



MLC TechConnect

**Guide to small business
CGT concessions**

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Guide to small business CGT concessions

This guide outlines the CGT concessions available to small businesses on disposal of assets and the opportunities to contribute sales proceeds into superannuation.

Introduction

When a small business taxpayer disposes of eligible business assets, they may use a range of small business CGT concessions to reduce or defer CGT and may be eligible to make 'CGT cap contributions' to super. CGT cap contributions do not count towards the taxpayer's non-concessional contributions (NCC) cap.

Total CGT cap contributions are subject to a lifetime limit of \$1.780 million in 2024/25. A \$500,000 limit (non-indexed) applies to CGT cap contributions relating to the small business retirement exemption.

In this guide, we outline:

- the small business CGT concessions
- the basic eligibility conditions common to all small business concessions
- additional conditions for each of the small business concessions, and
- how to make super contributions under the CGT cap.

Key terms and concepts are explained in [Appendix A](#). A flow chart on how to apply the small business CGT concessions is in [Appendix B](#).

Working with the client's registered tax agent

The small business CGT rules are complex. Clients should consult their registered tax agent to confirm eligibility for the concessions and if contributing to super, assistance with completing the CGT cap election form (refer to section [CGT cap election form](#)).

The client's registered tax agent is responsible for determining:

- the client's eligibility for concessions
- which concessions the client should claim and in what order
- any amount that must be directed to super to qualify for the tax concessions.

The registered tax agent will also assist the client complete the CGT cap election form and tax returns.

The client's financial adviser:

- works with the accountant to ascertain the concessions claimed and amounts that should be contributed into super based on the concessions used
- identifies opportunities to use any residual sales proceeds to make additional contributions into super
- recommends the super fund to which contributions should be made, underlying investments and investment options, and
- recommends non-super investments if the client is unable to, or should not, contribute all sale proceeds to super.

It's therefore important for financial advisers and registered tax agents to understand their roles and work closely together to provide the desired outcome for a mutual client.

Basic eligibility conditions

An individual taxpayer, partnership, company or trust may qualify for the small business concessions. To be eligible, the following basic eligibility conditions must be satisfied¹:

- a CGT event² relating to a CGT asset has occurred
- a gain would result³
- the disposed CGT asset is an active asset, and
- one of the following applies:
 - the \$2 million turnover test is met
 - the \$6 million maximum net asset value (NAV) test is met,
 - not running a business (other than as a partner) but your asset is used in your affiliate's or connected entity's small business, or
 - if a partner in a partnership that is a small business entity, the CGT asset is either an:
 - interest in a partnership asset, or
 - asset that is not an interest in a partnership asset (partner's assets) but is used in the business of the partnership.

Additional conditions must be satisfied for each of the small business concessions (except for the small business 50% active asset reduction), for certain CGT active assets (eg shares in a company) or for particular entities (eg partnerships).

Net asset value (NAV) test

To meet the NAV test, the total NAV of the CGT assets (subject to certain exclusions) can't exceed \$6 million just before the CGT event occurs. When applying this test, include CGT assets held by:

- the taxpayer that disposes of the asset
- **entities connected** with the taxpayer, and
- small business CGT **affiliates** of the taxpayer or **entities connected** with small business CGT affiliates of the taxpayer if those assets are used, or held ready for use, in a business conducted by the taxpayer or entity connected with the taxpayer (but not if the entity is connected with the taxpayer only through an affiliate).

Refer to [Appendix A](#) for definitions of key terms and concepts.

Advice tip

If the entity does not run a business in the year the CGT event occurs, then only the NAV can be used to determine whether the small business entity is met.

Assets excluded from NAV

The following assets are excluded from an individual's NAV:

- assets solely for the individual taxpayer's or their affiliate's personal use and enjoyment
- the family home to the extent it is used for private purposes
- superannuation interests, and
- insurance policies on the individual taxpayer's life.

Shares, units or other interests (except debts) that are held by the taxpayer in an entity connected with the taxpayer or their affiliates are also excluded. This avoids double counting, as the net asset value is already included in the taxpayer's NAV.

Special rules apply to partnership assets depending on whether it is considered a connected entity. For additional information refer to the [ATO website](#).

¹ Subdivision 152-A of Income Tax Assessment Act 1997 (ITAA97).

² But not event K7, special rules apply for event D1 – ITAA97 s152-10(1).

³ CGT cap contributions can still be made in certain cases where a capital gain did not result, such as where a small business would otherwise qualify for the 15-year exemption if the asset was not a pre-CGT asset, or where a capital loss is realised.

When calculating the NAV of the CGT assets, most liabilities of the entity relating to the assets included in the NAV are deducted, this includes liabilities not directly related to a particular asset but rather to the assets of the entity more generally, such as a bank overdraft or legally enforceable debts due for payment. Provisions for expenses are generally excluded from liabilities, such as provisions for the guarantee of a loan, long service leave, annual leave and possible obligations to pay damages in a pending lawsuit.

The client's registered tax agent will determine if the NAV test is passed.

Advice tip

Trading stock and depreciating items such as plant, machinery and equipment used in a business are not eligible for the small business CGT concessions, as disposal of these assets does not give rise to a capital gain. However, they are included in the \$6 million NAV test.

Turnover test

This test is met if the relevant entity(s) has an aggregated turnover of less than \$2 million in the previous income year and at the end of the relevant income year. Aggregated turnover is the taxpayer's annual turnover plus the annual turnover of affiliated or connected business entities.

Items in the annual turnover test

Items included in annual turnover	Items excluded from annual turnover
<ul style="list-style-type: none">▪ sales of trading stock▪ fees for services provided▪ interest from business bank accounts▪ foreign business income	<ul style="list-style-type: none">▪ GST charged on a transaction▪ amounts borrowed for the business▪ proceeds from the sale of business capital assets

If the business commences or ceases during the financial year, a reasonable estimate of annual turnover if the business ran for the entire year is required.

The client's registered tax agent will determine if the aggregated turnover test is passed.

For additional information, refer to the [ATO website](#).

