Selling a small business
CGT concessions and superannuation

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At a glance

Follow these steps to assess if a small business owner can benefit from the small business CGT exemptions and contribute to superannuation.

Step 1 – Meeting the basic conditions

Check that the initial basic conditions are met:
- Is it a small business?
- Is the asset an active asset?
- Is the active asset a share in a company or an interest in a trust to which special conditions apply?

Step 2 – Reduce or eliminate CGT

Consider the four possible small business CGT exemptions in the following order. Each exemption has its own specific conditions to be met.
- 15 year exemption

If the 15 year exemption cannot be used, consider one or more of the following exemptions:
- 50% active asset reduction
- Small business retirement exemption
- Small business rollover

Step 3 – Contributing to superannuation

Confirm if it is possible to make contributions to superannuation under the small business exemptions:
- Only the 15 year and the small business retirement exemptions allow contributions that are exempt from the normal superannuation caps

  Note: Such contributions, which must be made within strict time limits, have their own specific caps (the lifetime CGT cap) against which they are measured.
- With the other two exemptions, proceeds can only be contributed to superannuation in accordance with the normal rules and caps.

Step 1

Before it can be determined if a client is eligible for CGT concessions, the following basic conditions must be met.

01. Meet the eligibility conditions

Must satisfy one of the conditions:

(1) The taxpayer is a small business entity with less than $2 million annual turnover (aggregated turnover of business + connected entities and affiliates) based on any of the three methods of calculation -

(i) Previous year turnover
(ii) Estimated current year turnover
(iii) Actual current year turnover

(2) Not carrying on a business but the taxpayers passively held CGT asset is used in a business carried on by a small business entity that is an affiliate or connected to the taxpayer

(3) The taxpayer is a partner in a partnership that is a small business entity and the CGT asset is an interest in a partnership asset or is not an interest in a partnership asset **but** is used in the partnership business

(4) Net value of CGT assets owned by the taxpayer (and entities connected with the taxpayer) + assets used or held ready to use in a business carried on by the taxpayer (or an entity connected with the taxpayer), owned by the taxpayers affiliates (and entities connected with your affiliates), did not exceed $6 million (the "maximum net asset value" test) just before the CGT event

02. CGT asset must be an active asset

Active asset - an asset owned by the taxpayer and used or held ready to use in carrying on a business (whether alone or in partnership).

(1) Does not need to be active immediately before CGT event

(2) If owned for 15 years or less it must be an active asset of the taxpayer for at least half of the period (does not have to be continuous), or if owned for more than 15 years must have been an active asset for a total of at least 7.5 years

(3) Can be an intangible asset inherently connected to a business (e.g. goodwill) that the taxpayer carries on

(4) Some assets cannot be active assets (e.g. financial instrument, loans etc.)

Note: Passive assets can never be active – e.g. rental property unless rented to an affiliate or connected entity for use in their business.

03. If CGT asset is a share in a company or interest in a trust must meet additional conditions

Must satisfy these additional conditions where the CGT asset is a share in a company or interest in a trust:

(1) Just before the CGT event, either:

(i) The taxpayer must be a CGT concession stakeholder in the company or trust; or

(ii) CGT concession stakeholders in the company or trust had a total small business participation percentage in the taxpayer claiming the concession of at least 90%. (The 90% test only applies if there is an interposed entity between the CGT concessional stakeholder and the company or trust in which the shares or interest are held - the interposed entity is one claiming the concession)

(2) Unless the taxpayer satisfies the maximum net asset value test, it must be carrying on a business just prior to the CGT event

(3) The company or trust must either be a CGT small business entity for the income year or satisfy the maximum net asset value test

(4) The share in the company or interest in the trust must satisfy a modified active asset test (MAAT). Work out the total market value of both (i) the assets of the company or trust and (ii) the assets of any later (interposed) entity in which the taxpayer has a small business participation percentage, multiplied by that percentage. To meet the MAAT, at least 80% (the 80% test) of the above assets must be made up of (i) active assets and (ii) cash or financial instruments inherently connected with the business carried on by the company/trust or a later entity

Note: If the assets are held by a later entity, they are only active assets if **both** conditions are met: (i)The later entity is either a CGT small business entity or meets the maximum net asset value test in relation to the CG (ii)The taxpayer either has a small business participation percentage of at least 20% in the later entity or is a CGT concession stakeholder of the entity

If your client meets all the above conditions, turn the page to see which concession they may be eligible for.

