Australian Government
Australian Taxation Office

Small business entity concessions

- https://www.ato.gov.au/Business/Small-business-entity-concessions/
- Last modified: 07 Jun 2021
- QC 22648

Small businesses can access a range of concessions including payment and reporting options. This applies to sole traders, partnerships, companies or trusts.

To qualify for these concessions, you'll need to determine if your business is a 'small business entity' for the income year. You must review your eligibility each year.

If you are not a 'small business entity', you may still qualify for certain small business concessions based on your aggregated turnover.

Next steps

- Eligibility – work out if you're a small business entity

Find out about:

- What's new for small business
- Concessions

What's new for small business

- https://www.ato.gov.au/Business/Small-business-entity-concessions/What-s-new-for-small-business/
- Last modified: 04 Mar 2022
- QC 47369

Tax concessions for small businesses have changed.

When we say 'turnover', we mean aggregated turnover.

On this page:

- Interaction of tax depreciation incentives
- Temporary full expensing
- Instant asset write-off
- Backing business investment – accelerated depreciation
- Lower company tax rate changes
- Increased small business income tax offset
- Expanded access to small business concessions

See also:

- Concessions – see what small business tax concessions are available to you
- Economic stimulus measures

Interaction of tax depreciation incentives

Eligible business entities may be looking at which tax depreciation incentive is right for them.

Only one incentive can apply for an asset. If more than one incentive could apply to an asset the order of application is (subject to opt out choices):

1. Temporary full expensing
2. Instant asset write-off
3. Backing business investment
4. General depreciation rules

For a high-level snapshot to help you work out how these incentives may apply to you, see Interaction of the tax depreciation incentives.

Temporary full expensing

Eligible businesses with an aggregated turnover of less than $5 billion can deduct the business portion of the cost of eligible new depreciating assets. These assets must be first held and first used, or installed ready for use for a taxable purpose, between 7.30pm (AEDT) on 6 October 2020 until 30 June 2023.

For small and medium sized businesses (aggregated turnover of less than $50 million), temporary full expensing also applies to the business portion of eligible second-hand depreciating assets.

Businesses can also apply temporary full expensing to the business portion of the cost of improvements made to eligible depreciating assets. This applies even if those assets were acquired before 7.30pm (AEDT) on 6 October 2020.

Under temporary full expensing, small businesses also deduct the balance of their small business pool at the end of the income years ending between 6 October 2020 and 30 June 2023.

Small businesses will need to apply the simplified depreciation rules to claim temporary full expensing. From 7.30pm (AEST) 12 May 2015 to 30 June 2023, the ‘lock out’ rules are suspended to allow small businesses that choose to stop using the simplified depreciation rules to take advantage of temporary full expensing and the instant asset write-off.

See also:

- Temporary full expensing

Instant asset write-off

There have been changes to the instant asset write-off.

From 12 March 2020, the instant asset write-off:

- threshold amount for each asset is $150,000 (up from $30,000)
- allows businesses until 30 June 2021 to first use or install the asset ready for use, provided the asset is purchased by 31 December 2020
- eligibility was expanded to cover businesses with an aggregated turnover of less than $500 million (up from $50 million).

To find out more about how instant asset write-off works and the thresholds, refer to Instant asset write-off for eligible businesses.

See also:

- Simpler depreciation for small business
- General depreciation rules

Backing business investment – accelerated depreciation

From 12 March 2020 until 30 June 2021, the Backing business investment measure provides a 15-month investment incentive to support business investment and economic growth by accelerating depreciation deductions. The key features of the incentive are as follows:

- The benefits are either
  - if you are using the simplified depreciation rules for small business, you can claim 57.5% of the cost of the asset (for those assets that cost more than the instant asset write-off threshold) in the first year you add the asset to the small business pool
  - if you are not using the simplified depreciation rules for small business, you can claim a deduction of 50% of the cost or opening adjustable value of an eligible asset on installation. Existing depreciation rules apply to the balance of the asset's cost.

- Eligible businesses – businesses with aggregated turnover below $500 million.
- Eligible assets – new depreciating assets (for example, plant, equipment and specified intangible assets, such as patents). The assets must be first held, and first used or first installed ready for use for a taxable purpose on or after 12 March 2020 until 30 June 2021. Some exclusions apply.

You cannot claim a backing business investment – accelerated depreciation deduction if the business is eligible and uses temporary full expensing or instant asset write-off for the same asset.

See also:

- Backing business investment – accelerated depreciation

Lower company tax rate changes

From the 2017–18 to 2019–20 income years, companies that are base rate entities must apply the lower 27.5% company tax rate.

The lower company tax rate for base rate entities reduced to 26% in 2020–21 and will be 25% from the 2021–22 income year. A base rate entity is a company that both:

- has an aggregated turnover less than the aggregated turnover threshold – which is $25 million for the 2017–18 income year and $50 million for the 2018–19 to 2021–22 income years
- 80% or less of their assessable income is base rate entity passive income (such as interest, dividends, rent, royalties and net capital gain) – this replaces the requirement to be carrying on a business.

When working out the rate to use when franking your distributions, you need to assume that your aggregated turnover, assessable income and base rate passive income will be the same as the previous year.

Note:

- You still need to be a small business to be eligible for other small business tax concessions.
- The tax rates for all other companies do not change.

See also:

- Changes to company tax rates
- Allocating franking credits
- TR 2019/1 *Income tax: when does a company carry on a business?*
- Law Companion Ruling LCR 2019/5 *Base rate entities and base rate entity passive income*

Increased small business income tax offset

You can claim the small business income tax offset if you either:

- are a small business sole trader
- have a share of net small business income from a partnership or trust.

The small business income tax offset applies to small businesses with turnover less than $5 million. The rate of offset is:

- 8% from 2016–17 to 2019–20
- 13% in 2020–21
- 16% from 2021–22.

The maximum offset is $1,000 and we work out your offset based on amounts shown in your tax return.

See also:

- Small business income tax offset

Expanded access to small business concessions

More businesses may now be eligible for most small business tax concessions.

From 1 July 2016, a range of small business tax concessions became available to all businesses with turnover of less than $10 million (the turnover threshold). Previously the turnover threshold was $2 million.

The $10 million turnover threshold applies to most concessions, except for:

- the small business income tax offset, which has a $5 million turnover threshold from 1 July 2016
- capital gains tax (CGT) concessions, which continue to have a $2 million turnover threshold.

The turnover threshold for fringe benefits tax (FBT) concessions increased to $10 million from 1 April 2017 and will increase to $50 million from 1 April 2021.

From 1 July 2020, businesses that are not small businesses because their turnover is $10 million or more but less than $50 million can also access an immediate deduction for certain start-up expenses and for prepaid expenditure.

From 1 July 2021, businesses that are not small businesses because their turnover is $10 million or more but less than $50 million can also access these small business concessions:

- simplified trading stock rules
- PAYG instalments concession
- a two-year amendment period
- excise concession.

See also:

- Eligibility – work out if you're eligible for small business entity concessions
- Concessions – see what small business concessions you can access

Eligibility

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Eligibility/
- Last modified: 10 Dec 2020

- QC 50252

To work out if you are eligible for small business entity concessions, you first need to work out if you are a 'small business entity' in an income year. You must review your eligibility each year to check if you are able or required to use a particular concession.

When we say:

- 'small business' – we mean 'small business entity'
- 'turnover' – we mean 'aggregated turnover'.

From 1 July 2016, you are a small business if you are a sole trader, partnership, company or trust that:

- operates a business for all or part of the income year, and
- has a turnover less than $10 million (the turnover threshold).

The $10 million turnover threshold applies to most concessions, except for:

- the small business income tax offset – which has a $5 million turnover threshold
- the capital gains tax (CGT) concessions – which continue to have a $2 million turnover threshold.

For previous income years, you are a small business if your turnover is less than $2 million.

From 1 April 2017, the turnover threshold for fringe benefits tax (FBT) concessions increased to $10 million (will increase to $50 million from 1 April 2021) .

Expanded access to small business concessions

From 1 July 2020 – businesses that are not small businesses because their turnover is $10 million or more but less than $50 million can also access an immediate deduction for certain start-up expenses and for prepaid expenditure.

From 1 April 2021 – the turnover threshold for FBT concessions will increase to $50 million.

From 1 July 2021 – businesses that are not small businesses because their turnover is $10 million or more but less than $50 million may also be eligible to access these small business concessions:

- simplified trading stock rules
- PAYG instalments concession
- a two-year amendment period
- excise concession.

Find out about:

- Work out if you're a small business for the income year
- Aggregation – for more on aggregated turnover

- Definitions – the terms used to explain small business entity concessions

See also:

- Are you in business? – determine the differences between a hobby and a business for tax purposes

Work out if you're a small business for the income year

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Eligibility/Work-out-if-you-re-a-small-business-for-the-income-year/
- Last modified: 02 Jun 2021
- QC 50223

There are 3 methods to work out if you are a small business for the current income year.

If you satisfy any of these methods, you are a small business entity:

- Method 1 – Use your previous year's turnover – most businesses find this the easiest
- Method 2 – Estimate your current year turnover
- Method 3 – Use your actual current year turnover

You must use the same method for any connected or affiliated business and keep records of how you worked out your turnover.

You need to be aware that:

- some exceptions and limitations apply if you use Methods 2 or 3
- even if you are a small business for the current income year, you might not be eligible for all the small business concessions
- even if you aren't a small business because your turnover is at least $10 million, you might be eligible for certain small business concessions.

See also:

- If you're winding up a business
- If you're not a small business in an income year
- FBT exemption for work-related devices
- Aggregation

Method 1 – Use your previous year's turnover

You are a small business for the current income year if your previous year's turnover is less than $10 million.

If you are completing a tax return for 2015–16 or an earlier income year, your previous year's turnover must be less than $2 million.

Method 2 – Estimate your current year turnover

You are a small business for the current income year if your estimated turnover is less than $10 million. You can only use this method if your turnover was less than $10 million for one of the last two income years.

You must work out whether your turnover is likely to be less than $10 million, based on the conditions you know about at the beginning of the income year. If you are starting a business, base your estimated turnover on the conditions you know about at the time you start your business.

