Capital Gains Tax - Improved Concessions for Small Business

Tax Laws Amendment (2006 Measures No 7) Bill 2006 passed through Parliament on 29 March 2007. It now awaits Royal Assent.

The Bill will improve the access of small business to a number of Capital Gains Tax (CGT) concessions. These enhancements are the Government's response to recommendations by the Board of Taxation.

A. There are a number of notable IMPROVEMENTS to the concessions:

Significant Individual Test

The controlling individual 50 per cent test is replaced by the significant individual 20 per cent test where the new test allows up to eight people operating a small business jointly through an entity to access the concessions, compared with the previous rules which allowed a maximum of only two controlling individuals. Unlike the previous test, the new test can be satisfied on the basis of direct and indirect holdings through interposed entities.

Gifts Are Eligible For Retirement Exemption

The new rules allow a person to gift a business asset rather than requiring the asset be sold. This recognises that some people would prefer to gift an asset, such as the family farm, to their children rather than sell it to access the retirement exemption.

Small Business Rollover

This change allows a taxpayer to defer a capital gain in the year the gain is made, pending the reinvestment of the sale proceeds into a replacement asset.

• > If the proceeds have not been reinvested within two years, a capital gain arises at that time.

• > Previously, a taxpayer would have to account for a capital gain upfront in the year it is made if they had not yet reinvested the proceeds, potentially incurring additional compliance costs once the proceeds were reinvested.

In addition, roll-over will now be available to the extent the sale proceeds are reinvested in a replacement asset or in improving an asset already owned, rather than the proceeds having to be wholly reinvested in a newly acquired asset.

Deceased Estates

The new rules allow legal personal representatives or beneficiaries of a deceased estate to access the concessions to the same extent that the deceased could have used them just prior to their death.

Small Business 15 Year Exemption

The exemption will be available provided there has been a significant individual in relation to the company or trust for at least 15 years and not necessarily for the entire period of ownership of the asset.

B. Other IMPROVEMENTS include:

Extending types of liabilities taken into account in calculating the maximum net asset value test

The test will allow provisions for annual leave, long service leave, unearned income and tax to be taken into account.

Calculating the maximum net asset value test in relation to partnership assets

The test will be applied to the value of assets of individual partners rather than to the partnership as a whole.

Interests in companies and trusts as active assets

In determining whether 80 per cent of a company's or trust's assets are active assets, cash and financial instruments inherently connected with the business can now be counted.

About the Author

David Natenzon has gained extensive experience in different aspects of commercial, corporate, and litigation matters and manages Rosendorff's employment law division. He has developed an extensive knowledge of the WorkChoices legislation and is an Associate Member of the Law Institute of Victoria. David has written numerous resource papers on different aspects of corporate law. For more details, visit: www.rosendorff.com.au