

## **SMALL BUSINESSES SHOULD CAREFULLY CONSIDER THEIR ENTITLEMENT TO SMALL BUSINESS CAPITAL GAINS TAX CONCESSIONS WHENEVER AN ASSET IS SOLD**

Certain Small Business tax payers may be entitled to capital gains tax concessions (CGT) on disposal of their CGT asset.

In order to apply the Small Business CGT concession the asset disposed of must have satisfied the active asset test. The test requires that the asset must have been an active asset in the tax payers business just before the earlier of:-

- Its disposal
- The cessation of the relevant business (if the relevant business has ceased in the previous 12 months before the disposal).

In regard to the second requirement the Tax Office has declared in a recent interpretative decision (ID) that the sale of shares in the relevant business is not a cessation of the business.

The ID examines a case where the tax payer owned premises that were used in the business for a partnership. One of the partnership entities was connected to the tax payer through a common controller. As a result the premises were an active asset of the tax payer even though the tax payer did not use the premises in the course of carrying on its own business.

At a later date the partnership entity ceased being connected to the tax payer when the common controller sold its shares. However the entity continued to carry on the same business.

Subsequently the tax payer sold the premises and made a capital gain. The tax payer argued that the premises were an active asset just before the cessation of the partnership business which occurred on disposal of its shares.

Therefore the active asset test would be satisfied and the concession would be available to reduce the capital gain.

The Tax Office rejected this argument and emphasised that the sale of shares did not constitute a cessation of business. As such the tax payer was not entitled to the CGT concession as the active asset test could not be satisfied.

*Jeannette Eid*  
*Partner*  
*Wainwright Ryan*