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Case Study – Effective structuring a business sale
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Case Study - ABC Pty Ltd

- The shareholders are looking at signing a contract on 31 December 2009 to sell the business assets of ABC Pty Ltd.
- The sale can either be structured as:
 - a share sale whereby the shareholders sell their shares in ABC Pty Ltd; or
 - an asset sale whereby ABC Pty Ltd sells its business assets.
- This case study will compare the tax and commercial implications of both of these options

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Background Facts – ABC Pty Ltd

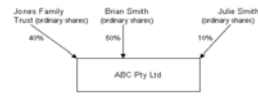
- Commenced an engineering business in 2000
- Has the following business assets at valuation:
 - Inventory \$ 175,000
 - Plant and Equipment \$ 125,000 (equal to WDV)
 - Goodwill \$ 4,250,000 (cost base Nil)
- Has other assets and liabilities as follows
 - Cash \$ 150,000
 - Debtors \$ 50,000
 - Loans to shareholders \$ 250,000
 - Creditors \$ 100,000

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Background Facts – ABC Pty Ltd

- Has the following shareholders



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graph TD
    JFT["Jones Family Trust (primary shares)"] -- 40% --> ABC["ABC Pty Ltd"]
    BS["Brian Smith (primary shares)"] -- 50% --> ABC
    JS["Julie Smith (primary shares)"] -- 10% --> ABC
  
```

- Each of the shareholders acquired their shares in 2002 as follows:
 - Jones Family Trust \$40,000
 - Brian Smith \$50,000
 - Julie Smith \$10,000

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Assumptions

- The \$6 million Net Asset Test is met for ABC and each other the shareholders.
- The trustee of the Jones Family Trust has always distributed 50% of the income and capital each to Jack and Sandra Jones and will do so for the 2010 income year.
- Brian and Julie are married but are not affiliates.
- Jack and Sandra are married but not affiliates.

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Assumptions

- Brian:
 - is at least 55 years of age; and
 - has not used any of his small business retirement exemption amount (lifetime limit of \$500,000).
- Julie:
 - will be under 55 years of age when both she and ABC lodges their 2010 income tax returns; and
 - has not used any of her small business retirement exemption amount (lifetime limit of \$500,000).

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Assumptions

- Jack:
 - is at least 55 years of age; and
 - has not used any of his small business retirement exemption amount (lifetime limit of \$500,000).
- Sandra:
 - will be under 55 years of age when both she and ABC lodges their 2010 income tax returns; and
 - has not used any of her small business retirement exemption amount (lifetime limit of \$500,000).

OPTION 1 – SHARE SALE

- On 31 December 2009, the shareholders entered into a share sale agreement to sell their shares.
- The consideration for the shares is \$4,900,000 being the value of net assets of ABC as follows:

◦ Inventory	\$ 175,000
◦ Plant and Equipment	\$ 125,000
◦ Goodwill	\$ 4,250,000
◦ Cash	\$ 150,000
◦ Debtors	\$ 50,000
◦ Loans to shareholders	\$ 250,000
◦ Creditors	\$ (100,000)
• Net Assets	\$4,900,000

OPTION 1 – SHARE SALE

- Each of the shareholders will have receive the following consideration for their shares:

◦ Jones Family Trust	\$1,960,000	(40% x \$4,900,000)
◦ Brian Smith	\$2,450,000	(50% x \$4,900,000)
◦ Julie Smith	\$ 490,000	(10% x \$4,900,000)
- This means that each of the shareholders will have the following capital gains on the sale of their shares:

◦ Jones Family Trust	\$1,920,000	(\$1,960,000 - \$40,000)
◦ Brian Smith	\$2,400,000	(\$2,450,000 - \$50,000)
◦ Julie Smith	\$ 480,000	(\$490,000 - \$10,000)

OPTION 1 – SHARE SALE

- Each of the shareholders will be able to reduce their capital gain by 50% under the general discount (Division 115)

◦ Jones Family Trust	\$ 960,000	(50% x \$1,920,000)
◦ Brian Smith	\$1,200,000	(50% x \$2,400,000)
◦ Julie Smith	\$ 240,000	(50% x \$ 480,000)
- Can each of shareholders access the small business CGT concessions?

OPTION 1 – SHARE SALE

- The shareholders must satisfy each of the basic conditions to access the small business CGT concessions?
