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Steps to make small business CGT cap contributions

You should take the following steps when making super contributions with the proceeds from asset sales that qualify for the small business CGT concessions.

Background

When a small business owner disposes of an active business asset, they may be eligible to disregard some or all of the capital gain by using the small business CGT concessions. Eligible CGT cap contributions are exempt from the non-concessional contribution (NCC) cap.

Using the CGT cap allows eligible clients to get more money into super, however, certain requirements must be met. This is a complex area and clients need advice from both a registered tax agent and a financial adviser.

For an understanding of the eligibility rules and concessions available please read our [Guide to small business CGT concessions](#).

Steps to make CGT cap contributions

Is the client eligible for the small business CGT concessions?

A registered tax agent should provide the appropriate advice to determine eligibility and which concessions should be applied.

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The basic conditions contained in subdivision 152-A of *Income Tax Assessment Act 1997* (ITAA97) for all taxpayers¹ are:

- a CGT event relating to a CGT asset has occurred
- a gain would result
- an asset that meets the active asset test is sold, and
- one of the following applies:
 - the \$2 million turnover test is met
 - the \$6 million maximum net asset value (NAV) test is met
 - if a partner in a partnership that is a small business, the CGT asset is an interest in a partnership asset or
 - the asset is used in an affiliates' or a connected entity's business or partnership.

Additional requirements apply to companies and trusts.

¹ Taxpayer for this purpose includes an individual, company or trust.

When working with the registered tax agent, an advice opportunity can arise to assist clients in making specific super contributions. The applicable CGT cap is a lifetime cap and operates separately from the NCC cap. The lifetime CGT cap is \$1.865² million in 2025/26 and it can only be utilised when eligible for the 15-year CGT exemption. Under the 15-year CGT exemption, sale proceeds from the disposal of the active asset(s) up to the CGT cap can be contributed into superannuation (if the individual is eligible to contribute to super).

Where the contribution is made under the retirement exemption, the disregarded capital gain under this exemption (not the sale proceeds) can be made up to the lifetime cap of \$500,000 (unindexed). These contributions also count towards the client's \$1.865 million lifetime CGT cap (2025/26).

Example 1: Using the retirement exemption

A client sold an eligible asset for \$600,000. After the 50% CGT discount and 50% active asset reduction, the client is left with an assessable gain of \$80,000. Only \$80,000 can be considered for contribution under the retirement exemption as part of the CGT cap.

Note: A client is able to skip the 50% active asset concession which would increase the amount that can be made under the retirement exemption.

Is superannuation appropriate?

If a client is under age 55 and utilising the CGT retirement exemption, the disregarded capital gain under the retirement exemption must be contributed to superannuation. Clients who are 55 and older can choose whether or not to contribute all or part of the amount of disregarded capital gain to super.

Where a client has a choice, you should consider whether it is appropriate for the client to make the contribution to super. Many small business owners do not contribute significant amounts into super throughout their working life, as many reinvest a considerable amount of their income and profits to sustain and grow their businesses. Investing any CGT cap amount into super provides a great opportunity to build their retirement savings in a concessional tax environment. However, contributions to super, including amounts made under the CGT cap, are preserved until a condition of release is satisfied. This limits access to these funds if required for a specific purpose. You should also consider whether some or all of the proceeds should be retained outside of the superannuation environment.

The transfer balance cap (\$2 m³ for 2025/26) limits the amount of funds that can be transferred into the retirement phase of super. This may reduce the benefit derived by contributing amounts into super if it takes the client's balance above their transfer balance cap, as excess amounts must be retained in the accumulation phase.

Where a client's marginal tax rate is less than the superannuation earnings tax rate of 15%, the client may be better off, from a tax perspective, investing in a non-superannuation investment. Clients may also wish to use the funds to pay off personal or business debts.

Clients may also wish to invest some or all the amount outside of super if the contribution takes their total super balance (TSB) above \$3m. Under the proposed Division 296⁴ tax, which may commence from 1 July 2025 an additional 15% tax is proposed to apply to earnings accrued relating to the portion of their TSB above \$3m. Please see our adviser article [Proposed super tax changes](#) for more information on this proposal.

Is the client eligible to contribute to super?

If a client satisfies the basic requirements to apply the concessions, they still need to be eligible to contribute any amounts to super. Generally, a trustee can only accept contributions, including CGT cap contributions from a client if they are under age 75 and is not limited by a client's TSB.

