TAX TALKS

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74 | Small Business CGT Concessions

The small business CGT concessions are probably the most generous concessions for small business in the Australian tax legislation. They can save business owners a lot of tax.

Small Business CGT Concessions

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Capital gains receive two big concessions – or five – depending on how you count them. The 50% CGT discount for individuals and trusts in Div 115. And the four small business CGT concessions in Div 152.

Under the 15-year exemption all capital gains from the sale of business assets are disregarded, if the taxpayer has owned the assets for more than 15 years, is over 55 and sells in connection with retirement or is permanently incapacitated.

The 50% reduction in s152-C reduces the capital gain by 50%. It is the easiest of the four to qualify for. The moment you pass the basic conditions you got this one nailed.

The retirement exemption provides that capital gains from the sale of business assets are tax free. But there is a life time limit of $500,000 per person. If the owner is under 55, the exempt amounts need to be paid into a super or retirement savings account.

And the rollover exemption allows to defer recognition of the capital gains. The only conditions is that the funds are used to replace small business assets or make a capital improvement to an existing asset.

But these four small business CGT concessions come with a lot of strings attached. There are the basic conditions that are anything but basic. Then there are specific conditions. And then you have an additional set of rules when the CGT asset is a parcel of shares or units.

Basic Conditions

The basic conditions in Subdivision 152-A are the gateway to the small business CGT concessions.

There must be a CGT event that happens to a CGT asset owned by a taxpayer. The CGT event would have resulted in a gain. So far so good. But now comes the first big hurdle.

The taxpayer must be either a small business entity carrying on a business with an aggregated turnover of less than $2m or the taxpayer meets the maximum net asset value test or the taxpayer is a partner in a partnership that meets the small business turnover test or the asset is used by an associate or connected entity in a small business entity.

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And the last of the basic conditions is that the CGT asset satisfies the active asset test. The test requires that the asset is held for use, or ready for use in the business for at least half of the time (or 7.5 years if held for 15 years or longer).

We said 'last' but if the asset is a parcel of shares or units there are quite a few more hurdles. But let's leave that for another time.

So these are the basic conditions in a nut shell. They are the most difficult part. Once these are ticked off, it gets easier.

Specific Conditions

Not every exemption has specific conditions attached. The 50% reduction comes string free. You just need to pass the basic conditions. But the other exemptions come with specific conditions.

15-Year Exemption

The taxpayer must have continuously owned the CGT asset for the fifteen year period ending just before the CGT Event; and

The taxpayer had a significant individual for a total of at least 15 years (even if the 15 years was not continuous and it was not always the same significant individual) during which the entity owned the CGT asset; and

The individual who was the "significant individual" just before the CGT event either was 55 years of age or over at the time and the event happened in connection with the individual's retirement; or was permanently incapacitated at that time.

If all this applies, then a taxpayer can disregard the whole of a capital gain arising from a CGT event by utilising the 15 year exemption.

50% Reduction

This one comes without specific conditions. You just need to meet the basic conditions. If you do this, you are entitled to reduce the capital gain by 50%. No further strings attached.

You can choose not to apply this exemption. And you can also choose the order in which you apply the 50% reduction, the retirement exemption and the rollover exemption.

This exemption is sometimes referred to as "the 50% active asset reduction" to distinguish it from the 50% discount in Div 115. But this is misleading since all assets need to be active assets to qualify for the small business CGT concessions, not just for this one. So the official name changed to 'small business 50% asset reduction'.

Retirement Exemption

There is a life time cap of $500,000 per person. So to claim this exemption, you must still be below this cap.

You need a significant individual for this exemption. Just as you did for the 15-year exemption.

And there is a caveat on what you do with the money. If you are under 55, you must contribute the proceeds to super either when making the choice or when receiving the proceeds, whichever is earlier. To contribute to super, you need to make a written election. A common mistake is that taxpayers either don't make a written election. Or they make an election for contribution cap purposes, which is not the same as electing the retirement exemption.

'Retirement exemption' is a strange name for this exemption. You don't actually have to retire to claim this exemption. You need to retire to claim the 15-year exemption, but not to claim the retirement exemption. A 19-

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year old kid in a garage selling their first start up could claim the retirement exemption.The name probably comes from the fact that if you are under 55, you need to put any exempt amount aside for your retirement.

Rollover Exemption

The rollover exemption requires you to get a replacement asset within 2 years or longer if the commissioner gives you permission to extend this period. If you intend to do this, you can defer the capital gain and roll over the cost base to the new asset.

So these are the four small business CGT concessions in a nutshell. The devil is in the detail though. And we didn't really go into that. Nor did we look into the actual wording of the law. We will do that next time.

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CGT Rollover

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