JBC Corporate

Capital Gains Tax on Sale of a Business

This information fact sheet aims to provide a brief overview of the effects of Capital Gains Tax ("CGT") in the event of a sale of a business, and how small business owners can minimise or even eliminate their CGT liability on the sale of their business.

Small Business Capital Gains Tax Concessions

A CGT concession of 50% will apply where there is a sale of a business only if all of the following are satisfied:

- The sale is for less than five million dollars;
- The business is trading at the time of the sale and has traded for at least half of the period of ownership, if owned for less than 15 years. Alternatively, if the business has been owned for more than 15 years and is not trading at the time of the sale but has traded for at least half of the period of ownership; and
- The business is owned by an individual, or if the business is owned by a company that has at least one shareholder owning and controlling a minimum of 50% of the issued shares. The company may hold the business for the benefit of a trust.

Capital Gains Tax Discount

The seller may be entitled to claim a further discount on the CGT liability and reduce the remaining tax liability by a further 50%. That is, the taxable gain would now be reduced to 25% of the original gain. To achieve the additional CGT discount, the sale would need to satisfy both of the additional criteria:

- The business has been owned by the vendor for more than 12 months; and
- The business is owned by individuals and not a company.

15-Year Exemption

If the seller satisfies all of the CGT Concession requirements and also meets the following requirements, then the entire transaction will automatically be exempt of CGT and no liability will exist:

- The business has been owned for more than 15 years and is trading at the time of the sale, and has traded for at least half of the period of ownership; and
- If the seller is over 55 years of age and intends to retire or is permanently incapacitated.

In the unusual circumstances where a business is disposed of involuntarily, the CGT may become exempt or be permitted to be rolled over, without having satisfied the minimum 15-year ownership rule. For example, if a business is disposed of as a consequence of a compulsory acquisition by either State or Federal Government, or if it is destroyed and a CGT liability is generated as a result of the insurance payout, or the business is sold as a result of a marriage breakdown.

Retirement Exemption

If the seller elects to adopt the Retirement Exemption option the CGT liability can be removed altogether subject to the following:

- The seller is over 55 years of age and intends to retire;
- The seller is under 55 years of age and the CGT liability (after any concession and discount) transfers to the seller as an Eligible Termination Payment, which is then paid into a complying superannuation fund; or
- If the capital gain has been realised by a company where the shareholders are less than 55 years of age, and the company has only two shareholders owning 100% of the shares and the gain is paid into a complying superannuation fund within seven days of receipt.

Rollover Option

If the seller is under 55 years of age, elects to adopt the Rollover Option and reinvest the net capital gain (after concession and discount) into another business, it will continually defer the CGT liability until the seller is over 55 years of age. The liability will then be removed by the use of the Retirement Exemption option. However, the seller can only claim the discount and concession to reduce the capital gain once. After the discount and the concession have been claimed, the remaining capital gain must be rolled over to defer the CGT. To be able to satisfy the Rollover Option, the seller must meet the following requirements:

- The seller must reinvest the gain in another business between one year before and two years after the sale of the business; and
- If the new business is owned by a company and the seller is buying the shares in the company or an interest in a trust, to gain control of the business, the seller must have a controlling interest in the company after the purchase.

It is important to note that the CGT liability on the sale of a business is generated not at settlement but when the contract is signed. The timing on a sale of a business is therefore important in determining the exact CGT liability and how that liability is handled to minimise its impact.

Should you have any questions or require further information on this subject please don't hesitate to get in touch.

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