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Small business CGT concession common errors

Small business owners may be eligible for various concessional treatments for transactions that involve capital gains tax (CGT). These concessions can reduce, defer or at times even eliminate tax payable from capital gains. Applying these concessions can often trip up small business taxpayers.

The Tax Office recently reported that its compliance work had revealed some common mistakes occurring on a regular basis from small business owners when applying the relevant tests for eligibility to these CGT concessions.

There are four concessions that may be available to eliminate or reduce capital gains made by a small business in respect of eligible assets:

- **The 15 year exemption**: Where a retiring taxpayer has held an asset for at least 15 years
- **The retirement exemption**: Where capital proceeds are put towards retirement savings (there is no need to actually retire)
- **The 50% active asset reduction**: The capital gain may be discounted by 50% (not to be confused with the 50% general discount for assets held for at least 12 months by certain taxpayers), and
- **The CGT rollover**: A capital gain may be deferred if a replacement asset is acquired within a specified time frame.

The concessions are subject to a number of eligibility criteria and conditions; ask this office if you would like to know more about these concessions for small business.

In an effort to stem the tide of erroneous claims, the Tax Office issued a statement, directed to both small business entities and to their tax agents, about its areas of concern.

Maximum net asset value

The Tax Office said that one of the most common errors seems to surround the maximum net asset value test, which is one of the basic conditions that may need to be satisfied in order to gain access to the concessions in some circumstances.

Under this condition, just before the relevant CGT event happening, the total "net value" of CGT assets that the taxpayer and specified related entities own cannot be more than $6 million. (This is inclusive of the CGT asset subject to the CGT event.)

Broadly, the net value of the CGT assets of an entity is the total market value of its assets, less any liabilities relating to those assets. The net asset value of an entity is also reduced by any provisions for annual leave, long service leave, unearned income and tax liabilities.

As noted, the maximum net asset total not only includes the value of assets that are owned by the taxpayer conducting the business, but also assets

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About this newsletter

Welcome to our client information newsletter, your monthly tax and super update keeping you on top of the issues, news and changes you need to know. Should you require further information on any of the topics covered, please contact us via the details below.

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Also in this issue:

of any "connected entities" and "affiliates" of the taxpayer (contact this office for an explanation of these terms). The Tax Office said that failing to identify "connected entities" and "affiliates" is one of the common mistakes, but other errors include:

- the valuation of assets at historical cost rather than market value just before the CGT event
- not including the CGT asset sold in the calculation, and
- not including relevant goodwill assets in the calculation.

The Tax Office added that where a market value is required, accepted valuation principles should be applied.

Use contract date, not settlement date

The Tax Office also found that business owners had incorrectly used the settlement date instead of the contract date when recording details of the CGT event. This can end up resulting in:

- the "active asset" test not being met (broadly, that the asset be "actively" used in the business for a certain period of time), or
- incorrectly applying the 15 year exemption when the asset had not been held for that time.

The Tax Office noted that a CGT event is generally deemed to occur at the time a contract is entered into, not at the settlement date.

Where contract and settlement dates cross over financial years, the capital gain or loss should be declared in the financial year in which the contract was signed.

Earn-out arrangements

The sale of a business often includes a clause that the seller will obtain further payments based on the business achieving certain future goals, otherwise referred to as earn-out rights. The Tax Office said that earn-out rights must be included in the capital proceeds when selling a CGT asset, and also when calculating the maximum net asset value. ■

Consolidated dependant (invalid and carer) tax offset

The consolidated dependant tax offset was introduced in the 2012-13 federal budget in May, and combines and consolidates eight of the existing dependency tax offsets into one single non-refundable tax offset for taxpayers who contribute to the maintenance of someone who is genuinely unable to work because of invalidity or care obligations.

The offsets that have been consolidated are the invalid spouse, carer spouse, housekeeper, housekeeper (with child), child housekeeper, child housekeeper (with child), invalid relative and parent/parent-in-law tax offsets.

Taxpayers who were eligible to receive more than one dependency offset amount in respect of multiple dependants who are genuinely unable to work will be able to receive more than one amount of the consolidated dependant tax offset in respect of these dependants (however see "Other entitlements" on the next page). Note that in the rare cases of having multiple spouses during an income year, more than one full offset cannot be claimed.

However, a number of eligibility requirements must be met before a taxpayer can make a claim for the dependant tax offset.