To learn more visit: www.netwealth.com.au/change

Step 2

Meet specific conditions of the exemptions to reduce or eliminate CGT

To the extent that 15 year exemption can be used, there is no need to consider any other exemption.

If the 15 year exemption eligibility criteria cannot be met, the remaining exemptions may be applicable either singularly or in conjunction with one another. As there is choice not to use one or more of the exemptions, it is therefore important to consider all options and work through the implications to achieve the most appropriate outcome.

15 year exemption

Tax impact:

(1) Entirely disregard any capital gain, no need to apply any other concessions

(2) No need to apply capital loss before applying 15 year exemption

(3) If an individual claimed exemption - payment is 100% tax free;

(4) If a company or trust claimed exemption - any distribution of the exempt amount to the CGT concession stakeholder is tax free up to the participation percentage

Individual claiming exemption:

Must meet these conditions:

(1) Owned asset continuously for 15 year period ending just before the CGT event

(2) When the CGT event happened, the taxpayer is either permanently incapacitated at any age; or at least 55 years old and the CGT event happened in connection with retirement

(3) If the CGT asset is a share in a company or interest in a trust, the company or trust must have had a significant individual for periods totalling at least 15 years during the entire time of ownership even if not the same significant individual during the whole period.

Company or trust claiming exemption:

Must meet these conditions:

(1) Owned asset continuously for 15 year period ending just before the CGT event

(2) There was a significant individual for at least 15 years, even if not the same individual

(3) The significant individual just before the CGT event was:

(i) At least 55 years old at the time and the event happened in connection with retirement, or

(ii) Permanently incapacitated at that time.

(4) Distribution of exempt amount - the Company or Trust makes the payment before the later of:

(a) 2 years after the relevant CG event; or

(b) 6 months after the latest time of an "earnout arrangement"; and meeting:

(i) the payment must be made to an individual who was a CGT concession stakeholder of the Company or Trust just before the event; and

(ii) total payments to each concessional stakeholder not exceeding their participation percentage of the exempt amount.

Reduce CG by current & prior year losses

Individuals must apply 50% general CG discount if asset owned for more than 12 months

50% active asset reduction

Tax impact:

(1) The amount of any capital gain is reduced by 50%

(2) Applies in addition to the individual 50% general CGT exemption making a total exempt amount of 75%

Individual or company or trust claiming exemption:

(1) If unable to use the 15 year exemption, this exemption may apply

(2) Once the basic conditions are satisfied, no further requirements need to be met

(3) Exemption applies automatically but may choose not to use if small business retirement or rollover exemption give a better result

(4) Small business retirement exemption and/or the small business rollover may also apply to any remaining amount after the application of this exemption

No CGT exempt super contribution allowed

Small business retirement exemption

Tax impact:

(1) Can disregard a capital gain up to a maximum of $500k (lifetime limit) per individual taxpayer or per eligible stakeholder for company or trust taxpayers

(2) Payment received from company or trust satisfying this requirement is 100% tax free

(3) Earlier exemptions taken (e.g. sale of another business) will reduce $500k lifetime limit

(4) Can choose to apply this exemption if not eligible for the 15 year exemption and after 50% active asset exemption

Individual claiming exemption:

(1) No need to terminate any activity, employment or cease business

(2) Keep a written record of the CG amount chosen (CGT exempt amount) to be exempt (subject to lifetime limit)*

(3) If under 55 years of age just before taxpayer chooses to use the exemption, the exempt amount must be contributed into super

(4) If 55 years of age or older when taxpayer makes the choice, no requirement to go into super (even if under 55 years of age when proceeds received)

(5) If proceeds received in instalments, super contribution requirements apply to each instalment

Company or trust claiming exemption:

(1) Must have at least one significant individual just before the CGT event

(2) Keep a written record of the CG amount chosen to be disregarded and if there is more than one CGT concession stakeholder, each stakeholder's percentage of the exempt amount (together adding up to 100%)*

(3) A payment to at least one CGT concession stakeholder worked out by reference to each individual's percentage of the exempt amount must be made

(4) The payment is equal to the exempt amount or the amount of capital proceeds, whichever is less

(5) If proceeds received in instalments, make payments to a CGT concession stakeholder for each instalment in succession (up to the asset's CGT exempt amount)

(6) Payment must be made by the later of:

(i) 7 days after choosing to disregard the CG

(ii) 7 days after receiving the capital proceeds from the CGT event

(7) If the stakeholder is under 55 years of age just before the payment is made, the Company or Trust must pay directly to a super fund

(8) If 55 years of age or older just before the payment is made, no need to contribute to super

