Sale of Business

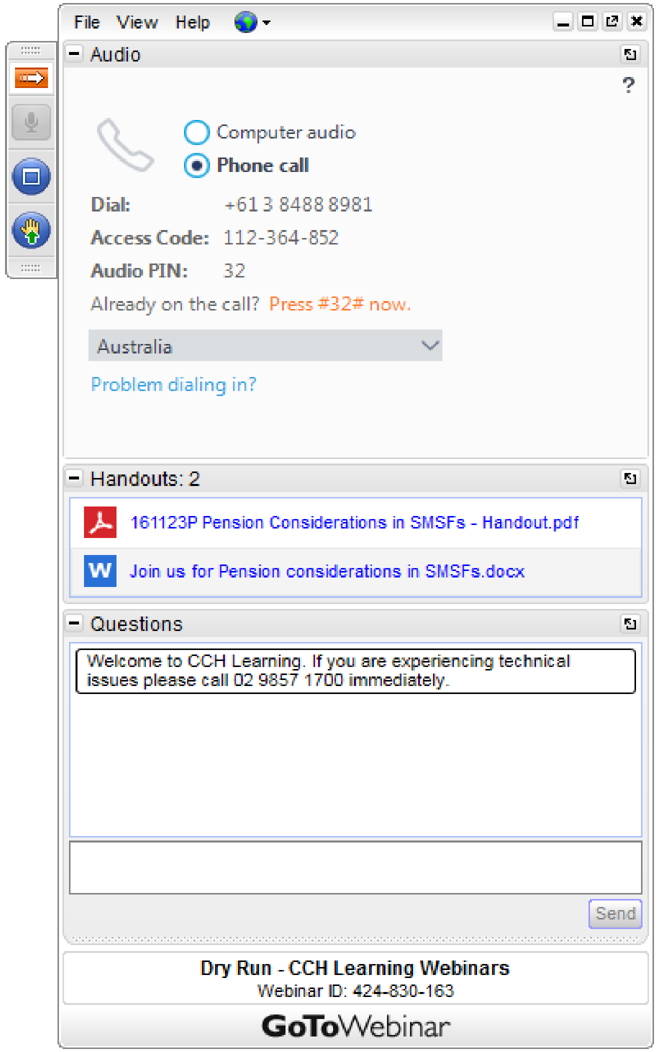
Corey Beat

Tuesday 14 November 2023

Wolters Kluwer

Crowe

How to participate today



- Handouts Section - PowerPoint
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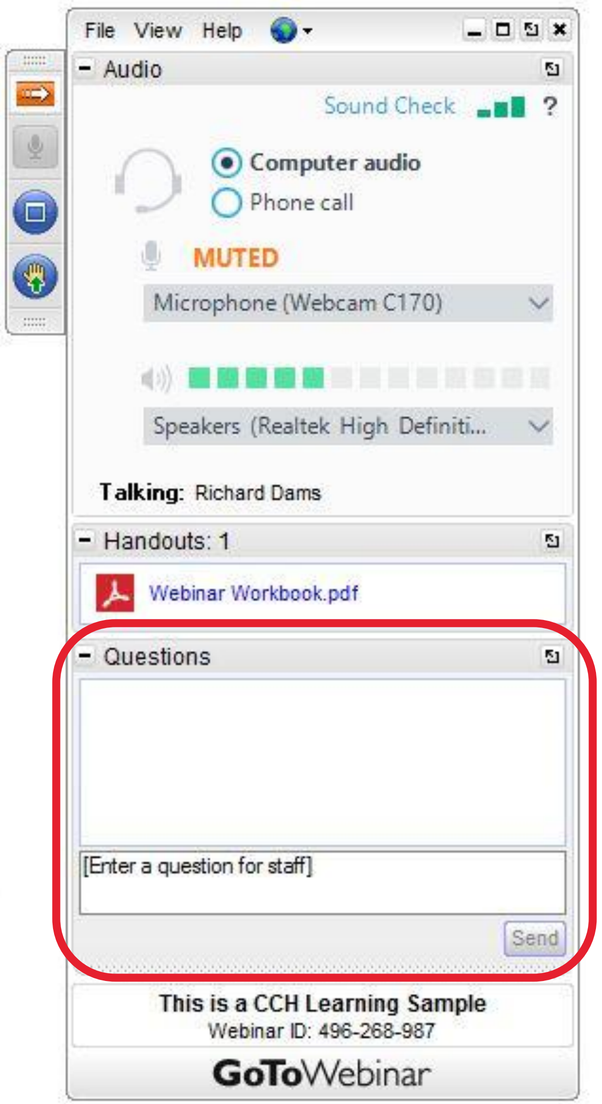
Questions?