These requirements include:

- maintenance of a dependant
- eligibility of the dependant (including residency requirements of both the taxpayer and the dependant)
- invalidity or carer obligations
- income requirements, and
- must not be in receipt of other entitlements (or not eligible for other entitlements in some cases).

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Maintenance

A taxpayer may satisfy this requirement for an income year if, during the year, they contribute to the maintenance of an eligible dependant. Determining whether a taxpayer has contributed to a dependant is open to interpretation. However it is generally accepted that if a taxpayer resides with a dependant, it will be generally accepted that they have contributed to their maintenance.

Eligible dependant

An eligible dependant of a taxpayer includes their:

- spouse
- parent
- child (aged 16 years or over)
- brother or sister (aged 16 years or over)
- spouse's parent, and
- spouse's sibling (aged 16 years or over).

The above listed dependants are only eligible if they are:

- genuinely unable to work due to invalidity or carer obligations, and
- Australian residents (see below for an exception to this general rule).

Note however that a taxpayer can still claim the tax offset for a foreign resident spouse or child if the taxpayer is domiciled in Australia.

Invalidity or carer obligations

A dependant is seen to be genuinely unable to work due to invalidity where the person receives a disability support pension or a special needs disability support pension under the Social Security Act 1991. Alternatively this test can be passed if the dependant receives an invalidity support pension under the *Veterans' Entitlement Act 1986.*

A dependant is genuinely unable to work because of a carer obligation if they:

- receive a carer payment or carer allowance under the *Social Security Act 1991*, or
- are wholly engaged in providing care to a relative who receives one of the following entitlements:
  - a disability support pension or a special needs disability pension under the *Social Security Act 1991*, or
  - an invalidity service pension under the *Veterans' Entitlements Act 1986.*

Income requirements

The income threshold rules for the new consolidated Dependant (Invalid and Carer) Tax Offset for the 2012-13 year are as per the table below.

The definition of income used for the purposes of the income limit eligibility cap for the dependant tax offset will be aligned with that which applies to family assistance payments for Family Tax Benefit Part B, which is currently $150,000 (this is updated every year on July 1). Adjusted taxable income will be used to determine whether a taxpayer passes this income test.

Income threshold rules for the new consolidated Dependant (Invalid and Carer) Tax Offset 2012-13	
Eligibility income threshold requirement for taxpayer	The taxpayer's and his/her spouse's combined adjusted taxable income is $150,000 or less*
Dependant's income threshold requirement	Dependant's adjusted taxable income is below the cut-out point (less than $9,974 for 2013). For full rebate income is $282
* Ask this office how to determine your adjusted taxable income.	

Other entitlements

A taxpayer is not entitled to a Dependant (Invalid and Carer) Tax Offset to the extent that they or their spouse received Family Tax Benefit (FTB) Part B (without shared care). If the couple received FTB Part B with shared care, the offset is reduced for the shared care percentage a taxpayer receives.

A taxpayer entitled to a zone, overseas forces or overseas civilian offset is not entitled to a Dependant (Invalid and Carer) Tax Offset. However, note that where a spouse is born before July 1, 1952 the taxpayer is entitled to the former Dependant Spouse Tax Offset rather than the new dependant tax offset.

It is also important to note that some of the previous dependant tax offsets have been "notionally" retained (retained only to help work out other offsets). They are used purely for the purposes of calculating zone or overseas forces offsets. Ask this office if your circumstances put you in this position. ■

When can I access my SMSF?

Self-managed superannuation funds (SMSFs) are typically established to fund the retirement of its members, meaning accessing benefits is generally only allowed when a member reaches their "preservation age" and meets one of the specified conditions of release.

What is my preservation age?

Preservation age depends on when a person was born (see following table).

Date of birth	Preservation age
Before 1 July 1960	55
1 July 1960 - 30 June 1961	56
1 July 1961 - 30 June 1962	57
1 July 1962 - 30 June 1963	58
1 July 1963 - 30 June 1964	59
After 30 June 1964	60

"Preservation" means that money in superannuation must remain in the fund until one of the specified conditions of release (more below). Super benefits are allocated to three preservation categories – preserved, restricted non-preserved and unrestricted non-preserved benefits.

Preserved and restricted non-preserved benefits must be retained in superannuation until a condition of release is met (with the latter having an added release condition dealing with ceasing "gainful employment", but it's a fine distinction and you should check with this office).

