**Small Business CGT Concessions Checklist**

Prepared by: Click or tap here to enter text.

Date: Click or tap here to enter text.

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Date: Click or tap here to enter text.

Name of Client: Click or tap here to enter text.

Tax File Number: Click or tap here to enter text.

**Basic conditions**

|  | **Y** | **N** | **N/A** |
| --- | --- | --- | --- |
| * Did the client (“taxpayer”) make a capital gain from a CGT event that happened to a CGT asset during the income year? |  |  |  |
| * At least ONE of the following applies: * the taxpayer is CGT small business entity (SBE); * the taxpayer satisfies the net asset value test; * the taxpayer is a partner in a partnership that is an CGT SBE and the CGT asset is an asset of the partnership; * the asset is a passively held asset used in a business of an affiliate or connected entity; * the asset is a passively held asset of a partner used in a partnership business;   AND   * the CGT asset satisfies the active asset test. | See under headings below for checklist details of these basic conditions. | | |

**Additional conditions: shares and trust interests**

|  | **Y** | **N** | **N/A** |
| --- | --- | --- | --- |
| * Is the CGT asset is a share or an interest in a trust (the “object entity”)? |  |  |  |
| * ONE of the following conditions must be satisfied (in addition to the basic conditions): * the taxpayer is a “CGT concession stakeholder” in the object entity (ie the taxpayer owning the shares or trust interests is an individual); * “CGT concession stakeholders” in the object entity together have a “small business participation percentage” in the taxpayer of at least 90% (ie the taxpayer owning the shares or the trust interests is a company or trust). | See under headings below for checklist details of these additional conditions. | | |

**CGT small business entity test**

|  | **Y** | **N** | **N/A** |
| --- | --- | --- | --- |
| * Does the taxpayer: * carry on a business in the income year in which the capital gain arises (see TR 2019/1; and * have an aggregated turnover of less than $2 million?   A partner can satisfy this test if the partnership is a CGT small business entity and the CGT asset is a partnership asset. |  |  |  |
| * Have you calculated aggregated turnover? |  |  |  |
| * Aggregated turnover is the turnover of: the taxpayer + connected entities + affiliates: |  |  |  |
| * **Connected entity:** is there an entity that “controls” the taxpayer or together with the taxpayer is controlled by a third entity? |  |  |  |
| * **Affiliate:** is there an individual or company that acts, or could reasonably be expected to act, in accordance with the directions or wishes of the taxpayer or in concert with the taxpayer in relation to the affairs of the business of the individual or company? |  |  |  |

**CGT small business entity test and passively held assets**

|  | **Y** | **N** | **N/A** |
| --- | --- | --- | --- |
| * If the taxpayer does not carry on a business, have you checked whether the taxpayer can access the concessions via the CGT small business entity test for an asset they own which is used in a business carried on by a connected entity or affiliate? |  |  |  |
| * Are you aware that a partner can access the concessions via the CGT small business entity test where the partner owns an asset independently of their interest in the partnership that is used in the business of the partnership? |  |  |  |
| * Are you aware that a taxpayer can access the CGT small business entity test where the CGT asset is used in a business carried on by the taxpayer's spouse or child under 18 through an entity that the spouse or child controls? |  |  |  |

**Net asset value test**

|  | **Y** | **N** | **N/A** |
| --- | --- | --- | --- |
| * Have you determined whether the sum of the net value of the CGT assets owned by the taxpayer, connected entities and affiliates did not exceed $6 million?   This test is applied just before the CGT event.  Some assets – including shares, trust interests in a connected entity and personal use and enjoyment assets – are excluded for this test.  For partners, the maximum net asset value test is applied at the partner level, ie on the basis of the individual partner being the taxpayer.  To determine the net value of the assets, take their market value and subtract:   * liabilities that relate to the assets: see TD 2007/14; and * provisions made by relevant entities for annual leave, long service leave, unearned income and tax liabilities. |  |  |  |

**Active asset test**

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Y** | **N** | **N/A** |
| * Is the CGT asset owned by the taxpayer: |  |  |  |
| * used, or held ready for use, in a business conducted by the taxpayer? |  |  |  |
| * used, or held ready for use, in a business conducted by a connected entity or an affiliate? |  |  |  |
| * for an intangible asset (eg goodwill) – inherently connected with a business being conducted by any of the above? |  |  |  |
| * for shares or trust interests in Australian resident entities – is at least 80% of the market value of the assets of the entity made up of active assets? |  |  |  |
| * Is the asset excluded from being an active asset?   See the assets listed in s 152-40(4). |  |  |  |
| * Has the asset been an active asset for least half the ownership period? |  |  |  |
| * If the ownership period exceeds 15 years, has it been an active asset for at least 7.5 years? |  |  |  |