Factors to consider when estimating your turnover include:

- your turnover in previous income years
- whether you plan to reduce or increase staff in the current income year
- whether your business operating hours will increase or decrease
- whether previous extraordinary sales or product lines will be available in the current income year
- whether your business will face increased competition in the current income year
- whether your business activity will increase or decrease because of changing conditions.

2015–16 and earlier income years

If you are completing a tax return for 2015–16 or an earlier income year, and you're using this method, your estimated turnover for that year, as well as one of the two previous income years, must be less than $2 million.

Method 3 – Use your actual current income year turnover

If your actual turnover at the end of the current year is less than $10 million, you are a small business for the current income year.

If you are completing a tax return for 2015–16 or an earlier income year, and you're using this method, your estimated turnover for that year must be less than $2 million.

You cannot determine your eligibility for the goods and services tax (GST), pay as you go (PAYG) instalments and excise concessions using your actual current income year turnover. This is because you must choose these concessions earlier in the income year.

Example: A business operating for part of an income year

Rosa has a business and plans to retire in March 2022. She decides to gradually ease out of the business and doesn't take on any new clients after March 2021.

Rosa's turnover for both the 2019–20 and 2020–21 income years was more than $10 million, so she cannot use Method 2. To be an eligible small business for the 2021–22 income year, Rosa must use her actual current year turnover.

When Rosa finishes her business in March 2022, her turnover for the income year to date is $8.1 million. Rosa is a small business for 2021–22 because she estimates that her turnover would have been $8.5 million for the full income year.

As a small business, Rosa may be able to access some of the small business concessions.

If you're winding up a business

In a year when you are winding up a business, you will be taken to be still running the business and have access to these concessions if both of the following apply:

- you are winding up a business you previously carried on
- you were a small business in the income year you ceased business.

If you're not a small business in an income year

If you are not a small business entity in an income year, you may still be able to access the:

- capital gains tax (CGT) concessions – if you pass the $6 million maximum net asset value test
- fringe benefits tax (FBT) car parking exemption – if in the income year ending just before the start of the relevant FBT year your gross total income was less than $10 million
- superannuation clearing house – if you have 19 or fewer employees
- lower company tax rate – if you are a base rate entity with a turnover less than $25 million for the 2017–18 income year (increased to $50 million from 2018–19 and future income years), and 80% or less of your assessable income is base rate entity passive income.

If you are not a small business entity in an income year – because your turnover is $10 million or more but less than $50 million using one of the 3 methods – you may:

- from 1 July 2020 be able to access an immediate deduction for certain start-up expenses and for prepaid expenditure
- from 1 July 2021 also be eligible to access the following small business concessions
  - simplified trading stock rules

- PAYG instalments concession
- a two-year amendment period
- excise concession

FBT exemption for multiple work-related devices

You are a small business for the FBT work-related portable electronic device exemption if you are a small business for an income year that ends or starts in the relevant FBT year. From 1 April 2021, the turnover threshold for determining if you can access this exemption increases to $50 million for the relevant income year.

Example: Is an employer a small business for an FBT year?

Dimitris is a sole trader who has a surveying business and employs a number of staff. In the 2019–20 income year, his business had a turnover of $3.7 million. He estimates that his turnover is going to be $12 million for the 2020–21 income year due to two large contracts he negotiated.

Dimitris wants to know if, as an employer, he can access the FBT exemption for portable electronic devices in the 2020–21 FBT year (1 April 2020 to 31 March 2021).

To determine this, Dimitris looks at whether his business is a small business for at least one income year that ends or starts in the 2020–21 FBT year.

Dimitris determines his business is a small business for 2019–20 income year because his turnover is less than $10 million. Therefore, his business can access the FBT exemption for portable electronic devices in the 2020–21 FBT year – from 1 April 2020 to 31 March 2021.

See also:

- Work-related portable electronic device exemption

Aggregation

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Eligibility/Aggregation/
- Last modified: 04 Sep 2020
- QC 50226

Use the aggregation rules to work out whether you need to add any other business entities' annual turnover to your annual turnover to work out your aggregated turnover.

Annual turnover is all ordinary income you earned in the ordinary course of running a business for the income year.

Aggregated turnover is generally your annual turnover plus the annual turnover of any business:

- connected with you
- that is your affiliate.

If your business is a company, your aggregated turnover includes your annual turnover, plus the annual turnover of all the entities that are connected or affiliated with your company. These connected or affiliated entities may be based in Australia or overseas.

If you are aggregated with one or more other businesses, you do not need to use a particular concession just because some or all of those other businesses have chosen to use it.

Find out about:

- Work out your aggregated turnover
- Affiliates
- Connected with you
- Control of a company
- Control of a partnership
- Trusts

See also:

- Definitions – the terms used to explain small business entity concessions

Work out your aggregated turnover

Follow these steps to calculate your aggregated turnover.

Step 1 – Work out your annual turnover (for the previous or current year)

Your annual turnover includes all ordinary income you earned in the ordinary course of business for the income year. Annual turnover means gross income, not net profit.

If you operate multiple business activities, either as a sole trader or within the same business structure, you must include the income from all your activities when working out your annual turnover.

For example, a sole trader operating a part-time consultancy and a retail shop would include the income from both business activities when working out annual turnover. Likewise, a company providing construction and project management services through separate arms of its business would need to include income from both activities when working out annual turnover.

Table 1: Amounts normally included and not included in ordinary income

Include these amounts	Do not include these amounts
• Trading stock sales • Fees for services you provide • Interest from business bank accounts • Amounts you receive to replace something that would have had the character of business income	• GST you charge on a transaction • Amounts you borrow for the business • Proceeds from selling business capital assets • Insurance proceeds for the loss or destruction of a business asset • Amounts you receive from farm management deposit repayments • JobKeeper payments (although they are ordinary income they are not earned in the ordinary course of business)

Note: Assessable income from an individual's personal income protection insurance policy as it is not 'from' a business activity

Special rules for calculating your annual turnover

Operating a business for part of the year

If you start or cease a business part way through an income year, you must make a reasonable estimate of what your annual turnover would have been if you had carried on the business for the entire income year. This rule applies for all three methods of working out whether you are a small business.

Retail fuel sales

Do not include retail fuel sales when working out your annual turnover. This is a special rule because sales of retail fuel are characteristically high in sales volume with low profit margins.

Non-arm's length business transactions

Include any income from transactions with an associate in your annual turnover.

If the dealing was not at arm's length (that is, the goods or services were sold at a discounted price because of their association with you) you must use the market value of the goods or services when working out your annual turnover.

However, you may take into account any discounts that you would have been offered had the dealing been at arm's length.

Example: Non-arm's length business transactions

Lana runs a printing business and Max runs a florist business. Lana and Max are married and are therefore each other's associate. Lana manufactures 200 gift cards for Max which he uses in his florist business. Lana only charges him the amount it costs her to manufacture the gift cards, with no profit margin.

This is a non-arm's length transaction between associates, so the amount that Lana must include in her annual turnover is the ordinary income she would have made from the sale of the gift cards if the transaction had been at arm's length. A useful guide for the amount she must use is the price she would charge any regular customer (taking into account bulk discounts that she would offer other customers).

If the aggregation rules do not apply to you, your aggregated turnover will be the same as your annual turnover. You do not need to read any further.

If you must consider the aggregation rules, or are not sure if they apply to you, read on.

Step 2 – Consider the aggregation rules

You must include the annual turnover of a relevant business with your annual turnover when working out your aggregated turnover.

A relevant business is a business that, at any time during the income year, is either:

- connected with you
- your affiliate.

Example: Aggregation rules

Using the previous example of Lana and Max, assume they each own 50% of the shares in a company called Lamax Pty Ltd. They do not have any involvement in each other's businesses. They are connected to Lamax Pty Ltd because they control the company. Lamax Pty Ltd is a relevant business of both Lana and Max.

Lana's aggregated turnover will be the annual turnover of her printing business plus the annual turnover of Lamax Pty Ltd.

Max's aggregated turnover will be the annual turnover of his florist business plus the annual turnover of Lamax Pty Ltd.

Example: Aggregation rules

BuildCo provides construction and project management services to its clients. It is a subsidiary of ParentCo, which is the parent company based in the USA. ParentCo is a relevant entity to BuildCo.

BuildCo's aggregated turnover will be its own annual turnover plus ParentCo's annual turnover.

If you have a relevant business, repeat Step 1 for each relevant business to work out their annual turnover. You must use the same method for working out your annual turnover and the annual turnovers of all your relevant businesses.

Step 3 – Work out your aggregated turnover

To work out your aggregated turnover, add the annual turnovers of relevant businesses to your annual turnover.

When working out your aggregated turnover, do not include any income:

- from dealings between you and a relevant business
- from dealings between any of your relevant businesses
- of a business when it was not your relevant business.

From 1 July 2016, a small business's aggregated turnover must be less than $10 million.

Example: Working out aggregated turnover for multiple entities

Claudia runs a clothing business and her brother Jonas runs a kitchen supplies store. Claudia and Jonas are associates, but they are not affiliates because they do not act in concert with one another or according to the directions or wishes of each other in regard to their respective businesses.

Claudia and Jonas each own 50% of the shares in a third business, CJ Retailers Pty Ltd. This means they are both connected with CJ Retailers Pty Ltd. Both Claudia and Jonas have separate dealings with CJ Retailers for their respective businesses.

Claudia must include CJ Retailers' annual turnover in her aggregated turnover because this business is connected with her. Claudia will not include any income from her transactions with CJ Retailers (to avoid double counting). Claudia will not include Jonas's turnover in her aggregated turnover because Jonas is not her affiliate.

Jonas must include CJ Retailers' annual turnover in his aggregated turnover because this business is connected with him. Jonas will not include any income from his transactions with CJ Retailers (to avoid double counting). Jonas will not include Claudia's annual turnover in his aggregated turnover, as Claudia is not his affiliate.

Example: Working out aggregated turnover for multiple entities

ElectricCo is an electrical contracting company that had an annual turnover of $7 million for the 2016–17 income year.

In 2015, ElectricCo expanded its business services and purchased another company called HiVoltCo to undertake high voltage installations.

HiVoltCo had an annual turnover of $2 million for the 2016–17 income year. As HiVoltCo is connected with ElectricCo, its annual turnover will be included when calculating ElectricCo's aggregated turnover.