- Condition 1 - \$6m Net Asset Test or SBE Test ✓
- Condition 2 – The Active Asset Test
- Condition 3 - Either:
 - the shareholder is a CGT Concession Stakeholder (significant individual or spouse); or
 - CGT Concession Stakeholders in ABC have a 90% interest in the shareholder.

Condition 2: The Active Asset Test

- The shares will meet the active asset test if:
 - 80% of the assets of ABC are active assets (80% look-through test); and
 - the 80% look-through test has been met for half the period in which the shareholder has held the shares
 - (Temporary failures of 80% look-through test okay)

Condition 2: The Active Asset Test

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- Active assets can include financial instruments (such as cash and debtors) provided they are inherently connected with the business
- Be careful of "Loans to Shareholders":
 - Probably not active assets.
 - The 80% look-through test is not just applied at 30 June of each year.

Assume Active Asset Test satisfied



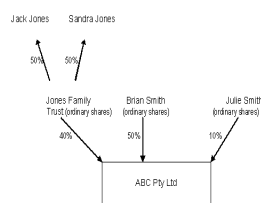
Condition 3: CGT Concession Stakeholder

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- As Brian and Julie are individuals - they need to be CGT Concession Stakeholders
- That is, Brian and Julie must be either:
 - a significant individual of ABC; or
 - the spouse of ABC provided that they have a SBPP (interest) in ABC of greater than zero.
- As the Jones Family Trust is not an individual - CGT concession stakeholders of ABC must have a 90% interest in the Jones Family Trust.

CGT Concession Stakeholders

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Brian and Julie

CGT Concession Stakeholders of ABC

Brian	50%	✓
Julie	10%	✓
(However spouse of Brian)		

Jones Family Trust

CGT Concession Stakeholders of ABC

Jack	50% x 40% = 20%	✓
Sandra	50% x 40% = 20%	✓

CGT Concession Stakeholders Interest in Jones Family Trust

Jack	50%
Sandra	50%
TOTAL = 100%	✓

Option 1 – Application of the Small business CGT Concessions

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- 50% reduction
- retirement exemption
- roll-over

50% Reduction - Subdivision 152-C

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- By satisfying the basic tests, the shareholders may reduce their capital gains by a further 50% under the business 50% reduction as follows:

Jones Family Trust	\$ 480,000	(50% x \$960,000)
Brian Smith	\$ 600,000	(50% x \$1,200,000)
Julie Smith	\$ 120,000	(50% x \$ 240,000)

Retirement Exemption – Jones Family Trust

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- Must have at least one significant individual just before the CGT event (Jack and Sandra are both significant individuals)
- May disregard part or all of the remaining capital gain by applying the retirement exemption for some or all of its CGT concession stakeholders (both Jack and Sandra)
- There is no requirement that the retirement exemption amount is applied equally between the CGT concession stakeholders
 - For example: The CGT retirement exemption may be applied 100% for Jack.

Retirement Exemption – Jones Family Trust

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- The choice must:
 - be in writing and must be made by the time the taxpayer lodges their tax return (or longer time that Commissioner allows); and
 - must state how much of the retirement exemption amount is applied for each CGT concession stakeholder.
- Remaining \$480,000 can be disregarded under the retirement exemption amount – decision needs to be made about how to apply retirement exemption amount between Jack and Sandra.
- In this example the Jones Family Trust has applied the retirement exemption amount equally between Jack and Sandra.

Retirement Exemption – Jones Family Trust

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- There is no requirement for the retirement exemption amount applied for Jack to be paid into a complying superannuation fund.
- However the retirement exemption amount applied for Sandra must be paid into superannuation within seven days of making the choice.
- A CGT Cap Form must be given to the superannuation fund on or before the payment is made otherwise it will form part of the non-concessional contributions not the CGT cap limit.

Brian Smith

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- Brian (as an individual) may choose to ignore all or part of his remaining capital gain of \$600,000 under the retirement exemption (up to his lifetime limit of \$500,000).
- As he is at least 55 years of age, there is no requirement for him to pay the retirement exemption amount into superannuation.
- The choice must be in writing and must be made by the time the taxpayer lodges their tax return (or longer time that Commissioner allows).

Retirement Exemption – Brian Smith

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- If he chooses for the retirement exemption amount to be paid into superannuation, a CGT Cap Form must be given to the superannuation fund on or before the payment is made otherwise it will form part of the non-concessional contributions not the CGT cap limit.
- \$500,000 of the remaining \$600,000 can be disregarded under the retirement exemption amount.
