

Super strategies

Convert business capital into tax-free retirement benefits

If you're selling your business to retire, taking advantage of the CGT small business concessions could enable you to manage tax and get more money into super.

How does the strategy work?

To use this strategy, you need to sell 'active business assets' and meet a range of other conditions.

Active assets are assets that are held or used in the course of carrying on your business or a business of someone else connected with you. Generally, this might include land and buildings and in limited circumstances, shares in the company.

If you have held the active business assets for **15 years or more**, you may be eligible to claim the 15 year CGT exemption. It could enable you to disregard 100% of capital gains made when selling business assets and contribute up to \$1.48 million to super by using the CGT cap. This cap may also be available when disposing of pre-CGT assets or assets where there is no capital gain.

In other circumstances, including where the active business assets have been held for **less than 15 years**, you may be eligible to use the CGT retirement exemption instead. This exemption enables you to disregard up to \$500,000 in capital gains and invest up to \$500,000 of exempt gains in super under the CGT cap.

Other key considerations

- If you are eligible and want to make a contribution into super and have the contribution count towards the CGT cap, you must provide your fund with a '**CGT cap election**' form in the approved format at the time or prior to making the contribution.
- If you're under age 55 and want to claim the CGT retirement exemption, you will need to invest the CGT exemption amount in super to qualify for the CGT concession. Also, you won't be able to access the money until you meet certain conditions.
- If you plan to retire and are eligible to access your super, you might want to use up to \$1.6 million to start a retirement phase income stream investment. By doing this, no tax will be payable on earnings in the fund, you can receive a tax-effective income under age 60 and all income payments received at age 60 or over will generally be tax-free.

Seek advice

You should consult with a **registered tax agent** to determine the CGT implications, whether the small business concessions will be available to you and which ones should be claimed.

A **financial adviser** can help you to:

- maximise your super contributions
- unwind or reassign business insurance policies, such as those used to fund a Buy Sell agreement
- pay-off business loans and release guarantees
- review your personal insurance needs to ensure you are suitably covered, and
- facilitate, with legal advice from your solicitor, any estate planning changes that may need to be made.

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Case study

Jane, aged 64, recently sold a business she has owned for the last 10 years for \$500,000 and made a capital gain of \$400,000.

She wants to limit the amount of CGT she has to pay on the sale proceeds and, if possible, get all the money into the concessional tax system to fund her retirement.

Her registered tax agent determines that she is eligible to claim the 50% general CGT discount¹ and a CGT retirement exemption of \$200,000. This will enable her to offset her taxable capital gain and receive the full sale proceeds of \$500,000 without paying any tax.

Her financial adviser recommends she invest the CGT exemption amount of \$200,000 in super and notify her fund that she wants this amount to be counted towards her available CGT cap.

Because the amount claimed under the CGT cap is excluded from the non-concessional contribution cap (and she is under age 65), she is then able to invest a further \$300,000 in super this financial year (by bringing forward an additional two years worth of non-concessional contributions) as a personal after-tax contribution.²

By using this strategy, Jane is able to get the full sale proceeds of \$500,000 into super without exceeding the contribution caps. Also, because Jane has retired, she can use the \$500,000 to commence a 'retirement phase' pension where she can receive tax-free payments³ to meet her living expenses.

Details	
Sale proceeds received	\$500,000
Less cost base	(\$100,000)
Nominal capital gain	\$400,000
Less 50% general CGT discount	(\$200,000)
Net gain after discount	\$200,000
Less CGT retirement exemption claimed	(\$200,000)
Net taxable gain	Nil

- ¹ If an asset has been held for more than 12 months, individual small business owners (eg sole traders and partners) must utilise the 50% general CGT discount before electing to apply any of the other small business CGT concessions except for the 15 year exemption.
- ² The rules that apply to personal after-tax and other non-concessional contributions (NCCs) are complex, and some important changes to the NCC rules came into effect on 1 July 2017. It is important to seek personal advice before making NCCs to understand your eligibility.
- ³ Assumes Jane commences a pension from a taxed fund.

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