ElectricCo's aggregated turnover is $9 million for the 2016–17 income year, as it is only connected with HiVoltCo. HiVoltCo's aggregated turnover is also $9m.

As the aggregated turnover of both ElectricCo and HiVoltCo is under the $10 million threshold, ElectricCo has access to small business concessions and the lower company tax rate will apply.

See also:

- Subdivision 328-C of the *Income Tax Assessment Act 1997* – What is a small business entity?
- Are you in business? – determine the differences between a hobby and a business for tax purposes

Affiliates

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Eligibility/Aggregation/Affiliates/
- Last modified: 22 May 2017
- QC 50236

An affiliate is any individual or company that, in relation to their business affairs, acts or could reasonably be expected to act:

- according to your directions or wishes, or
- in concert with you.

Trusts, partnerships, and superannuation funds cannot be your affiliates.

CGT concessions

When working out your aggregated turnover for small business capital gains tax (CGT) concessions, additional entities may be treated as being connected with you or your affiliate.

See also:

- Basic conditions for the small business CGT concessions
- Who is an affiliate?
- When an entity is connected with you

Connected with you

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Eligibility/Aggregation/Connected-with-you/
- Last modified: 02 Jun 2021
- QC 50239

Another entity is deemed to be connected with you 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 (see the indirect control test).

Also, when working out your aggregated turnover for the small business capital gains tax (CGT) concessions, an entity can be taken to be connected with another entity in certain circumstances – see Small business CGT concessions.

To work out whether a control relationship exists between entities, use the control rules:

- Control of a company
- Control of a partnership
- Trusts

Control of a company

To work out whether you control a company, you must consider whether you have an interest in any company and whether your affiliates have an interest in any companies.

You control a company if you, your affiliates, or you together with your affiliates, have either:

- shares and other equity interests in the company that give you and/or your affiliates at least 40% of the voting power in the company
- the right to receive at least 40% of any income or capital the company distributes.

Example: control of a company

Lucy is a sole trader. Her interests in Cool Computers give her 30% of the voting rights in that company.

Sean is Lucy's affiliate. He also owns interests in Cool Computers that give him 30% of the voting rights in that company.

Lucy controls Cool Computers because Lucy's interests and Sean's interests together give them the right to exercise more than 40% of the voting rights in that company. Lucy must include Cool Computers' and Sean's annual turnover when working out her aggregated turnover.

Control of a partnership

You control a partnership if you, your affiliates, or you together with your affiliates, have the right to 40% or more of the partnership's net income or capital.

Example: control of a partnership

Olivia and Jill are partners in a professional practice. They each have a 50% interest in the partnership. As they each control the partnership, they need to include the partnership's annual turnover when determining their eligibility.

Trusts

There are specific aggregation rules for trusts, that can differ based on the type of trust.

Control of a trust (other than a discretionary trust)

You control a trust if you, your affiliates, or you together with your affiliates, have the right to receive 40% or more of any income or capital the trust distributes.

Control of a discretionary trust

There are two tests for control of a discretionary trust:

- distribution test
- influence over trustee test.

You control a discretionary (non-fixed) trust if you meet either of these tests.

Tax-exempt entities and deductible gift recipients can never control a discretionary trust. This is regardless of the percentage of distributions they receive.

Distribution test

You meet the distribution test if in any of the previous four income years, you, your affiliates or you together with your affiliates received a trust distribution of 40% or more of the total income or capital the trust distributed for that income year.

> Example: control of a trust
>
> Gavin is working out whether he is an eligible small business for the current financial year. Three years ago, Gavin receives a distribution from a discretionary trust, which constitutes 70% of the total amount of the income the trust distributed in that income year.
>
> Gavin controls that trust because he received a distribution of income three years ago that was more than 40% of the total amount of income distributed that year. When working out his aggregated turnover, Gavin includes the annual turnover of the trust.

Influence over trustee test

You meet this test if the trustee either acts, or might reasonably be expected to act, according to the directions or wishes of you, your affiliate or you together with your affiliates.

You must consider all the circumstances to work out whether you satisfy this test. For example, to prove that you had no influence over the trustee, it would not be enough for the trust deed to say the trustee must ignore your directions or wishes.

Some factors you might consider include:

- the way the trustee has acted in the past
- the relationship between you or your affiliates (or both) and the trustee
- the amount of property or services you or your affiliates (or both) transferred to the trust
- any arrangement or understanding between you and any person who has

benefited under the trust in the past.

Control of a discretionary trust – trustee did not make a distribution

Where the trustee of a discretionary trust did not make a distribution because the trust had a tax loss or no taxable income, the trustee can nominate up to four beneficiaries as controllers of the trust for that income year.

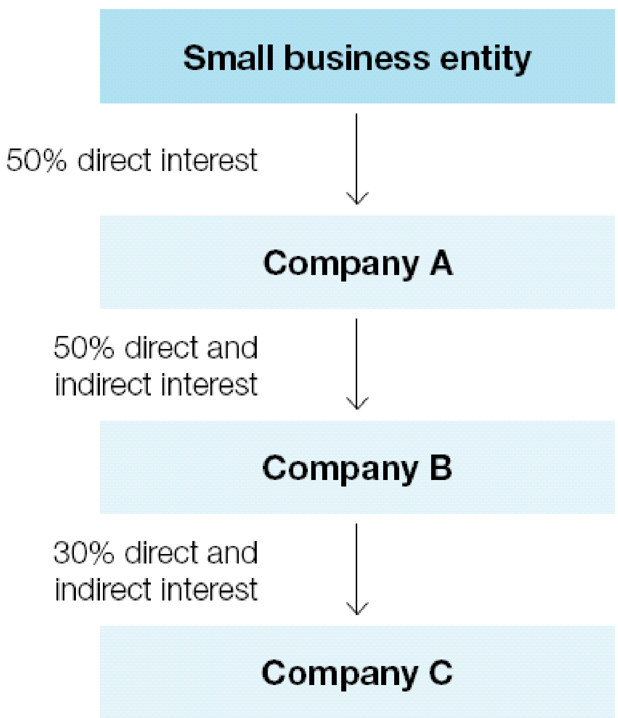
The implications of being a nominated controller are different for the aggregation rules and the active asset test. For the purposes of the:

- aggregation rules – if you are a nominated controller, you are not connected with the trust. This means that you do not have to include either the trust's annual turnover for the aggregated turnover test or the value of the trust's net assets when considering whether you meet the maximum net asset value test
- active asset test – if you are a nominated controller, you are connected with and are taken to control the trust for that income year. This means that an asset you hold can qualify as your active asset (and potentially be eligible for the CGT concessions) where it is used or held ready for use in the business of the trust. Additionally, if the asset you hold is an intangible asset such as goodwill, it can be your active asset if it is inherently connected with the business of the trust.

Indirect control test

This test is designed to look through business structures that include interposed entities. For example, where you directly control a second entity, and the second entity either directly or indirectly controls a third entity, you are taken to also control the third entity.

Indirect control test



In the above figure, the small business has more than 40% direct and indirect interest in companies A and B. Therefore, the small business controls companies A and B but not company C.

See also:

- Small business CGT concessions

Public entity exception

The indirect control test does not apply if an entity controls a public entity that in turn controls a third entity. However, it will apply if the first entity actually controls the third entity. (For example, because it holds 50% of the voting rights in the third entity, excluding interest held indirectly through the public entity.)

The types of public entities are:

- companies whose shares are listed for quotation in the official list of an approved stock exchange, unless those shares are of a type that carry the right to a fixed dividend rate
- publicly traded unit trusts
- mutual insurance companies
- mutual affiliate companies
- any company where all of its shares are beneficially owned by one or more of any of the entities listed above.

Discretion about the control test

If you meet the 40% threshold under one of the control tests, we may determine that you do not control an entity if both:

- your control percentage is less than 50%
- we are satisfied, or think it is reasonable to assume, that another entity actually controls the entity.

However, it is possible that both you and another person or entity jointly control an entity if you each have a control percentage of at least 40% and you share the responsibilities.

Example: discretion about the control test

Lachlan owns 48% of the shares in a private company. He plays no part in the day-to-day or strategic decision making of the business. Daniel beneficially owns the other 42% of the shares in the company. The other 10% does not take part in the management of the business. All shares carry the same voting rights and Daniel makes all day-to-day and strategic decisions for the company.

Even though Lachlan owns 48% of the shares in the company, he is not taken to control the company if the Commissioner of Taxation is satisfied that the company is controlled by Daniel.

Definitions

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Eligibility/Definitions/
- Last modified: 22 May 2017
- QC 50241

Table 1: Definitions of the terms used to explain small business entity concessions

Term	Definition
Aggregated turnover	Your aggregated turnover is your annual turnover (all ordinary income you earned in the ordinary course of running a business for the income year) plus the annual turnover of any entities you are connected with or that are your affiliates. When we say 'turnover', we mean 'aggregated turnover'.
Annual turnover	Annual turnover is the total ordinary income that you derive in the income year in the course of running your business.
Assessable income	Assessable income is your ordinary income and statutory income.
Associate	The definition of associate is very broad. As an individual, your associates include but are not limited to: • your relatives, such as your spouse or children • a partnership you are a partner in • another partner in that partnership and that partner's spouse and children • a trustee of a trust that you, or your associate, are a beneficiary of • a company that you, or your associate, control or influence. Similar rules apply to work out who is an associate of a company, partnership and trust.
Connected with	An entity is connected with you if: • you control or are controlled by that entity • both you and that entity are controlled by the same third entity.