- After the retirement exemption of \$500,000 is applied, Brian's capital gain will be reduced to \$100,000.

Retirement Exemption – Julie Smith

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- Julie (as an individual) may choose to ignore all or part of her remaining capital gain of \$120,000 under the retirement exemption.
- As she will not be at least 55 years of age when she makes the choice, the retirement exemption amount must be paid into a complying superannuation fund.
- The choice must be in writing and must be made by the time the taxpayer lodges their tax return (or longer time that Commissioner allows).
- A retirement exemption amount must be paid into superannuation by the time the choice is made.
- A CGT Cap Form must be given to the superannuation fund on or before the payment is made otherwise it will form part of the non-concessional contributions not the CGT cap limit.

Roll-Over - Subdivision 152-E

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- A taxpayer can choose the roll-over by meeting the Subdivision 152-A requirements, however:
- CGT Event J5 occurs if within the 2 year replacement period:
 - you do not acquire a replacement asset or incur fourth element expenditure or the asset is not active
- CGT Event J6 occurs if by the end of the 2 year replacement asset period:
 - the capital gain is more than the cost of the replacement asset and fourth element expenditure
- There is no requirement that the taxpayer is contemplating acquiring a replacement asset to apply the roll-over.

Roll-Over - Subdivision 152-E

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This means that:

- For Brian:
 - he can apply the small business roll-over to his remaining capital gain of \$100,000; however
 - CGT Event J5 will occur on 31 December 2011 if he does not acquire a replacement active asset.
 - (Brian defers paying tax on the \$100,000 for two years)
- For Julie and Jones Family Trust (in respect of Sandra):
 - they could apply the small business roll-over rather than the small business retirement exemption; however
 - CGT Event J5 will occur on 31 December 2011 if they do not acquire a replacement active asset.
 - They will be able to apply the small business retirement exemption in the 2012 year
 - If they are at least 55 year when the choice is made to apply the retirement exemption, there is no requirement that the amount is paid into superannuation.

Option 1 - Summary

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	Option 1 Share Sale
Brian's Capital Gain (deferred)	100,000
Total Amounts included in assessable income	100,000
Use of Retirement Exemption:	
- Brian	500,000
- Julie	120,000
- Jack	240,000
- Sandra	240,000

OPTION 2 – ASSET SALE

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- On 31 December 2009, ABC entered into an asset sale agreement to sell its business assets for the following consideration:

◦ Inventory	\$ 175,000
◦ Plant and Equipment	\$ 125,000
◦ Goodwill	\$ 4,250,000
• Total	\$ 4,550,000

OPTION 2 – ASSET SALE

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- ABC will be required to include the following amounts in its assessable income:

◦ Sale of Inventory	\$ 175,000
◦ Profit on Sale	\$ Nil

- ABC will also a capital of \$4,250,000 on the sale of the goodwill (cost base of Nil)

OPTION 2 – ASSET SALE

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- As ABC is a company it cannot access the general discount under Division 115. **X**
- Can ABC access the small business CGT concessions?

OPTION 2 – ASSET SALE

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- ABC must satisfy each of the basic conditions to access the small business CGT concessions?
- Condition 1 - \$6m Net Asset Test or SBE Test **✓**
- Condition 2 – The Active Asset Test **✓**

Option 2 – Application of the Small business CGT Concessions

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- 50% reduction
- retirement exemption
- roll-over

50% Reduction - Subdivision 152-C

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- By satisfying the basic tests, ABC may reduce its gain under the small business 50% reduction:

• Gain	\$4,250,000
• 50% reduction	\$2,125,000
• Remaining capital gain	\$2,125,000

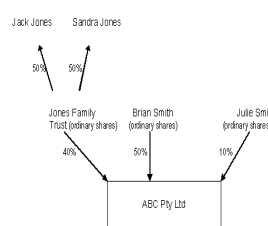
Retirement Exemption – ABC Pty Ltd

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- Must have at least one significant individual just before the CGT event
- May disregard part or all of the remaining capital gain by applying the retirement exemption amount for some or all of its CGT concession stakeholders

CGT Concession Stakeholders of ABC

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CGT Concession Stakeholders of ABC		
Brian	50%	✓
Julie	10%	✓
(However spouse of Brian)		
Jack	50% x 40% = 20%	✓
Sandra	50% x 40% = 20%	✓

Retirement Exemption – ABC Pty Ltd

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- Brian, Jack and Sandra are significant individuals
- ABC may disregard part or all of the remaining capital gain by applying the retirement exemption amount for some or all of its CGT concession stakeholders
 - Brian, Julie, Jack and Sandra are each CGT concession stakeholders.