These two categories basically transform into unrestricted non-preserved benefits when a condition of release is met. Unrestricted non-preserved benefits can be accessed, with no conditions of release having to be met. Unrestricted non-preserved benefits are generally from certain amounts funds accumulated before July 1, 1999, when the legislation to protect superannuation savings came in.

Cashing of benefits

Getting money from an SMSF is known as "cashing of benefits", and can be paid as a lump sum or by starting a pension (and there are "restrictions" about which form of payment can be made, consult this office for more information). When a member can apply for the cashing of benefits depends on both preservation conditions and meeting a condition of release.

Legislation spells out in some instances the form that cashing of benefits must take, known as "cashing restrictions", and an SMSF's trust deed can also stipulate rules for paying benefits to members. All forms of payments are "voluntary" cashing of benefits (in that the member, once eligible, can decide to cash benefits) with the one exception being the death of a member, when benefits must be "compulsorily" cashed out.

Conditions of release

To withdraw benefits from your SMSF, you must satisfy the conditions outlined in your trust deed and the Tax Office's conditions of release. The most common conditions of release for paying out benefits are:

- Retirement: Actual retirement depends on a person's age and, for those less than 60 years of age, their future employment intentions. A retired member can't access their preserved benefits before they reach their preservation age
- Transition to retirement (attaining preservation age): Members who are under the age of 65 and have reached preservation age, but remain gainfully employed on a full-time or part-time basis, may access their benefits as a "non-commutable income stream" (cannot be withdrawn as a lump sum)
- Attaining age 65: A member who reaches age 65 may cash their benefits at any time. There are no cashing restrictions (but it's not compulsory to cash out benefits merely because they've reached a certain age).

There are a number of other circumstances in which benefits can be released:

- Incapacity: If, due to ill health, an SMSF member ceases gainful employment and is unlikely to regain work for which they are qualified, benefits may be cashed with no restrictions. If the end of gainful employment is due to a temporary state of health and is not a permanent condition, temporary incapacity benefits may be paid as a non-commutable income stream. This is generally up to the level of income received before the temporary incapacity, and includes salary support insurance or sick leave payments
- Severe financial hardship: Releasing benefits on these grounds depends on being able to show that a member cannot meet living expenses

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and has been on government income support for either 26 weeks or 39 weeks (depending on age). There are also restrictions on payment amounts, and advice is recommended

- Compassionate grounds: Until recently, the Australian Prudential Regulation Authority (APRA) had the discretion to release benefits on compassionate grounds, but the role has now been taken over by Medicare. Early release is generally done for things like treating life threatening illness, palliative care or other medical support, or to prevent foreclosure on the family home. The amount of benefits released is determined by the government, and must be made as a lump sum
- Temporary resident leaving the country: Eligible temporary resident visa holders who permanently leave Australia can apply to the Tax Office to have accumulated superannuation benefits paid out
- Terminal illness: On confirmation of diagnosis of a terminal medical condition, all benefits become unrestricted non-preserved and can be cashed out. Prescribed certification from medical practitioners will be required.

No early access

Setting up or using an SMSF to gain improper early access to superannuation benefits is illegal, and this area has become a focus for the Tax Office given the increasing number of SMSFs illegally accessing their benefits.

If a benefit is unlawfully released, the Tax Office may apply significant penalties to trustees, the SMSF itself and the recipient of the early released payments. Speak to this office before deciding to access your benefits. ■

Be on the lookout for these business scams

A recent global report revealed that Australians are the most fearful people in the world when it comes to identity theft and fraud – an unsurprising statistic considering the sheer number of scams that seem to be circulating. Protect yourself and your business by being aware of the common scams targeting small businesses.

False billing scams

The most reported of small business scams, false billing scams often manifest themselves in the form of subscription forms disguised as an outstanding invoice or a "renewal notice" that get businesses to sign up for unwanted advertising services or unauthorised listings in magazines, journals, business registries or directory.

Scammers often falsely claim that the publication or directory is well-known and has a high readership, and the offer may sound like a "free" entry but charges can be hidden in the fine print, resulting in demands for payment later. The warning signs include:

- you receive a call or invoice from a business directory or publication you've never heard of, confirming your entry or advertisement
- the caller claims that the government requires you to be listed in their register
- the caller reads out your listing or advertisement and you recognise it as a listing you put in a different publication.

