

CGT Small Business Concessions

NEW RULES / PLANNING OPPORTUNITIES

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August, 2004

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1. HISTORY OF CONCESSIONS

- CGT Small business concessions commenced 21 September 1999 (15 years after CGT commenced)
- At same time, gains from depreciable assets excluded from CGT
- Previously exemptions removed

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2. THE FOUR CONCESSIONS

- 15 Year Concession
- 50% Active Asset Concession
- Retirement Exemption
- Asset Rollover Relief

- Other CGT concessions can also be used – 50% 12 month concession

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3. THE BASIC CONDITIONS FOR RELIEF

These conditions must be met for accessing all of the concessions:

- Maximum net asset value test
- Active Asset Test
- ONLY if the CGT asset is a share in a company or a unit in a trust
 - There is a controlling individual
 - Asset owned by CGT Concession Stakeholder

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3.1 MAXIMUM NET ASSET VALUE TEST

- Net value of CGT assets owned by the small business entity, their small business CGT affiliates, and connected entities does not exceed \$5 million immediately before the CGT event

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3.1.2 MEANING OF MARKET VALUE

- Market value of CGT assets exceeds liabilities
- Ignore the following assets
 - ownership interests in other entities connected with entity or their small business CGT affiliates
 - Individuals personal assets
 - Superannuation entitlements
 - Life insurance policies
 - Non-business assets of small business CGT affiliates and entities connected with you
 - Business assets of your small business CGT affiliate if not connected to your business or an entity connected with you.

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3.1.3 MEANING OF SMALL BUSINESS CGT AFFILIATE

- If you are an individual, your spouse or any child of yours under 18 years of age
- The person acts or could reasonably be expected to act in accordance with your directions or wishes, or in concert with you.

Partners acting in concert with each other in the partnership will not be small business CGT affiliates for that reason alone.

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3.1.4.1 MEANING OF CONNECTED WITH THE ENTITY

An entity is connected with another entity if:-

- Either entity controls the other entity
- Both entities are controlled by the same third entity

Control is defined in section 152-30 for the above tests and the definition of control is complex. The definition changes depending on whether the entity is a company, trust or discretionary trust

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3.1.4.2 CONTROL OF ENTITY - 40% OR MORE OF RIGHTS

- Entity, its Small business CGT affiliates, or the two combined have:-
 - beneficial rights to at least 40% of income or capital of the entity
 - At least 40% of voting power
 - Are the trustee of the discretionary trust
 - Power to influence the trustees discretion
- Where interest is less than 50% and some one else has control - not included

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3.1.4.3 SPECIAL RULE FOR DISCRETIONARY TRUSTS

OLD RULES

- Any beneficiary of a discretionary trust was deemed to be a controller of that trust
- If they have a limited fixed interest - the assets included will be limited to that interest
- Exclusion for trusts where controlling entity is a public entity
- Charities included

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3.1.4.3 SPECIAL RULE FOR DISCRETIONARY TRUSTS

NEW RULES

- Charities no longer a problem – not included
- All beneficiaries of trust now eliminated unless meet other control tests
 - Control / are trustee
 - Control distributions
- Control deemed if taxpayer & CGT Small Business Affiliates together receive 40% or more of distributions in one of previous 4 years.
- Can nominate 4 controlling individuals in a loss year – essential to maintain active assets

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3.1.4.4 INDIRECT CONTROL

- Where the first entity controls a second entity under Section 152-30 and the second entity controls a third entity under section 152-30, then the first entity will be deemed to control the third entity
- Exclusion where the second entity is a public entity

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3.1.4.5 CONNECTED WITH

- Very wide test and will include many entities
- Disclaimer suggested in relation to discretionary trusts
- Need to work thoroughly through the provisions to determine assets to be included and excluded.
- Need to establish all the facts with the client

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3.2.1 ACTIVE ASSET TEST

- Asset will be an active asset if immediately before the earlier of:-
 - the CGT Event;
 - the cessation of the business if within 12 months; and
- was an active asset for at least half the period commencing from the later of:-
 - the date of acquisition of the asset
 - 15 years before the earlier date above if held over 15 years

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3.2.2 ACTIVE ASSET TEST

- Must be used or ready for use in carrying on a business
- If intangible- inherently connected with the business
- Used in carrying on a business by your small business CGT affiliate or an entity connected with you

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