Fixed trust	A trust is a fixed trust if entities have fixed entitlements to all of the income and capital of the trust.
Non-fixed trust	A non-fixed trust is a trust that is not a fixed trust. For example a trust where the trustee has the discretion to distribute the trust income to a beneficiary, would not be a fixed trust.
Ordinary income	Ordinary income is income according to ordinary concepts. Generally this is amounts that everyone would consider to be income.
Ordinary course of business	Generally, you derive income in the ordinary course of running a business if you: • regularly or customarily derive the income in the course of running a business, not from any special circumstance or unusual event • don't regularly derive the income but you do derive it directly from your normal business activities. You may derive ordinary income in the ordinary course of running your business, even if the income is not the main type of ordinary income you derive. The income does not need to account for a significant part of your business's overall receipts. It is sufficient that the ordinary income is of a kind derived regularly or customarily in the course of running your business.
Person	A person is an individual but also includes a company or other entity that is considered a person for legal purposes.
Relevant business	A relevant business is a business entity that is your affiliate or connected with you.
Retail fuel	Retail fuel means taxable fuel, within the meaning of the *Fuel Tax Act 2006,* that is sold by retail. Generally, this includes fuel on which duty is payable under customs and excise law and also includes compressed natural gas, liquefied petroleum gas, or liquefied natural gas.
Small business	When we say 'small business', we mean 'small business entity'.
Small business entity	You are a small business entity if you are carrying on a business with less than $10 million aggregated turnover. When we say 'you' we mean the individual, partnership, company or trust that runs the business.
Statutory income	Statutory income is income that is not ordinary income and that you include in assessable income because of a specific rule in the

	tax law. For example, a net capital gain is statutory income. If a receipt is classed as both ordinary income and statutory income, the statutory rule prevails.
Trading stock	Trading stock includes: • anything you produce, manufacture or acquire that you hold for purposes of manufacture, sale or exchange in the ordinary course of your business • livestock.

Concessions

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/
- Last modified: 10 Dec 2020
- QC 50137

As a small business you can access a range of concessions.

When we say 'small business' we mean small business entity.

If you are not a small business, you may still qualify for certain small business concessions based on your aggregated turnover.

Find out about:

- Concessions at a glance
- Income tax concessions
- CGT concessions
- GST and excise concessions
- PAYG instalments concession
- FBT concessions
- Super concessions

Concessions at a glance

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/Concessions-at-a-glance/

- Last modified: 07 Jun 2021
- QC 53212

If you are a business, use this table to find out what concessions you can access based on your aggregated turnover.

When we say 'turnover', we mean 'aggregated turnover'.

The concessions have various start dates beginning from 1 July 2016.

Note: Most concessions have additional eligibility requirements.

Business concessions

Deductions

Concession	Turnover less than $2 million	Turnover $2 million to less than $5 million	Turnover $5 million to less than $10 million	Turnover $10 million to less than $50 million	Turnover $50 million to less than $500 million	Turnover $500 million to less than $5 billion
Simplified depreciation rules – instant asset write-off	Yes	Yes	Yes	Yes	Yes	No
Backing business investment – accelerated depreciation	Yes	Yes	Yes	Yes	Yes	No
Temporary full expensing	Yes	Yes	Yes	Yes	Yes	Yes
Accelerated depreciation for primary producers	Yes	Yes	Yes	Yes	Yes	Yes
Deductions for professional expenses for start-ups	Yes	Yes	Yes	Yes	No	No
Immediate deductions for prepaid expenses	Yes	Yes	Yes	Yes	No	No

Calculating and paying income tax

Concession	Turnover less than $2 million	Turnover $2 million to less than $5 million	Turnover $5 million to less than $10 million	Turnover $10 million to less than $50 million
Lower company tax rate changes	Yes	Yes	Yes	Yes
Increased small business income tax offset	Yes	Yes	No	No
PAYG instalments concession	Yes	Yes	Yes	Yes (from 1 July 2021)

Simplified record keeping

Concession	Turnover less than $2 million	Turnover $2 million to less than $5 million	Turnover $5 million to less than $10 million	Turnover $10 million to less than $50 million
Simplified trading stock rules	Yes	Yes	Yes	Yes (for income years starting on or after 1 July 2021)
Two-year amendment period	Yes	Yes	Yes	Yes (for income years starting on or after 1 July 2021)

GST, BAS and excise

Concession	Turnover less than $2 million	Turnover $2 million to less than $5 million	Turnover $5 million to less than $10 million	Turnover $10 million to less than $50 million
Simpler BAS	Yes	Yes	Yes	No
Accounting for GST on a cash basis	Yes	Yes	Yes	No
Annual apportionment of GST input tax credits	Yes	Yes	Yes	No
Paying GST by	Yes	Yes	Yes	No

instalments				
Excise concession	Yes	Yes	Yes	Yes (from 1 July 2021)

Capital gains tax (CGT)

Concession	Turnover less than $2 million	Turnover $2 million to less than $5 million	Turnover $5 million to less than $10 million	Turnover $10 million to less than $50 million
Small business restructure rollover	Yes	Yes	Yes	No
CGT 15-year asset exemption	Yes	No	No	No
CGT 50% active asset reduction	Yes	No	No	No
CGT retirement exemption	Yes	No	No	No
CGT rollover	Yes	No	No	No
Contributions of small business CGT concession amounts to your super fund	Yes	No	No	No

Fringe benefits tax (FBT)

Concession	Turnover less than $2 million	Turnover $2 million to less than $5 million	Turnover $5 million to less than $10 million	Turnover $10 million to less than $50 million
FBT car parking exemption	Yes	Yes	Yes	Yes (from 1 April 2021)
FBT work-related devices exemption	Yes	Yes	Yes	Yes (from 1 April 2021)

Superannuation

Concession	Turnover less than $2 million	Turnover $2 million to less than	Turnover $5 million to less than	Turnover $10 million to less than

		$5 million	$10 million	$50 million
Superannuation clearing house	Yes	Yes	Yes	No
Contributions of small business CGT concession amounts to your super fund	Yes	No	No	No

See also:

- Income tax concessions
- Income and deductions for business

Income tax concessions

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/Income-tax-concessions/
- Last modified: 10 Dec 2020
- QC 22650

As a small business, you may be eligible for the following income tax concessions if your turnover is below the turnover threshold in the income year.

From 1 July 2016, the turnover threshold is:

- $5 million for the small business income tax offset
- $10 million for all other income tax concessions.

The turnover threshold up to 30 June 2016 was $2 million for all these concessions.

If you are not a small business because of your turnover, some of these income tax concessions may still be available to you.

On this page:

- Deductions for professional expenses for start-ups
- Small business restructure rollover
- Simplified trading stock rules
- Immediate deductions for prepaid expenses
- Two-year amendment period

See also:

- Simplified depreciation rules – instant asset write-off
- Accelerated depreciation for primary producers
- Lower company tax rate changes

- Increased small business income tax offset

Deductions for professional expenses for start-ups

From 1 July 2015, small businesses are entitled to certain deductions when starting up a small business. The range of deductible start-up costs includes professional, legal and accounting advice and government fees and charges.

If their turnover is less than $50 million businesses are also entitled to deductions for these start-up costs from 1 July 2020.

See also:

- Certain start-up expenses immediately deductible

Small business restructure rollover

From 1 July 2016, small businesses can change the legal structure of their business without incurring any income tax liability when active assets are transferred by one entity to another.

This rollover applies to active assets that are CGT assets, trading stock, revenue assets and depreciating assets used, or held ready for use, in the course of carrying on a business.

See also:

- Small business restructure rollover

Simplified trading stock rules

This concession allows you to estimate the value of your trading stock at the end of the financial year to report in your tax return. You will need to record how you estimated the value of your stock, but you don't need to notify us that you have chosen to use an estimate.

You can choose not to conduct a stocktake (and account for changes in the value of your trading stock) if there is a difference of $5,000 or less between:

- the value of your stock at the start of the income year
- a reasonable estimate of the value of your stock at the end of the year.

If you choose not to use an estimate, you will need to conduct a stocktake and account for the changes in the value of your stock.

If your turnover is less than $50 million you can access the simplified trading stock rules from 1 July 2021.

See also:

- Simplified trading stock rules

Immediate deductions for prepaid expenses

You can claim an immediate deduction for prepaid expenses where the payment covers a period of 12 months or less that ends in the next income year.

If your turnover is less than $50 million you can deduct these prepaid expenses from 1 July 2020.

See also:

- Summary of rules including the 12-month rule

Two-year amendment period

As a small business, you generally have a two-year time limit, from the day we issued your notice of assessment, for reviewing an assessment.

If your turnover is less than $50 million, the two-year time limit also applies to your assessment for an income year starting on or after 1 July 2021.

See also:

- Time limits on tax return amendments
- Income tax decisions

Small business CGT concessions

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/CGT-concessions/
- Last modified: 04 Aug 2021
- QC 22655

The small business capital gains tax (CGT) concessions allow you to reduce, disregard or defer some or all of a capital gain from an active asset used in a small business.

The concessions are available when you dispose of an active asset and meet eligibility requirements.

On this page

- Eligibility
- The 4 small business CGT concessions
- Applying the small business CGT concessions

Eligibility

You must meet basic eligibility conditions common to all 4 concessions.

Step 1: You must be one of the following:

- a small business entity with an aggregated turnover of less than $2 million
- not carrying on a business (other than as a partner) but your asset is used in a closely connected small business (passively-held assets)
- a partner in a partnership that is a small business entity, and the asset is either
  - an interest in a partnership asset (partnership assets)
  - an asset you own that is not an interest in a partnership asset (partner's assets) but is used in the business of the partnership

- you satisfy the maximum net asset value test.

Step 2: The asset satisfies the active asset test.

Step 3: If the asset is a share in a company or an interest in a trust, it must meet additional conditions.

Step 4: The eligibility condition in this step applies to a CGT event happening after 7.30pm AEDT on 8 May 2018 that involves the creation, transfer, variation or ending of your right or interest to either:

- an amount of income or capital of a partnership
- an amount calculated by reference to the entitlement of a partner in a partnership to an amount of the partnership's income or capital.

If the CGT event involved ending your right or interest, your right or interest must be a membership interest in the partnership immediately before the CGT event happens.

For all other cases, your right or interest must be a membership interest in the partnership immediately after the CGT event happens.

The 4 small business CGT concessions

All the concessions except for the small business 50% active asset reduction have additional requirements you must meet.

Small business 15-year exemption

You will not pay CGT when you dispose of an active asset if you meet both of the following additional requirements:

- you are aged 55 years or older and retiring, or are permanently incapacitated
- you have continuously owned the asset for at least 15 years.

You may be able to contribute amounts to your super fund from the small business 15-year exemption without affecting your non-concessional contributions limits.

Small business 50% active asset reduction

You will only pay tax on 50% of the capital gain when you dispose of an active asset.

The small business 50% active asset reduction applies if you meet the basic eligibility conditions. It applies in addition to the CGT discount.

