

From: Julian Cheng [julian@icaa.org.au]

Sent: Friday, 15 April 2005 11:02 AM

To: Board of Taxation

Subject: Review of small business CGT concessions - additional issue to be taken into consideration

Dear Sir/Madam,

Further to our recent submission on the quality and effectiveness of the small business CGT concessions, we advise that another issue has come to our attention. We appreciate that the due date for lodgment of submissions has passed but would be grateful if you could also consider this issue as part of your review. In summary, a number of our members have expressed the concern about the exclusion of significant minority interest holders from the concessions.

One purpose of the concessions was to provide greater flexibility in how small business taxpayers can access the various benefits. Another purpose was to provide small business people with access to funds for retirement or expansion. However, the concessions are only available to controlling individuals and not taxpayers with significant minority interests who may in fact play a key role in the business.

For example, one of our members has been involved in a business group of companies for 15 years as a director and substantial shareholder (49%). This shareholding is held in a holding company and the business is owned and operated through a wholly-owned subsidiary. The other director controls the remaining 51%.

In this group, the controlling shareholder and the member were both actively engaged solely in the development and management of the business. The difference in shareholding was merely a reflection of the fact that the controlling shareholder was involved in the project from the very beginning.

We consider the the small business CGT concessions are not operating with appropriate flexibility in only allowing the controlling shareholder to to access the small business CGT concessions. By not having the same rules for all the parties in this scenario, a controlling shareholder's desire to dispose of the business could be frustrated by a minority shareholder's refusal to sell his share of the business due to the unequal impact of capital gains tax. In this regard, we submit that the concessions do not "take account of actual taxpayer circumstances and commercial practices" (refer to the Board's consultation plan for the review).

We note that a control test of 40% exists when determining if an entity is a connected entity. If the same test were substituted from the current 50% control test, then the above situation would be remedied (subject to the multiple tier issue also being remedied).

Please contact me if you have any queries in relation to the above.

Regards,

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