Once a client turns age 75, there is a short window to allow personal contributions, including CGT cap contributions, to be accepted by the trustee. The contributions must be received by the fund on or before 28 days after the end of the month in which they turn 75. The only exception to this rule is if the amount is received under an earn-out arrangement. In this case, the trustee can accept contributions after the 28 days (following the end of the month when they turn age 75) if the trustee could have accepted the contribution in the year of the CGT event⁵.

² The threshold may be indexed in future years.

³ A client may have a personal transfer balance cap of between \$1.6 m and \$2 m if a retirement phase income stream was commenced prior to 1 July 2025.

⁴ The proposed Division 296 tax is not law at time of writing.

⁵ SISR 7.04(6A)

Clients using the CGT retirement exemption who are below age 55 **must** contribute the CGT exempt amount into super. Clients aged 55 or older can choose to contribute the amount into super or receive the amount as cash. Utilising the CGT, NCC and CC caps together can allow the client to make significant super contributions using proceeds from the sale of small business assets.

How much can the client contribute to super?

As the CGT cap is a lifetime cap, investigate if any previous contributions were made by the client under the CGT cap. While confirmation of a client's current ability to utilise the tax concessions and amount to contribute must be provided by a registered tax agent, you may need to liaise with the client and their other professional advisers to understand whether they have made prior contributions that may have reduced their CGT cap. Clients may be able to make NCC or CCs (subject to caps) with amounts that exceed their CGT cap.

Advice tip: Total super balance considerations

Contributions under the CGT cap can still be made in the situation where an individual's TSB exceeds the general transfer balance cap (\$2 million for 2025/26) at 30 June prior. This is because the TSB cap impacts the individuals' eligibility to make NCCs and not CGT cap contributions.

For clients whose balances are close to the TSB threshold and want to make NCCs as well, the NCC should be made before or in the same year as the CGT cap contribution. This allows a larger investment into super than would otherwise be allowed as the contributions under CGT cap increases the super balance at the following 30 June test date and may limit or preclude any future NCCs.

Adhere to the timing rules

Timeframes for CGT cap contributions vary depending on whether the active asset is owned individually or by a company or trust. The timeframes generally allow CGT cap contributions to be made in the financial year after the CGT event. Delaying the CGT cap contribution to the following financial year as long as contribution timeframes are met may be useful if a client's TSB is expected to impact the non-concessional contribution caps or access to the catch-up concessional contribution measure in the next financial year.

Ownership structure	Concession	Contribution timeframe
Individually (aged 55 or over)	15-year exemption	Later of: <ul style="list-style-type: none"> the day their tax return needs to be lodged for the year that the CGT event occurred, or 30 days after receiving the capital proceeds.
	Retirement exemption	
Individually (aged under 55)	Retirement exemption	Later of the: <ul style="list-style-type: none"> day their tax return needs to be lodged for the year that the CGT event occurred, or day the capital proceeds are received (this is because the entity must contribute the amount directly to the individual's superannuation fund).
	15-year exemption	The payment must be made to the individual within two years after the CGT event. The individual has to make the super contribution within 30 days of receiving the payment.
Company/trust (aged 55 or over)	Retirement exemption	Payment to the individual must be made within the later of: <ul style="list-style-type: none"> seven days of making the election (completing entities tax return), or seven days after receiving the capital amount from the CGT event. The individual has to make super contribution within 30 days of receiving payment.
	Retirement exemption	Payment must be made directly into the superannuation fund within the later of: <ul style="list-style-type: none"> seven days of making the election (completing entities tax return), or seven days after receiving the capital amount from the CGT event.

Complete CGT cap election form

When the 15-year exemption or CGT retirement exemption is claimed and an amount is to be contributed to a super fund, the client must complete, sign and provide the fund with an ATO approved [CGT cap election form](#) to have the contribution count towards the CGT cap. This form must be provided to the trustee before or at the time the contribution is made⁶. It notifies the superannuation trustee that the client is claiming the contribution amount under the CGT cap.

The trustee then reports the amount to the ATO, so that the contribution is not counted towards the NCC cap. The CGT cap election form is a tax form and clients requiring assistance should contact a registered tax agent.

Late elections or invalid forms

A client may end up having the amount treated as an NCC if a valid form is **not** provided to the trustee on or before contribution is received by the fund, or the amount claimed does not qualify for the relevant CGT concession. If this occurs, the contribution would be assessed against the NCC cap and an excess may arise. See our [Guide to non-concessional contributions](#).

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⁶ ITAA97 s292-100(9)