You may choose not to apply the concession if you prefer.

Small business retirement exemption

Capital gains from the disposal of active assets are exempt from CGT up to a lifetime limit of $500,000.

If you are under 55, the exempt amount from the proceeds on disposal of the asset must be paid into a complying superannuation fund or a retirement savings account.

You may be able to use amounts from the small business retirement exemption as contributions to your super fund without affecting your non-concessional contributions limits.

Small business rollover

The small business rollover allows you to defer all or part of a capital gain made from a CGT event happening to an active asset.

For example, you can defer your capital gain until a later year if you buy a replacement asset or improve an existing active asset.

The replacement asset can be acquired one year before or up to 2 years after the last CGT event in the income year for which you choose the rollover.

Applying the small business CGT concessions

You can apply as many of the small business CGT concessions as you are eligible for until the capital gain is reduced to zero.

There are rules about the order you apply the concessions, any current year or prior year capital losses, and the CGT discount.

Small business entity

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/CGT-concessions/Small-business-entity/
- Last modified: 17 Jul 2017
- QC 52267

You're a small business entity for the four CGT concessions if you're an individual, partnership, company or trust that:

- is carrying on a business, and
- has an aggregated turnover of less than $2 million.

Aggregated turnover is your annual turnover plus the annual turnovers of any business entities that are your affiliates or connected with you.

To work out whether you're a small business entity for the current year, you need to:

- choose a calculation method
- calculate your aggregated turnover.

Choose a calculation method

You can calculate your aggregated turnover using one of three methods: previous year, estimated current year or actual current year. Most businesses will only need to consider the ‘previous year’ method.

You must use the same method for calculating the annual turnover of your business and any affiliates or connected entities.

If your business is carried on as a partnership, it's the partnership and not the individual partner that must be the small business entity.

Method 1 – Use your previous year’s aggregated turnover

If your aggregated turnover for the previous income year was less than $2 million, you're a small business entity for the current year.

Method 2 – Estimate your current year aggregated turnover

If your estimated aggregated turnover for the current year is less than $2 million, you're a small business entity for the current year. However, you can use this method only if your aggregated turnover for one of the two previous income years was less than $2 million.

If you're estimating your turnover, you need to determine whether your aggregated turnover is more likely than not to be less than $2 million.

You must estimate your turnover based on the conditions that you're aware of at the beginning of the income year or, if you're starting a business part way through the year, at the time that you start your business. Factors to consider when estimating your turnover include:

- your turnover in previous income years
- whether you plan to reduce or increase staff in the current year
- whether your business operating hours are increasing or decreasing
- whether previous extraordinary sales or product lines will be available in the current income year

- whether your business will face increased competition in the current income year
- whether your business activity will increase or decrease because of changing conditions.

Method 3 – Use your actual current year turnover

If your actual aggregated turnover is less than $2 million at the end of the income year, you're a small business entity for that year.

Calculate your aggregated turnover

To calculate your aggregated turnover you need to:

- Step 1 – work out your annual turnover (for your previous or current year)
- Step 2 – consider the aggregation rules
- Step 3 – work out your aggregated turnover

If the aggregation rules don't apply to you (because there are no other business entities that are your affiliate or connected with you), your aggregated turnover is the same as your annual turnover. In this case you only need to do step 1.

Step 1 – work out your annual turnover (for your previous or current year)

Your annual turnover includes all ordinary income earned in the ordinary course of business for the income year. Turnover is your gross income or proceeds, rather than your net profit.

If you operate multiple business activities, either as a sole trader or within the same business structure, you must include the income from all your activities when working out your annual turnover. For example, a sole trader operating a part-time consultancy and a retail shop would include the income from both business activities when working out annual turnover.

Include these amounts:

- sales of trading stock
- fees for services provided
- interest from business bank accounts
- amounts received to replace something that would have had the character of business income, for example, a payment for loss of earnings.

Do not include these amounts:

- GST you charged on a transaction
- amounts borrowed for the business
- proceeds from the sale of business capital assets
- insurance proceeds for the loss or destruction of a business asset
- amounts received from repayments of farm management deposits.

Special rules for calculating annual turnover

Business operated for part of the year

If you start or cease a business part way through an income year, you need to work out your turnover using a reasonable estimate of what your turnover would have been if you had carried on the business for the entire income year. This rule applies for all three methods of working out aggregated turnover.

Retail fuel sales

Do not include retail fuel sales when calculating your turnover. This is a special rule because sales of retail fuel are characteristically high in sales volume with low profit margins.

Non-arm's length business transactions

If you have dealings with associates that are not at arm's length (that is, the goods or services were sold at a discounted price because of their association with you) you must use the market value of the goods or services when calculating your annual turnover.

However, you may take into account any discounts that would have been offered had the dealing been at arm's length.

As an individual, your associates include, but are not limited, to:

- your relatives, such as your spouse or children
- a partnership that you are a partner in
- another partner in that partnership, and that partner's spouse and children
- a trustee of a trust that you, or your associate, are a beneficiary of
- a company that you, or your associate, control or influence.

There are similar rules to determine who is an associate of a company, partnership and trustee.

See also:

- *Income Tax Assessment Act 1936* Section 318

Step 2 – consider the aggregation rules

When working out your aggregated turnover you must include the annual turnover of any relevant business entity – that is, any business entity that, at any time during the income year, was your affiliate or connected with you.

Repeat step 1 for each relevant business entity to work out their annual turnover. You must use the same method for working out your annual turnover and the annual turnovers of all your relevant businesses entities.

See also:

- Small business entity concessions – Aggregation

Step 3 – work out your aggregated turnover

To work out your aggregated turnover, add the annual turnovers of relevant business entities to your annual turnover.

Do not include income:

- from dealings between you and a relevant business entity
- from dealings between any of your relevant business entities
- of an entity when it was not your relevant business entity.

If your aggregated turnover is less than $2 million, you're a small business entity for the current year.

If you're not a small business entity in an income year, you may still be able to access the capital gains tax concessions if you satisfy the [$6 million maximum net asset value test](#).

Example: Aggregated turnover

Lana has an affiliate, Max, who owns a company, Maxaco.

When Lana is working out her aggregated turnover, she includes:

- Max's turnover because Max is Lana's affiliate
- Maxaco's turnover because she is connected to the company through her affiliate.

Lana does not include any income from her transactions with Max or Maxaco.

Next steps:

- [Choosing and applying the concessions](#)

See also:

- [Affiliates](#)
- [Connected entities](#)

Passively-held assets

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/CGT-concessions/Passively-held-assets/

- Last modified: 17 Jul 2017
- QC 52268

You can access the small business concessions for a CGT asset you own if the asset is used or held ready for use in, or inherently connected with, a business carried on by your affiliate, or an entity connected with you. You must satisfy the following conditions:

- your affiliate, or entity connected with you, is a small business entity for the income year (that is, the income year in which the CGT event happens to your asset)
- you don't carry on a business in the income year other than in partnership
    - if you carry on a business in partnership, the CGT asset is not an interest in an asset of the partnership
- your affiliate or entity that is connected with you at a time in the income year is the same small business entity that carries on the business and uses the asset at that time, and the asset is the same asset that also meets the active asset test at that time.

In determining whether the entity that uses the passively-held asset is a small business entity, there's a special rule for calculating aggregated turnover.

An entity that is your affiliate, or is connected with you, is deemed to be an affiliate of, or connected with the small business entity that uses the asset. In calculating the aggregated turnover of the small business entity, the turnover of entities that are deemed to be affiliates or connected entities must be included. The calculation of aggregated turnover is otherwise the same.

A special affiliate rule for spouses and children under 18 also applies.

Example

Peter owns land that he leases to a company he wholly owns, Fossy Farm Pty Ltd, which uses the land in its farming business. Peter does not carry on a business himself.

Peter would be able to access the small business CGT concessions through the small business entity turnover test, depending on the aggregated turnover of Fossy Farm Pty Ltd.

Peter has an affiliate, Mike, who carries on a separate business. Mike acts in accordance with Peter's wishes in running his business. The special rule for calculating aggregated turnover will apply to treat Mike as Fossy Farm's affiliate also. When working out Fossy Farm's aggregated turnover, Mike's turnover will need to be included.

Concessions not available for super funds

The small business concessions are not available for any capital gain a super fund makes on the sale of an asset used in a related entity's business.

For example, a super fund may own premises used in the business of a related entity. However, as the members or trustees of the fund (who typically also control the related entity) don't control the fund in the manner required, the related entity is not a connected entity and, therefore, the business real property is not an active asset.

See also:

- Calculate your aggregated turnover
- Spouses and children
- Affiliates
- Connected entities

Partner in a partnership – using the small business entity test

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/CGT-concessions/Partner-in-a-partnership---using-the-small-business-entity-test/
- Last modified: 17 Jul 2017
- QC 52269

A partner can't be a small business entity. It's the partnership that must satisfy the small business entity test to qualify as a small business entity. The aggregated turnover of the partnership must be below the relevant threshold to access a particular concession.

If the partnership is a small business entity, a partner may be eligible for the small business CGT concessions for:

- their interest in a partnership asset, or
- an asset they own that is not a partnership asset but is used in the business of the partnership.

In both cases the partner is not required to be connected with the partnership.

This is different to the approach used in the maximum net asset value test. For that test, it's the individual partners in the partnership that determine their eligibility, not the partnership.

Partnership assets

An asset is a partnership asset if the partners own the asset in line with their respective interests as specified in the partnership agreement.

You're eligible for the concessions if:

- the asset is your interest in a partnership asset
- that partnership is a small business entity, and
- the asset meets the active asset test.

Partner’s assets

You're eligible for the concessions for a CGT asset you own (that is not an interest in a partnership asset) when the following conditions are satisfied:

- you are a partner in a partnership in the income year in which the CGT event happens to your CGT asset
- the partnership uses the asset at a time in the income year in carrying on the partnership business, and is a small business entity for that income year
- the only business you carry on is as a partner in a partnership, and
- the asset meets the active asset test.

There's a special rule for calculating the aggregated turnover of the partnership in cases where a partner's asset is being used in the business carried on by the partnership.

