DLK ADVISORY

SMALL BUSINESS RESTRUCTURE ROLLOVER: TAX RELIEF FOR GENUINE BUSINESS RESTRUCTURES

With the latest statistics showing a significant rise in liquidations and with the ATO's focused efforts on debt collection, small businesses face significant financial pressures. However, the answer isn't to evade responsibilities or take shortcuts – business restructuring has to be done properly and in compliance with the relevant laws. The small business restructure rollover (SBRR) provides a legitimate, structured path for businesses to reorganise their operations, allowing them to better meet these challenges without prejudicing creditors or engaging in unethical practices.

The SBRR is a strategic tool for small businesses looking to restructure without the immediate burden of tax liabilities. It allows for greater flexibility in organising business assets, potentially leading to more efficient and effective business operations. For instance, restructuring from a sole proprietorship to a trust or a company can be seamlessly facilitated through the roll-over, provided the ultimate economic ownership remains unchanged.

To qualify for the SBRR, each party to the transfer must meet the small business entity definition. A small business entity is defined as an entity with an aggregated turnover of less than $10 million. This includes businesses that operate as a sole trader, partnership, company or trust, provided they meet the turnover threshold. Entities connected with or affiliated with a small business entity also fall under this definition.

The assets being transferred must be active assets, which include CGT assets, trading stock, revenue assets or depreciating assets. Non-active assets, such as loans to shareholders, are not eligible.

The transfer must be part of a genuine restructure of an ongoing business, not an artificial or inappropriately tax-driven scheme, and there must be no change in ultimate economic ownership of the transferred assets.

Opting for the SBRR has several tax implications:

- *The transfer does not trigger an income tax liability at the time of the transfer.*
- *The transferor is deemed to have received an amount equal to the asset's cost, and the transferee acquires the asset at this cost.*
- *Potential liabilities like GST or stamp duty must be considered, as they might still apply.*
- *The roll-over does not protect against the application of anti-avoidance rules, ensuring the transaction is not purely tax-motivated.*

For CGT assets, the transferee must wait at least 12 months to claim the CGT discount on any subsequent sale, and pre-CGT assets retain their status. For trading stock, the roll-over cost is based on the transferor's cost or value at the beginning of the income year. Depreciating assets allow the transferee to continue deducting the decline in value using the transferor's method and effective life. Revenue assets are transferred without resulting in a profit or loss for the transferor.

The SBRR offers significant tax relief and flexibility for small businesses undergoing genuine restructures. By understanding the eligibility criteria and implications, business owners can leverage this provision to enhance their business structure while maintaining compliance with tax regulations.

CONTACT

If you have any queries, please feel free to contact us.

DLK Advisory Pty Ltd
Level 10, 99 Queen Street, Melbourne VIC 3000

T: +61 3 9923 1222

www.dlkadvisory.com.au

Partnering together to achieve your objectives