 - There is no requirement that the retirement exemption amount is applied equally between the CGT concession stakeholders.
 - As Brian and Julie between them own 60% of the shares and Jack and Sandra between them own 40%, commercially this may be how the retirement exemption should be applied.
 - In this case study ABC has applied \$500,000 to each of the CGT concession stakeholders.

Retirement Exemption – ABC Pty Ltd

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- The choice must:
 - be in writing and must be made by the time the taxpayer lodges their tax return (or longer time that Commissioner allows); and
 - must state how much of the retirement exemption amount is applied for each CGT concession stakeholder.
- ABC must make the choice so that each CGT concession stakeholder does not exceed their lifetime \$500,000 limit.
- There is no requirement for the retirement exemption amount applied for Brian and Jack to be paid into a complying superannuation fund.
- However the retirement exemption amount applied for Julie and Sandra must be paid into superannuation within seven days of making the choice.

Retirement Exemption – ABC Pty Ltd

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- A CGT Cap Form must be given to the superannuation fund on or before the payment is made otherwise it will form part of the non-concessional contributions not the CGT cap limit.
- After applying the retirement exemption, the remaining capital gain will be \$125,000 as follows:

◦ Capital Gain	\$4,250,000
◦ Less 50% Reduction	\$2,125,000
◦	\$2,125,000
◦ Retirement Exemption	\$2,000,000
◦ Remaining Capital Gain	\$ 125,000

Roll-Over - Subdivision 152-E

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- A taxpayer can choose the roll-over by meeting the Subdivision 152-A requirements, however:
 - CGT Event J5 occurs if within the 2 year replacement period:
 - you do not acquire a replacement asset or incur fourth element expenditure or the asset is not active
 - CGT Event J6 occurs if by the end of the 2 year replacement asset period:
 - the capital gain is more than the cost of the replacement asset and fourth element expenditure
 - CGT Event J2 occurs if, after the 2 year replacement asset period:
 - there is a change to the replacement asset or improved asset
- There is no requirement that the taxpayer is contemplating acquiring a replacement asset to apply the roll-over.

Roll-Over - Subdivision 152-E

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- Roll-over:
 - As ABC meets the basic conditions, it can apply the small business roll-over to the remaining capital gain of \$125,000; however
 - CGT Event J5 will occur on 31 December 2011 if its does not acquire a replacement active asset.
- There is no requirement that ABC is contemplating acquiring a replacement asset.
- ABC defers paying tax on the \$125,000 for two years

OPTION 2 – ABC PTY LTD

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- Before ABC Pty Ltd can be wound up:
 - The retained profits need to be paid out
 - The 50% reduction needs to be paid out of \$2,125,000
- If the 50% reduction is paid out while the company is operating:
 - it will be a dividend to the shareholders; and
 - ABC may not have sufficient franking credits to fully frank the dividend.

OPTION 2 – ABC PTY LTD

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- If however, a liquidator distributes the 50% reduction as part of the winding up process the amount:
 - is not deemed to be a dividend;
 - will be consideration for the cancellation of the shares (CGT Event C2).
- This means that each of the shareholders will have a capital gain in relation to their shares.

OPTION 2 – LIQUIDATOR'S DISTRIBUTION

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- Each of the shareholders will have receive the following consideration for the cancellation of their shares:

◦ Jones Family Trust	\$ 850,000	(40% x \$2,125,000)
◦ Brian Smith	\$1,062,500	(50% x \$2,125,000)
◦ Julie Smith	\$ 212,500	(10% x \$2,125,000)
- This means that each of the shareholders will have the following capital gains on the sale of their shares:

◦ Jones Family Trust	\$ 810,000	(\$ 850,000 - \$40,000)
◦ Brian Smith	\$1,012,500	(\$1,062,500 - \$50,000)
◦ Julie Smith	\$ 202,500	(\$ 212,500 - \$10,000)

OPTION 2 – LIQUIDATOR’S DISTRIBUTION

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- Each of the shareholders will be able to reduce their capital gain by 50% under the general discount (Division 115)
 - Jones Family Trust \$ 405,000 (50% x \$810,000)
 - Brian Smith \$ 506,250 (50% x \$1,012,500)
 - Julie Smith \$ 101,250 (50% x \$ 202,500)
- Can each of shareholders access the small business CGT concessions?