An entity that is your affiliate, or connected with you, is deemed to be an affiliate of, or connected with the partnership that uses the asset. In calculating the aggregated turnover of the partnership, the turnover of entities that are deemed to be affiliates or connected entities must be included. The calculation of aggregated turnover is otherwise the same.

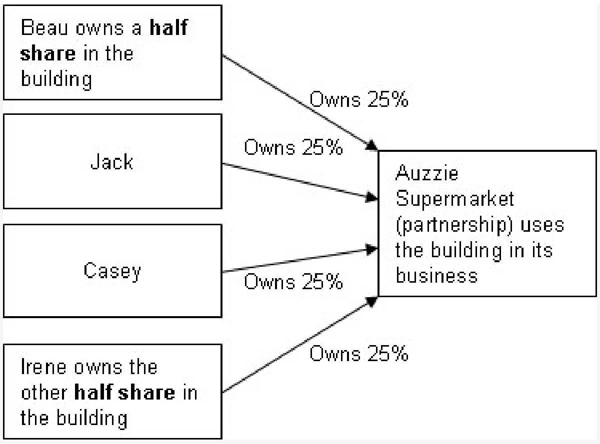
There's another special rule for working out aggregated turnover where:

- you are a partner in more than one partnership, and
- the asset is used in more than one partnership’s business.

In this case, each partnership that you're a partner in, and that uses the asset, is treated as being connected with the partnership for the purpose of working out whether it's a small business entity (the test entity). When working out the aggregated turnover of the test partnership, the turnover of any other partnerships that are deemed to be connected must be included.

Example

Beau and Irene each own 50% of a supermarket building, which is used in the business of a partnership carried on by Beau, Jack, Casey and Irene. Beau, Jack, Casey and Irene each have a 25% interest in the partnership, which trades under the name ‘Auzzie Supermarket’.



Beau and Irene may be able to access the small business CGT concessions for their respective shares of the building through the small business entity turnover test, depending on the aggregated turnover of the partnership as calculated for Beau and Irene respectively. The aggregated turnover of Auzzie Supermarket must be calculated separately for Beau and Irene, taking into account any entities that are affiliates of, or connected with, each of them respectively.

Next steps:

- Choosing and applying the concessions

See also:

- Calculate your aggregated turnover
- Affiliates
- Connected entities

Maximum net asset value test

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/CGT-concessions/Maximum-net-asset-value-test/
- Last modified: 17 Jul 2017
- QC 52270

You qualify for step 1 of the small business CGT concessions if the total net value of CGT assets owned by you and certain entities does not exceed $6 million just before the CGT event for which the concessions are sought. The limit is not indexed for inflation.

You must include the net value of CGT assets owned by:

- you
- any entities connected with you
- any of your affiliates and entities connected with your affiliates
    - but only if the assets are used, or held ready for use, in a business carried on by you or an entity connected with you
    - don't include an asset if it is used in the business of an entity that is connected with you only because of your affiliate.

Find out about:

- [Meaning of 'net value']
- [Partner in a partnership]
- [Assets to include]
- [Liabilities to include]
- [Assets to exclude]
- [Effect of look-through earnout rights]

See also:

- [Affiliates] and [Connected entities]

Example

Colin operates a newsagency as a sole trader.

Colin's son, Simon, carries on his own florist business, which is unrelated to the newsagency business. Simon owns the land and building from which the newsagency is conducted and leases it to Colin. Simon also owns 100% of the shares in Simco Pty Ltd, which carries on a separate business. Simon is connected with Simco Pty Ltd because he controls the company. Simon regularly consults Colin for advice in his business affairs and acts according to Colin's wishes – therefore, Simon is Colin's affiliate.

To determine whether he satisfies the maximum net asset value test, Colin includes the market value of the land and building owned by Simon (because it is used in his newsagency business) but does not include Simon's other assets used in his florist business (because they are not used in the newsagency business). Nor does Colin include Simco's assets, because those assets are not used in his business and Simco Pty Ltd is only connected because of his affiliate, Simon.

Meaning of 'net value'

The net value of the CGT assets of an entity is the sum of the market values of those assets less any liabilities of the entity that are related to those assets and provisions made for:

- annual leave
- long service leave
- unearned income
- tax liabilities.

The net value can be positive, negative or nil.

Partner in a partnership

If you're a partner in a partnership and the CGT event happens to an asset of yours or a CGT asset of the partnership (for example, disposal of a partnership asset), the maximum net asset value test would include:

- if you're connected with the partnership – all the assets of the partnership (excluding the value of your interest in the partnership)
- if you're not connected with the partnership – only your interest in the partnership (exclude the assets of the partnership as a whole).

Entities that hold shares or trust interests would calculate their net asset value in a similar way.

Assets to include

Assets to be included in determining the net value of the CGT assets are not restricted to business assets. They include all CGT assets of the entity, unless the assets are specifically excluded (see Assets to exclude).

In the case of a dwelling that is an individual's main residence, the individual only includes the current market value of the dwelling in their net assets to the extent that it is reasonable, having regard to the amount that the dwelling has been used to produce assessable income that gives rise to deductions for interest payments, or would give rise to deductions for interest if interest had been paid.

The individual would be entitled to deduct part of the interest on money they borrowed to buy the home if:

- part of the home is set aside exclusively as a place of business and is clearly identifiable as such, and
- that part of the home is not readily adaptable for private use – for example, a doctor’s surgery in a doctor's home.

This is a hypothetical interest deductibility test. If the individual did not actually incur any interest, the test looks at whether they would have been entitled to a deduction if they had taken out a loan to purchase their home.

If the dwelling has had some income-producing use, the percentage of income-producing use is multiplied by the current market value to work out the value of the dwelling that should be included. This will take into account the length of time and percentage of income-producing use of the dwelling.

Although gains from depreciating assets may be treated as income rather than capital gains, depreciating assets are still CGT assets and are included when calculating the net asset value.

Example

Ben owns a house that has a market value of $750,000 just before applying the net assets test. Ben has owned the house for 12 years:

- for the first three years, 20% of it was used for producing assessable income
- for the following two years, 40% was used for producing assessable income
- for two years, it was used solely as a main residence
- for the last five years, 10% was used for producing assessable income.

Ben’s dwelling has had 15.8% income-producing use:

- 3 ÷ 12 years × 20 = 5.0
- 2 ÷ 12 years × 40 = 6.7
- 2 ÷ 12 years × 0 = 0.0
- 5 ÷ 12 years × 10 = 4.1

Ben will include $118,500 in his net assets ($750,000 × 15.8%).

Ben has a liability of $500,000 attached to the house, therefore 15.8% ($79,000) of the liability is also included in the calculation of net assets.

Liabilities to include

Liabilities to be included in determining the net value of CGT assets include:

- legally enforceable debts due for payment
- presently existing legal or equitable obligations to pay either a certain sum or ascertainable sums.

See also:

- Taxation Determination TD 2007/14

Amounts that are not included in liabilities for the purposes of determining the net value of CGT assets of an entity include:

- provisions for possible obligations to pay damages in a pending lawsuit
- provisions for liabilities in respect of an earn-out contract
- provisions for the guarantee of a loan
- provisions for long service and annual leave entitlements
- provisions for income and other taxes prior to liability arising
- accounting liabilities arising as a result of receiving prepaid income
- provisions in general, for such things as quantity rebate and the like.

Provisions for annual leave, long service leave, unearned income and tax liabilities are not within the meaning of the term 'liabilities' but are separately taken into account in determining the net value of CGT assets.

Liabilities related to assets

A liability must be related to the CGT assets of an entity to be taken into account in determining the net value of the CGT assets of the entity.

This includes liabilities directly related to particular assets that are themselves included in the calculation, for example, a loan to finance the purchase of business premises. It also includes liabilities not directly related to a particular asset but rather to the assets of the entity more generally – for example, a bank overdraft or other short-term financing facility that provides working capital for the operation of the business. However, liabilities that are directly related to an asset that is excluded from the net asset calculation cannot be included – but certain liabilities related to excluded interests in connected entities may be counted.

Example

Cool Tool Pty Ltd is selling its business. The assets and liabilities of the company are as follows:

Assets:	
Plant and machinery	$1,500,000
Freehold premises	$3,500,000
Total assets	$5,000,000
Liabilities:	
Mortgage (secured over the premises)	$2,000,000
Provision for leave of employees	$500,000
Provision for rebates	$200,000
Provision for possible damages payout	$100,000
Total liabilities	$2,800,000
Net assets:	$2,200,000

The net value of the CGT assets of the company is calculated as follows:

Assets:	
Plant and machinery	$1,500,000
Freehold premises	$3,500,000
Total assets	$5,000,000
Liabilities:	
Mortgage (secured over the premises)	$2,000,000
Provision for leave of employees	$500,000
Total liabilities	$2,500,000
Net value of CGT assets:	$2,500,000

The following items are not taken into account in working out the net value of the CGT assets of Cool Tool Pty Ltd because they are not within the meaning of the term 'liabilities':

- provision for possible damages payout
- provision for rebates.

Assets to exclude

Some interests in connected entities

When calculating net value, you should exclude the shares, units and other interests (apart from debt) that you hold in an entity connected with you or your affiliate. This is because the net value of the CGT assets of the connected entity is already included in the test.

However, include any liabilities relating to these excluded interests in connected entities.

Non-business assets of affiliates or entities connected with affiliates

Include the net value of assets of your affiliates, and entities connected with your affiliates, only if the assets are used, or held ready for use, in a business carried on by you or an entity connected with you. However, don’t include an asset of your affiliate or an entity connected with your affiliate if it is used, or held ready for use, in the business of an entity that is connected with you only because of your affiliate.

Personal use and super assets

If you're an individual, you should disregard the following assets when working out the net value of your CGT assets:

- assets being used solely for your personal use and enjoyment, or that of your affiliate
- your own home, to the extent that you use it for private purposes (also, if your only other use is some incidental income-producing use, exclude your home from the net asset value test). If you've used part of your home to produce assessable income, you must make a reasonable apportionment
- rights to amounts payable out of a super fund or approved deposit fund
- rights to an asset of a super fund or approved deposit fund
- insurance policies on your life.

Where an asset is disregarded, any related liability is also disregarded because these liabilities are not related to an asset included in the net asset value calculation.