Alison Wood
Moderator

Type your question and hit Send



Your Presenter

Corey Beat

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Today's session will cover

Over several sessions, we will cover the 2 main alternatives for selling a business (sale of shares/ units versus sale of assets) - this session includes:

- a case study approach to business sales
- the pre & post CGT status of the business
- the sale of the business assets
- the apportionment of sale proceeds
- accessing the CGT small business relief concessions

Stages of sale process

Stages of the business sale process

- A three-stage process generally exists for all business sales:
  - Stage 1 - getting ready to go to market
  - Stage 2 - going to market
  - Stage 3 - doing the deal

Stage 1 | Getting ready to go to market

- highlighting any problems potential buyers may find in the business
- assisting with existing problems & getting business ready for sale - to maximise price
- advising on pricing & fair market price for the business
- identifying potential buyers locally, nationally & internationally
- evaluating whether owner should sell assets or share/units
- preparing anonymous fact sheet - initial marketing document sent to potential buyers
- compiling information memorandum (IM) - detailed sales document
- assessing the most appropriate deal structure – to optimise tax position

Stage 1 | Getting ready to go to market

- businesses should first consider the sale process 2-3 years prior to selling
- during this time, the owner should:
  - obtain a valuation of the business from a qualified valuer
  - prepare business for sale (business plan, enhance profitability, etc)
  - consider tax planning prior to sale

Note:

The structure of SME sales are invariably driven by taxation considerations – the net cash position of the vendor is crucial.

Stage 2 | Going to market

- making confidential approach to potential buyers & gauge interest
- if potential buyer interested - issue Confidentiality Agreement & release IM
- dealing with any questions & request non-binding indicative offers
- analysing offers & terms
- reviewing taxation implications of offers & advising on tax outcomes

Stage 3 | Doing the deal

- collating information for due diligence phase
- managing the due diligence process & dealing with questions from the due diligence teams
- providing secure electronic data room to effectively control the due diligence process - allows us to:
  - deal with multiple bidders
  - track what information has been accessed
  - log when information accessed

Stage 3 | Doing the deal

- assisting in negotiations:
  - ensuring favourable terms e.g. earn outs, price & payment terms
  - work with legal advisers to ensure financial & commercial aspects of deal correctly reflected in SPA
  - negotiate final sale price to maximise transaction terms that will result in best net cash position
- nature & extent of due diligence generally dictated by size of transaction

Case study

History of Business

- Jim & Helen currently operate a successful cabling business through their company Underground Cables Pty Ltd (UCS).
- They are both Directors of the company & were allotted the following shares on incorporation of UCS, the details of which have been verified by reference to the records of the Australian Securities and Investments Commission (ASIC):

Shareholder	No of shares	Date allotted
Jim	1	1 Nov 2003
Helen	1	1 Nov 2003

History of Business

- The company was first registered on 1 November 2003.
- The business has grown substantially over time & now has annual turnover in excess of $5,000,000 & employs over 20 staff.
- Jim & Helen have not previously applied the CGT small business retirement exemption.

The Term Sheet

- Jim & Helen have been approached by a private equity group to purchase the underground cabling of UCS as part of a ‘tuck-in’ to a larger infrastructure services business.
- They have provided you with a copy of the acquisition term sheet, the details of which stipulate it is for the purchase of the UCS business, specifically:
  - plant & equipment (P&E);
  - trading stock; and
  - goodwill
- Purchase price of $3 million cash payable on settlement

