

*Don't let your **share structure** trip you up*

Many companies have different classes of shares but when it comes time to sell, this share structure might be an impediment.

There are a number of reasons why differential share structures are used - the ability to provide different rights to equity holders and allowing dividends to be paid to one class of shareholder in preference to another are common reasons. Much of this comes down to the way the company is managed and the arrangements between shareholders. Having different share classes can provide an additional level of flexibility in the ownership of a company.

There is however one occasion where different share classes can work against you; when the company sells capital assets, triggers a capital gain and wants to reduce that capital gain by accessing the small business CGT concessions. The most common example of this is the sale of the business or shares in the company. **The concessions are attractive because they can defer capital gains tax or reduce it to zero.**

To access a number of the small business CGT concessions you need to be a **'significant individual'**, as defined by the legislation. This is a person who **holds at least a 20% participation interest** in the company. Such an interest requires them to have **rights to dividends, return of capital, and voting rights**.

So, what is the problem with different share classes?

Let's assume we have a company with three shareholders. Each shareholder has one ordinary share. Also on issue is one A class share, one B class share, and one C class share. These shares have the same rights attaching to them. The different shareholders each hold a different class of share in addition to the ordinary share they own. This structure was put in place to allow dividends to be paid to the shareholders at different times. The directors have the right to declare dividends to any class of share. Over the years the company has declared dividends but only to the ordinary shares. They have never used the different share classes for dividend purposes. Now, the company sells its business and wants to manage the capital gain by using the small business CGT concessions. The preferred concession they want to access is the small business retirement concession. This concession requires there to be a significant individual.

Unfortunately, none of the shareholders qualify. Because the company could pay a dividend to any of the classes of shares and no one shareholder holds at least a 20% interest in **all classes** of shares on issue, a significant individual does not exist. **The fact that the company has never paid dividends to one share class in preference to another does not matter.** The mere ability to do this fails the significant individual test.

This test is applied at the time of the CGT event. So, even where there are different share classes on issue it may be possible to overcome this problem. Don't simply rush out and issue shares though, as this could trigger other CGT problems. This is something that needs to be considered and planned well in advance of a CGT event.

Failing to have a significant individual does not mean you lose access to all of the small business CGT concessions. It does however limit the concessions that are available to you.

Help available

To make the compilation & reporting task for tax returns easier, clients of **Property Tax Specialists** received checklists and templates to facilitate the process ... **saving them time and money** ... the 'write' way is having clear **documentation**. ATO way means time/money wastage with possible audit investigation.

If you need help contact Shukri Barbara at Property Tax Specialists at Shukri@propertytaxspecialists.com.au

We look forward to being of Service – helping you towards Prosperity & Peace of Mind

Please do not hesitate to contact us if you would like to review & discuss your current property & tax situation, your asset protection strategy, structuring your next investment property, planning to legally minimise your tax position or just to prepare your next tax return.

We look forward to being of service. We also look forward to your referrals.

To improve our service we welcome all constructive comments on this newsletter and other materials.

For help contact **Shukri Barbara** at Property Tax Specialists at Shukri@propertytaxspecialists.com.au

Disclaimer

The material and contents provided in this publication are informative in nature only. It is not intended to be advice and you should not act specifically on the basis of this information alone. If expert assistance is required, professional advice should be obtained.

Acknowledgement - parts of this newsletter have been taken from Knowledge Shop Pty Ltd client newsletters. Barbara & co – Property Tax Specialists is a member of the Knowledge Shop and Hayes Knight Network

Kind Regards
Shukri Barbara

Property Tax Specialists – [Prosperity & Peace of Mind](#)
[Barbara & Co cpa](#)

phone 02 9411 8133

fax 02 9412 2833

mobile 0410 588 305

post: P.O.Box 665 Chatswood NSW 2057

office
Level 5
suite 509, 71-73 Archer Street
Chatswood NSW 2067
website www.propertytaxspecialists.com.au <<http://www.propertytaxspecialists.com.au>>

"Liability is limited by a Scheme approved under Professional Standards Legislation"