Example: Personal use assets

The market value of Lana's CGT assets is:

Land used in business	$50,000
Business goodwill	$200,000
Trading stock	$100,000
Plant	$50,000
Boat (used solely for personal use)	$50,000
Home	$600,000
Total	$ 1,050,000

Lana borrowed $20,000 to buy the boat.

When working out the net value of her CGT assets, Lana does not include:

- the market value of her boat ($50,000)
- the liability for the boat.

Lana uses 50% of her home exclusively for income-producing activity. She includes 50% of the value of her home, representing the income-producing percentage, and does not include the other 50% ($300,000).

Therefore, the net value of her CGT assets is:

$1,050,000 − $350,000 = $700,000

Effect of look-through earnout rights

Earnout arrangements are a way of structuring the sale of a business to deal with uncertainty about its value. The contract for the sale of a business (or assets of the business) provides for an initial lump sum payment by the buyer and a right to subsequent financial benefits that are contingent on the performance of the business for a specified period after the sale.

Working out the net value of your CGT assets for the purpose of the maximum net asset value test may require you to value an asset that is subject to a look-through earnout right.

However, depending on your situation you may be entitled to make a choice to treat the market value of the relevant CGT asset as one of the following:

- the first element of the cost base
- nil
- the total financial benefits provided, or
- the capital proceeds.

If such a choice is made and the look-through earnout right is also your CGT asset, you treat the market value of that right as if it were nil.

Next steps:

- Choosing and applying the concessions

See also:

- Earnout arrangements and CGT
- Subsection 152-20(5)

Active asset test

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/CGT-concessions/Active-asset-test/
- Last modified: 11 Jul 2019
- QC 52271

A CGT asset is an active asset if you own it and:

- you use it or hold it ready for use in the course of carrying on a business (whether alone or in partnership)
- it is an intangible asset (for example, goodwill) inherently connected with a business you carry on (whether alone or in partnership).

The active asset test is satisfied if the asset was an active asset of yours:

- for a total of at least 7½ years during the test period, if you've owned it for more than 15 years, or
- for at least half of the test period, if you've owned it for 15 years or less.

The test period:

- begins when you acquired the asset, and
- ends at the earlier of
  - the CGT event, and
  - when the business ceased, if the business in question ceased in the 12 months before the CGT event (or such longer time as the ATO allows).

The periods in which the asset is an active asset do not need to be continuous. However, they must add up to the minimum periods specified above, depending on the total period of ownership.

The asset does not need to be an active asset just before the CGT event.

Example

Jodie ran a florist business from a shop she owned for eight years. She ran the business for five years, and then leased it to an unrelated party for three years before selling. The shop satisfies the active asset test because it was actively used in Jodie's business for more than half the period of ownership, even though the property was not used in the business just before it was disposed of.

Find out about:

- Meaning of active asset
- Spouses and children under 18 years
- Land subdivision and active asset test
- Businesses that are winding up
- Death and the active asset test
- Continuing time periods for active asset test for involuntary disposals
- Modified active asset test for CGT event D1
- Additional conditions if the CGT asset is a share or trust interest

See also:

- Requesting an extension of time

Meaning of active asset

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/CGT-concessions/Active-asset-test/Meaning-of-active-asset/
- Last modified: 23 Oct 2019
- QC 52272

A capital gains tax (CGT) asset is an active asset if you own it and:

- you use it or hold it ready for use in the course of carrying on a business (whether alone or in partnership)
- it is an intangible asset (for example, goodwill) inherently connected with a business you carry on (whether alone or in partnership).

A CGT asset is also an active asset if you own it and it is used or held ready for use in the course of carrying on a business or it is an intangible asset inherently connected with a business carried on, (whether alone or in partnership) by any of the following:

- your affiliate
- your spouse or child under 18 years
- an entity connected with you.

However, certain CGT assets cannot be active assets, even if they are used or held ready for use in the course of carrying on a business – for example, assets whose main use is to derive rent (unless the asset was rented to an affiliate or connected entity for use in their business). Generally a rental property will not be an active asset.

On this page:

When an asset is ‘held ready for use’

For an asset to be held ready for use in the course of carrying on a business, it needs to be in a state of preparedness for use in the business and functionally operative. As such, premises still under construction, or land upon which it is intended to construct business premises, could not be said to be 'held ready for use' and would, therefore, not be active assets at that time.

Example 1: Asset is not held ready for use

Margaret carried on business at various customer on-site locations. She acquired some land with the intention of constructing premises in which to carry on her business. Soon after Margaret acquired the land she was approached by another party that was keen to acquire the land. Margaret sold the land and made a capital gain. She was only part way through the construction of the premises at that time.

In this situation, the land was not held ready for use by Margaret in the course of carrying on her business at any time. It was not in a state of preparedness in which Margaret could carry on her business. This means that the land was not an active asset at any time.

Assets that cannot be active assets

The following CGT assets cannot be active assets (even if they are used, or held ready for use, in the course of carrying on a business):

- shares in companies or interests in trusts, unless they satisfy the 80% test (see The 80% test)
- financial instruments, such as bank accounts, loans, debentures, bonds, futures and other contracts and share options (if a financial instrument is inherently connected with the business, it can count towards the satisfaction of the 80% test)
- assets whose main use is to derive interest, an annuity, rent, royalties or foreign exchange gains, unless the main use for deriving rent was only temporary or the asset is an intangible asset that you have substantially developed or improved so that its market value has been substantially enhanced.
- shares and trust interests in widely-held entities, unless held by a CGT concession stakeholder in the widely-held entity.

Trade debtors are not considered to be financial instruments for the purposes of the active asset exclusions. Rather, they are a business facilitation mechanism that assists in the conduct of the business and are inherently connected with the business. Accordingly, trade debtors can be included in the value of active assets when calculating the 80% test.

The 80% test

At least 80% of the market value of all a company or a trust's assets are made up of the market value of the company or the trust's:

- active asset
- financial instruments and cash that are inherently connected with the business.

Inherent connection

Inherent connection requires more than just some form of connection between the cash or financial instrument and the business. Examples of things inherently connected to a business include:

- when it is a permanent or characteristic attribute of the business, for example, goodwill, or trade debtors
- excess funds the business has as a result of a temporary spike in trading activity or the sale of a business asset
- a financial instrument that is inherently connected with a business that the owner of the financial instrument carries on, rather than any business a related entity carries on.

Example 2: Loan to a related company

Archimedes Pty Ltd is a manufacturing business. It lends $300,000 to a related company, Galileo Pty Ltd, to acquire various assets for use in the businesses of both companies.

Although the loan is made between members of a corporate group as part of the overall financing of the group, it is not a permanent or characteristic attribute of the business (which is manufacturing, not the acquisition of assets).

The loan is included in the total market value of all the assets, but not included as an active asset.

The market value of Archimedes Pty Ltd.'s active assets is $700,000 (without the loan) and the market value of all its assets (including the loan) is $1 million. The relevant calculation is:

- $700,000 ÷ $1 million = 70%

This means that the 80% test is not satisfied.

Temporary breaches of the 80% test

The 80% test will be taken to have been met where the total market value of the active assets falls below 80% of the total market value of the company or trust and:

- this is only temporary in nature
- it is reasonable to conclude that the 80% threshold has been passed.

Depreciating assets, such as plant, are CGT assets. They can be active assets and included in the 80% test.

Example 3: Temporary breach due to borrowing money

John sells an active asset that meets the basic conditions and makes a capital gain. He acquires shares in Fruit and Veg Co, which runs his family business, as replacement assets. The shares meet the 80% test and, as a result, are active assets.

Sometime later, Fruit and Veg Co borrows money to pay a dividend, and fails the 80% test. Two weeks later they pay the dividend and the shares pass the 80% test again. For the interim two weeks the shares are treated as active assets, even though they do not pass the 80% test.

Where an asset's main use is to derive rent

An asset whose main use is to derive rent (unless that main use is only temporary) cannot be an active asset. This is the case even if the asset is used in the course of carrying on a business.

Whether an asset's main use is to derive rent will depend on the particular circumstances of each case. A key factor in determining whether an occupant of premises is a lessee paying rent is whether the occupier has a right to exclusive possession.

For example, if premises are leased to a tenant under a lease agreement granting exclusive possession, the payments involved are likely to be rent and the premises are not an active asset. On the other hand, if the arrangement allows the person only to enter and use the premises for certain purposes and does not amount to a lease granting exclusive possession, the payments involved are not likely to be rent.

An asset that is leased to a connected entity or affiliate for use in its business may still be an active asset. It is the use of the asset in that entity's business that will determine the active asset status of the asset.

All uses of an asset are considered in determining what the main use of the asset is and, therefore, whether it is an active asset. However, personal use of the asset by the asset owner, or by an individual who is their affiliate, is not considered in determining the main use of the asset.

Example 4: Asset's main use is to derive rent

Rachael owns five investment properties which she rents to tenants under lease agreements that grant exclusive possession. The lease terms vary from six months to two years. The properties are not active assets because they are mainly used by Rachael to derive rent. It is irrelevant whether Rachael's activities constitute a business.

Example 5: Asset's main use is not to derive rent

Michael owns a motel (land and buildings) which he uses to carry on a motel business. The motel provides room cleaning, breakfast, in-house movies, laundry and other services as part of the business. Guests staying in the motel do not receive exclusive possession, but simply have a right to occupy a room on certain conditions. The usual length of stay by guests is between one and seven nights. The motel would be an active asset because its main use is not to derive rent.

The following is considered use of the asset to derive rent, where the rent is derived:

- from an entity that is not an affiliate or connected with the asset owner (third party), or
- by an entity that is an affiliate or connected with the asset owner (relevant entity).

The use of the asset to derive rent from a third party will be considered use to derive rent, even if that entity uses the asset in their business. This is because the use of the asset by the asset owner is to derive rent.

However, use of the asset by a relevant entity is treated as the use by the asset owner, even if the asset owner receives rent from the relevant entity for the use of that asset.

This means, if the relevant entity uses the asset:

- in its business, that use is treated as use by the asset owner to carry on business
- to derive interest, rent, royalties, or foreign exchange gains from an entity that is a third party, that use is treated as use by the asset owner to derive passive income.