CGT Status

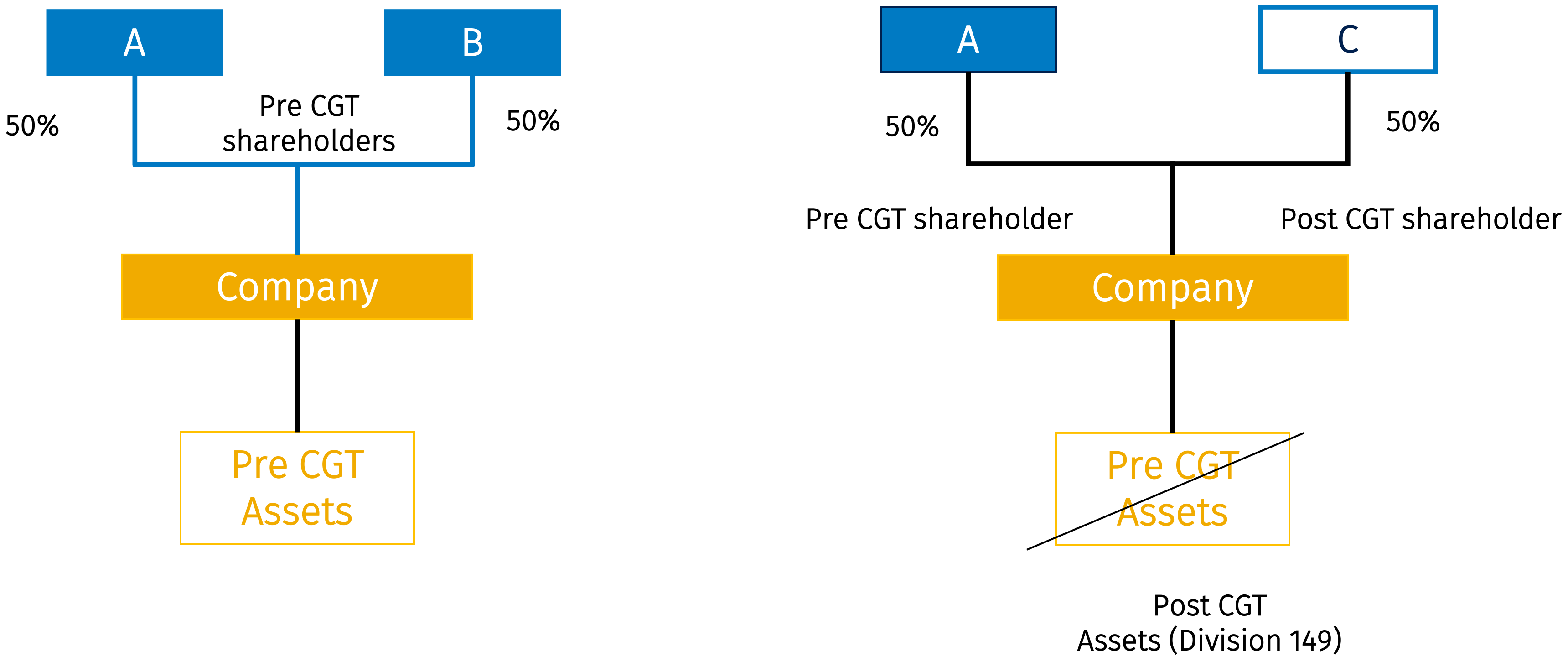
CGT Status of Business

- understanding the CGT status of the business is vital to accurately determining the tax outcomes associated with the sale of the business
- ‘pre-CGT’ assets of the business can be sold tax free, whereas ‘post-CGT’ assets will be subject to the CGT rules
- check whether a valid roll-over election has been made in relation to the transfer of the business of a partnership to a company – invalid election potentially prejudices ‘pre-CGT’ status
- in practical terms, it is also vital that any changes in majority underlying ownership are identified, also for the purpose of accurately determining the CGT status of a business

Change in majority underlying ownership

- when selling pre CGT assets, need to check Division 149 ITAA 1997 has not triggered a pre CGT asset to become a post-CGT asset
- Division 149 applies where there has been a change of 50% or more on the underlying interests (i.e. shares or units) in the pre-CGT asset
- where it applies, the underlying asset is deemed to have been acquired at market value at the time of the ownership change

Change in majority underlying ownership



Options for Sale

Options for selling a business

- There are two alternatives for effecting a business sale:
  1. Sale of business assets by the business entity (i.e. sale of a business)
  2. Sale of the entity (i.e. sale of shares in a company or units in a unit trust)
- in all cases, clients should do a comparison to determine whether it is preferable to sell the business or the entity
- the preferred option will depend on the particular circumstances of the seller and the buyer
- advisers that fail to compare both options can result in the client paying more tax than they need to

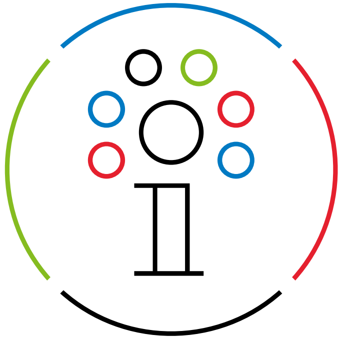
Sale of business assets

Advantages	Disadvantages
✓ some of the purchase price is often able to be depreciated or amortised by purchaser (i.e. depreciating assets which includes intellectual property) ✓ purchaser can claim a tax deduction for trading stock purchased ✓ a step-up in the cost base of CGT assets is obtained ✓ no previous liabilities of the company are inherited ✓ possible to acquire only part of a business ✓ profitable operations can be absorbed by loss companies in the acquirer's group thereby effectively gaining the ability to utilise the losses ✓ easier to satisfy the CGT small business relief provisions where only assets of the business are sold ✓ sale contract generally simpler than contract involving sale of an entity	✗ need to apportion sale proceeds across business assets ✗ employee entitlements need to be dealt with ✗ vendor remains liable for past problems of the business (i.e. claims by employees / creditors) ✗ need to renegotiate supply and employment agreements ✗ sale proceeds, together with retained profits, must be accessed from the entity - different tax outcomes can arise depending on the way proceeds are accessed ✗ higher duty imposed on the transfer of assets versus share or unit sale ✗ the benefit of any losses incurred by the target company remains with the vendor and prior year losses cannot be used by the purchaser ✗ sale gives rise to a taxable supply for GST purposes, but going concern exemption may apply

Sale of entity

Advantages	Disadvantages
✓ where entity is sold, proceeds from sale of entity are received by shareholders/unit holders and are not locked in the entity ✓ potential to step up the tax value of assets if target is consolidated ✓ potential to liquidate the target company and eliminate claims against the company, if target is consolidated ✓ purchaser may benefit from tax loss/franking credits of target company (unless the target company was a member of tax consolidated group) ✓ no need to assign contracts or intellectual property ✓ no stamp duty payable by purchaser on acquisition of shares (if underlying assets are not predominantly land) ✓ no GST payable by the seller on the sale price, as sale constitutes a financial supply (however input tax credits can not be claimed by the buyer)	✗ reluctance in SME market to acquire entities because of due diligence requirements, legislative compliance, existence of potential claims ✗ ability to utilise prior year losses of a target company may be restricted by the same business test requirements or the consolidation loss rules ✗ ability to utilise prior year losses of an acquired trust may be restricted by the trust loss rules ✗ purchasing retained profits and tax thereon – purchaser acquires inherent tax liability which can be reflected in sale price ✗ may be a need to complete an exit calculation if entity being sold is part of a consolidated group ✗ more difficult to obtain CGT small business relief ✗ sale contract more complex and lengthy than contract for sale of assets

Poll Question 1



When preparing a business for sale, which of the following steps should be taken.