Active asset test

A CGT asset is an active asset if it is owned by the taxpayer, and it is used or held ready for use in the carrying on of a business by:

- the taxpayer,
- their affiliate,
- their spouse or child under 18, or
- a connected entity.

An intangible asset (eg goodwill) is also an active asset if it is:

- owned by the taxpayer and inherently connected with a business the taxpayer carries on, or
- it is inherently connected with a business carried on by their affiliate, their spouse or child under 18 or a connected entity.

The active asset test is satisfied if the asset being disposed of was an active asset for at least:

- half the test period if owned for 15 years or less, or
- 7.5 years during the test period if owned for more than 15 years.

The test period starts when the asset is acquired and ends on the earlier of:

- the CGT event relating to the asset; and
- the day the business ceases or is sold (if the CGT event occurred 12 months or less after this).

You can apply for an extension of time if you dispose of the asset more than 12 months after the business ceases or is sold. Any periods during which the asset is an active asset can be totalled to determine if the active asset test is met. The asset does not need to be an active asset just before the CGT event, which means taxpayers do not need to be carrying on a business just before the CGT event.

Example – Active asset test

Lara purchased business premises in January 2004. She used this property in her catering business until March 2012. From March 2012 until the asset was disposed of in April 2022, she rented the property to unrelated businesses. Even though the use of the business premises changed from being used in Lara's own business to an unrelated business, the business premises meets the active asset test as the property was used in her business for at least 7.5 years (as the property was held for more than 15 years).

There are modified rules to determine if the active asset test is satisfied for CGT assets acquired or transferred under the rollover provisions relating to assets compulsorily acquired, lost or destroyed, or to marriage and relationship breakdown⁴.

Certain CGT assets cannot be active assets, such as:

- assets whose main use is to derive interest, an annuity, royalties or foreign exchange gains
- assets whose main use is to derive rent unless:
 - the main use for deriving rent was only temporary
 - the asset was rented to an affiliate or connected entity for use in their business, or
 - the asset is an intangible asset that the taxpayer has substantially developed or improved so that its market value has been substantially enhanced.⁵
- shares in companies or interests in trusts that don't satisfy the 80% test (refer to the section 'Disposing of shares in a company or units in a unit trust' below)
- financial instruments (eg bank accounts, loans, debentures, bonds, futures and other contracts, share options (if a financial instrument is inherently connected with the business it can count towards the satisfaction of the 80% test))
- shares and trusts interests in widely-held entities, unless held by a CGT concession stakeholder in a widely-held entity
- vacant land resulting from land that is subdivided into both vacant land and land used to run a business.

Passively-held assets

There may be circumstances (eg relating to asset protection) where the disposer does not carry on a business but leases the asset to a related party. A disposer can access the small business CGT concessions if:

- their affiliate or entity connected with them is a small business entity for the same income year that the CGT event happens
- in the income year that the CGT event happens, the same affiliate or entity connected with them must:
 - be using the asset in their business
 - be a small business entity, and
 - the asset must meet the active asset test for the same time.
- they don't run a business in the income year other than in a partnership. If they run a business in a partnership, the CGT asset cannot be their interest in a partnership asset.

⁴ Refer to [Active asset test for involuntary disposals](#) on ATO website for more information.

⁵ ITAA97 s152-40 (4)(e)

In some cases, a spouse or child under 18 may be an affiliate for this purpose. Refer to the [ATO website](#). An asset which is used primarily to derive rent in an unrelated entity's business cannot be an active asset and small business CGT concessions are not available.

Example – Passively held assets

Jana is a full-time employee and owns a commercial property which is leased to a company owned 100% by her husband, Michael, to run his medical practice. While Jana is not carrying on a business, she may be eligible to use the small business CGT concessions, as the asset is used in her affiliate's business.

Disposing of shares in a company or units in a unit trust

Rather than a business disposing of an active asset, a small business owner may dispose of their ownership interest in the business, eg shares in a company or units in a unit trust. To be eligible for the small business concessions a share or unit must:

- meet the basic eligibility conditions (refer to page 4)
- satisfy the modified active asset test (80% test – see below)
- the taxpayer either carries on a business or satisfies the maximum net asset value test
- just before the CGT event, the taxpayer was either a CGT concession stakeholder in the company/trust, or satisfies the 90% test (see below)
- when applying the modified connected entity rule, the company or trust must be carrying on a business and meet the \$2 million turnover test or the \$6 million NAV test.

Modified active asset test (80% test)

A share in a company or units in a unit trust can be active assets if the total of:

- the market value of the active assets of the company or trust, and
- cash and the market value of any financial instruments of the company or trust that are inherently connected with the business,

equates to at least 80% of the market value of all of the company or trust assets.

Example – Selling shares in a company

Yan and Lily own 50% each of Blinky Bill Pty Ltd which carries on a horticultural business. The market values of the company's CGT assets are:

Asset	Amount
Business premises	\$700,000
Goodwill	\$100,000
Trading stock	\$100,000
Plant and equipment	\$300,000
Rental property (not an active asset as deriving passive income)	\$250,000
Total	\$1.45 million

The shares in Blinky Bill Pty Ltd qualify as active assets as it meets the 80% test. The active assets of Blinky Bill Pty Ltd are \$1.2 million and are more than 80% of the market value of all the assets. Depreciating assets, such as plant and equipment are CGT assets. While the small business CGT concessions cannot be accessed on their sale, these are active assets and included in the 80% test. Yan and Lily's shares in Blinky Bill Pty Ltd are active assets.

If the company or trust has a small business participation percentage in another entity, include the assets of the other entity and multiply by the participation percentage in the 80% test⁶.

