the following changes:

Needs to carry on a business just before the CGT event

If the taxpayer relies on the $2m turnover test to qualify for the small business CGT concessions, then they must be carrying on a business just before the relevant CGT event.

Financial instruments and cash no longer active

Financial instruments, cash as well as shares and units are no longer active assets. So they do not go into the numerator when calculating the active asset percentage. If the active asset percentage is below 80%, the shares or units don't count as active.

New object entity test

The object entity must now also qualify, under modified rules, as a CGT small business entity or satisfy a modified $6M maximum net asset value test.

This object entity test is a completely new requirement for the object entity. Currently, only the taxpayer making the capital gain needs to meet the basic conditions.

The $6M maximum net asset value test has been modified. The active assets included in the test are now those of the object entity, its affiliates and entities controlled by the object entity.

Control at 20%

Control no longer applies from 40% onwards, but from 20% onwards. So more entities will become connected entities and hence go into the maximum net asset value test.

New look through

There is a new look through approach which will examine the market value of all active assets of companies and trusts which are connected to the object entity.

Future

While the Federal Government continues to review its budget position, it is probably safe to say this will not be the last change to the small business CGT concessions. Therefore, it is a good time to review the concessions available and ways in which clients might utilise them now before any further changes reduce their effectiveness.

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