

SBCGTintegrity

From: David Martland <david@dsmadvisory.com.au>
Sent: Friday, 23 February 2018 10:04 AM
To: SBCGTintegrity
Subject: Enquiry about: Improving the integrity of the small business CGT concessions

Categories: Saved

Dear Sir/Madam

I have only one comment in relation to the Exposure Draft released on the small business CGT concessions. I raise this because it specifically impacts a client of mine.

I understand that under the modified active asset test, cash and financial instruments will no longer be able to be included in the numerator for the purpose of applying the test in 152-40(3) unless they are trading stock (and inherently connected with the business).

From what I understand, there was no mention of this when these changes were flagged in the May 2017 budget. However, the law is to apply from 1 July 2017? Therefore, these are retrospective changes without any detail being provided about the changes until the recent release of the Exposure Draft.

I have a client that entered in to a share sale agreement post 1 July 2017 but before the release of this Exposure Draft. They did so with the understanding they would qualify for access to the small business CGT concessions in respect of the share sale. This modified active asset test now casts doubt over whether they would still qualify. This would likely have impacted their negotiation of this transaction had this been known.

I therefore cannot see merit for this particular change being retrospective and would find it very unfair if my client was penalised in this situation.

Please let me know if you have any questions.

Kind regards

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Director



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