Steps for the modified active asset test

Steps	Details
1	<p>Determine the total market value of assets in:</p> <ul style="list-style-type: none"> the company or trust (ie the taxpayer relating to CGT event), and any entity the company or trust has a small business participation percentage (ie the later entity) multiplied by that percentage. <p>Note: To avoid double counting, the value of interest in later entities is excluded.</p>
2	<p>Determine the value of active assets in the:</p> <ul style="list-style-type: none"> company or trust, and later entity multiplied by the small business participation percentage. <p>An active asset of a later entity can only be 'active' if:</p> <ul style="list-style-type: none"> under the modified connected entity rule if either the: <ul style="list-style-type: none"> later entity is a small business entity, or NAV test is met, AND the taxpayer: <ul style="list-style-type: none"> has a small business participation percentage of at least 20% in the later entity, or is a CGT concessional stakeholder of the later entity.
3	<p>The 80% of assets calculated at Step 1 must be:</p> <ul style="list-style-type: none"> active assets (Step 2 amount), and cash or financial instruments inherently connected with the business carried on by the company, trust or later entity. <p>Note: Any cash or financial instrument acquired or held for the purpose of ensuring the company or trust meets the 80% test will be ignored as part of an integrity measure.</p>

Taxpayer carries on a business or satisfies the maximum net asset value test

Taxpayers who are shareholders or unitholders selling their interest in an entity must either:

- meet the maximum NAV test, or
- have carried on a business just before the CGT event.

In many cases, shareholders or unitholders will not operate a business in their own right (eg as a sole trader) and therefore would need to meet the maximum NAV test.

CGT concession stakeholder or 90% test

Just before the CGT event:

- the taxpayer must be a CGT concession stakeholder in the company or trust in which the taxpayer holds the shares or units, or
- the CGT concession stakeholders of the company or trust had a total small business participation percentage of at least 90% in the taxpayer.

⁶ Refer to [Modified active asset test](#) on the ATO website for more information.

A CGT concession stakeholder can only be a natural person. A CGT concession stakeholder of the company or trust is:

- a significant individual, ie they have a small business participation percentage (direct or indirect) in the company or trust of at least 20%, or
- a significant individual's spouse who has a small business participation percentage in the company or trust greater than zero (eg a small business participation percentage of 1% may qualify).

Small business participation percentage

An entity's small business participation percentage in another entity at a time is the sum of:

- the entity's direct small business participation percentage in the other entity at that time, and
- the entity's indirect small business participation percentage in the other entity at that time.

Direct small business participation percentage – company

An individual's direct small business participation percentage in a company is determined by the lesser of their percentage of:

- voting power (except for jointly owned shares)
- dividends they are entitled to receive, or
- capital distribution they are entitled to receive.

Example – Direct small business percentage in a company

Jamie has shares that entitle him to 40% of any dividends and capital distributions of Leicester Pty Ltd. The shares do not carry any voting rights. Jamie must use the smallest percentage, the voting entitlement, to calculate his small business participation percentage. Jamie's direct small business participation percentage is 0%.

Example – Direct small business percentage in a company

Marty owns 49% of the shares in Byrde Pty Ltd. All shares have equal voting, dividend and distribution rights. His wife, Wendy owns 1% of the shares with the remaining interest held by another party. Marty is a CGT concessional stakeholder as he is a significant individual by owning more than 20% of the shares. Wendy is also a CGT concessional stakeholder as she is the spouse of a significant individual and her ownership interest is more than zero.

Direct small business participation percentage – trusts

An entity's direct small business participation percentage in a fixed trust is determined by the lesser of its percentage of:

- trust income that it is beneficially entitled to, or
- capital that the entity is beneficially entitled to.

For discretionary trusts, an entity's small business participation percentage during the relevant year is the lesser of its percentage of:

- trust income that it is beneficially entitled to, or
- trust capital that it is beneficially entitled to.

The relevant year is the CGT event year. If no distribution of income or capital occurs in that year (because the trust had no net income or had a tax loss), the relevant year is the last income year the trustee made a distribution of income or capital.

However, the participation percentage is 0% if the trust made no distribution in the relevant year although it had net income and no tax loss. A 0% participation percentage also applies if the trust has never made a distribution of income or capital.

Indirect small business participation percentage

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

The 90% test only applies if there's an interposed entity between the CGT concession stakeholder(s) and the company or trust in which the shares or interests are held. The interposed entity will be the entity accessing the concessions and will satisfy the 90% test if at least 90% of the small business participation percentages in that entity are held by CGT concession stakeholders of the company or trust in which the shares or interests are held.

Example – Indirect small business participation percentage

XYZ Trust owns 50% of the shares in Panola Pty Ltd that grants them 50% of voting power, dividends and capital distributions. Therefore, XYZ Trust has a 50% direct interest in Panola. Jenny receives 60% of the distributions (income and capital) from XYZ Trust. As a result, Jenny has a direct participation percentage of 60% in XYZ Trust. Jenny's participation percentage in Panola is calculated by multiplying her participation percentage in XYZ Trust (60%) and XYZ Trust's total participation percentage (50%) in Panola. Jenny has a 30% (60% x 50%) participation percentage in Panola.

Example: 90% test

A discretionary trust holds 50% of shares in an operating company which it sells. Anna receives 95% of the distributions from the trust. The trust cannot be a CGT concession stakeholder in the company because it is not an individual. Anna is a CGT concession stakeholder in the company if she (or her spouse) has a direct or indirect interest in the company of at least 20%.

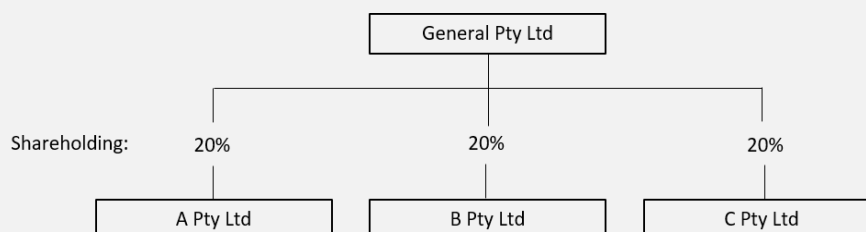
She, together with other CGT concession stakeholders in the company, must also have a combined small business participation percentage in the trust of at least 90%. Both the 20% and the 90% tests are satisfied because Anna's has more than 90% interest in the trust and her indirect interest in the company is 47.5% (ie 50% multiplied by 95%, which satisfies the 20% test).