Tips to protect you from false billing scams are:

1. ensure the business billing you is the one you normally deal with
2. always check that the entry or advertisement was both ordered and delivered before paying an invoice
3. be aware that a scammer may quote a genuine entry or advertisement you placed in a different publication or directory to convince you to pay
4. never give out or clarify any information about your business unless you know what the information will be used for
5. if you receive an offer for a free trial, check for any hidden terms

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6. try to avoid having a large number of people authorised to make orders or pay invoices
7. never agree to any business proposal on the phone, always ask for an offer in writing, and
8. if you are unsure about any part of a business offer, ask for more information or seek independent advice.

Phishing refund scams

A phishing email that claims that the recipient is entitled to a "tax refund" is currently circulating and states that recipients should click on the embedded link or open an attachment to complete an online form to receive the refund. These emails can differ in their appearance and level of sophistication, but key indicators of this scam are:

- the email asks you to provide personal details (you should always be suspicious of this)
- it is poorly worded with spelling and grammar mistakes (though not always the case)
- includes an attachment form or link to a webpage to lodge a form
- comes from an email address which is not a valid ATO email address, and
- asks for credit card and PIN numbers.

How to deal with phishing emails:

1. do not click on the link in the email, as it will open a fake webpage that will attempt to obtain your tax file number
2. do not open any attachments, as they are often infected with a virus or a malicious program
3. delete them immediately, as the ATO will never email you asking for personal details, and
4. only access the ATO's online services by typing directly into your browser.

Yellow Pages directory fax scams

In early August, the Australian Competition and Consumer Commission (ACCC) warned small businesses to watch out for fraudulent faxes claiming to be from Yellow Pages Australia and Open Business Directory. Key indicators of this scam are:

- these faxes appear to be seeking confirmation of contact details for their business. On closer inspection however, the fax is in fact an agreement to sign up to an online business directory service charged at $99 per month for a minimum two-year period, and
- they contain an invoice due date, and scammers may soon start hassling businesses for payments or threatening them with late payment fees, legal action or debt collection

How to deal with fraudulent faxes:

1. bin them, as Sensis will never approach you this way
2. ignore and report any threatening phone calls, emails or faxes demanding payment, and
3. spread the word and ensure your employees are aware of this scam and know how to protect your business.

Overpayment scams

This involves scammers making contact to purchase goods and services from you, and then sending you a payment by cheque, money order or credit card for far more than the agreed price. The scammer then asks you to refund the overpayment or to pay the scammer's "freight company".

The scammer is hoping you will transfer the refund or pay for "freight" before you discover that their cheque has bounced or that their money order or credit cards were phoney. Businesses may end up losing money, as well as the item they were selling if they had already sent it to the scammer. Common products that overpayment scammers target include used cars or boats, and electronic items such as smart phones, tablet devices and laptops.

How to detect overpayment scams:

- be suspicious if you are overpaid for products
- be wary of complicated or unlikely orders.

Investment scheme scams

This scam usually involves telemarketing campaigns peddled as tax-free opportunities, which often turn out to be sports betting schemes or betting software offers in disguise and are nothing more than gambling.

- watch out for unsolicited offers with keywords such as "tax-free wealth", "strategic investment", "investment not gambling" or "recession proof" – these schemes are not investment opportunities.

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Domain name scams

Under this scam, you'll be sent either an unsolicited invoice or email for an internet domain name registration very similar to your own business domain name or a renewal notice for your actual domain name. If you have a registered domain name and receive a renewal notice, check that it:

- matches your current domain name exactly – look for small differences such as "com.au" instead of "net.au". Remember, even if the core business name is the same, it could be a completely new domain name, and
- comes from the company you originally registered your domain name – check for the actual expiry date for your existing domain name to confirm if it is really due for renewal.

Office supply scams

These scams often involve products or services that businesses regularly order such as stationery and cleaning supplies. Scammers typically call businesses pretending that the service or product has already been ordered and will pretend to be a business's "regular" supplier – telling them that the offer is "special" or is available for a limited time.

- ask for proof if the caller claims that your business has ordered or authorised something and you do not think it sounds right. Check that goods have actually been ordered and delivered.

Email intercept scam

Under this scam, the scammer gains access to your supplier's email account and intercepts emails going from you to the supplier and vice versa. Using this technique, the scammer is able to send you a deposit invoice and change the bank account details – causing you to make a money transfer to an incorrect account.

- if you notice a supplier's usual bank account details have changed, call them to confirm.

Ransomware scam

Akin to an extortion scheme whereby scammers hijack your computer files and then demand a ransom so you can have them back, ransomware scams sometimes involve users finding that their computer has been frozen. Scammers have used pop-up alerts that claim to be from the Australian Federal Police saying that the computer has been locked because a business has visited an illegal website or breached various laws. The scammer claims that they will unlock the computer if a fee is paid.

