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YOUR MONEY

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Using small biz cap gap

Super limit not all you think it is for traders

Monica Rule and Neale Prior

The new $1.6 million superannuation cap has hidden traps for small business operators whose enterprise forms part of their retirement savings plans.

Successful small business operators will need to spend some time learning the new rules or get some expert advice to maximise potential contributions when they sell their small business.

Timing and sequencing could well be imperative to how much you are able to get into super.

The sequencing challenges come about because of the interaction of the rules governing non-concessional super contributions, the small business capital gains tax exemption and the $1.6 million balance cap that takes effect on July 1.

Get it wrong and you could hit the $1.6 million cap head on and be left with a big chunk of your pre-retirement asset sale proceeds outside of super.

Non-concessional super contributions are made with money on which tax has been paid, such as an inheritance or the after-tax proceeds from selling shares or an investment property not related to your business.

Super rule changes that take effect on July 1 will limit non-concessional contributions to $100,000 a year or $300,000 over any three year period.

Right now, the limit is $180,000 or $540,000 if you use the bring forward rule to make three years contributions.

By now it is well known that your ability to make non-concessional contributions will become heavily restricted once your total super balance gets towards $1.6 million, and all but disappear once you hit the balance.

There are, however, far more generous contribution rules for small businesses both in the quantum of the contributions and, equally importantly, they are insulated from the effects of the total superannuation balance.

These provisions are collectively known as CGT cap amounts.

The first CGT cap amount concession is called the small business 15-year CGT exemption. Next year, up to $1.445 million of sale proceeds can be put into super by an owner aged at least 55 who has owned their business 15 years or more.

To use this provision, they must be retiring or become permanently incapacitated.

The other provision is the small business retirement CGT exemption. Up to $500,000 capital gains from the sale of an active business asset can be put into super.

The CGT cap amount counts towards the total super balance for the purposes of working out whether you are about to hit the new $1.6 million cap.

However, your entitlement to make CGT cap contributions is not affected by your total superannuation balance.

This means that careful planning needs to be carried out when you are considering making both CGT cap and non-concessional contributions.

Get it in the wrong order and you can smash into the $1.6 million cap head on.

Let's just say you're selling your business next year for about $1.5 million but you're also likely to get a $300,000 inheritance.

You're in your sixties, ground away at your business for 16 years, qualify as a small business taxpayer and plan to retire to your bit of paradise by the Indian Ocean.

Your super has a modest balance of $200,000 because every spare dollar has been poured into the business or paying off the mortgage.

You decide to put the maximum $1,445 million CGT cap contribution into your super. This will give you a total superannuation balance of $1.645 million.

You are now unable to put any of your $300,000 inheritance into super as a non-concessional contribution because your total superannuation balance has hit the $1.6 million cap.

But if you put the maximum $300,000 non-concessional contribution in first, you could still put in the full $1,455 million CGT cap contribution because it is not restricted by your super balance.

This would give you a balance of more than $1.9 million in super.

The new rules mean you will only be able to have a maximum $1.6 million in your tax-free account-based pension.

The other $300,000 will have to remain in accumulation phase, where it still enjoys the generous tax concessions.

THERE'S NO BUSINESS LIKE SMALL BUSINESS

WHAT'S A SMALL BUSINESS?
A turnover of less than $2 million or a maximum net asset value not exceeding $6 million.

WHAT'S AN ACTIVE BUSINESS ASSET?
An asset used by you in carrying on a business. Includes tangible assets, such as a factory unit and business equipment, or your business's goodwill.

WHAT ARE CGT CAP AMOUNTS?
A concession for small business operators to bolster super balances where you can put the proceeds of active business asset sales straight into super.

HOW MUCH CAN BE PUT IN?
The maximum for a retiring business owner aged 55 or more is $1.415 million this financial year and $1.445 million next year.

DO I HAVE TO PAY CGT FIRST?
No. Money from the sale proceeds contributed to super under CGT Cap amount provisions is disregarded for CGT purposes.

HOW DO I DO IT?
For a personal contribution to be treated as a CGT cap amount and not as a non-concessional contribution, you must fill out the Tax Office form NAT 71161.

WHEN DO I DO IT?
The election must be made before or at the time the member makes the contribution into their SMSF.

WHAT IF I GET IT WRONG?
If the election is made after the money is contributed, it will be counted towards non-concessional contributions. This may result in excess non-concessional contributions tax.

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