Interposed entities – modified connected entity rule

The company or trust must be a small business entity or satisfy the maximum NAV test. The turnover and assets of affiliates and entities that are controlled by the company or trust must also be included. Under the modified connected entity rule, a company or trust is taken to control another entity if it has a 20% or more control percentage in the other entity.

Example – Indirect small business participation percentage

General Pty Ltd has a 20% shareholding in three companies – A, B and C.



Under the general connected entity rule, A, B and C is excluded as the shareholding is less than 40%. However, under the modified connected entity rule, General Pty Ltd is taken to control another entity if it has at least a 20% control percentage in that entity. Therefore A, B and C are considered to be controlled by General Pty Ltd and their annual turnover and the net assets are included when determining if General Pty Ltd is a small business entity or satisfies the maximum NAV test.

Concessions and specific conditions

If the basic eligibility conditions have been met, the taxpayer may be eligible for one or more of the small business concessions:

- 15-year exemption
- 50% active asset reduction
- CGT retirement exemption, and
- CGT rollover exemption.

Apart from the 15-year exemption, the 50% general CGT discount is applied where the asset is held by an individual taxpayer or trust for at least 12 months.

15-year exemption

This concession exempts all the capital gain of an active asset that a taxpayer owned continuously for at least 15 years (ending just before the CGT event). Additional conditions may apply depending on the taxpayer.

Advice tip

Eligibility for the 15-year exemption is tested first. If the 15-year exemption applies, the other small business concessions do not apply. As the entire capital gain is exempt, capital losses are not used and will be available to offset other capital gains. If you make a capital loss from the CGT event, you may use the capital loss to reduce other capital gains.

The sale proceeds of the active asset may also be contributed to superannuation as a CGT cap contribution up to the CGT cap of \$1.780 million in 2024/25. Contributions under the CGT cap do not count towards the NCC cap. Refer to 'Contributions to superannuation' on page [16](#) for more information.

Individual disposes of an active asset

To qualify for the 15-year exemption, an individual taxpayer must:

- satisfy the basic eligibility conditions
- continuously own the CGT asset for the 15-year period ending just before the CGT event occurred, and
- at the time of the CGT event be:
 - at least 55 years old and disposing of the assets in connection with retirement, or
 - permanently incapacitated.

If the CGT asset is a share in a company or an interest in a trust, the company or trust must have had a significant individual for a period totalling at least 15 years during the entire time the individual owned the share or interest, even if it wasn't the same significant individual during the whole period.

Company or trust disposes of an active asset

If a company or trust disposes of an active asset, the company or trust must:

- satisfy the basic eligibility conditions
- continuously own the CGT asset for the 15-year period ending just before the CGT event occurred, and
- had a significant individual for a total of at least 15 years during the ownership period (does not have to be the same significant individual for entire period), and the significant individual just before the CGT event is:
 - at least 55 years old and disposing of the assets in connection with retirement, or
 - permanently incapacitated.

If a company or trust claims the 15-year exemption (or could have if the asset was not acquired before 20 September 1985), the exempt capital gain (not the sale proceeds) made by the company or trust can be distributed tax free to individuals who are CGT concession stakeholders just before the CGT event⁷. The distribution must be made before the later of:

- within 2 years of the CGT event
- 6 months after the latest time a possible financial benefit becomes or could become due under the look-through earnout right relating to the CGT asset and the disposal; and
- any further time allowed by the ATO.

The amount distributed to each CGT concession stakeholder, when applying the 15 year exemption, cannot exceed their control or participation percentage multiplied by the exempt amount.

In connection with retirement

An individual does not need to be fully retired for the CGT event to be in connection with the person's retirement. Instead, there needs to be at least a significant reduction in the number of hours the individual works or a significant change in the nature of their activities. An asset sold either before (eg as part of winding down the business) or after the individual's retirement may be considered in connection with their retirement.

Example – CGT event is in connection with retirement

Cyril is 57 when he sells his small business. As part of the sale and to ensure continuity of operations, he agrees to be employed by the new owner for one day a week. The sale of the business is likely to be in connection with Cyril's retirement. He has ceased being self-employed and has commenced a new arrangement on a much-reduced scale with another party although still performing similar activities.

Example: CGT event is not in connection with retirement

Lenny and his spouse, Doris, are farmers, both aged over 55 years. They sell one block of land which they use in their farm and reduce their working hours from over 60 hours per week each to approximately 40 hours a week. While there has been some reduction in terms of hours worked, there has not been a significant reduction in the number of hours or a significant change in the nature of their activities. It is unlikely that Lenny and Doris will be considered as disposing of land in connection with their retirement.

Example: 15-year exemption

Kanahooka Pty Ltd operates a real estate agency and sells the following assets:

- Business premises – \$850,000 sale proceeds with a capital gain of \$600,000
- Rent roll – \$400,000 sale proceeds with a capital gain of \$350,000
- Goodwill – \$500,000 sale proceeds with a capital gain of \$500,000.

Kanahooka has owned and used these assets in its business for the entire period of ownership of 20 years, therefore it meets the basic eligibility conditions. Jamie (60) is a 100% shareholder in Kanahooka. To qualify for the 15-year exemption, Kanahooka must have had a significant individual for a total of at least 15 years, the significant individual just before the CGT event was at least 55 years old, and the disposal of assets is in connection with the significant individual's retirement.

Jamie qualifies as a significant individual as he has at least 20% ownership in Kanahooka, and he is retiring after selling his business. Upon satisfying the 15-year exemption, Kanahooka can disregard a \$1.45 million capital gain and can distribute it tax-free to Jamie.

Jamie can contribute up to \$1.45 million as a CGT cap contribution (if CGT cap available). The contribution must be received by the super fund within 30 days after the payment is made by the company. Alternatively, if Jamie was a joint owner and his controlling interest was 60%, his contribution into super will be limited to \$870,000 (60% of \$1.45 million).

⁷ ITAA97 s152-125(1)(b)

Where the 15-year exemption is not satisfied

If a small business owner does not qualify for the 15-year exemption, they may apply the other concessions to reduce the capital gain. Before these concessions are applied, the capital gain is first reduced by capital losses.

