

# ALERT

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## Small Business CGT Concessions: Small Business Entities Sold for More Than \$6 Million

The purpose of this alert is to clarify one aspect of the rules pertaining to the CGT Small Business Relief concession contained in Division 152 of the *Income Tax Assessment Act 1997 (1997 Act)*.

Specifically, there may be situations where eligible small business owners may be entitled to the CGT concessions contained in Division 152, even where their net asset value is **in excess of** \$6 million.

This arises as a result of the specific wording contained in section 152-10(1)(c) of the 1997 Act. This section provides that “at least one” of the following conditions needs to be satisfied in order to satisfy the basic conditions of the relief [we have not considered herein the application of the other basic conditions]:

- (i) the entity is a “small business entity” for the relevant year;
- (ii) the entity satisfies the maximum net asset value test;
- (iii) the entity is a partner in a partnership that is a small

business entity for the income year and the CGT asset is an interest in an asset of the partnership; or

- (iv) the conditions mentioned with respect to passively held assets regarding affiliates and entities connected with the entity or passively held assets in partnerships are satisfied.

What is clear from section 152-10(1)(c) of the 1997 Act is that **only one** of these conditions needs to apply to the relevant taxpayer.

Therefore, if an entity, say, satisfies the small business entity test – as defined in section 328-110 of the 1997 Act (and as modified by Division 152) – then that is sufficient for the purposes of the requirement in section 152 10(1)(c) of the 1997 Act.

Generally speaking, section 328 110 provides that a small business entity is an entity with turnover of less than \$2 million.



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In other words it is quite conceivable that a small business entity with turnover of less than \$2 million – but with a sale of an active asset worth **more than** \$6 million - would still be eligible for the Division 152 CGT concessions. Obviously, there are other conditions in Division 152 of the 1997 Act which need to be satisfied.

The anomaly we point out here is that if the value of the small business assets being sold is in excess of \$6 million, there is a perception that the concessions in Division 152 will not apply. This may be correct in certain situations. However, if the relevant business being sold satisfies the definition of a “small business entity” (generally speaking because its aggregated turnover in the previous year, or the current year is less than \$2 million), then even if the value of the business was say \$10 million, we consider that the Division 152 concessions would be applicable (subject to satisfying the other requirements of Division 152 of the 1997 Act).

Advisers should consider the position for their clients on sale of an eligible small business and whether any amendment requests may be required for past year returns.

Please contact a member of the Cornwall Stodart Revenue Law Team if you would like to discuss.

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