CGT small business relief strategy puts business buy-out two years ahead

Others may have overlooked this lesser-known option to defer gain to allow access to funds, rather than having to roll the gain into super

This strategy only works for those capital gains tax (CGT) stakeholders who are within approximately two years of age 55. Collins Hume recognised the opportunity and used it to good effect to help our client recently.

We assisted a client who is a business owner and who was looking to bring in a minority shareholder and raise some funds. Our client was buying out a retiring partner and it was tight raising all the funds to purchase the full share. However they did have some friends from overseas who were keen to invest in an Australian business to help assist them with future Australian residency, so there were synergies.

As our client didn't particularly want their retiring partner to know they were bringing in an unrelated party, they sold part of their existing shares to their friends and purchased all of the retiring partner's share themselves via a new discretionary trust for asset protection and tax effectiveness. By selling some of their existing shares in the company they had potential CGT issues with which to deal.

As part of our analysis we determined that our client qualified for small business CGT concessions. Applying small business CGT concessions was an obvious choice as it could reduce the taxable capital gain where eligibility criteria were met.

Given the particular circumstances, we were able to apply the small business retirement exemption which would allow us to reduce any taxable capital gain to nil. Under this particular exemption there is the requirement to roll the capital gain into super where the CGT stakeholder is under 55. Where the CGT stakeholder is over 55, the gain can be paid directly to that individual.

As the elder of the husband and wife was only aged 53, by applying a little known strategy, we were able to defer the deemed CGT date by two years, putting the CGT stakeholder over the age of 55 and allowing them to access money equal to the gain tax free.

Under normal circumstances the gain would need to be paid into super with access not being available until a condition of release had been met under superannuation rules.

Happy to have the cash to reduce borrowings

This strategy is fairly simple (in theory) as long as your accountant is aware of it, but it is very important that all steps are followed, documentation properly kept and amounts physically paid when required and to the right place.

As a result, an individual / shareholder can potentially reduce tax on a capital gain to nil and gain access to full proceeds sooner than they would have otherwise.

Shane Bartrim is a Collins Hume Partner and a Business Strategist. In this case, Shane's expertise and subsequent advice helped our client achieve some personal objectives sooner than they would have otherwise been able.

Our client was happy that with the right advice they were able to reduce their capital gain to nil without having to tie up a significant amount of money in super which didn't suit their needs at that particular point in time.

Talk with one of our experts about succession, asset protection or tax effectiveness issues in your business by phoning 02 6686 3000 or by emailing us at mail@collinshume.com.au.