

A GUIDE FOR SELLING OR CLOSING YOUR BUSINESS



As a hard-working small business owner, you've spent years building your own livelihood and now, for whatever reason, you've decided the time has come to sell or close your enterprise.

To assist you, the Australian Tax Office provides detailed guidance on important legal and taxation matters you will need to address. Our Enrizen team has briefly clarified some of the more confusing requirements to help you get your head around this overwhelming time.

GOODS AND SERVICES TAX

- **DISPOSING OF CAPITAL ASSETS** If you are registered for GST, disposing of capital assets is a taxable sale and you are required to account for GST.
- **MARGIN SCHEME** If you are selling real property, the margin scheme calculates the GST as being 1/11th of the difference between the sale price and the purchase price or approved valuation.
- **SALE OF A GOING CONCERN** A business sold as a going concern is generally exempt from GST however the ATO recommends you obtain a private ruling relating to your particular circumstances.

CAPITAL GAINS TAX (CGT)

The sale of your business' assets may incur CGT if you sell them for more than their cost base.

SMALL BUSINESS CONCESSIONS If you satisfy the definition of 'small business' for CGT purposes (currently net assets of \$6 million or less) you may be eligible for:

- CGT exemption on assets owned continuously for at least 15 years;
- 50% capital gain reduction on active assets or total relief if you are retiring; and
- deferred capital gains for two years, or longer if you acquire a replacement asset.
- **EARNOUTS** If a price can't be agreed at sale time an 'earnout agreement' allows payment of an initial lump sum with subsequent payments made based on the business' performance after sale. These payments are considered received in the year the sale occurred, often requiring the amendment of prior year tax returns.
- **EVENT K6** If you own pre-CGT shares and the market value of your company's post-CGT assets are at least 75% of the net value of the company, the ATO may deem your shares to be post-CGT assets.

- **BUY/SELL AGREEMENT** An agreement whereby the surviving business partners will buy out your interest in the business should you die, become disabled or retire. If the payout from a life insurance policy is used, the proceeds will be exempt from CGT.
- **CAP ELECTION** Should you satisfy the 'small business' net asset threshold and the 15-year ownership CGT exemption you may be eligible to make a non-concessional contribution of your business sale proceeds into superannuation without affecting your non-concessional cap. A lifetime limit of \$500,000 applies.
- **ROLLOVER STATEMENT** You must provide certain information to a super fund when rolling over an ETP consisting of a CGT-exempt component.
- **DIVISION 7A** If your business forgives all or part of a debt owed by you as a shareholder or shareholder's associate, the debt may be treated as dividends under Division 7A. You can seek the Tax Commissioner's discretion in this area.
- **DEMURGERS** If your selling your company as several separate entities your demerger may have CGT consequences.
- **WINDING UP A COMPANY** If your company pays a distribution to shareholders of money or property that has been derived from income and not paid up share capital, that distribution may be deemed to be dividends.

CGT provisions can be triggered when a company makes a final or interim distribution where the distribution is not deemed to be dividends. If a liquidator has been appointed, it has an obligation to collect any debts owed to the ATO.
- **FINALISING EMPLOYEE OR INDEPENDENT CONTRACTOR OBLIGATIONS:** If your business has employees, including independent contractors, you will need to finalise matters relating to FBT, PAYG, superannuation and eligible termination payments for those employees.

This can be a complicated process so you should always seek professional advice regarding the legal and taxation matters involved and above all, retain all related documentation and records

NEXT STEPS

Get in touch with Tom Heslop via email or phone to discuss your options.



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