

Small Business CGT Concessions Enhanced

Business assets owned by entity not carrying on business

The Assistant Treasurer and Minister for Revenue, Mr Peter Dutton has announced changes to the small business capital gains tax (CGT) concessions. The changes will improve access to the concessions for taxpayers who are using the \$2 million turnover test to access the concessions and hold assets (typically real property) in a separate entity to the entity that is carrying on the business. The changes will be effective from 1 July 2007.

Background

Up to 30 June 2007 to access the small business CGT concessions a taxpayer had to pass the \$5 million maximum net asset value test (\$6 million from 1 July 2007). The asset also had to be an active asset, which meant that the asset had to be used or held ready for use in carrying on a business by the taxpayer, their small business CGT affiliate or an entity connected with the taxpayer.

From 1 July 2007 an alternative entry point into the small business CGT concessions was created by providing access to the concessions for small business entities. A small business entity is an entity that carries on a business and turns over, together with its affiliates and connected entities, less than \$2 million per annum. However the entity holding the asset had to be the small business entity. To qualify as a small business entity the taxpayer has to carry on business. When the taxpayer fails the \$6 million net asset threshold but passes the \$2 million turnover threshold there is currently no access to the concessions where the asset was owned by the taxpayer who did not carry on business whilst being used or held ready for use in a business by an affiliate or connected entity of the taxpayer. The recently announced changes seek to correct this anomaly. Details are as follows.

Owning Entity Separate to Business Entity

Consider the example below.



In this example the discretionary trust owns farmland to the value of \$8 million. The land is used in a farming business carried on by the company. Both the trust and the company are controlled by the same person (the farmer) and therefore the company is an entity connected to the discretionary trust. The Discretionary trust and company's aggregate turnover is \$1.5 million per annum. The farmer is selling the land and wishes to know the CGT implications. The land is worth \$8 million, so the discretionary trust fails the \$6 million maximum net asset value test. Although the discretionary trust's aggregate turnover is less than \$2 million, the discretionary trust is not carrying on a business and is therefore currently is not eligible to become a small business entity. Prior to these changes that is where it stopped - with the discretionary trust having no access to the small business CGT concessions.

Now, under the new changes, the discretionary trust will have an asset that is used or held ready for use in the business of a small business entity (and will be eligible to access the small business CGT concessions on that basis). Note that an aggregated turnover test applies to the entity owning the asset, its affiliates and connecting entities (including the small business entity).

Partnerships and CGT Assets

Under the announced changes a partner who owns a CGT asset will be able to qualify for the small business CGT concessions via the small business entity test where the asset is used in a business carried on by a partnership. It will not be necessary for each partner in the partnership to own the asset in the same proportions as their ownership interest in the partnership.

The amendment will clarify that a partner who owns a CGT asset will qualify for the concessions without the asset having to be an asset of the partnership, provided their aggregated turnover is less than \$2 million.

Moving Forward.....

The above changes were announced by way of press release with very little detail. With the federal election to be held on 24 November, the government is now in caretaker mode. With the Christmas break following shortly thereafter; it is unlikely that we will see draft legislation until early to mid 2008. We will keep you posted of changes as they become available.

Should you require assistance additional information, contact your PKF tax adviser or:

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