THE CGT RETIREMENT EXEMPTION CONCESSION: What a boon!

If you run a small business and sell it – or some of its asset(s) – and make a capital gain, the CGT "retirement exemption" may be invaluable to reduce or eliminate the tax payable on the gain.

The funny thing is that you don't have to retire to use the CGT retirement exemption. Rather, it just means if you are under 55 years of age you have to pay the exempt gain into your superannuation (and the amount is exempt from the non-concessional contributions cap). On the other hand, if you are 55 years of age or over you can take the gain in your hands tax-free.

Furthermore, if you are under 55 and have to pay it into super, you could use the related rollover concession to defer the taxation of the gain for two years – and this may allow you then to use the retirement exemption for the reinstated gain when you are 55 years or over.

However, there is a limit on the amount of capital gain that is entitled to the retirement exemption. You only have a lifetime exempt limit of $500,000 – whether you take it into your hands tax-free or you put it into super (or you take it as a stakeholder payment in a company or trust where a company or trust make a gain).

It should also be noted that if you are going to use the CGT small business concessions (and there are four specific concessions which can be used, including the "15 year exemption" and the "50% reduction"), then if you meet the conditions for the 15 year exemption, it must be used in preference to any other concession. And one of the advantages of this concession is that it exempts the whole capital gain (regardless of how big it is) – unlike the retirement exemption which is subject to the lifetime limit of $500,000.

Crucially, there are special rules that apply if a company or trust makes the gain and you wish to use the retirement exemption. And if you don't meet these rules – especially the payment rules – then the retirement exemption is not available at all.

These payment rules are, broadly, that the payment must be made to the relevant stakeholder by seven days after the company or trust lodges its return.

And another great thing about the concession in this case is that the payment of the exempt gain to a stakeholder does not have to be in proportion to their interest in the company or trust. This allows excellent tax planning opportunities.

These are just a few of the "ins and outs" about using the retirement exemption. But there are also important eligibility rules to be met in the first place.

So, if you are thinking of selling your small business come speak to us first so that we can help you maximise the benefit of the concession, and make sure you qualify for them in the first place.