

CGT on the Sale of a Business

Concessions are permitted regarding capital gains made on assets that are not plant and equipment, where the business qualifies as a small business entity under the Simplified Tax System (STS) or the Net business assets of the business and associates are less than \$6 million.

The only requirement a business needs to meet to enter the STS is to have a turnover (total sales) of less than \$2million.

The \$6 million net business asset test does not include your spouse's business assets if your businesses are not related. If an individual partner in the business owns less than 40% of the partnership then only his or her share of the net partnership assets is taken into account when calculating the \$6 million.

How the Small Business CGT Concessions work:

- a) The 50% capital gains discount - only half of the gain is included in your taxable income. This concession is not available if the asset is owned by a company. You must have held the asset for more than 12 months for this to qualify
- b) The 15 year ownership exemption. This requires you to have held the asset for more than 15 years. The asset must be an active asset. You need to satisfy the controlling individual test if the asset is owned by a company or trust. The taxpayer or the controlling individual, if a company or trust, must also be over 55 and retire or permanently incapacitated.
- c) Retirement exemption – can only apply to an active asset and the taxpayer or controlling individual must be over 55 and retire or put the funds into a super fund where they will not be taxed on entry or exit. A taxpayer can only process \$500,000 worth of capital gains this way in their life time. This does not require the asset to have been held for more than 12 months
- d) 50% discount for active business assets – can only apply to an active asset. This does not require the asset to have been held for more than 12 months.
- e) Rollover relief where an active asset can be sold and another active asset purchased or improved within two years or in the previous year. This does not require the asset to have been held for more than 12 months. From 1-7-07 if you don't spend the rollover you declare it as income or use the retirement exemption in the year the 2 years expires. Pre 1-7-07 you had to go back 2 years and amend

Note b) to e) from 1-7-07 require your net assets and those of your associates to be less than \$6mil for the business to be a small business entity. More than one of the above can be used if you qualify. It is not that difficult to meet the retirement condition but if that is the case you would not be looking to use the rollover relief. You can use the 50% capital gain discount together with the 50% active asset discount to only pay tax on only 25% of the gain. For example:

Gain of	\$100,000
Less 50% CGT Disc	<u>50,000</u>
	50,000
Less 50% Active Asset Disc	<u>25,000</u>
	25,000
Purchase A New Active Asset	<u>25,000</u>
Amount subject to CGT	0

An asset is not an active asset if it is held merely for the purpose of earning rental income. From 1-7-07 to qualify as an active asset it must be used in a business, the business can be one owned by an affiliate, and it must be active for at least half the time it was owned or 7 ½ years whichever is the least.

There are problems if the asset is held in a company. Firstly the 50% capital gain discount is not available. The controlling individual test cannot be met in many circumstances so the 15 year ownership or the retirement exemption may not be available. The active asset discount stays within the company. If you try and get the money out of the company (without putting it into a superannuation fund note possible age base limit problems) every dollar you receive, including the dollars that the company did not have to pay tax on because of the discount will be fully taxable as a dividend in your hands. Using the rollover relief provisions is only useful if you are buying another business and it will force you to continue to use the company so continuing the problem next time you sell.

Changes in the 2007 budget now mean that there can be up to 8 controlling individuals in any business.