CGT Concessions When Selling a Business

Guidance by Velocity Legal

What is Capital Gains Tax (CGT)?

Capital Gains Tax (**CGT)** in Australia is not a separate tax regime. Rather, the CGT provisions operate to include net capital gains in the taxpayer's assessable income. Net capital gains are the sum of all capital gains made during the year less certain capital losses.

The Small Business CGT Concessions allow eligible business owners to reduce, disregard or defer some or all of the capital gain arising from a sale of business assets.

To determine what concessions are available when selling your business, start by exploring the following questions.

Explore The Following Questions

What is your current structure? (this will affect what you can sell)

- Sole trader
- Discretionary Trust
- Company
- Partnership
- Unit Trust
- Other or combination

Who is selling it?

- You
- Trust
- Company

What are you selling?

- Shares
- Units
- Property
- Goodwill
- Plant & Equipment
- Stock

What are you receiving?

- Cash (upfront payment)
- Cash (deferred payment)
- Earnout (contingent on future performance)
- Shares

The basics of CGT

Broadly speaking, you make a capital gain where the sale price (known as 'capital proceeds') from a sale (known as 'a CGT event') exceeds your costs associated with the asset (known as 'cost base'). The difference is a 'capital gain'.

Please note that not all assets are subject to the CGT rules. Different rules apply to the sale of trading stock, plant and equipment, and other assets held on 'revenue account'.

Capital Gain

Once you determine the capital gain, the following steps are taken prior to applying the small business CGT concessions:

1. apply capital losses (from other CGT events either in the current year or a previous year); and

2. apply the general 50% CGT discount (you must be an Australian resident. A company cannot claim the general 50% CGT discount).

Unless the small business CGT concessions apply, the remainder must be included in your tax return. Tax of up to 47% may apply to this amount.

Small Business CGT Concessions

Businesses and their owners can benefit from a variety of concessions that may significantly reduce or eliminate any remaining capital gain. These are known as the Small Business CGT Concessions.

To access the concessions, there are a number of 'basic conditions' which must be met (unfortunately, they are not basic!).

Key Conditions

1. One of the following:

a. the maximum net asset value test **(MNAV)** – you must have 'net assets' below $6 million

- includes 'affiliates' and 'connected entities'
- excludes main residence, superannuation and personal use assets

OR

b. Small Business CGT Entity

- carrying on a business with turnover of less than $2million (includes 'affiliates' and 'connected entities')

2. Active asset test – the CGT asset disposed of must have been an 'active asset' of the taxpayer:

- for at least 50% of ownership period
- the test is more complex when shares or units are being sold

3. If shares or units are being sold, further tests apply.

The CGT concessions:

Once the basic conditions are satisfied, the taxpayer can choose to apply any one or more of the Small Business CGT Concessions below, subject to the further requirements.

1. **15-year exemption**

   The most powerful concession. It allows for an entirely tax-free outcome. When an entity has owned an asset for at least 15 years and meets the other conditions, then the capital gain is permanently disregarded (i.e. tax-free).

   If the seller is a company or trust, the sale proceeds may also be paid to the controlling individuals tax-free.

   The specific requirements for the 15-year exemption are:

   - the owner must own the asset for at least 15 years
   - the owner is either
     - 55 years of age or over (and the sale is ‘in connection’ with their retirement) or
     - permanently incapacitated

2. **50% Reduction**

   If the 15-year exemption is not available, the taxpayer can apply the 50% Reduction, where:

   - the capital gain is reduced by 50%;
   - there are no additional requirements (on top of the basic conditions).

   * It is sometimes better not to apply the 50% Reduction depending on the taxpayer’s goal (e.g. where a company is involved).

3. Retirement Exemption

The Retirement Exemption allows each person to disregard a capital gain of up to $500,000 (as a lifetime limit). Where the seller is a company or trust, it may be possible to use the Retirement Exemption for more than one person (potentially up to eight).

Important to note:

- capital gain of up to $500k is disregarded, per person (the lifetime limit);
- if taxpayer is under 55 **when** making the choice, a payment to superannuation must be made;
- companies and trusts can have several individuals; and
- the concession does not require anyone to retire.

4. Small business roll-over

Under the small business roll-over, a taxpayer can defer capital gains for at least two years. No further conditions apply.

Under the small business roll-over:

- capital gain is temporarily disregarded;
- capital gain 'comes back' in two years, if no further action taken; and
- if a taxpayer acquires a 'replacement business asset', then a further deferral happens until a trigger event happens.

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Need help navigating CGT for your business? Get in touch.

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