A. Obtain a valuation
B. Update the business plan
C. Address existing problems
D. All the above
E. None of the above

Option 1 | Sale of business assets

Key Issues | Apportioning sale proceeds

- Commissioner will generally accept allocation of proceeds as set out in sale contract, provided parties are dealing at arms length
- some sale contracts will not allocate sale proceeds across assets
  - seller and buyer can separately make a reasonable apportionment based on market value
- if parties not dealing at arm's length, the market value substitution rule will apply (assets deemed to have been disposed of for their market value)
- gives rise to conflict between buyer & seller

Key Issues | Apportioning sale proceeds

- seller should aim to maximise consideration allocated to:
  - Pre-CGT assets (including goodwill); and
  - CGT assets qualifying for concessional treatment
- purchaser should aim to maximise consideration to:
  - trading stock
  - depreciable assets

Key Issues | Apportioning sale proceeds

- The apportionment is often a compromise along the following lines:
  - trading stock : at cost
  - WIP : at calculated cost
  - depreciable assets : at written down value
  - intellectual property : at written down value
  - pre-CGT capital assets : as much as can be justified
  - goodwill : the remainder
  - assignments of leases or business contracts : nominal amount

Key Issues | Apportioning sale proceeds

- ATO may challenge apportionment on basis that it is unreasonable
- taxpayers who merely ‘guess’ the allocation should expect valuations to be challenged
- recommend sale proceeds always allocated in the contract

Note:

It is important to consider the allocation of proceeds in detail where both ‘pre’ & ‘post’ CGT assets are being sold (e.g. pre-CGT land with post CGT buildings).

Apportioning sale proceeds | Goodwill

TR 1999/16

- ATO will accept the amount a vendor and purchaser allocate to goodwill provided all of the following requirements are met:
  - parties are dealing at arms length
  - parties do not allocate to goodwill an amount that should be attributable to an identifiable asset e.g.
    - WIP
    - trade names, logos
    - scientific, technical, industrial or commercial knowledge

Apportioning sale proceeds | Goodwill

Note:

TR 1999/16 – Commissioner can treat parties as not dealing at arm's length if one party is indifferent (i.e. one party allows the other party to allocate the sale consideration across the assets). Under tax law, disposal of assets are dealt with as follows:

Asset Type	Treatment of Sale Proceeds
Trading Stock	Assessable Income
Depreciating Assets	Excess of sale proceeds over adjustable value is assessable; Excess of adjustable value over sale proceeds is deductible
Other Assets	Capital Proceeds for CGT Events (usually CGT Event A1)

Apportioning sale proceeds | Goodwill

Goodwill

- TR 1999/16 sets out ATO's view on treatment of goodwill (based on High Court decision of FCT v Murry (1998) ATC 4585)
- ATO recognises goodwill is single CGT asset separate to other business assets
- time of acquiring goodwill is taken to be:
  - the date of entering into the contract, in the case of purchased goodwill
  - the time when work commences that results in the creation of goodwill, for internally generated goodwill [s 109-10 ITAA97]

Apportioning sale proceeds | Goodwill

Goodwill

- where work commenced prior to 20 September 1985, business goodwill will be pre-CGT, provided the same business is being carried on
- same business test requires essential character of business to remain unchanged - mere expansion of a business results in an expansion of existing goodwill
- goodwill acquired prior to 20 September 1985 (pre-CGT) - no CGT payable
- post-CGT goodwill - concessional CGT treatment may apply:
  - general 50% CGT discount for individuals and trusts; and
  - small business CGT concessions

Apportioning sale proceeds | Other issues

Restrictive Covenants

- agreement for the seller not to operate a similar business within an area for a certain time period
- amount received by seller for the grant of a restrictive covenant is capital in nature

Note:

- TR 1999/16 stipulates covenant is linked to the goodwill of a business.
- If no consideration allocated, ATO accepts no capital proceeds are attributed to the covenant.
- If proceeds separately allocated, CGT Event D1 will occur, resulting in a capital gain to the seller:
  - Post CGT asset, and
  - Not eligible for 50% General Discount.

Apportioning sale proceeds | Other issues

Depreciable Assets and Intellectual Property

- no CGT concessions available on disposal of depreciating assets and IP
- seller will aim to allocate minimal sale proceeds to depreciating assets
- seller should aim to minimise amounts allocated to IP and maximise goodwill

Note:

- Temporary Full Expensing and Instant Asset Write Off will mean there may be a number of depreciating assets that have NIL tax WDV
- These assets may have significant value – Purchaser may insist on allocating value to these items
- May lead to assessable balancing adjustments arising to the Seller

Apportioning sale proceeds | Other issues

Trading Stock

- as the sale is outside the ordinary course of business, Act deems sale at market value on day of sale and assessable income to the seller
- 'market value' for a wholesale sale is likely to equate to cost, 'book value'

Trade Debts

- vendor generally retains trade debts
- if debtors transferred to the purchaser, purchaser cannot claim a tax deduction on any debt that becomes bad