General 50% CGT discount

If the taxpayer is a sole trader, partner in a partnership, trust beneficiary or individual selling an active asset (including shares in a company or units in a trust) and the asset has been held for at least 12 months, the 50% general CGT discount applies. This concession must be used before applying the small business CGT concessions, other than the 15-year exemption.

50% active asset reduction

The capital gain arising from an active business asset is reduced by 50% (this may be in addition to the general 50% CGT discount). This automatically applies unless the taxpayer chooses for it not to apply. A small business owner only needs to meet the basic conditions to qualify for this concession.

The other CGT small business concessions (excluding the 15-year exemption) can be used in conjunction with this concession to reduce the capital gain.

Advice tip

Taxpayers may have varying reasons whether to utilise the 50% active asset reduction. If the taxpayer is a company, they may decide not to use this discount to allow a higher amount to be disregarded and distributed under the retirement exemption (otherwise the distribution of the amount is generally treated as a dividend). This may also allow for greater CGT cap contributions (see 'Contributions to superannuation' on page [16](#)).

Where the retirement exemption relates to an individual under age 55 the exempt amount must be contributed to super. Where the individual needs the funds using the 50% active asset reduction will result in a lower amount disregarded under the retirement exemption, and therefore a lower amount that must be contributed to super.

Retirement exemption

This concession can exempt a capital gain on a business asset, up to a lifetime limit of \$500,000 (unindexed) per qualifying individual. The individual doesn't have to retire despite the name of this concession.

Individual disposes of an active asset

The exempt amount:

- must be contributed to super if the small business owner is less than 55 years of age, and
- may be taken as cash if 55 years of age or older (regardless of whether the individual is retiring or not) but the individual can decide to make a CGT cap contribution if eligible to contribute⁸.

The test date for the individual's age is at the time the election is made (generally the day the individual lodges their tax return).

⁸ Since 1 July 2022, the work test or work test exemption is not needed to make a CGT cap contribution where the individual is aged 67 or older. CGT cap contributions must be received by the super fund on or before 28 days following the end of the month the individual turns 75.

Company or trust disposes of an active asset

Where a company or trust disposes of an active asset there must be a significant individual just before the CGT event and the company or trust must pay the exempt amount to a CGT concession stakeholder by the later of:

- 7 days after the entity makes the choice, or
- 7 days after capital proceeds are received.

For CGT event J2, J5 or J6 the payment must be made by 7 days after the choice. Choice must be made by the day the income tax return is lodged for the year in which the CGT event happened.

The entity can choose how much to distribute to each CGT concession stakeholder when applying the retirement exemption (not limited to participation percentage).

If a CGT concession stakeholder is under 55 years old just before a payment is made the amount must be contributed directly to superannuation by the company or trust on behalf of the individual.

Advice tip

When clients are contemplating selling a business, financial advisers should stress the importance of independent tax advice. Certain steps and timeframes apply to satisfy the small business concessions and then for the adviser/client to make CGT cap contributions.

For example, if a company sells an eligible business asset, applies the retirement exemption and makes a direct distribution to a CGT concession stakeholder under age 55, it fails the requirement under the retirement exemption to make a super contribution for the benefit of the CGT concession stakeholder. It will lose the tax exemption for the capital gain. This cannot be rectified by the individual making the super contribution.

Example – Retirement exemption

Kanahooka Pty Ltd (from the previous example) operates a real estate agency and sells the following assets:

- Business premises – \$850,000 sale proceeds with a capital gain of \$600,000
- Rent roll – \$400,000 sale proceeds with a capital gain of \$350,000
- Goodwill – \$500,000 sale proceeds with a capital gain of \$500,000.

Let's now assume, Kanahooka has owned these assets for 10 years instead and has been using these assets in its business for the entire period of ownership. It meets the basic conditions.

Jamie (60) is a 100% shareholder in Kanahooka. As Kanahooka is a company, it is not eligible for the general 50% CGT discount in respect of owning an asset for 12 months or more. Kanahooka may be eligible for the 50% active asset reduction and retirement exemption of up to \$500,000.

Jamie qualifies as a significant individual, as he has at least 20% ownership in Kanahooka.

50% active asset reduction used

The following is the gain position if Kanahooka utilises the 50% active asset reduction.

Capital gain of \$1.45 million reduced by:	Remaining capital gain:
50% active asset reduction	\$725,000
\$500,000 retirement exemption	\$225,000

\$1.225 million of the \$1.45 million capital gain is disregarded (unlike the entire capital gain using the 15-year exemption). \$500,000 is disregarded under the retirement exemption and can be contributed by Jamie as a CGT cap contribution (unlike \$1.45 million using the 15-year exemption). If Jamie wants to contribute more of the sale proceeds to super, the amount would have to be distributed from the company to Jamie (eg an unfranked dividend) or come from disposing of the shares (for example, if the company is wound up), which is another CGT event. Where the CGT cap contribution is exhausted, NCCs can be made subject to Jamie's total super balance.

Non-company structure

If a business was operated as a discretionary trust, sole trader, or partner in a partnership, a capital gain of up to \$2 million could be disregarded using a combination of CGT discounts. In Kanahooka's case:

Capital gain of \$1.45 million reduced by:	Remaining capital gain:
General 50% CGT discount	\$725,000
50% active asset reduction	\$362,500
Retirement exemption	Nil

Only the \$362,500 disregarded under the retirement exemption can be contributed to super as a CGT cap contribution. Jamie can also consider making additional concessional contributions (eg personal tax-deductible contribution) or NCCs, if eligible.

Two shareholders

What if Kanahooka Pty Ltd had two shareholders – Jamie (99%) and his spouse, Naomi (1%)? Jamie is a CGT concession stakeholder as he is a significant individual (at least 20% ownership) and Naomi is a CGT concession stakeholder as she is a spouse of a significant individual with any interest more than 0% (refer to page 8). Naomi as a CGT concession stakeholder presents new opportunities⁹.

