

28 February 2018

Via email: [SBCGTintegrity@treasury.gov.au](mailto:SBCGTintegrity@treasury.gov.au)

Dear Sir or Madam

Thank you for the opportunity to contribute. We have some real concerns regarding the draft legislation. We have live examples where it penalises shareholders that otherwise would have and should continue to be entitled to the small business CGT concessions.

Consider the simple examples of two businesses. Assume these businesses are conducted through Pty Ltd companies and the shareholders have no other net worth other than their investment in their businesses. The CGT event under both scenarios is the sale of the shares in the respective companies.

### **Case Study 1**

Company A-Tech Pty Ltd is owned by one shareholder, John, aged 48, who took his savings, began an Information Technology business and grew it into a successful enterprise.

Company A Tech Pty Ltd runs a small business employing 3 individuals, out of a leased office in Adelaide. All of Company A-Tech Pty Ltd's assets are active assets, and over the past few years Company A-Tech Pty Ltd has built up net value of \$5.9m. John receives an offer to sell his shares in Company A-Tech Pty Ltd for \$5.9m and decides to sell his shares for this value.

Under both the old rules and the proposed new rules, John satisfies the maximum net asset value, as he has assets under \$6m, both in his name individually and also his small business, John is a CGT concession stakeholder and accordingly, John can access the concessions.

### **Case Study 2**

Company B Gardens Pty Ltd is owned by two shareholders, Robert and Frank, who both have 100 shares each in Company B Gardens Pty Ltd. Robert and Frank are both aged 50, they met at University, both had an interest in high quality manufacturing and took their life savings and began a bespoke garden sculpture manufacturing business which uses special high quality carbon to produce specialty installations such as privacy screens for commercial and residential applications.

Company B Gardens Pty Ltd leases a manufacturing facility in Northern Adelaide and employs 12 staff. All of Company B Gardens Pty Ltd assets are active assets, and over the past 10 years, Robert and Frank have grown the business to a net value of \$8m. Robert and Frank receive an offer to sell their shares to a private equity organisation for \$4m each to Robert and Frank (total \$8m).



Under the old rules, both Robert and Frank would satisfy the SBCGT concessions – as their assets are under the maximum net asset value and both are CGT concession stakeholders, however under the proposed law, both Robert and Frank would not be entitled to access the concessions due to the wording of the new law requiring the business value (itself) to be less than \$6m – this is notwithstanding that the business is held by 2 shareholders and their respective interests is still under the maximum net asset value.

### **Conclusion / Summary**

The proposed law as it is currently drafted penalises collaborative business effort. Under the above relatively simple and very common case study scenarios - there are clearly outcomes under the proposed law that are inequitable.

Eg - John gets CGT concessions on \$5.9m worth of shares, however, Robert and Frank do not get CGT concession on \$4m worth of shares.


We understand the intent of the changes is to prevent taxpayers with more than \$6m from accessing the concessions, but our example shows that it affects taxpayers with less than \$6m merely because they are participants in a business with others. In situations where participants/stakeholders themselves have greater than \$6m we agree that changes should be made but not to the detriment of hard working Australians involved in businesses where their interest is less than \$6m.

For many small business owners, their business investment represents a significant proportion towards their retirement nest egg. Enacting retrospective legislation does not allow adequate time for such business owners to properly prepare and plan for retirement with certainty regarding the likely tax outcomes. This is particularly relevant, given the role that the small business CGT concessions play for retiring business owners to provide for their own retirement. Accordingly, we recommend any changes to the law be prospective, and set for a future start date to provide time for taxpayers and agents to understand any new law and be in a position to make informed decisions.

We suggest the basic conditions for eligibility should remain unchanged in terms of accessing the concessions. Alternative business structures such as operating as a partnership may provide access to the SBCGT concessions – but there are commercial impracticalities, such as risk protection and limited liability issues that mean it is not viable for joint business owners to conduct business without the use of a corporate structure – and therefore the SBCGT rules need to accommodate such business owners.

Yours sincerely,

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