Apportioning sale proceeds | Other issues

Prepayments

- business sale – price usually adjusted for prepaid expenses
- may result in a higher sale price (seller has already paid expenses inherited by the buyer)
- seller may have already claimed a tax deduction for the prepaid amount (or part thereof)
- purchaser not entitled to a deduction for any increase in the purchase price to reflect the prepayment

Accruals

- business sale – price usually adjusted for accrued expenses
- may result in a lower sale price (buyer required to pay expenses which should have been paid by the seller)
- seller not entitled to a deduction for the adjustment paid to the purchaser

Apportioning sale proceeds | Other issues

Employee Leave

- when a business is sold, employees will usually be either:
  - offered employment by the purchaser; or
  - made redundant by the seller
- redundant employees – seller will pay out unused leave entitlements and redundancy payments
- continuing employees – seller and purchaser will adjust purchase price to reflect leave liabilities assumed by the purchaser

Apportioning sale proceeds | Other issues

Employee Leave

- leave liabilities calculated in respect of employees' current pay scales
- traditionally adjustment was effected by reducing the sale price of the business:
  - capital sum
  - not deductible to the seller
  - not assessable to the purchaser
- sellers can claim deduction for 'accrued leave transfer payments' (s 26-10 ITAA 1997)

Apportioning sale proceeds | Other issues

Employee Leave

- accrued leave transfer payment - payment that an entity makes:
  - in respect of an individual’s leave
  - when the entity is no longer required (or is about to stop being required) to make payments in respect of such leave
  - under an Australian law, award or industrial agreement
- accrued leave payments are deductible to the seller (s 26-10) and assessable to the purchaser (s 15-5)

Apportioning sale proceeds | Other issues

Employee Leave

- rather than a payment being made by the vendor generally the vendor will usually reduce the purchase price by the agreed amount of the provisions
- the amount of the provisions is "tax adjusted" to reflect the fact that the purchaser will obtain a tax benefit when the employee leave provisions are paid out
- the tax adjustment is generally 25% or 30% (to reflect the corporate tax rate) - basis for adjusting the purchase price down by 75% or 70% of the accrued leave entitlements is that when the purchaser actually pays the entitlement (i.e. 100% of the accrued entitlements), the purchaser will have a tax saving of 25% or 30% - hence adjustment ought to be only 75% or 70%

Solution

Apportionment of Sale Proceeds | Solution

- The balance sheet of UCS just prior to the sale of business was as follows:

	$
Cash at bank	200,000
Trading stock	200,000
Debtors	100,000
Plant & equipment	1,000,000
Other liabilities	(500,000)
NET ASSETS	1,000,000
Issued capital	2
Ret earnings	999,998
	1,000,000

- The offer, based on the term sheet, is to acquire trading stock, P&E and goodwill.

Apportionment of Sale Proceeds | Solution

Trading stock

- where sold outside the ordinary course of business, is deemed to be sold at market value
- ‘market value’ for a wholesale sale is likely to equate to cost or ‘book value’
- therefore, trading stock sold for $200,000 – no gain or loss for tax purposes

Apportionment of Sale Proceeds | Solution

Plant & equipment

- it is assumed that market value approximates tax written-down value (TWDV);
- where sold for TWDV: no balancing adjustment on sale;
- where market value different to TWDV: balancing adjustment triggered
- based on allocating proceeds to P&E at TWDV: P&E sold for $1,000,000
- ‘no gain or loss’ on sale of P&E for tax purposes

Note:

Purchaser may desire to allocate higher proceeds to P&E

Apportionment of Sale Proceeds | Solution

- Total capital proceeds of $3,000,000 allocated as follows:
  - trading stock $200,000
  - P&E $1,000,000
  - Goodwill $1,800,000
- The capital gain on sale of goodwill is $1.8 million, because nil cost base as internally generated
- If the goodwill has retained its pre-CGT status, this capital gain is disregarded, and the sale becomes tax-free

CGT Small Business Relief

CGT Small Business Relief

- Jim is 54 years of age and Helen is 52 years of age. Neither have previously applied the CGT small business retirement exemption.
- Helen plans to retire once the business is sold. Jim & Helen each own a 50% interest in UCS and are each entitled to:
  - 50% of the voting power in the company;
  - 50% of any dividend paid by the company; and
  - 50% of any distribution of capital

CGT Small Business Relief

- SBR provides for a capital gain arising on certain assets to be reduced
- a number of ‘basic conditions‘ must be satisfied & the following concessions are available:
  - 15-year exemption
    - full exemption from CGT when asset held >15 years, you are over 55 and disposal in connection with your retirement
    - if a company/trust makes a capital gain, need a significant individual and CGT concession stakeholder
  - 50% reduction

CGT Small Business Relief: Overview

- retirement exemption
  - $500K lifetime limit. Do not need to retire. Must rollover into superannuation if under 55
  - if a company or trust makes a capital gain, need a CGT concession stakeholder
- small business rollover
  - defer capital gain for 2 years or longer where reinvest in new assets or capital improvements

