Tax – Small business CGT concessions

Small business owners who sell business assets may be eligible for tax concessions on capital gains and may be able to contribute an amount into superannuation to help fund their retirement.

Benefits

- Investing in superannuation boosts your savings to help meet your retirement goals.
- The rate of return inside superannuation may be higher after-tax than investing outside superannuation. This is because earnings inside superannuation are taxed at a maximum rate of just 15%, whereas earnings from non-superannuation investments are generally taxed at your marginal tax rate (plus Medicare levy) which could be up to 47%. This could help your savings to grow faster.
- Your tax-free component will increase. This amount can be withdrawn tax-free at any age and is also tax-free if paid as a death benefit lump sum to dependants (including a person who is a non-tax dependant such as an adult child) after your death.

How it works

Rather than saving for retirement during their working lives, many small business owners instead use surplus funds to grow their business. The CGT cap exists to allow small business owners to make large contributions into superannuation once business assets have been sold.

To be eligible to use the CGT cap, you must first be eligible for a small business CGT tax concession.

NOTE: The eligibility rules are complex and specialist advice from a registered tax agent should be obtained to understand the rules to your situation.

Qualifying for the small business CGT tax concessions

To be eligible for the small business CGT tax concessions, certain basic conditions must be met such as:

- The net value of assets owned by your business and related entities is less than $6 million, or the (aggregated) turnover of the business is less than $2 million each year.
- The asset being sold is being used in running a business or it is held ready to be used in running a business (ie is an active asset).
- If the asset being sold is a share in a company or an interest in a trust, there must be a 'significant individual' and the entity claiming the concession must be a 'CGT concessional stakeholder' of the company or trust.

The following table outlines other CGT tax concessions which are available but which have further eligibility conditions attached.

Concession	Detail
15-year exemption	If the business asset being sold had been owned for at least 15 years, the entire capital gain may be exempt from tax under the 15-year exemption. The entire sale proceeds maybe contributed into superannuation using the CGT cap (up to the lifetime limit).
Retirement exemption	Up to $500,000 (lifetime limit) of assessable capital gain can be exempted from tax using the retirement exemption. If you are under age 55, you must

	contribute this amount to superannuation. If you are over age 55, you can take it in cash or choose to contribute it to superannuation. The superannuation amount is contributed under the CGT retirement cap. Amounts contributed under the CGT retirement cap reduce you're remaining CGT lifetime cap.
Small business 50% active asset reduction	This provides a small business/individual with a 50% reduction to their capital gain. You may also be eligible to apply the small business retirement exemption and/or small business rollover relief to the reduced capital gain amount (provided you meet the relevant criteria).
Small business rollover relief	This allows a person/entity to defer a capital gain arising from the sale of one or more small business asset(s) where a replacement asset is acquired within a certain time period. To be eligible you generally need to meet all the 'basic conditions' for small business CGT concessions, and acquire a replacement asset by the end of the 'replacement asset period'. You still may be able to claim the concession if you do not acquire a replacement asset within this time but some/all of the capital gain may be assessable.

If the 15 year exemption applies, this reduces the assessable gain to zero and no further concessions are applied.

If ineligible for the 15 year exemption, the other concessions apply to reduce the assessable gain. For individuals and trust beneficiaries, the standard CGT discount (for individual taxpayers) is applied to the assessable capital gain. For all eligible individuals, the 50% active asset reduction is then applied, followed by the retirement exemption. It is not compulsory to claim 50% active asset reduction, and in fact, it can sometimes be beneficial not to claim it as it can reduce the amount that can be contributed into superannuation using the CGT cap.

Contributing the proceeds into super

The amount you can contribute into superannuation is limited by contribution caps. The CGT cap enables small business owners who are eligible for CGT tax concessions to contribute larger amounts into superannuation closer to retirement.

The CGT cap provides a lifetime limit of $1.515 million for 2019/20 (the cap is indexed). The $1.515 million limit applies to total contributions made from the following amounts:

- up to $500,000 (unindexed) of capital gains which have been exempted using the retirement exemption
- the sale proceeds from an asset that is eligible for the 15-year exemption
- an asset that would otherwise qualify for the 15-year exemption concession but is a pre-CGT asset (purchased before 20 September 1985) or was sold for a capital loss.

Depending on your individual circumstances, there are certain timing requirements that must be adhered to when applying Small Business CGT concessions and making super contributions under the CGT cap. At the time of making the contribution you need to complete a 'Capital Gains Tax election form' and give it to the superannuation fund on or before the contribution is made.

Risks and Consequences

- As the CGT cap is a lifetime limit, in some cases it may be beneficial to use the non-concessional contribution cap first and retain the CGT cap for future use. However you should consider your eligibility to make non-concessional contributions in the future under the contribution rules.

- The eligibility criteria for the small business CGT concessions are complex and you must seek tax advice to determine your eligibility.
- Time limits apply to be eligible to use the small business CGT concessions and the CGT cap.
- If you exceed your CGT cap, the excess contributions will count towards your non-concessional contribution cap. Tax penalties may apply if you exceed your non-concessional contribution cap.
- If you are age 65 – 74, you need to satisfy the work test in the year the contribution is made to superannuation or be eligible to utilise the work test exemption. The work test means you have been gainfully employed for at least 40 hours over 30 consecutive days in the financial year the contribution is made.
- All contributions to superannuation are preserved until you meet a condition of release.
- Fees may be charged for your superannuation contributions. You should check the details in the fee section of your Statement of Advice and the Product Disclosure Statement (PDS) for your superannuation fund.

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