

controlling" shareholder, so the market value was less than simply his one-third share of the sale price.

As a result of this AAT decision, the taxpayer passed the \$6 million "maximum net asset value test", allowing him to qualify for small business capital gains tax (CGT) concessions, where otherwise he would not have.

The Commissioner has appealed to the Federal Court against this AAT decision.

TIP: This decision demonstrates that the actual selling price of an asset may not always represent its "market value". In this decision, the AAT agreed with the taxpayer's valuer that "all other things being equal, the average price per share of a controlling shareholding will be higher than the average price per share of a non-controlling shareholding because of the value of control".

Individual not a share trader

The Administrative Appeals Tribunal (AAT) has found that a taxpayer (a childcare worker) was not carrying on a business of share trading, and accordingly was not entitled to claim a loss resulting from her share transactions. In the year in question, the taxpayer turned over approximately \$600,000 in share transactions (including both purchases and sales).

In deciding that the taxpayer was a share investor and not a share trader, the AAT considered each of the key indicators established in case law. The AAT decided that a lack of regular and systematic trade, especially in the second half of the income year, when only 10 transactions were made, went against the taxpayer's contention that she was conducting a share trading business.

TIP: The AAT weighs up all the relevant factors in cases like this. There have been cases where the AAT has found that a taxpayer was carrying on a business of share trading, and has therefore allowed them to claim a deduction for their losses.

Small business restructures made easier

The Government has made changes to the tax law to provide tax relief for small businesses that restructure. The tax law changes provide an optional rollover for small business owners who change the legal structure of their business on the transfer of business assets from one entity to another. The effect of the rollover is that the tax cost of the transferred assets is rolled over from the transferor to the transferee.

This optional rollover is in addition to existing rollovers available where an individual, trustee or partner transfers assets to, or creates assets in, a company in the course of incorporating their business.

The changes to the tax law will take effect on 1 July 2016.

TIP: You must meet strict eligibility requirements in order to access the rollover. Among other things, the rollover must be part of a genuine business restructure that does not change the ultimate economic ownership of the assets. There are also tax consequences you should be aware of.

Tax law changes to treatment of earnouts

The Government has recently amended the tax law concerning the capital gains tax (CGT) treatment of the sale and purchase of businesses involving certain earnout rights.

Specifically, the changes provide for a "look-through" treatment. Under the amended tax law, capital gains and losses that arise in respect of look-through earnout rights will be disregarded. Instead, payments received or paid under the earnout arrangements will affect the capital proceeds and cost base of the underlying assets to which the earnout arrangement relates when they are received or paid (as the case may be).

The changes apply from 24 April 2015.

TIP: These changes to the tax law do not apply for events that occurred before 24 April 2015. However, transitional protection is provided, subject to conditions, for taxpayers who have reasonably anticipated these changes to the tax law, which were originally announced by the former Government.

Important: Clients should not act solely on the basis of the material contained in Client Alert. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. Client Alert is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.