CGT Small Business Relief: Basic conditions for application

- 2 basic conditions must be satisfied
- the first basic condition is that at least one of the following applies:
  - you are a 'small business entity' (SBE) for the income year; or
  - you satisfy the NAVT; or
  - you are a partner in a partnership that is a SBE for the income year and the CGT asset is a partnership asset
    - you hold the asset passively and it is used in a business carried on by an 'affiliate' or connected entity that is a SBE;
    - you hold the asset passively, are a partner in a partnership that is a SBE, and asset is used in the partnership business

CGT Small Business Relief: Basic conditions for application

- the SBE test is a complete alternative to the NAVT
- if you are a SBE, this basic condition is satisfied (your NAV is irrelevant)
- the second basic condition is the CGT asset satisfies the 'active asset' test

CGT Small Business Relief: Small business entity

<table>
<tr><th rowspan="3"></th><th colspan="4">Aggregated turnover</th></tr>
<tr><th rowspan="2">Previous Year - 2</th><th rowspan="2">Previous Year - 1</th><th colspan="2">Current Year</th></tr>
<tr><th>Likely</th><th>Actual</th></tr>
<tr><td>Test 1:
Previous Year</td><td>N/A</td><td>Under $2 million</td><td>N/A</td><td>Can be over $2 million</td></tr>
<tr><td>Test 2:
Likely Test</td><td colspan="2">One can be >$2 million, but not both</td><td>Under $2 million</td><td>N/A</td></tr>
<tr><td>Test 3:
Actual for Current Year</td><td>N/A</td><td>N/A</td><td>N/A</td><td>Under $2 million</td></tr>
</table>

CGT Small Business Relief: Case Study

Conclusion

- as UCS's turnover is in excess of $5m it will not satisfy the SBE test
- need to consider the maximum net asset value test
- you satisfy the maximum net asset value test if just before the CGT event, the sum of the following amounts does not exceed $6m:
  - the net value of the CGT assets of yours
  - the net value of the CGT assets of any entities connected with you; and
  - the net value of the CGT assets of any affiliates of yours or entities connected with your affiliates

CGT Small Business Relief: Additional basic conditions

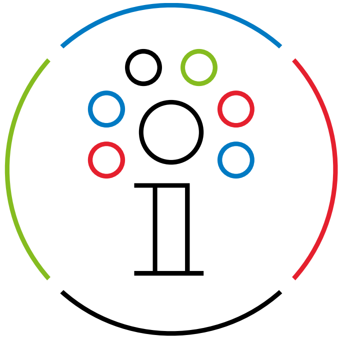
- if the CGT asset is a share in a company, or interest in a trust, you must satisfy either of the following additional conditions:
  - you are a CGT concession stakeholder in the company or trust (i.e. you must be an individual); or
  - CGT concession stakeholders in the company or trust have a combined small business participation percentage (SBPP) in you (i.e. the shareholder/unit holder) of at least 90%
  - 'CGT concession stakeholder' is a 'significant individual'
- a significant individual' is a person who, generally, holds a small business participation percentage (SBPP) of at least 20% in the company

Poll Question 2

Goodwill is a pre-CGT asset if the business was commenced or acquired before 20 September 1985.

A. TRUE

B. FALSE



Connected Entities & Affiliates

Connected entities

- the relevance of understanding the 'connected entity' provisions is that for the purposes of the small business CGT concessions:
  - aggregated turnover includes the annual turnover of an entity 'connected' with you
  - 'connected entities' are also relevant for the purposes of the NAVT & active asset test
- 'connected' depends on 'control'
  - either entity, its affiliates or together with its affiliates, 'controls' the other; or
  - entities are controlled by the same third party, its affiliates or together with its affiliates

Connected entities

- the meaning of control is then determined for three different situations:
  - direct control of an entity other than a discretionary trust
  - direct control of a discretionary trust
  - indirect control (which applies to all entities)
- control: company - rights to 40% of dividends, or capital or voting
- control: unit trust - entitlement to 40% of income or capital of the trust
- control: partnership - entitlement to 40% of income or capital of the partnership

Connected entities – control of discretionary trust

- There are effectively 2 tests which can be used to determine who controls a discretionary trust:
  - the distribution test
    - an entity controls a discretionary trust if the entity and/or affiliates receive at least 40% of the income or capital in any of the 4 prior income years
  - the influence test
    - an entity controls a discretionary trust if a trustee acts, or could reasonably be expected to act, in accordance with the directions or wishes of the entity and/or its affiliates

‘Affiliate’

- The definition provides as follows [s 328-130]:
  - An individual or company is an affiliate of yours if they act, or could reasonably be expected to act:
    - in accordance with your directions or wishes; or
    - in concert with you
    - in relation to the affairs of the business of the individual or company.