* This must be done by the day of lodgement of return for the year of the CGT event

Small business rollover

Tax impact:

(1) Allows **deferment** of all or part of a capital gain from a CGT event happening to an active asset by rolling over the gain to a replacement asset

(2) Can choose to apply this relief if not eligible for 15 year exemption and after considering 50% active asset and small business retirement exemptions

Individual or company or trust claiming exemption:

(1) Used where it is intended to purchase a replacement asset with the proceeds. Rollover can be obtained even where the replacement asset has not yet been acquired or any expense incurred on the capital improvement to an existing asset

(2) Only the basic conditions need to be met

(3) Time limits apply - replacement asset needs to be acquired in the period 1 year **before** to 2 years **after** the sale of the original asset

(4) If unable to acquire the replacement asset within the time limit, deferred CG will crystalise and subject to meeting the conditions, can opt to use (go back to) small business retirement exemption

No CGT exempt super contribution allowed

Step 3

Contributing to superannuation using the lifetime cap of $1.48m

Can be contributed to super

(1) The total proceeds of the sale are eligible for contribution not just the capital gain portion, up to the lifetime cap of $1.48m

(2) Must submit CGT cap election form to super fund at or before making contribution

Timing - Individuals must contribute on or before the later of the day their tax return is due for the year of the CGT event or 30 days after receiving proceeds

Timing - Company or trust must make the contribution within 30 days of payment from Company or Trust

Can be (or must be) contributed to super

Individual claiming exemption

(1) Only the exempt capital gain portion of the sale and up to a lifetime cap of $500k can be contributed

(2) Must submit CGT cap election form to super fund at or before making contribution

Timing

(1) If under 55 years of age, must contribute to super by the later of the day the choice is made (the date the tax return is required to be lodged) or the date the capital proceeds received

(2) If 55 or older, no contribution to super required but if wish to contribute to super, then it must be contributed before the later of the day their tax return is due for the year of the CGT event or 30 days after receiving proceeds

Company or trust claiming exemption

(1) Applies only to the exempt capital gain portion of the sale and up to a lifetime cap of $500k

(2) CGT cap election form must be provided to super fund at or before contribution

Timing

(1) If the CGT concession stakeholder is under 55 years of age just before the payment is made in relation to them, the company or trust must make the contribution, up to the relevant CGT exempt amount, to a super fund on their behalf in the same timeframe as in point (6) above, instead of being a payment, it is a direct contribution to the fund

(2) If the concession stakeholder is 55 years or older just before the payment is made to them, the company or trust is not required to contribute the amount to a super fund on behalf of the member. If the member wishes to contribute the amount to a super fund, the contribution must be made within 30 days of receiving the payment

Definitions

Net value of CGT asset
Assets included are not restricted to business assets. They include all CGT assets of the entity, unless the assets are specifically excluded.

Carrying on a business
(1) Significant commercial purpose
(2) Systematic with a view to profit
(3) Organised in a business-like manner.

A CGT Concession stakeholder
of a company or trust is a significant individual in the company or trust, or the spouse of a significant individual where the spouse has a small business participation percentage in the company or trust.

Small business participation percentage is the sum of the direct and indirect small business participation interests.

Direct small business participation percentage for a company is the smallest percentage out of:
(i) The voting power
(ii) Any dividend or capital distribution, the entity is entitled to.

Direct small business participation percentage for a trust:
(1) Where entities have entitlements to all the income and capital of the trust - the lower percentage of the income and the capital that the entity is beneficially entitled to from the trust
(2) Where entities do not have entitlements to all the income and capital of the trust and the trust makes a distribution of income or capital - the lower percentage of distributions of income and capital that the entity is beneficially entitled to during the income year.

The indirect small business participation percentage is the entity's direct participation interest in an interposed entity multiplied by the interposed entity's total participation percentage (both direct and indirect) in the company or trust.

In connection with retirement
while there is no need for a permanent retirement, there does need to be a significant reduction in working hours or the nature of present activities.

A significant individual
has a small business participation percentage in the company or trust of at least 20%.

Related information

Contribution Caps & Total Super Balance
Contributions to super (CGT exempt amounts) up to the CGT lifetime cap amounts **does not** count toward members contribution caps but **does** count toward Total Super Balance once contributed.

Death and small business CGT concessions
There may also be scope for the LPR or beneficiary of a deceased estate to claim small business CGT concessions if the asset is disposed of within 2 years of death & the asset would have qualified for the concession had it been disposed of just before death by the deceased.

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