

Capital Gains Tax – Small Business Concessions

The CGT small business is one of the last remaining tax perks. For example, if you're selling your business, the CGT small business concessions can reduce your capital gains tax liability to \$0.

The main eligibility criteria that must be met before applying these concessions include:

1. The entity making the gain is carrying on a business
2. The business' turnover is less than \$2 million
3. The net assets of the entity and its connected entities is less than \$6 million
4. The asset sold is used in carrying on your business – so this concession would not apply for assets that are held for passive investment purposes (for example, listed equities).

Briefly, the concessions include:

1. Capital gain exemption if the entity has owned the asset for more than 15 years
2. 50% active asset CGT concession
3. Retirement exemption whereby if you are under 55 years old the proceeds must be rolled over into a complying superannuation fund; and if you are over 55 years old, you can just take the cash proceeds tax-free.

For example, you are self-employed, aged over 55 years old and thinking of retiring. The company you own and operate from sells the business for \$1 million. Presumably the company has built up the goodwill of the business from the beginning of operation. Assuming the company has met the eligibility criteria and has operated the business for 15 continuous years,

there will be no tax payable on the capital gain for the company.

Even if you have not operated the business for 15 years, you could reduce the tax liability to zero using the other concessions:

XYZ Pty Ltd	Amount
Capital Gain	\$1,000,000
Active Asset 50%	(\$500,000)
Retirement Exemption (business owner > 55yrs old)	(\$500,000)
Taxable Income	Nil
Tax Payable on Capital Gain	Nil

If you are considering selling your business or want to make sure you have the right structure in place, contact us today for a review.



Assisting small business measures deadline approaching

If your business has an annual turnover less than \$2 million, you have until 30 June 2010 to request

a 12-month general interest charge (GIC) free payment arrangement for activity statement debts.

You may also be eligible to defer the payment due date for certain 2009-10 activity statements.

Visit www.ato.gov.au/ assisting small business for more information, including eligibility criteria and frequently asked questions.

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Reporting Obligations – Companies Limited by Guarantee:

The Incorporations Amendment (Corporate Reporting Reform) Bill 2010 was introduced to Parliament in December 2009. The proposed reform followed extensive advocacy by the accounting profession. Perhaps the most significant item is the introduction of a three-tiered differential reporting framework for Companies Limited by Guarantee. Whereby:

Tier 1 companies with an annual revenue below \$250,000, and who are not Deductible Gift Recipient (DGR) entities for tax purposes, would be released from the onerous financial reporting obligations currently imposed by the Act (subject to some minor conditions).

Tier 2 companies, with an annual revenue of less than \$250,000 but are DGR, or have an annual revenue of between \$250,000 and \$1,000,000 (irrespective of whether they are a DGR), would be eligible to nominate a review instead of an audit. This would reduce the reporting and auditing obligations.

Tier 3 companies, entities with annual revenue of \$1,000,000 or more would continue to prepare and lodge an audited financial report. There are other streamlining arrangements for Tier 2 and Tier 3 Companies also proposed.

ATO comment on Word Investment case



In the autumn 2008 overVIEW we reported on a Federal Court full court decision rule that charities running a business with the sole purpose of providing funds would not have to pay company tax on the profit. The Tax Office, however, disagreed with the ruling of the full Federal Court and appealed to the High Court.

The case involved the funeral business, Bethel Funerals whose profits are solely used to support the work of Wycliffe Bible Translators.

ATO have released a Decision Impact Statement regarding Word Investments Limited.

In this statement ATO advise that they accept that an entity can be a charitable institution even if it does not directly carry out charitable activities, but instead, gives its trading surplus to institutions that do carry out charitable activities. However, ATO maintains that each case must be decided on its merits.



“Where the Buck Stops” Some Brief Thoughts on Board Responsibility

Article by Neil A W Angus

As a member of the governing body of an organisation, there is no doubt that “the buck stops with you”. However that governing body is described, for example as a board, a committee or a council, certain responsibilities rest with it. In this article, we will explore some of the key responsibilities of a governing body (board).

Firstly, the board must understand that it is the highest level of authority and therefore carries the highest level of responsibility in the organisation. It is responsible for what the organisation does as well as what it does not do. It is subject always to the organisation’s constituent document. Consequently, board members must ensure they are informed. This is particularly important in relation to financial, legal and compliance matters. The board must understand what its responsibilities are to all the stakeholders – for example, the members of the organisation, any employees and also any statutory regulator, such as ASIC or the ATO.