Note:

For SBR purposes, a spouse or child under 18 may also be an ‘affiliate’ [under s.152-47]

Definition of ‘affiliate’

- There are some significant issues relating to this definition:
  - only an individual or a company can be an affiliate - trusts, partnerships and super funds are not capable of being an ‘affiliate’
  - an individual or company can only be your affiliate if they are carrying on a business in their own right - if it is established that an individual or company is not carrying on a business, then they cannot be your affiliate
  - a spouse or a child under 18 years is not automatically your affiliate - a spouse can only be your affiliate if the spouse:
  - conducts an actual business in their personal capacity; and
  - in the conduct of that business, they act in accordance with your directions or wishes, or in concert with you

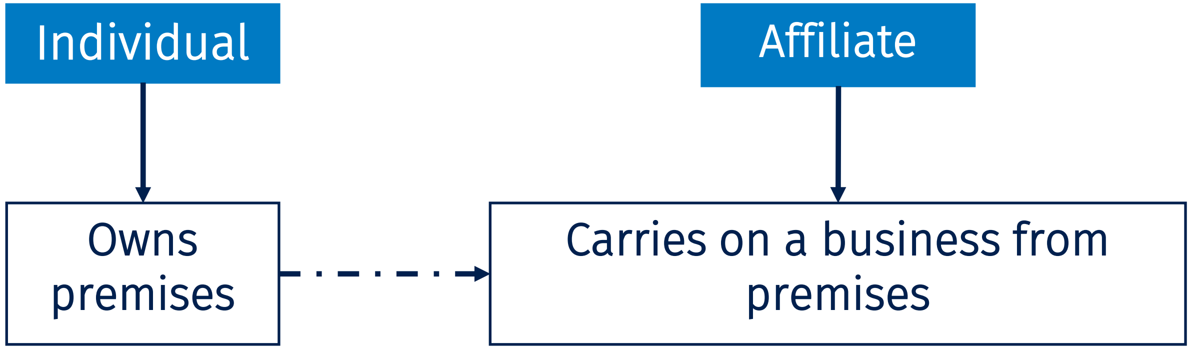
Active Asset Test

Active asset test

- A CGT asset is an active asset where it satisfies either of the following conditions:
  - it is used or held in carrying on business; or
  - it is used or held in carrying on a business by an affiliate or a connected entity; or
  - it is an intangible asset connected with business carried on by you, a connected entity, or affiliate (e.g. goodwill)

Active asset test

- active asset includes an asset you own that is used in a business by your affiliate



- although the individual does not carry on a business, the premises owned by the individual is an active asset

Case Study Pt 2: CGT Small Business Relief Solution

- Jim & Helen each own 50% of UCS, which is at least 40%.
  - therefore they each control UCS;
  - therefore, they are connected entities of UCS.
- Jim & Helen also own at least 20% of UCS
  - therefore they are both ‘significant individuals’ of UCS
  - therefore they are both ‘CGT concession stakeholders’

Case Study Pt 2: CGT Small Business Relief Solution

- Market value of UCS's net assets, including the goodwill ascribed by the purchaser, is as follows

	Book value $	Market value $
Cash at bank	200,000	200,000
Trading stock	200,000	200,000
Debtors	100,000	100,000
Plant & equipment	1,000,000	1,000,000
Goodwill	-	1,800,000
Other liabilities	(500,000)	(500,000)
NET ASSETS	**1,000,000**	**2,800,000**

Case Study Pt 2: CGT Small Business Relief Solution

- Net Asset Value Test
  - UCS's net assets are $2.8 million;
  - Jim & Helen's only assets are their main residence & personal use assets, which are not included for the purpose of the NAVT
  - therefore NAVT of UCS and its connected entities (being Jim & Helen) is < $6 million
  - NAVT satisfied

Case Study Pt 2: CGT Small Business Relief Solution

- Active asset test
  - asset disposal giving rise to capital gain is the goodwill ($1.8m capital gain);
  - goodwill is capable of being an active asset;
  - goodwill is internally generated - taken to be acquired when the activities which give rise to the goodwill commenced;
  - the goodwill has been owned up to current, which is at least 7.5 years during the period from the date goodwill was acquired (2003) to date sale contract signed
  - the goodwill satisfies the active asset test

Case Study Pt 2: CGT Small Business Relief Solution

- 50% active asset reduction concession
  - no additional conditions – applies where basic conditions satisfied
  - means that capital gain can be reduced by 50%
  - Choice can be made to forgo this concession to maximise access to Retirement Exemption [s152-220]

Note:

50% CGT discount applied before the 50% AAR

15 Year & Retirement Exemption for companies

Case Study Pt 2: CGT Small Business Relief Solution

- 15-year exemption (for company)
  - basic conditions: satisfied;
  - goodwill continuously owned for 15 years: satisfied;
  - UCS had a 'significant individual' for at least 15 years during which the goodwill was owned: satisfied;
  - significant individual just before the sale of the goodwill must be 55 or over and the sale happen in connection with their retirement: not satisfied;
  - the sale will happen in connection with Helen's retirement, however she is 52 years old. Further, Jim is 54 years, the sale does not happen in connection with his retirement
  - No 15-year exemption available

Case Study Pt 2: CGT Small Business Relief Solution

- Retirement exemption (for company)
  - basic conditions must be satisfied;
  - company must have at least one significant individual;
  - company must make directly or indirectly through interposed entity a payment to CGT concession stakeholder in respect of which the concession is being applied of the amount of capital gain being reduced;
  - if CGT concession stakeholder under 55, CGT exempt component (up to $500k lifetime limit) must be rolled over to superannuation;
  - based on age at time just before the payment;
  - payment must be made within 7 days of lodgment of company tax return - exempt amount deemed to be an employment termination payment (ETP)

Case Study Pt 2: CGT Small Business Relief Solution

- Applying retirement exemption:
  - basic conditions: satisfied;
  - significant individual: satisfied;
  - Jim is 54 years and thus the payment to him is required to rolled over to superannuation. Helen is 52 years and thus the payment must also be rolled over into superannuation;
  - payments deemed to be ETP's;
  - payments will be made on date UCS's tax return lodged
- Therefore, retirement exemption conditions all satisfied. The remaining capital gain may be reduced by a further amount of up to $1m ($500K x 2).