Capital gain of \$1.45 million reduced by:	Remaining capital gain:
50% active asset reduction	\$725,000
Retirement exemption (\$500,000 for Jamie and \$225,000 for Naomi)	Nil

Using the retirement exemption \$500,000 can be distributed to Jamie tax free and \$225,000 can be distributed to Naomi tax free¹⁰. If Kanahooka chose not to apply the 50% active asset reduction, it would have a taxable capital gain of \$450,000 after applying the retirement exemption for Jamie and Naomi. As Kanahooka has two CGT concession stakeholders, it can exempt up to \$1 million (2 x \$500,000) under the retirement exemption.

⁹ Kanahooka Pty Ltd is not eligible for the general 50% CGT discount as it is a company.

¹⁰ Kanahooka Pty Ltd can decide what amount to pay Jamie and Naomi using the retirement exemption, subject to a lifetime limit of \$500,000 each.

Other considerations

Some additional considerations when using the CGT retirement exemption include:

- if capital proceeds are received in instalments, the additional conditions must be met for each instalment. This affects when amounts must be contributed to super by or for an individual under age 55 or paid to a CGT concession stakeholder who is age 55 or over.
- for individual CGT concession stakeholders, generally the capital proceeds may be used for other purposes until such a time as the contribution must be made.
- where the disposal (CGT event J2, J5 or J6) is to a related party and there is no payment or the payment is less than market value, the market value substitution rule applies to determine the capital gain and the retirement exemption can still apply.
- there is no requirement for the individual to cease their business or activity or for a CGT concession stakeholder of a company or trust who is also an employee of the company or trust to terminate employment.

CGT rollover exemption

The small business rollover concession defers the capital gain on the sale of an asset where a replacement asset is acquired, or capital is expended to improve an existing asset. The basic conditions and additional conditions must be met to apply the small business rollover concession.

The rollover concession is generally applied after the 50% CGT discount (if applicable) and 50% active asset reduction. It can be applied to the remaining capital gain instead of or in conjunction with the retirement exemption.

If the deferred capital gain later crystallises (eg when the replacement asset or improved asset is no longer an active asset or is sold) all or part of the capital gain which has been deferred becomes assessable. Depending on the type of CGT event, some of the small business concessions may apply to reduce the gain.

Note: Refer to the [Small business rollover concession](#) page on the ATO website for more information.

Contributions to superannuation

The majority of clients seeking advice in relation to the small business CGT concessions will be selling their business to fund their retirement. In recognition, they may use some or all of the proceeds from the disposal of small business assets to make super contributions under the CGT cap which do not count towards the NCC cap.

There are some distinct differences between the retirement exemption and the 15 year exemption and their interaction with the CGT cap:

Differences between retirement exemption, 15 year exemption and CGT cap

	Retirement exemption	15 year exemption
Amount eligible for CGT cap	Relates to capital gain disregarded	Relates to capital proceeds received
Pre CGT assets (Pre 85)	n/a	Assume post CGT asset
Capital loss instead of a capital gain	n/a	Assume a capital gain was made

Lifetime CGT cap

There is a limit on the amount that can be contributed under the CGT cap depends on which of the small business CGT concessions apply.

CGT cap contributions are subject to an indexed lifetime limit of \$1.780 million in 2024/25.

A \$500,000 limit (non-indexed) also applies to CGT cap contributions that relate to the retirement exemption.

CGT cap election form

For the contribution to be counted towards the CGT cap, the client must complete the [CGT cap election form \(NAT 71161\)](#) and provide it to the super fund at or before the time that the contribution is received by the fund. From a practical perspective, it is best to submit the form before the contribution is made.

Where the form is received after the contribution the contribution will not be a CGT cap contribution. It will be treated as NCC or CC if a notice of intent is submitted. Where a CGT cap contribution is required for the individual who is under age 55 under the retirement exemption the tax exemption under the concession may not be available.

For assistance completing this form, the client should refer to their registered tax agent.

Timeframes for CGT cap contributions

The following table summarises the maximum amounts and timeframes for CGT cap contributions.

Timeframes for CGT cap contributions

15-year exemption		
Note: Must be 55 or over or permanently incapacitated at time of CGT event		
Ownership structure	Maximum CGT cap contribution	Contribution timeframe ¹¹
Individual	Up to the <u>lesser</u> of: <ul style="list-style-type: none">▪ sale proceeds, or▪ unused CGT cap.	If making contribution, must be made by <u>later</u> of: <ul style="list-style-type: none">▪ day that taxpayer is required to lodge tax return¹² for the income year when CGT event occurred, or▪ 30 days after receiving capital proceeds.
Company or trust	Up to the <u>lesser</u> of: <ul style="list-style-type: none">▪ stakeholder's participation percentage of the exempt amount,▪ payment received, or▪ unused CGT cap.	Company or trust <u>must</u> make a payment to the CGT concession stakeholder within two years after the CGT event. If making contribution, individual must make the CGT cap contribution within 30 days of receiving the payment.

¹¹ ITAA97 s292-100

¹² Generally, an individual taxpayer is required to lodge their tax return by 31 October of the following financial year, or for those that used a tax agent in the previous year and will utilise that tax agent again, by 31 March or 15 May.

Retirement exemption			
Ownership structure	Age	Maximum CGT cap contribution	Contribution timeframe
Individual	Under 55 ¹³	Up to <u>lesser</u> of: <ul style="list-style-type: none"> disregarded capital gain, or unused retirement exemption (lifetime limit of \$500,000) 	Contribution <u>must</u> be made into the individual's superannuation fund by the <u>later</u> of: <ul style="list-style-type: none"> the day their tax return¹⁴ needs to be lodged for the year that the CGT event occurred, or the day the capital proceeds are received¹⁴.
	55 or over		If making contribution, before the <u>later</u> of: <ul style="list-style-type: none"> the day the taxpayer is required to lodge their tax return¹⁴ for the income year when the CGT event occurred, or 30 days after receiving capital proceeds.
Company or trust	Under 55 ¹⁵	Up to <u>lesser</u> of: <ul style="list-style-type: none"> disregarded capital gain, payment received from company/trust (if 55 or over), or unused retirement exemption (lifetime limit of \$500,000) 	Company or trust <u>must</u> make the payment directly into the CGT concession stakeholder's superannuation fund by <u>later</u> of: <ul style="list-style-type: none"> 7 days of making the election (completing entities tax return), or 7 days after receiving the capital amount from the CGT event¹⁶.
	55 or over		Payment to the CGT concession stakeholder <u>must</u> be made by <u>later</u> of: <ul style="list-style-type: none"> 7 days of making the election (completing entities tax return), or 7 days after receiving the capital amount from the CGT event. <p>If making contribution, must be made by individual within 30 days of receiving payment¹⁷.</p>

