

# Business Succession: parting a business and owner



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# Business Succession

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- Options
- Tax Issues
- Small Business Concessions
- Earnout Arrangements
- Capacity
- Superannuation
- Wills



# Options

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People dislike planning for their own death

Many don't like planning for retirement

- Lack of Planning
  - Intestacy
- Too much tax

What really matters to people

- Limited options
- Other people get in the way



# Business Succession

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- Business
  - Control
  - Operation
  - Ownership
- Structures
  - Partnerships
  - Trusts
  - Companies



# Business Options

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- MBO or Family
  - Vendor Finance
- External Sale
  - National Groups
  - Like firms
  - Ongoing obligations and earnouts
- Winding up



# Business Succession

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## The Future

- Part-time work v Retirement
- Lifestyle expectations
- Family member expectations
  
- Financial expectations
  - *What can the business fund?*



# Funding

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- What is the business worth
  - Now
  - In three to five years
  - Annual funds that may be generated
- What sort of income will superannuation generate
  - How much for how long
  - Life expectancy
- Savings outside of super?



# Vendor Finance

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- Security
  - PPSR registration
- Asset Protection
  - Incoming Principals
  - Outgoing Principals
- Key to Asset Protection = Separation





# Tax on Transfer

## Structure:

- Is 50% CGT discount available
- Company tax rates mobile
  - 27.5% or 25% v 23.5% or 35.25% (47% with CGT discount)
  - sale proceeds must remain in company to access low rate
    - Drip feed slowly esp if shareholder discretionary trust
- Small business 50% reduction - company or unit trust
  - company - liquidate to pay 50% reduction
  - unit trust - small business 50% reduction triggers CGT event E4

# Small Business Concessions

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## Basic Conditions

- SBE or MNAV
- Active Asset
  - Connected with
    - Control – include full value /aggregate turnover
      - 40% income or capital (if company also votes)
      - De facto or distributions if discretionary trust
  - Affiliate
    - Acts /expected to act in accordance with wishes



# Small Business Concessions

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- Significant Individual
  - At least 20% small business participation percentage (SBPP)

<b>Entity</b>	<b>SBPP</b>
	<b>Lowest of legal and equitable rights in</b>
Company	Voting power % Dividend % Capital %
Fixed Trust	Income distribution % Capital distribution %
Discretionary Trust	Income distribution % in relevant year Capital distribution % in relevant year



# Small Business Concessions

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- Significant Individual
- Taxpayer is company or trustee
  - 15 year exemption
    - Entity must have significant individual for 15 years +
    - Payment must be to CGT concession stakeholder
  - small business retirement exemption
    - payment to CGT concession stakeholder if >55 at election; or
    - contributed to complying super fund if < 55 at election



# Small Business Concessions

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- Significant Individual
- CGT asset is **share** or **unit**
  - taxpayer must be CGT concession stakeholder in entity;
  - CGT concession stakeholders together have SBPP in entity > 90%
- Concession Stakeholder
  - Significant individual
  - Spouse of Significant Individual with SBPP > 0



# Small Business Concessions

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Post 8 February 2018 asset is **share** or **unit**

- Additional Tests
  - Object entity must be SBE or meet MNAV
  - Taxpayer holding interest must be SBE or meet MNAV
  - Modified 80%Active Test for share or unit
    - Cash & financial assets not active if acquired to meet test
    - Shares in subsidiaries not counted- underlying assets are



# Small Business Concessions

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## 15 Year

- 55 or over and retiring
- Continuously held asset for 15 years
- Active for at least 7½ years
- Share or Unit - need significant individual for 15 years
- Payment must be to Concession Stakeholder

## 50% Reduction

- No additional Tests
- Not obligatory



# Small Business Concessions

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## Retirement

- \$500,000 lifetime threshold
- No need to retire
  - payment to CGT concession stakeholder if  $>55$  at election; or
  - contributed to complying super fund if  $< 55$  at election
- Election when tax return due or lodged





# Small Business Concessions

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## Rollover

- Replacement Asset Period
  - Starts 1 year before CGT Event
  - Ends
    - 2 years after event
    - 6 months after latest time payment may be received under 'look through earnout right'
- J5 at end Replacement Asset Period
  - 50% concession no longer available
  - Retirement concession may be – election post J5



# Look through Earnout Arrangements

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- Right to future financial benefits
- Disposal of active asset
- CGT Event A1
- All benefits within 5 years
- Benefit contingent on performance
- Parties at arms length



# Capacity

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## Planning for loss of capacity

- Powers of Attorney
  - Duties of Attorney
  - Limitations
  - Business Powers of Attorney



# Capacity

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## Planning for loss of capacity

- Inter vivos deeds
- Superannuation deeds
  - Corporate Trustee
  - Individual Trustee

Advanced Care Directives



# Superannuation

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- Control of SMSF
  - Trustee
  - Director
  - Deed
- Death Benefit Nominations
  - In the Alternative
  - Attorney



# Wills

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- Life Interests
- Testamentary Trusts
  - Consider the need to distribute franking credits
- Wills Directions
- Mutual Wills



# The Team

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- Accountant
- Financial planner
- Solicitor

The best succession plans are created by a professional team that work together and value each other's expertise and experience.



# Questions

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