



Growing Jobs and Small Business - Small business restructure roll-over (capital gains tax roll-over relief)

On 8 March 2016, the Tax Laws Amendment (Small Business Restructure Roll-over) Act 2016 received royal assent.

This roll-over was announced in the 2015-16 budget as part of the Growing Jobs and Small Business package.

Broadly, this Act:

- Provides greater flexibility for small business owners to change the legal structure of their business by allowing them to defer gains or losses that would otherwise be realised when business assets are transferred from one entity to another.
- Provides small businesses with a new roll-over for gains and losses arising from the transfer of active assets that are CGT assets, trading stock, revenue assets and/or depreciating assets between entities as part of a genuine restructure of an ongoing business.
- Applies to transfers that do not result in a change in the ultimate economic ownership of the assets.
- Is in addition to roll-overs currently available where an individual, trustee, or partner in a partnership transfers assets to, or creates assets in, a company in the course of restructuring their business.
- Extends the relief to include transfer of trading stock, revenue assets, and depreciating assets.

These changes will apply to transfers occurring on or after 1 July 2016.

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Business structures and restructures: Is your structure working against you?

Many business owners don't realise that the business has outgrown its structure until something comes up – and this something is usually something negative.

Are your assets at risk?

Legal action by employees, customers and suppliers as well as divorce are the two primary risk issues for many business operators. If you have been operating as a sole trader or as a partner in a partnership or have simply been holding all business assets in a single entity, your structure may not provide sufficient asset protection. If any personal assets or valuable assets of the business are held in the same entity which carries on the trading operations of the business, those assets may be at risk. To protect your assets it is generally preferable to separate as many valuable assets as possible from the trading operations.

Can you introduce new business partners or investors?

If you want to provide key employees or investors with an equity interest in your business, your current business structure may not allow for this. For example, it is not generally possible to provide fixed entitlements to the profits of a business operated by a discretionary trust.

Entities such as companies and unit trusts are a much more effective vehicle to facilitate the introduction of new equity partners as they can provide a fixed interest in the income and capital gains generated by the business. New investors can also potentially claim interest deductions on funds borrowed to invest in the company or unit trust.

Reinvesting in growth

Reinvesting profits in your business is important if you have or expect a strong growth path. Some business structures however don't readily facilitate profits being retained by the business. For example, it is generally more difficult for a trust to retain profits, as the trustee of a trust is taxed on these profits at penalty tax rates if they are not distributed to the beneficiaries of the trust each year. This is compared to private companies where profits are taxed at a maximum rate of 30% or 28.5% and can be retained in the company without the need to distribute these profits annually.

Can you exit your business?

The business lifecycle has shortened considerably with less business owners seeking to create empires but more opportunistic business models. The wrong structure will limit your ability to sell your business interests and may have a dramatic and detrimental impact on the amount of tax you pay on the sale proceeds. It's important that you explore this issue well before you actually plan to sell or reduce your stake in the business.

Are you in need of a financial planning advice?

We have a financial planner who could help you in many areas of financial affairs, a few of them as follows

- ✓ Setting financial goals
- ✓ Wealth protection
- ✓ Wealth Creation
- ✓ Children Education
- ✓ Retirement Planning

I would like to suggest that you meet with our financial planner and find out how he can help you. He offers a free initial consultation.

Please contact me to take up his free consultation offer and arrange for a meeting.

The material and contents provided in this publication are informative in nature only. It is not intended to be advice and you should not act specifically on the basis of this information alone. If expert assistance is required, professional advice should be obtained.