Secondly, each board member must always make decisions in good faith and at all times act in the best interest of the organisation. A board member cannot be working to a “hidden agenda”, but must be careful to disclose any actual or potential conflicts of interest. For example, a school board member must make decisions based on the overall good of the school, not what would benefit his

child in a particular grade. A board member must not gain an advantage for himself or someone else based on his position or information that he is aware of as a result of his board involvement.

Thirdly, each board member must make enquiry in relation to various matters. For example, a board member should expect to see regular financial statements outlining clearly both the financial position and financial performance of the organisation. It is not good enough for only verbal reports to be received at a board meeting. There must be reliable evidence that the organisation is being managed in a financially responsible manner. Also, seeing regular financial reports assists the board member to determine whether proper books and records are being maintained.

The fourth responsibility of a director is to ensure the organisation does not trade whilst insolvent – that is, when it is unable to pay its bills as and when they fall due. This is a very important responsibility and links directly to the previous point. A failure in this area can potentially lead to personal responsibility by a director for debts incurred by an organisation.

The board would normally only have one direct report, that being the chief executive, principal or most senior manager. The board should be

wary of a dominant chief executive, as history shows that many frauds are committed by a dominant chief executive who deceives the board. One safeguard for the board in this area is to request direct verbal reports at the board meeting from the management level below the chief executive.

The board must be confident that the organisation has in place systems and internal controls that are adequate to safeguard the assets and operations of the organisation. Determination of this is often assisted by an external advisor, such as the organisation’s auditor. If the organisation is audited, the board should expect to see the audit report and audit management letter each year. The auditor should be invited to attend and address a board meeting following the completion of the annual audit.

Adhering to the points noted above will assist a director to carry out his duties in a responsible manner and also assist him to sleep at night, despite knowing that “the buck stops with you”.

Neil Angus is a Chartered Accountant with over 25 years experience in the field of Audit and Forensic Accounting. Neil is associated with our firm and is the endorsed Liberal Party candidate for the seat of Forest Hill at the upcoming State election.

Help! I've put too much into my super fund

One of the great things about superannuation is the concessional tax rates. Concessional contributions, which come from pre tax income, are taxed at 15%.

There are caps imposed on how much you can put into super and still get the concessional tax rate. Concessional contribution caps were halved from 1 July 2009. The current situation is summarised in the following table.

	Concessional Contribution Cap	Non Concessional Contribution Cap
Aged under 50 at 30 June	\$25,000 pa	\$150,000 pa
Aged 50 or more at 30 June	\$50,000 pa to 30 June 2012 \$25,000 pa thereafter	\$150,000 pa

If you are under age 65, you have the option to bring forward future non concessional contributions, allowing a contribution above \$150,000 to be made in a year. The maximum over a three year period is \$450,000.

The Government has recently announced that over 50's will be able to contribute \$50,000 pa as a concessional contribution, beyond 2012, provided that the account balance is under \$500,000. The detail of this provision is yet to be released.

Excess contributions are not uncommon and many taxpayers inadvertently breach their contribution limits.

This can occur for the following reasons:

- » You have multiple employers;
- » You have entered into a salary sacrifice agreement, which has not been reviewed recently;
- » Contributions relating to earlier periods are paid into super after 1 July

The problem is that if you breach the concessional contributions cap, the tax on the contributions over the cap is an additional 31.5% on top of the initial 15% paid by the super fund. The excess is then added to your non concessional contributions. Where both the concessional and non-concessional caps are breached, the excess contributions tax could be as high as 93%.

Once the contribution has been accepted by the fund, it cannot be refunded to you, and the preservation rules apply (meaning that you can only get the money out once you meet the conditions of release – for example, you turn 60).

In some cases, where an honest mistake has been made, the amount can be refunded. However, if you are over the contributions cap, have changed your mind about the contribution, or you have had a change in income levels so that you cannot utilise the tax deduction, then it is unlikely your excess contribution would be called an honest mistake.

However, if you inadvertently banked money into the wrong account (and that account was the superannuation funds account) then that might be an honest mistake if you can prove it.

A few adventurous taxpayers have tried to get around the contributions cap by amending their trust deeds. Under these arrangements, a clause is inserted into the SMSF trust deed to restrict the trustee from accepting all or part of a contribution if it would cause the member to exceed a contributions cap. If the trustee does accept the contribution the trust deed directs the trustee to hold the contribution in a separate trust, even though the amount has been treated as a contribution and mixed with other assets of the super fund. But the Commissioner is onto this scheme and has stated that he considers the schemes "ineffective" and tax is still likely to apply to the excess contributions.

The important thing is to be aware of what your contributions caps are, the total amounts that have been contributed, and what's contained in your trust deed.

For advice on managing your SMSF and getting money in and out of your fund, speak to us or your adviser today.



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