



Précis Paper

Talking Tax Relief for Small Businesses

Abstract – Principal lawyers at Coleman Greig, Sydney, Peter Bobbin and Morris Maroon discuss existing and new tax concessions introduced for small business this Covid-19 year and the necessity of planning for businesses to benefit,

Discussion Includes

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Talking Tax Relief for Small Businesses

1. In this edition of BenchTV, members of Coleman Greig's tax team, Peter Bobbin (Principal Lawyer) and Morris Maroon (Principal Lawyer) discuss tax benefits and concessions for small business this year of Covid-19.

Small business isn't so small

2. It can involve a Capital Gains Tax (CGT) event, a reorganization of a family unit, or 'vanilla' tax relief items.
3. It can involve a small business turnover of \$2 million up to \$500 million.

Timing for planning

4. It's about preparing clients for any potential exit or succession event.
5. With a potential transaction, it may involve restructuring the proposed transaction. By way of example shifting a transaction to a share sale arrangement. Also consider vendor tax due diligence.
6. Consider the stages of a business as wonder, blunder, thunder, plunder, asunder – asunder happens because there's no planning.

Three primary categories of tax concessions

7. One is small business CGT concessions - these are complex. You have to go back to the provisions. In particular, last year there was a change.
8. Critical in the small business CGT relief area is it's part of retirement planning. Critical is getting it right well ahead of the capital realization event that might occur remembering that a capital realization event can occur in several ways – it can occur by way of a sale, it can occur by way of some disability event and an insurance payout.
9. The threshold is either two million dollar annual turnover or your net market value asset test is less than \$6 million. Excluded from that net market value asset test is your home, superannuation and other personal use assets such as a holiday home. Basically, it includes all your CGT assets other than your holiday home.
10. Again, it's called small business rollover relief/ retirement relief but it's not small business – an example is a business with \$20 million assets, the turnover of the business is less than \$2 million. That's a classic example for the farming community – low turnover, high value asset.
11. The 15 year exemption is when you've held the active asset for more than 15 years and you dispose of it you can get 100% tax free.

12. Another category is vanilla concessions – these are for all taxpayers who meet the threshold requirements. This is broken up into a number of concessions.
13. The third category is the internal restructure of family unit.
14. What is involved is small, medium and long-term planning for all three.

Vanilla concessions

a) Instant asset write off and accelerated depreciation

15. Enhancing the instant asset write off was initiated by Covid-19 times. Instant asset write off is from 12 March 2020 to 31 December 2020.
16. Instant asset write off has broader application.
17. It's 100% deduction and it can apply to second-hand goods.
18. Business owners need to know about it for planning.
19. Tax payers should look at their activities in February and early March to see if they can fit the contract into the category where it's available for first use at 12 March start date.
20. It applies to entities whose turnover is less than \$500 million.
21. Accelerated depreciation is also a Covid-19 concession. If you don't get your instant asset write off you can apply accelerated depreciation but it only applies to new assets. The depreciation rate is quite attractive.
22. The planning issue here is planning that capital expenditure and timing it. Essentially, it applies to all the assets that don't come under the instant asset write off.
23. The farmers have been looked after. Any expenditure on fodder storage, applicable from 20 August 2018, is 100% deductible up front. The same applies to new fencing and water facilities - from 15 May you're entitled to 100% deduction. It also applies to lessees of the land.
24. Whether it's primary production or not is very important.

b) Company tax rate and income tax offset

25. The corporate tax rate is falling. This will impact on franked dividends. You want to maximise the benefits of the franking credits you have on hand. The threshold is \$50 million turnover. The other requirement is that 80% or less of your assessable income has to be passive income ie interest, dividends, rent, royalties and capital gains.
26. Small business income tax offset is only available to the sole traders who are carrying on a business, or distributions from a partnership or a trust carrying on a business. It applies to turnover less than \$5 million. It's a tax rebate. It reduces the tax payable.

c) Prepaid expenses and others

- 27. Provided the prepayment is for services which will be rendered within 12 months and your turnover is less than \$10 million you get the prepayment. Examples are rent, registration fees, insurance, advertising – you pay before 30 June, provided the service will be delivered within 12 months.
- 28. Trading stock – if your closing stock this year is similar to last year's, no stocktake is required. But documentary evidence can be useful.

d) Professional expenses for start-ups and others

- 29. Upfront deductions are allowed for start-ups. These can be blackhole expenditure deductions.
- 30. Other benefits are fringe benefits tax benefits - car parking exempt for less than \$10 million turnover, mobile devices, GST benefits for BAS (Business Activity Statement) cash turnover and contribution to small business superannuation clearing house.

CGT concessions

- 31. Division 152 and Division 115 – we're talking about a CGT event.
- 32. It has to be an active asset.
- 33. Four tax concessions – the second 50% active asset, the retirement exemption, the 15 year exemption and rollover provisions.
- 34. Planning is commonly two to five years in advance. One of the best ways is to prepare a spread sheet as though you were selling now.

Restructure roll-over

- 35. ATO says it needs to be a genuine restructure of an ongoing business. The ATO Ruling gives guidelines on what it thinks acceptable. Estate planning, family funding and family financing, marital relationship restructure and asset protection are all possible. Tax must not be the objective.

BIOGRAPHY

Peter Bobbin

Principal Lawyer, Coleman Greig, Sydney

Peter joined the firm as part of the 2019 integration with Argyle Lawyers.

With over 30 years' experience in superannuation and taxation in both the personal and commercial arena, there is no case too complex for Peter. He is well known for his fine planning and strategic skills in the areas of tax, estate and business succession planning, commercial structuring, trusts, ATO litigation management, regulatory compliance and general commercial issues.

A former university lecturer and accountant, Peter is also active in lobbying the government to support a good cause or achieve better outcomes in the law. He has successfully had laws amended and was the only individual (non-association) representative invited to the Federal Treasury initiative on the Ralph Report to tax trusts as companies.

In 2015, Peter was honoured by the Tax Institute as the Tax Advisor of the Year (SME). Peter is also a Public Notary.

Morris Maroon

Principal Lawyer, Coleman Greig, Sydney

Morris joined the firm as part of the 2019 integration with Argyle Lawyers.

Morris has specialist expertise across a broad range of industries including property, retail, manufacturing, aviation, IT and import distribution industries. He provides taxation advice to accountants, financial advisors and lawyers. Specific expertise includes international tax planning, inbound and outbound structuring, due diligence work, capital gains tax, payroll tax, GST, stamp duty and dealing with Australian Taxation Office tax disputes.

Having dedicated his entire career exclusively to the tax profession, Morris has comprehensive experience in advising clients regarding the complexities involved in setting up a business in Australia and overseas.

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Ruling

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