¹³ Test date is client's age when choice to use exemption is made (generally when tax return lodged) – ITAA97 s152-305(1)(b)

¹⁴ ITAA97 s152-305

¹⁵ Test date is the CGT concession stakeholder's age just before payment is made – ITAA97 s152-325(7)

¹⁶ ITAA97 s152-325

¹⁷ ITAA97 s292-100(8)

Eligibility to contribute to super

The client must be eligible to contribute to superannuation if they wish to have a contribution count towards the CGT cap amount. The general rules for acceptance of contributions are summarised in the following table.

Table 5: Super contributions

Age	Ability to make contributions
On or before 28 days following the end of the month the member turns age 75	Generally, no restriction (must comply with timing requirements outlined above)
Otherwise	Certain contributions relating to look through earnout rights, or special circumstances exist and Trustee applies their discretion.

CGT cap contributions not limited by total super balance

CGT cap contributions are not subject to the total super balance (TSB) provisions. An individual is able to make CGT cap contributions within their cap regardless of their previous 30 June TSB.

Once CGT cap contributions are made, they are included in the next 30 June TSB and may impact an individual's eligibility to make NCCs or use the CC catch-up provisions in the following financial year. CGT cap contribution timeframes permitting, consider making the CGT cap contribution after 30 June if it creates an overall advantage for the taxpayer (see example below).

CGT cap contributions that exceed the CGT cap are NCCs and subject to the TSB.

For more information, see our [TSB impact on contribution eligibility](#) article.

In-specie contribution to SMSF

The strategy of using the small business CGT concessions and making an in-specie contribution within the CGT contribution cap has been called into question by recent ATO private binding rulings. These rulings are binding on the taxpayer who seeks the ruling and while they cannot be relied upon by anyone else, they give us insight into the ATO's position.

According to the ATO, the following events need to occur in sequence:

1. the CGT event,
2. the choice to disregard the capital gain, and
3. the in-specie contribution.

Where these events occur simultaneously, the conditions for the CGT contribution cap are not satisfied and the standard NCC cap would apply. In some of these rulings, eligibility for the small business CGT concession was also ruled out.

The ATO expressed their original view in [Losses and CGT subcommittee June 2011 minutes](#), whereby the retirement exemption was not available for an in-specie contribution when the individual was under age 55. Recent ATO private binding rulings appear to extend this view to other scenarios, for example, the 15-year rule and the retirement exemption from age 55.

Due to the uncertainty in this area, clients seeking to use the small business CGT concessions via in-specie contributions under the CGT cap should seek tax advice or apply to the ATO for a private binding ruling.

Death and small business CGT concessions

The Legal Personal Representative (LPR), beneficiary of the deceased estate, a surviving joint tenant, a trustee or beneficiary of a testamentary trust may also be eligible for the small business CGT concessions where the:

- asset is disposed of within two years of the date of death (an extension can be sought from the ATO in certain circumstances), and
- asset would have qualified for the small business CGT concessions if the deceased had disposed of the asset immediately before their death.

Where the recipient is applying the retirement exemption, there is no requirement for the exempt amount to be contributed to superannuation if the deceased was under age 55 when they died.

The 15-year exemption can also be chosen if the deceased had met the requirements, except that it is not necessary for the CGT event to have happened in relation to the retirement of the individual.

If the asset is not sold within 2 years (or an extended time limit granted by the ATO), the recipient must continue to use the asset in the deceased's business or other business, otherwise the active asset test will not be satisfied, and the small business CGT concessions may not be available.

CGT small business strategies

CGT cap contributions, total super balance and ability to make NCCs

Consider the timing of CGT cap contributions and the impact on the next 30 June total super balance and ability to make NCCs.

Example – CGT cap contributions and NCCs

On 4 April 2025, Sue (age 57) receives a distribution from her business of \$1.4 million representing an exempt capital gain using the 15-year exemption. Within 30 days from the distribution (the required timeframe), Sue makes a CGT cap contribution of \$1.4 million into her super fund.

Sue wants to make additional NCCs into her super fund. Her TSB on 30 June 2024 was \$1.45 million. Sue would have to make the NCCs in the 2024/25 financial year as she is unable to make NCCs in 2025/26 as her TSB on 30 June 2025 will exceed the general transfer balance cap for 2025/26 (ie her NCC cap for 2025/26 is nil).

Forgo 50% active assets reduction

Consider forgoing the 50% active assets reduction to increase the capital gain disregarded under the retirement exemption allowing for an increased CGT cap contribution.

Example – 50% active asset reduction used

Rebecca, aged 62, sold an active asset (shares in her company) for \$1.3 million that she owned for 10 years and made a capital gain of \$1,000,000. She can reduce her assessable capital gain as follows:

Capital gain of \$1 million reduced by:	Remaining capital gain:
Less 50% general discount (\$500,000)	\$500,000
Less 50% active assets reduction (\$250,000)	\$250,000
Less CGT retirement exemption (\$250,000)	Nil

Rebecca could make a CGT cap contribution of \$250,000 (the disregarded capital gain) under the retirement exemption.

However, she could elect not to use the 50% active assets reduction allowing a greater CGT cap contribution:

Capital gain of \$1 million reduced by:	Remaining capital gain:
Less 50% general discount (\$500,000)	\$500,000
Retirement exemption (\$500,000)	Nil

Rebecca could make a CGT cap contribution of \$500,000 (the disregarded capital gain using the retirement exemption). By opting out of the 50% active asset reduction, she can contribute an additional \$250,000 in CGT cap contributions.

