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# USING THE SMALL BUSINESS CGT CONCESSIONS FOR SUPER

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If you are a small business owner, the capital gains tax (CGT) small business concessions allow you to increase your retirement savings significantly. Fortunately, the maximum thresholds for the concessions have not been reduced from 1 July 2017, unlike the contribution caps, but they can be complex to understand. This article covers the two parts which make up the concession – the 15-year asset exemption and the small business retirement exemption.

Amounts transferred to superannuation under the small business concession will increase your fund balance. This can impact on your ability to make non-concessional contributions which are determined by your total superannuation balance at the end of the previous financial year. Also, the small business amount can be transferred to the fund if you meet the same tests for making non-concessional contributions. These depend on the member's age and whether a work test has been met after age 65.

If you use the capital gains from a small business concession for retirement or superannuation purposes, a lifetime cap of \$1.48 million, which is indexed, applies. The amount available under the CGT concession cap depends on how the CGT concessions are used. In effect, there are two parts to the cap, the lifetime cap and the small business

retirement cap, which falls under the lifetime cap. The overall cap is indexed while the retirement exemption cap is set at \$500,000. This is outlined in the following table:

Income year	Lifetime CGT cap amount	Retirement exemption cap amount
2018/19	\$1,480,000	\$500,000
2017/18	\$1,445,000	\$500,000

Amounts claimed under the \$500,000 retirement exemption cap reduce the amount available under the lifetime CGT cap.

## What amounts qualify under the lifetime CGT cap?

There are two small business concessions that can count against the lifetime CGT cap for retirement purposes – the 15-year CGT exemption and the retirement exemption. It is important to understand how these amounts qualify.

## Qualifying for the 15-year exemption

The 15-year exemption counts against the lifetime CGT cap before other small business CGT concessions are applied. The exemption



### The quote

*If you wish to transfer amounts to superannuation under the CGT small business concessions, a work test needs to be satisfied if you are 65 or older.*

allows the capital gain received from the sale or disposal of a CGT small business asset to be disregarded if it has been owned by the small business for at least 15 years. In addition, the person claiming the concession must be older than 55 at the time of sale or disposal and the amount received must be in connection with their retirement.

If the 15-year exemption does not apply, trustees can consider the other available CGT small business concessions.

### Retirement exemption

The retirement exemption allows the taxable net capital gain from the sale of a small business asset to be exempt from tax. The lifetime limit of \$500,000 applies to the qualifying net capital gains. Amounts that do not qualify under the retirement exemption and made to the super fund can be treated as either concessional or non-concessional contributions. These amounts will be measured against the relevant contributions cap.

If you are less than 55 years old, the retirement exemption amount must be contributed to super. However, if you are 55 or over there's no requirement to pay the amount to super. Also, other good news is that for the retirement exemption to apply there is no requirement for you to retire but the 15-year CGT exemption requires retirement to take place.

### Qualifying for the small business CGT concession

The small business CGT concession is available to individuals, trusts, companies and partnerships that carry on a small business where a capital gain is made on the sale or disposal of an 'active asset' of that business.

### What is considered a small business?

To qualify as a small business, individuals, trusts, companies or partnerships (referred to as 'entities') can meet one of two tests – the net turnover test or the net asset value test.

To satisfy the net turnover test the entity must be carrying on a business for tax purposes and the net total turnover of the business and connected entities cannot exceed \$2 million. If this test is not met the \$6 million net asset value test may be satisfied. This test requires that the sum of the net value of CGT assets owned by the taxpayer and connected entities must not exceed \$6 million. In calculating the \$6 million net assets, personal assets, life insurance and superannuation are excluded.

### What is an active asset?

An 'active asset' for purposes of the CGT small business concessions is an asset that is used or held ready for use by an entity and is used in connection with the business activity.

Active assets can include goodwill, trademarks, franchises, licences or certain shares or units held in Australian companies or trusts.

### CGT small business strategies

You can use the CGT small business concessions for retirement purposes in combination with the other two

concessions that are available. These are the CGT 50% active asset reduction and the CGT small business asset roll-over concession. By using these concessions, it is possible for you to vary the amount claimed under the retirement exemption and can result in less tax being paid on the capital gain.

### Using the 50% active asset reduction effectively

The 50% active asset reduction and general 50% CGT discount are often used together with the retirement exemption to minimise the amount of CGT payable. However, you have a choice of which small business concession you can use. Sometimes it may not be worthwhile to access the discounts available in order to make a larger amount to super under the retirement exemption. Here is an example of how the CGT concessions can be used:

#### Example

Sam has sold a commercial property previously used in his business. The property was sold for \$2,000,000 and the initial cost was \$1,000,000. The property was owned for more than one year which allows Sam to use the 50% general discount and will reduce the taxable capital gain to \$500,000. In addition, Sam could apply the 50% active asset reduction, which would leave a taxable capital gain of \$250,000. But, Sam could choose to claim \$250,000 under the retirement exemption and none of the capital gain would be taxed.

If Sam wished to maximise the amount to superannuation, he may be better off using the 50% active asset reduction and leave the remaining net capital gain of \$500,000 to fully utilise the \$500,000 retirement exemption cap.

### Meeting work test for contributions into super

If you wish to transfer amounts to superannuation under the CGT small business concessions, a work test needs to be satisfied if you are 65 or older. But once you reach 75, you can't transfer amounts to superannuation under the CGT small business concessions. If you are 65 or over, you may not be able to transfer the CGT small business amount to super where you receive the amount from the sale of a small business over multiple years and don't meet the work test in one or more of those years.

### Conclusion

Using the small business CGT concessions for retirement purposes not only saves you paying tax but it can also significantly boost your superannuation. This can help you to top up your retirement savings especially if you have made irregular contributions during your working life. As the CGT concessions are complex, make sure you get the greatest benefit from them by obtaining advice from a qualified professional, such as your accountant or tax adviser. **FS**