byfields business advisers

TRANSFER OF ASSETS

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There are times when your business changes and assets must be transferred to continue providing you with the best operating structure. Reasons to transfer assets may include providing better asset protection, succession, or simply outgrowing your current structure.

Whatever your reasons, transfers are deemed to have happened at market value, even if the transfer is for lower or no consideration. This can lead to unexpected tax and duty outcomes if not managed carefully.

The types of assets that are commonly transferred include:

Business assets

- Trading stock
- Livestock
- Equipment

Capital assets

- Goodwill
- Real property

The tax office understands that business assets are transferred and allows this to happen tax-effectively using rollovers. Rollovers enable you to transfer the above business assets between structures at their tax value without tax consequences. If rollovers are not utilised, the existing business owners are deemed to have sold their assets to the new owners/entity at market value which would likely result in a taxable sale and tax payable.

Examples of the common asset transfers between structures we see include:

- The transition from a sole trader to a new entity to include others
- Inclusion or retiring of partners from a partnership
- Transfer from a partnership to a trust
- Transfer from one trust to another trust
- Transfer from a trust to a company

Capital assets are more complicated to transfer between entities due to capital gains tax and transfer duty. Some exemptions can apply for capital gains tax, but the criteria to qualify are complex. Very simply, the criteria are as follows:

- **Small business classification:**

This requires turnover to be below $2 million or net assets not exceeding $6 million. Ineligibility for small business classification precludes access to the exemptions. It is important to note that these values are not indexed, making qualifications more challenging for some clients.

- **Active assets status:**

The transferred asset must be (or have been) an active asset in your business for a specified time period.

- **Ownership connection:**

The person/entity who owns the asset must be connected to the operating business entity.

Every circumstance will be different, so an analysis will need to be prepared specific to your situation to determine if you qualify for these concessions. If you are eligible, they can significantly reduce your capital gain.

Transfer duty is also payable on the transfer of capital assets. Farmland may qualify for a Family Farm Duty Exemption on the transfer of farmland between family members. This exemption is also complex and must be considered for each circumstance.

So next time you are considering your business structure and capital asset ownership, please speak to us, and we can assist you in considering which rollovers and exemptions you may be eligible for. Not considering all the options may result in significant financial costs to you and your business.