Forgoing the 50% active assets reduction can also be a tax-effective strategy when a company is selling active business assets. This is because the amount claimed when using the 50% active assets reduction may not be distributed tax-free to CGT concession stakeholders.

Example – Forgo active asset reduction - company

Ron and Sue are 57 and 55 years of age respectively and have been running a small business company for the last eight years. Each own 50% of the shares in the company. They sell the active assets of the company for \$1.2 million and make a capital gain of \$900,000.

If the company claims the 50% active assets reduction, the capital gain reduces to \$450,000. The company then eliminates the remaining capital gain by claiming \$450,000 under the CGT retirement exemption. The company decides to allocate \$225,000 each to Ron and Sue.

Capital gain of \$900,000 reduced by:	Remaining capital gain:
Less 50% active assets reduction (\$450,000)	\$450,000
Less CGT retirement exemption (Ron - \$225,000)	\$225,000
Less CGT retirement exemption (Sue - \$225,000)	Nil
Amount distributed tax free from the company	\$450,000

If the company doesn't apply the 50% active asset reduction and distributes the disregarded capital gain under the retirement exemption evenly to Ron and Sue:

Capital gain of \$900,000 reduced by:	Remaining capital gain:
Less CGT retirement exemption (Ron - \$450,000)	\$450,000
Less CGT retirement exemption (Sue - \$450,000)	Nil
Amount distributed tax free from the company	\$900,000

By not applying the 50% active asset reduction, the company distributes \$900,000 tax free, compared to \$450,000.

Sell shares rather than assets

Where shares in a company or units in a unit trust qualify as an active asset, it may be more tax effective for an individual to sell the shares or units.

Note: There may be other options such as liquidating a company and receiving a liquidator's distribution.

Example – Sell shares rather than assets

Jason, aged 59, has operated a small business through a company for the last seven years and hasn't previously used any of the small business concessions.

He has found two potential buyers, one wants to purchase the business assets from the company, and another who wants to purchase the shares in the company.

Both buyers are prepared to pay \$2.2 million, of which \$2 million is a capital gain.

If the company sells the assets:

Capital gain of \$2,000,000 reduced by:	Remaining capital gain:
Less 50% active assets reduction (\$1,000,000)	\$1,000,000
Less CGT retirement exemption (\$500,000)	\$500,000

The company has to pay capital gains tax on the remaining capital of \$500,000. Only \$500,000 can be distributed from the company using the retirement exemption.

Conversely, if Jason sells his shares in the company:

Capital gain of \$2,000,000 reduced by:	Remaining capital gain:
Less 50% general CGT discount (\$1,000,000)	\$1,000,000
Less 50% active assets reduction (\$500,000)	\$500,000
Less CGT retirement exemption (\$500,000)	\$0

The capital gain is reduced to nil and all the sale proceeds are held directly by Jason (an individual taxpayer not a company).

Small business concessions and winding up a business

Consider company liquidation

When a company is liquidated, the shareholders receive capital proceeds and/or a dividend. Whether it is tax-effective to liquidate a company would depend on the specific circumstances. Taxation advice is essential.

The capital proceeds of a voluntary liquidation may include the disregarded capital gain using the small business 50% active asset reduction.

Providing the relevant conditions are met, the individual shareholder may be eligible for the general 50% CGT discount and/or the small business concessions in relation to the cancellation of the shares.

Turnover test

If you cease a business, you must make a reasonable estimate of what your annual turnover would have been if you ran the business for the entire income year.

An entity winding up a business will be taken to be still carrying on the business and have access to the small business concessions if:

- it is winding up a business it previously carried on, and
- it was a small business entity in the income year the entity ceased business.

Other rollovers

Tax legislation has other rollovers provisions for business owners looking to restructure, such as:

- individual or trustee to a company¹⁸
- partnership to a company¹⁹
- unit trust to a company²⁰, and
- inserting a holding company between shareholders and another company²¹

These rollovers and scrip for scrip rollovers (company to company and trust to trust)²² are beyond the scope of this guide. Clients should consult with their taxation adviser for further information.

¹⁸ Subdivision 122-A, ITAA97

¹⁹ Subdivision 122-B ITAA 97

²⁰ Subdivision 124-N ITAA 97

²¹ Division 615, ITAA97

²² Subdivision 124-M ITAA97

Appendix A – Key terms and concepts

Affiliate

An affiliate of the taxpayer is an individual or a company that, in relation to their business affairs, acts or could reasonably be expected to act in concert of, or in accordance with direction or wishes of the taxpayer.

Trusts, partnerships and super funds can't be affiliates.

Spouses and children are not automatically an affiliate.

Note: Refer to the [Affiliates](#) page on the ATO website for more information.

Connected entities

An entity is connected with another entity if it:

- is controlled by you
- controls you
- is controlled by another entity that also controls you
- is controlled by your affiliate
- is controlled by you together with your affiliate
- is controlled by an entity that you control.

Control of a partnership, company or trust (except a discretionary trust)

An entity controls another entity if it or its affiliate (or all of them together):

- owns, or has the right to acquire ownership of, interests in the other entity that give the right to receive at least 40% (the control percentage) of:
 - any distribution of income or capital by the other entity, or
 - if the other entity is a partnership, the income, net income or capital of the partnership, or
- if the other entity is a company, owns, or has the right to acquire ownership of, equity interests in the company that give at least 40% of the voting power in the company.

Control of a discretionary trust

Control by entity with influence over trustee

An entity controls a discretionary trust if the trustee either acts, or might reasonably be expected to act, in accordance with the directions or wishes of the entity and/or the entity's affiliates.

Control by beneficiary (Distribution test)

A beneficiary is taken to control a discretionary trust only if, for any of the four income years before the year for which relief is sought for a CGT event, the beneficiary, or the beneficiary together with their affiliates received a trust distribution of at least 40% of the total income or capital the trust distributed for that income year.

If an entity's control percentage in another entity is at least 40% but less than 50%, the Commissioner may determine that the first entity does not control the other entity if he is satisfied that a third entity (not including any affiliates of the first entity) controls the other entity.

Appendix B – Small CGT business concessions flowchart

