

27 February 2018

Senior Adviser
Small Business Entities and Industry Concessions Unit
The Treasury
Langton Crescent
PARKES ACT 2600

To whom it may concern,

Improving the integrity of the small business CGT concessions

KDA Group Pty Ltd is a regional accounting practice with a wide range of SME clients and welcomes the opportunity to make a submission to Treasury in relation to the *Improving the integrity of the small business CGT concessions* (Draft Legislation).

Whilst we understand the motivation to make the changes, we have three concerns regarding the proposed legislation as follows:

1. The proposed legislation in its current form will have consequences for small business taxpayers who have structured their affairs such that a business is carried on in one entity, and the business premises from which the business is carried on (or other assets connected to the business) are held in another entity. The proposed changes may result in a capital gain arising from the disposal of the interests in the entity which owns the business premises (or other asset) no longer qualifying for the application of the small business CGT concessions, which would otherwise qualify under the current legislation or a different ownership structure. For example, if two individuals owned a small business and premises jointly, and their net assets were less than \$6 million, they could apply the small business CGT concessions to a capital gain arising from the sale of both the business and the premises. However, under the proposed legislation, if the same individuals owned the business jointly but held the premises in a unit trust, they would no longer be able to apply the small business CGT concessions to a capital gain arising from the sale of units in the unit trust. As there is no mischief involved in this type of scenario, we suggest that the proposed legislation is amended so as to allow the existing provisions to continue to apply in these circumstances.

These comments also apply in circumstances where a property is held in an ungeared unit trust that complies with SIS Regulation 13.22C, where a self managed superannuation fund and related parties own units in the unit trust. The self managed superannuation fund may acquire units from the related parties over a number of years. Under the existing provisions, the related parties can potentially apply the small business CGT concessions to a capital gain arising on the sale of their units to the self managed superannuation fund, however under the proposed changes this would no longer be the case.

2. We are of the opinion that the reduction in the percentage that is used to identify control of an entity to 20% is not realistic. In commercial reality, a 20% ownership interest in an entity would rarely give the owner sufficient influence to enable them to control that entity. We consider that the existing provisions regarding affiliates and control are sufficient.
3. We are of the view that the retrospective application of the proposed changes to 1 July 2017 is not practical or reasonable given that taxpayers may have entered into transactions based on the existing law since that date. Furthermore the 2017-18 Budget announcement gave very little detail as to the intended changes in the law, which appear to have much wider scope and application than the announcement portrayed. Given the taxpayers could not have been expected to know this we feel it is unreasonable for the changes to apply retrospectively.

We appreciate the opportunity to provide comment on the proposed changes and are happy to discuss further.

Yours faithfully,



David Ohlmeyer

Director