



CGT still applies even if you are “forced” to sell an asset

During the COVID pandemic years, we all suffered in one way or another – in particular the small businesses who relied on customers coming through their doors.

Mr Lewis was one such small businessman who operated a “multi-gym business” and who as result of the COVID pandemic found it impossible to keep his business operating and pay staff without additional financing. In his own words:

“...the government imposed lockdowns shut down my business operations virtually overnight. I had no income, no relief fast enough to respond, and no option but to sell personal assets just to meet my basic obligations – to pay rent, staff, escalating legal costs and debts.”

So that is exactly what he did.

He arranged for the family trust of which he was a beneficiary to sell shares and to distribute the gain to him. (Luckily, the trust had made some good investments.) As a result, a \$200,000 capital gain was distributed to him which he used to keep his business going and to pay staff, etc.

The problem was he was clearly assessable on that capital gain – and he sought to challenge the decision by arguing he was forced to sell the shares and that he did not really make a gain because he had to use the money to save his business.

In short, Mr. Lewis argued the Tribunal should consider his intention and his hardship, claiming the gain was not a true “profit” since proceeds offset business losses from lockdowns.

However, the Tribunal had to conclude that he had realised the capital gain and that there was no discretion in the law to exclude it or exempt it.

Furthermore, there were no CGT concessions available – and, in particular, the 50% discount was not available as the shares were not held by the trust for more than 12 months.

The moral of this story is that where a capital gain has duly been realised or come home to the taxpayer there is no discretion for the amount to be excluded from the assessment process (unless the tax law specifically provides one: eg, a roll-over).

This is the case, despite the circumstances under which gain arose – including where the taxpayer was “forced” to sell an asset or the gain “accidentally” arose. The only exception is where there has been a compulsory acquisition of an asset under relevant legislation.

Otherwise, a taxpayer can only seek relief after the assessment process by making a hardship relief application – and even then it is very difficult to succeed, especially if there were any reasonable measures a person could have taken to avoid the hardship.

If you find yourself in such circumstances, come and speak to us about the matter – and preferably before you think you may be “forced” to sell some CGT assets. 💰

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