

## **Capital Gains Tax and the complexities surrounding the concessions for small businesses.**

“Most small businesses owners should not pay Capital Gains Tax on the sale of a small business” according to Peter Vickers of Peter Vickers and Associates Pty Ltd, Chartered Accountants of Lindfield.

However benefitting from the small business capital gains tax concessions is complex and most small businesses need to seek advice to be able to benefit from these substantial concessions available. Many of the issues are not as straightforward as small businesses would expect and a business should not assume that they will be eligible.

“The Guide to capital gains tax 2008-09” issued by the ATO looks simple at first glance. However it is anything but simple for a small business to understand if it is eligible because of the stringent conditions which exist.

Capital gains tax (CGT) is the tax you pay on a capital gain. It is not a separate tax, just part of your income tax. The most common way you make a capital gain (or capital loss) is by selling assets such as real estate, shares or managed fund investments. Managed funds also distribute capital gains you must report.

The small business Capital Gains Tax (CGT) concessions were introduced in 1999 with the intention of removing impediments to efficient asset management, improving capital mobility, reducing complexity and compliance costs and generally, make Australia's CGT regime internationally competitive.

Thanks to the intricate nature of the basic requirements of eligibility, the ATO has found it necessary to continually make changes to the concessions over recent years to alleviate the problems of definition and methodology and to improve access and make it easier for taxpayers to work out if they are actually eligible for the concessions.

The availability of the concession has also been mis-used. As a result of inappropriate promotions by a few advisors, the ATO issued a Taxpayer Alert warning against “offerings to eliminate capital gains tax”.

Most investors examine their realised and unrealised capital gains and look at ways to arrange these, commonly by crystallising losses to avoid CGT. The ATO is aware of circumstances in which assets appear to have been intentionally disposed of in order to offset capital gains tax and views this activity as tax avoidance under Part IVA of the Income Tax Assessment Act 1936.

This is an area that is open to interpretation and creates a complex technical and theoretical discussion. How the ATO will interpret a company's business arrangements is a grey area in the absence of clearly defined methodologies. Seeking professional advice in the planning stage of a sale is advised, from a taxation specialist with experience and knowledge of the ATO's rulings and the way in which the affairs are likely to be interpreted.

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