OPTION 2 – LIQUIDATOR’S DISTRIBUTION

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- The shareholders must satisfy each of the basic conditions to access the small business CGT concessions?
- Condition 1 - \$6m Net Asset Test or SBE Test
 - must be satisfied just before CGT Event C2 occurs ✓
- Condition 2 – The Active Asset Test
- Condition 3 - Either:
 - the shareholder is a CGT Concession Stakeholder (significant individual or spouse); or
 - CGT Concession Stakeholders in ABC have a 90% interest in the shareholder.

Condition 2: The Active Asset Test

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The shares will meet the active asset test if:

- 80% of the assets of ABC are active assets (80% look-through test); and
- the 80% look-through test has been met for half the period in which the shareholder has held the shares

(Temporary failures of 80% look-through test okay)

Condition 2: The Active Asset Test

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- Be careful of the timing of the ‘winding up’:
 - When the business assets are sold, all of the assets will cease to be active assets from that point onwards.

Condition 3: CGT Concession Stakeholder

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- As Brian and Julie are individuals - they need to be CGT Concession Stakeholders

That is, Brian and Julie must be either:

- a significant individual of ABC; or
- the spouse of ABC provided that they have a SBPP (interest) in ABC of greater than zero.

- As the Jones Family Trust is not an individual - CGT concession stakeholders of ABC must have a 90% interest in the Jones Family Trust in the year that CGT Event C2 occurs.

CGT Event C2 (liquidator’s distribution – Small business CGT Concessions

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- 50% reduction
- retirement exemption
- roll-over

50% Reduction - Subdivision 152-C

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- By satisfying the basic tests, the shareholders may reduce their capital gains by a further 50% under the business 50% reduction as follows:

• Jones Family Trust	\$ 202,500	(50% x \$ 405,000)
• Brian Smith	\$ 253,125	(50% x \$ 506,250)
• Julie Smith	\$ 50,625	(50% x \$ 101,250)

Retirement Exemption

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- Brian, Julie, Jack and Sandra's lifetime limits have already been used up.
- Jones Family Trust may be able to apply the retirement exemption if it has different CGT concession stakeholders to Jack and Sandra in the year of the CGT Event C2.

Roll-Over - Subdivision 152-E

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- As the shareholders meet the basic conditions:
- they could apply the small business roll-over to their remaining capital gains; however
- CGT Event J5 will occur if they do not acquire replacement active assets.
- Effectively they can defer the capital gain for two years.

Comparison between two options

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	Option 1 Share Sale	Option 2 Asset Sale
ABC - sale of inventory		175,000
ABC's Capital Gain (deferred for 2 years)		125,000
Jones Family Trust's Capital Gain (deferred on winding up ABC)		202,500
Brian's Capital Gain (deferred on winding up ABC)		253,125
Julie's Capital Gain (deferred on winding up ABC)		50,625
Brian's Capital Gain (deferred)	100,000	
Retained Profits - when paid out as dividends		650,000
Total Amounts included in assessable income	100,000	1,456,250
Use of Retirement Exemption		
- Brian	500,000	500,000
- Julie	120,000	500,000
- Jack	240,000	500,000
- Sandra	240,000	500,000

Commercial considerations when selling a business

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Commercial considerations – Share Sale

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- No transfer duty on the transfer of shares in Queensland companies unless Land Rich provisions apply
- Transfer duty applies to the transfer of Queensland business assets
 - scheduled to be abolished from 1 July 2012
?????

Commercial considerations – Share Sale

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Net Assets

- At what date are the net assets calculated?
 - specified date;
 - contract date; or
 - completion date
- Calculation of assets and liabilities? (share or business sale)
 - inventory and work-in-progress
 - employee entitlements
 - if acting for a buyer, make sure 'on costs' (superannuation, pay-roll tax and work cover) are included
 - based on 'after tax' costs (usually 70% of the employee entitlement amount)

Commercial considerations – Share Sale

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- Need to identify the assets which are owned by the company that are to be kept by the vendor
 - important that the client identifies these assets
 - tax implications and transfer duty to transfer the assets out of the company
- Retained profits
 - Do these need to be paid out before completion?