To protect yourself from a ransomware attack:

- ensure your computer has a firewall and up-to-date anti-virus and anti-spyware software
- use a pop-up blocker as a lot of ransomware is delivered via pop-up alerts, and
- back-up your personal computer files and system files regularly.

Fax back scams

Scammers fax businesses an offer that requires one to accept by sending a fax back to a premium rate number (starting with "19") to accept. The scammers make sure that it takes several minutes to process the fax, resulting in a hefty phone bill.

Scams succeed because they look authentic and prey on time-poor small business owners. Protect yourself and your business by being aware of the common tricks employed by scammers. ■

Business reporting moves to the next level

Up until recently, the lack of standardised reporting processes and requirements across multiple government agencies meant that businesses often had to interpret the terms used and the type of information required for different government reporting needs.

The solution, "Standard Business Reporting" (SBR), was launched in 2010 with the intention to streamline how businesses report and lodge mandated requirements to government, including to the Tax Office. Businesses that sign on can use SBR-enabled software to prepare and lodge key government forms and electronic reports directly from their own computer systems, and to do so use a single secure log on called AUSkey when sending reports to agencies via SBR. AUSkey does away with the need to have different passwords or log-in details for each government agency, and is the responsibility of the Australian Business Register (see www.auskey.abr.gov.au).

The SBR program is a long-term project, with an intention to extend the same standards and reporting tools to not just business-to-government dealings but eventually business-to-business. The initial focus of SBR was for tax reporting and company compliance, with super the next area to be given the SBR treatment.

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Now the government is set to move SBR to the next level with the announcement that the platform is moving from a proprietary interface to an open-source solution, and one that adopts international e-commerce standards. The Tax Office move to an open-source environment may shape future applications of the program.

Taking the program into open-source territory will also open the door to improvements and add-ons being developed by the wider software developer community, with the justified hope that more and easier applications will encourage more businesses to take up electronic reporting and related commerce solutions. The same open-source standard is being widely adopted in Europe, where several countries are mandating schemes similar to Australia's SBR.

The new SBR standard should also shape how superannuation regulatory and administration requirements are handled, and will thus inform and contribute to the government's SuperStream program (which has the stated aim of streamlining the industry's "back office").

Under this initiative, employers of more than 20 staff will, from July 2014, be required to adopt the SuperStream standards for their superannuation obligations.

After that the business reporting standard will be applied to employer reporting obligations for the Department of Human Services, with reporting to the Insolvency and Trustee Service the next organisation to adopt SBR, before moving progressively to every other government agency. ■

Did you know…

How long does it take to earn the price of a beer?

Every year in the Bavarian city of Munich, the Oktoberfest famously celebrates beer in all its forms. Over the 16-day event, visitors manage to consume around 7.6 million litres of the amber fluid, which sold at a recent festival for an inflated asking price of €9 (around $13.50) per litre, which is the capacity of a typical large stein.

Germany is a beer-loving nation, with a recorded average consumption of 100 litres per person each year. Except of course the foaming brew is more affordable away from the tourists and hoopla of the Oktoberfest.

Just for a bit of financial comparison fun, analysts at the Swiss bank UBS calculated how long it would take a German worker, earning that country's national median wage, to make enough money to buy a half-stein (500ml) at a retail outlet. The data indicated that the thirsty German would have to labour for just under seven minutes to earn his fist of foaming amber.

At the other end of the bar stand the parched workers in India, who are required to toil for almost an hour, due to higher taxes and lower wages, before being able to pay for a cold one. In fact (and perhaps somewhat unfairly), it is the hotter countries that have the longest work time required to buy a cold beer. The Philippines comes in at 38 minutes, Nigeria at 29 minutes and Vietnam at 28.

Australians on the other hand have to work about 12 minutes per beer (although that's a half litre, so it's a good sized beer), while our US friends are luckier than even the Germans and have to work for only around five minutes before earning a brewski. French beer drinkers need to labour for 10 minutes to earn their half litre, just behind China at around eight minutes. Our Mexican friends have to sweat through 15 minutes to earn their beer, while the Japanese have to stick at the job for about 18 minutes to earn enough for their brew.

The average, out of the 27 countries that UBS surveyed, is 20 minutes of earning the national median hourly wage to buy a half litre of that country's typical local brew. ■