Case Study Pt 2: CGT Small Business Relief Solution

Summary of application of SBR:

	$
Capital gain (sale of goodwill)	1,800,000
Less: 50% AAR	(900,000)
Less: retirement exemption payment ($450k each to Jim & Helen)	(900,000)
Net capital gain	**Nil**
*Jim & Helen each have a further $50k ($500k - $450k) remaining of the lifetime retirement exemption limit	

Note: 50% Discount does not apply to companies

CGT Small Business Relief - compliance

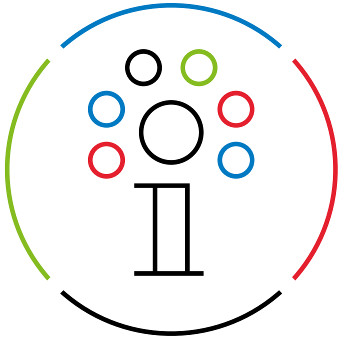
ATO Scrutiny

- ATO continues to focus on non-disclosure & incorrect reporting of capital gains
- specific attention to be given to claims to the SBR concessions when ineligible and/or incorrectly calculating the SBR claim
- in recent years, heightened data-matching efforts used to uncover unreported sales of property and business assets
- many recent cases also indicate ATO will impose significant penalties where it identifies an incorrect SBR claim, including shortfall penalties & shortfall interest charge (SIC)

Questions?

You can type them in the “Questions” box now

Or contact me via:

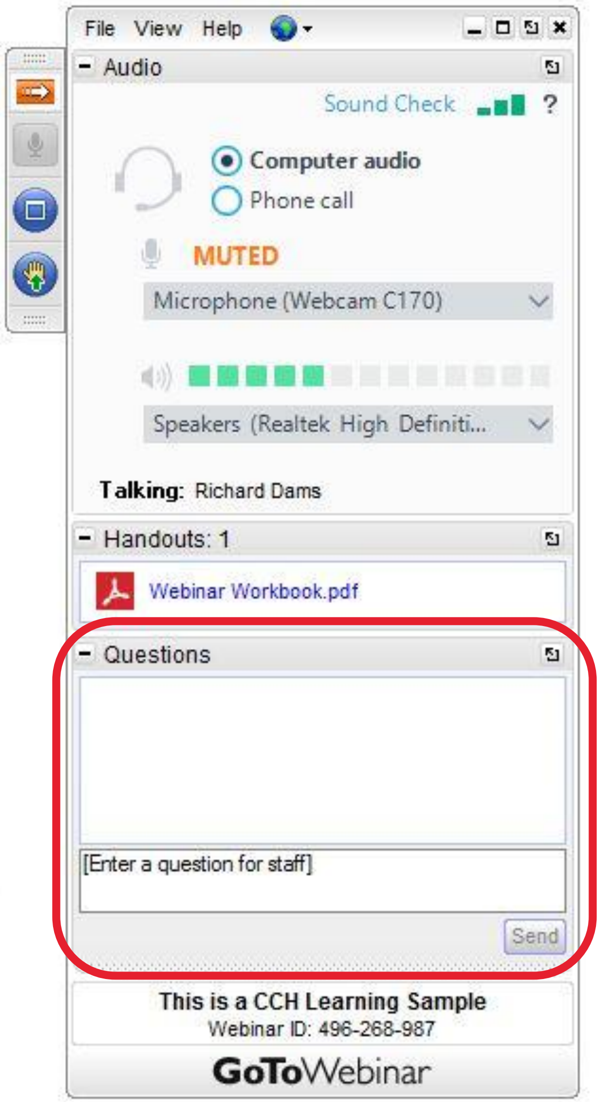


- Corey Beat
- Partner – Tax Advisory
- Crowe Australasia – an affiliate of Findex
- corey.beat@crowe.com.au

Questions?

Alison Wood
Moderator

Type your question and hit Send



Upcoming Webinars

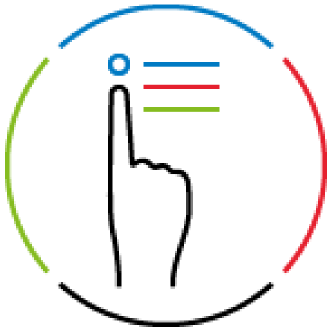
- 15 November - Driving Advisory Revenue
- 15 November - Employee Expenses
- 16 November - Crypto Accounting Simplified: Expert Insights for Accountants
- 21 November – ATO Phoenix Strategy – Ordering the Phoenix
- 22 November – Division 7A Update (Crowe)

Questions?

Corey Beat

Partner - Tax Advisory
Crowe Australasia, an affiliate of Findex

Next steps



Please complete the Feedback Survey when the webinar ends

Within 24-48 hours you will be enrolled into the E-Learning which includes:

- a PDF of the PowerPoint
- a verbatim Transcript
- any supporting documentation
- a CPD Certificate

Thank you for attending

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