



MoneyTalk

CGT relief for Owners selling a Small Business

Wendy Oehley, tax manager at Grant Thornton's Cape Town office, explains the exemption from capital gains' tax on small business assets that is available to individuals.

THE Income Tax Act No 58 of 1962 provides a special concession for capital gains tax (CGT) in certain circumstances on the disposal of "small business" assets.

A "small business" is defined as a business of which the **market value of all its assets, as at the date of disposal** of the asset or interest, **does not exceed R5 million**.

The concession provides for an exclusion in the calculation of the total capital gain or loss of the taxpayer, **of capital gains up to a maximum of R500 000** (per taxpayer over his lifetime) on the disposal of:

- The "active business assets" of a small business owned by a sole proprietor.
- An interest in each of the active business assets of a partnership qualifying as a small business upon his withdrawal from the partnership, to the extent of his interest in the partnership.
- An entire direct interest, which consists of at least 10 per cent of the equity of a company qualifying as a small business, in so far as that interest relates to assets of the small business.

It is important to note that an "active business asset" is defined as:

- Immovable property to the extent that it is used for business purposes
- Other assets used or held wholly or exclusively for business purposes

But excludes:

- financial instruments
- assets held mainly to derive annuity, rental, foreign exchange gains, royalties or similar (passive) income.

The relief will only apply where:

- The person held the asset or interest for his own benefit for a continuous period of at least five years prior to disposal.
- The taxpayer was substantially involved in the operations of the small business.
- The taxpayer is 55 or, if younger, has disposed of the asset or interest in consequence of illness or infirmity.
- The qualifying capital gains are realised within a period of 24 months — i.e. full payment has been received within that period

The relief **will not apply** in circumstances where a person owns more than one business either by way of:

- A sole proprietorship.
- A partnership interest.
- A direct interest in the equity of a company (consisting of at least 10 per cent).
- The total market value of all assets in respect of all those businesses exceeds R5 million.

This article is extracted from Tax Breaks, written by Wendy Oehley, tax manager at Grant Thornton's in Cape Town.

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