**Shares and trust interests: CGT concession stakeholder test**

|  | **Y** | **N** | **N/A** |
| --- | --- | --- | --- |
| * For a CGT asset that is a share or an interest in a trust (the “object entity”) is the taxpayer a “CGT concession stakeholder”? That is: * a significant individual in the entity (an individual with a “small business participation percentage” of at least 20%); or * the spouse of a significant individual? |  |  |  |
| * Alternatively, where the taxpayer owning the shares or trust interests is a company or trust, do CGT concession stakeholders in the object entity together have a “small business participation percentage” in the taxpayer of at least 90%? |  |  |  |

**Calculation**

|  | **Y** | **N** | **N/A** |
| --- | --- | --- | --- |
| * Have you reduced the assessable capital gain by any prior and/or current year capital losses, and the CGT discount (if applicable) before applying the concessions (except the 15 year exemption)? |  |  |  |

**15-year exemption**

|  | **Y** | **N** | **N/A** |
| --- | --- | --- | --- |
| * Are you satisfied that the **basic** conditions (see above) for the concession have been met? |  |  |  |
| * Are you satisfied that the following conditions for the exemption have also been satisfied: |  |  |  |
| * the age and retirement or permanent incapacitation condition? |  |  |  |
| * the continuous 15-year ownership condition? |  |  |  |
| * the business-use holding period requirement? |  |  |  |
| * for shares or trust interests – the significant individual test? |  |  |  |
| * Where the client that owns the asset is not an individual, are you satisfied that these **further** requirements have been met: |  |  |  |
| * the significant individual test (including where a discretionary trust has losses)? |  |  |  |
| * the requirement to pay an exempt amount to a CGT concession holder (and the relevant "CGT cap" for the making of non-concessional superannuation contributions)? |  |  |  |
| * the period within which payment must be made? |  |  |  |
| **NOTE**: it is obligatory to apply the exemption if the conditions for it are met. |  |  |  |

**50% active asset reduction**

|  | **Y** | **N** | **N/A** |
| --- | --- | --- | --- |
| * Are you satisfied that the **basic** conditions (see above) for the concession have been met? |  |  |  |
| * Are you aware that: |  |  |  |
| * the retirement exemption and/or small business roll-over (see below) can be applied in addition to the 50% reduction? |  |  |  |
| * it is not obligatory to apply the 50% reduction – and if your client is a company or a unit trust, it may be more beneficial to apply the retirement exemption? |  |  |  |

**Retirement exemption**

|  | **Y** | **N** | **N/A** |
| --- | --- | --- | --- |
| * Are you satisfied that the **basic** conditions (see above) for the concession have been met? |  |  |  |
| * Are you satisfied that the following conditions for the exemption have also been satisfied: |  |  |  |
| * payment of gain to complying super fund if taxpayer client is less than 55? |  |  |  |
| * payment made within the relevant period? |  |  |  |
| * payment does not exceed the client’s lifetime CGT retirement exemption limit? |  |  |  |
| * Where the client that owns the asset is not an individual, are you satisfied that these requirements have also been met: |  |  |  |
| * the significant individual test? |  |  |  |
| * payment of amount to CGT concession stakeholders within the required periods? |  |  |  |
| * the amount was paid to a super fund if the stakeholder is less than 55? |  |  |  |
| * payment cannot exceed the stakeholder’s lifetime CGT retirement exemption limit (and the relevant CGT cap for non-concessional superannuation contributions)? |  |  |  |
| * choice made to apply the exemption and adequate records kept? |  |  |  |

**Small business rollover**

|  | **Y** | **N** | **N/A** |
| --- | --- | --- | --- |
| * Are you satisfied that the **basic** conditions (see above) for the concession have been met? |  |  |  |
| * Are you satisfied that the following conditions for the roll-over have also been met: |  |  |  |
| * acquisition of replacement asset (or improvements) within relevant period? |  |  |  |
| * replacement asset or improvement becomes active asset within relevant period? |  |  |  |
| * if replacement asset is a share or a trust interest - significant individual test? |  |  |  |
| * Have you documented that if these conditions are not met, the capital gain rolled over will be reinstated at the end of the replacement asset period? |  |  |  |

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