



## PLAIN ENGLISH GUIDE

# CAPITAL GAINS TAX ON SALE OF FARMLANDS OR SMALL BUSINESS ASSETS AS AT 1<sup>ST</sup> JULY 2009

There have been many changes to the law in this area over recent years which have resulted in more changes to the CGT status of small business assets on sale, including farmlands.

Due to these recent changes it is very worthwhile considering all the options and getting advice in this very complex area before making any decision.

Some of the key elements that have to be satisfied to qualify for the Small Business Rollover concessions include:

- i. The farmer or any affiliates must have assets less than \$6 million. The assets do not include the principal place of residence or superannuation. Specialist advice needs to be obtained concerning “what is an affiliate?”
- ii. Some debts may be taken into account when considering whether the assets exceed or fall below the \$6 million threshold.
- iii. Where assets of a farmer and/or affiliates is greater than \$6 million, a new test has been introduced to provide that where a business has a turnover of less than \$2 million, small business concessions may be available.

If the farmer satisfies the CGT Small Business test, the following small business concessions/discounts may be available:

- (a) A 50% general discount on any capital gain in relation to any asset providing it has been held for 12 months.
- (b) Small businesses selling active assets are may be entitled to a further 50% active asset discount leaving a gain of 25%. If the owner is involved in the farming business or actively involved in a share farming arrangement, the farm will be classed as an active asset. However if the property is leased for a long period, this can lead to the seller being disqualified from CGT Small Business Rollover concessions. Advice should be obtained as to how to satisfy these criteria.
- (c) You could then take advantage of the business roll-over concession, the retirement concession or the 15 year concession. Depending on age and circumstances, the 25% gain can be rolled over into another active asset or paid into superannuation and for over 55s there are certain other concessions.
- (d) Where a company or trust disposes of an asset, an individual seeking to qualify for concessions must satisfy the requirement of holding 20% of the control of a company.

The CGT Small Business Rollover Concessions are very complex and this article is to highlight certain issues that need to be considered. It is not meant to be a detailed summary.