 - Make sure that there will be sufficient franking credits to pay out any dividends and that the contract states that the dividends are to be fully franked
- Purchaser has increased risk because acquiring the 'history' of the company
- Vendor will need to give extensive warranties including tax warranties

Commercial considerations – Share Sale

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- Financial assistance issues
 - If the purchaser is obtaining finance and the company assets are being used as security
 - Corporations Law requires documents to be lodged with ASIC prior to the company giving the financial assistance

Commercial considerations - Earn Out Provisions

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- Increasingly common
- Seller at risk
- Have clear formula
- Accounting Standards or accounting policies adopted by the entity in the previous years
- Require regular reporting - early identification of problems

Commercial considerations - Earn Out Provisions

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- Protect against material changes in business model
- Independent expert to resolve disputes
- Security for unpaid purchase price
 - Charge – often of little value
 - Bank guarantee
 - Personal guarantees
- Accelerated payment if buyer sells an interest in the business

Taxation considerations when selling a business

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Sale of shares/units v sale of business

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- Sale of Business
 - Companies not entitled to 50% general discount
 - Companies – paying out 50% reduction (look at 'winding up' company)
 - Unit trust – CGT event E4 issue for unitholders when distributing 50% reduction
 - Balancing adjustments on disposal of plant and equipment
- Shares/units
 - Does the company/trust satisfy the '80% look through test' for half the time the shares/units been owned?
 - CGT concession stakeholder
 - Is the individual shareholder a CGT concession stakeholder?
 - Do CGT concession stakeholders have a 90% interest in the non-individual shareholder?

Small Business CGT Concessions

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- Net Asset Test
 - snap shot test – just before contract
 - review prior to negotiations/contract
 - excludes superannuation and assets held for personal use and enjoyment (must be owned by an individual)
 - assets owned by multiple entities - check connection (40% = control)
 - restraint of trade covenants have value (TR 1996/16)
 - reduce net asset value by apportioning value to restraint – timing critical

Small Business CGT Concessions

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- Review structure well before contract (CGT concession stakeholders)
 - companies with special class shares
 - unit trust with discretionary income
 - jointly held shares (voting rights)
- Sale of CGT assets by company
 - want to apply retirement exemption but no CGT concession stakeholders just before signing sale contract
 - apply small business roll-over

Trusts and CGT issues

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- If no one is presently entitled to 'Trust Income' but there is section 95 net income:
 - the trustee pays the tax at 46.5%; and
 - the trustee is not entitled to the general 50% discount or 50% reduction.
- Issue if:
 - the definition of 'Trust Income' does not include net capital gains; and/or
 - the ATO wins Bamford case

Trusts and CGT issues

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- Distributions (CGT concession stakeholders)
 - make sure you read the Deed; and
 - make sure distributions are done on time.

Apportionment Issues

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- Interest of purchaser and vendor not aligned
- Trading stock – ATO not bound
 - Market value if disposal outside ordinary course of business (section 70-90)
- CGT assets and plant – ATO bound if parties are dealing at arms length
- Must be genuine negotiation

Earn Out Provisions - CGT

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- Capital Gain = Capital Proceeds less Cost Base
- Capital proceeds are total of:
 - money; and
 - value of property (section 116-20)
- Contractual right to receive earn out payment is "property"
- Must value contingent right to payment of earn out amount – at time of CGT event
- Cash flow issues – small business retirement exemption

Earn Out Provisions - CGT

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- Earn out right overvalued
 - vendor cannot amend return
 - generates capital loss (TR 2007/D10)
- Earn out right undervalued
 - capital gain on payment
 - small business concessions not applicable (TR 2007/D10)

Employee Entitlements

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- Vendor does not get deduction unless 'accrued leave transfer payment' (section 26-10)
- Adjust on 'after tax' basis (70% of accrued entitlements)
- When acting for a buyer make sure the employee entitlements include 'on costs' such as superannuation, pay-roll tax and workcover?

GST Issues

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- Sale of equity interests generally a financial supply
- If GST payable - seller must get tax invoice
 - Check ABR
 - Problems with invalid tax invoice

GST Going Concern Issues

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- Often pressure on seller to apply going concern – can be deal breaker
- Always consider obtaining a private ruling
- Contracts must include gross up clause
- Multiple vendors/purchasers are a problem
 - where plant and equipment is owned by a separate entity
- ATO requires single supplier and single purchaser (GSTR 2002/5 - paragraphs 44 and 45)

GST Going Concern - Premises

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- If a periodic lease ATO accepts owner of premises and owner of business can both supply going concern (GSTR 2002/5 (para's 137-140))
- Does not have to be written lease – must be regular rental payments
- Resist temptation to document lease close to sale (division 165)



Thank You

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