Example 6: Asset used by a relevant entity

Kiki owns a property and rents out 90% of the floor area to Lost Dog Pty Ltd that is neither her affiliate nor connected with her (ie a non-related third party). Kiki earns 90% of the revenue derived from owning the property from renting it to Lost Dog Pty Ltd.

Beaglehole Pty Ltd, which carries on a dog-grooming business, uses the remaining 10% of the floor area of the property as its business premises and pays Kiki rent for using it – this rent forms 10% of the revenue Kiki earns from owning the property. As Kiki owns 60% of Beaglehole Pty Ltd, Beaglehole is connected with Kiki.

Beaglehole Pty Ltd.’s use of that 10% of the property is treated as Kiki’s use because Beaglehole Pty Ltd is connected with Kiki. Because Beaglehole uses that part of the property as its business premises, Kiki is treated as using that part as business premises. This means that the rent Beaglehole Pty Ltd pays to Kiki is not treated as rent for the purposes of determining Kiki's main use of the property.

However, Kiki's main use of the property is to derive rent, because 90% of the revenue she derives from the property is rent received from Lost Dog Pty Ltd, a non-related third party.

Kiki's property is not an active asset in these circumstances.

Example 7: Mixed use

Mick owns land on which there are a number of industrial sheds.

- He uses one shed (45% of the land by area) to conduct a motor cycle repair business.
- He leases the other sheds (55% of the land by area) to unrelated third parties.

The income derived from the motor cycle repair business is 80% of the total income (business plus rentals) derived from the use of the land and buildings.

In determining if the main use of the land is to derive rent, it's appropriate to consider a range of factors. In this case, a substantial (although not a majority) proportion by area of the land is used for business purposes. As well, the business proportion of the land derives the vast majority (80%) of the total income.

In all the circumstances, we consider the main use of the land in this case is not to derive rent and accordingly the land is not excluded from being an active asset.

See also:

- Active asset test
- TD 2019/D4

Spouses and children under 18 years

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/CGT-concessions/Active-asset-test/Spouses-and-children-under-18-years/
- Last modified: 17 Jul 2017
- QC 52274

For an asset to be an active asset, it must be used or held ready for use in, or inherently connected with:

- your business
- a business your affiliate or an entity connected with you, carries on.

Where you own an asset that your spouse or child under 18 years uses in their business, they are your affiliate for the purposes of the:

- active asset test
- $6 million maximum net asset value test
- $2 million aggregated turnover test.

Your spouse or child may also be your affiliate where one of the following applies:

- you own an asset that is used in a business carried on by an entity that your spouse or child owns or has an interest in
- an entity you own, or have an interest in, owns an asset that is used in a business which your spouse or child carries on, or an entity that your spouse or child owns or has an interest in.

Treat your spouse or child as your affiliate when working out whether the entity that owns the asset is:

- an affiliate
- connected with the entity that uses the asset in their business.

This may allow your asset to be an active asset.

See also:

- Active asset test

Land subdivision and active asset test

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/CGT-concessions/Active-asset-test/Land-subdivision-and-active-asset-test/
- Last modified: 17 Jul 2017
- QC 52276

If land, part of which is used in the business of the taxpayer and part of which is vacant, is subdivided, the new subdivided blocks created out of the vacant part of the land will not satisfy the active asset test when they are sold.

Example

Tom acquired 10 hectares of land as a single parcel in 1988. There are three distinct areas of the land which have different uses. Approximately 20% of the land is used in his business and 20% of the land is used for domestic purposes and contains Tom's main residence. The remaining 60% (rear of property) is vacant. The vacant part of the property has not been used or held ready for use for any purpose. Tom will subdivide the land into residential blocks. The subdivided blocks will not be trading stock because Tom is not carrying on a business of land development. After the subdivision is completed, Tom will sell all of the new subdivided blocks including those created out of the vacant part of the land.

Land is a CGT asset. Tom owns the land and used it in his business. Although only 20% of the land area has been used in the business, it is considered the conditions of an active asset are satisfied.

When the land is subdivided, the original land parcel is split into subdivided blocks which are separate new assets. When a CGT asset is split into two or more assets and you are the beneficial owner of the original asset and each new asset, the split is not a CGT event. You work out the cost base and reduced cost base of each new asset using the method statement set out for split, changed or merged assets.

The new subdivided blocks are taken to have been acquired by Tom when that original parcel was acquired. The disposal of a subdivided block is treated as the disposal of an asset in its own right, and not as a disposal of part of an asset (the original land parcel).

The subdivided blocks that are created out of the vacant part of the land are new assets that have never been used or held ready for use in any business. Therefore, they are not active assets.

The main residence exemption will apply to the dwelling including up to two hectares of land adjacent to the dwelling, provided the main residence provisions are satisfied.

The new subdivided blocks created out of the part of the land on which Tom carried on the business will satisfy the active asset test when they are sold as they were owned for more than 15 years and were active assets for at least 7 and a half years.

See also:

- Active asset test

Businesses that are winding up

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/CGT-concessions/Active-asset-test/Businesses-that-are-winding-up/
- Last modified: 17 Jul 2017
- QC 52277

On this page:

- Passively-held assets and partner's assets
- Test period when business ceases

Passively-held assets and partner's assets

If you are accessing the concessions using the basic condition for passively-held assets or a partner’s assets, there is a special rule that affects the period of time that your asset is an active asset in the CGT event year. It applies in the income year the CGT event happens where:

- a business previously carried on by your affiliate, an entity connected with you or a partnership in which you are a partner, is being wound up and the asset is no longer being used in the business, and
- the asset was used, held ready for use in, or inherently connected with the business at a time in a previous income year when you ceased to carry on the business.

This rule treats the entity as carrying on the business for a moment in time in the income year the CGT event happens and treats the asset as being used, held ready for use in, or inherently connected with, the business at that same moment in time in the CGT event year. The asset must still pass the active asset test.

This rule is also required to enable you to meet the basic condition for passively-held assets and partner’s assets.

Test period when business ceases

If the CGT event happens within 12 months after the business ceased, the test period can end when the business ceased.

This aspect of the active asset test allows some flexibility in the situation where a business is sold, or has otherwise ceased, and an asset previously used in the business is sold after that time. The asset only needs to be an active asset for half (to a maximum of 7.5 years) of the shorter test period during the total time the asset was owned.

If the CGT event happens more than 12 months after the business ceased, the test period ends either:

- when the CGT event happens, or

- when the business ceased, if the ATO grants you an extension of time.

Requests for an extension of time are considered on the merits of each case.

For the purposes of the active asset test, the cessation of a business includes the sale of a business.

Example

Laura purchased business premises in February 2012 and immediately started to carry on her business from the premises. Her business expanded and she moved to larger premises across the street in April 2015. She entered into a contract to sell the original premises in July 2015. The premises were an active asset for at least half the period beginning in February 2012 and ending just before the CGT event in July 2015 and accordingly the active asset test is satisfied.

See also:

- Active asset test
- Making choices and requesting extensions

Death and the active asset test

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/CGT-concessions/Active-asset-test/Death-and-the-active-asset-test/
- Last modified: 17 Jul 2017
- QC 52278

Where you are one of the following you may be eligible for the concessions to the same extent that the deceased would have been just prior to their death:

- a beneficiary of a deceased estate
- a legal personal representative (executor)
- a surviving joint tenant
- a trustee or beneficiary of a testamentary trust (trust created by a will).

You will be eligible for the concessions where the CGT event happens within two years of the individual’s death. Otherwise the active asset test applies to you in the normal way for any capital gain made on a sale of the assets after the two-year time limit. This means that if you do not continue to carry on the deceased's business, or use the asset in another business, after the two-year time period, the active asset test may not be satisfied and the small business concessions may not be available.

The ATO can extend this two-year period.

See also:

- Death and the small business CGT concessions
- Making choices and requesting extensions
- Joint ownership

Continuing time periods for active asset test for involuntary disposals

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/CGT-concessions/Active-asset-test/Continuing-time-periods-for-active-asset-test-for-involuntary-disposals/
- Last modified: 17 Jul 2017
- QC 52279

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 breakdown.

If you acquired a replacement asset to satisfy the rollover requirements for the compulsory acquisition, loss or destruction of a CGT asset, the replacement asset is treated as if:

- you acquired it when you acquired the original asset, and
- it was an active asset at all times when the original asset was an active asset.

If you have a CGT asset transferred to you because of a marriage or relationship breakdown, and the capital gain arising from that transfer was rolled over under the marriage or relationship breakdown rollover provisions, for purposes of the active asset test you can choose whether to:

- include the ownership and active asset periods of your former spouse, or
- commence the ownership and active asset periods from the time the asset was transferred to you.

If you choose to include your former spouse's ownership and active asset periods of the CGT asset, that asset is treated as if it had been:

- acquired by you when your former spouse acquired the asset, and
- was an active asset of yours at all times when the asset was an active asset of your former spouse.

See also:

- Active asset test
- ITAA 1997 Subdivisions 124-B and 126-A

Modified active asset test for CGT event D1

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/CGT-concessions/Active-asset-test/Modified-active-asset-test-for-CGT-event-D1/
- Last modified: 17 Jul 2017
- QC 52281

A modified active asset test applies if you make a capital gain from CGT event D1 (about creating rights in another entity).

The active asset test requires you to own the CGT asset before the CGT event happens. However, under CGT event D1, the relevant CGT asset (the rights) is created in the other entity without you owning it, so it would not be possible to satisfy the active asset test.

Accordingly, the test is modified to require the right you create that triggers the CGT event to be inherently connected with another CGT asset of yours that satisfies the active asset test.

See also:

- Active asset test

Additional conditions if the CGT asset is a share or trust interest

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/CGT-concessions/Extra-conditions-if-the-CGT-asset-is-a-share-or-trust-interest/
- Last modified: 12 Jan 2021
- QC 52283

To be eligible for the small business capital gains tax (CGT) concessions where the CGT asset is a share in a company or interest in a trust, you must meet:

- the basic conditions for the small business CGT concessions

- the following additional basic conditions for a share in a company or interest in a trust.

Find out about:

- Additional conditions for the small business CGT concessions
- CGT concession stakeholder
- The 90% test
- Modified active asset test
- Capital gains made before 8 February 2018

See also:

- Basic conditions for the small business CGT concessions
- Choosing and applying the concessions

Additional conditions for the small business CGT concessions

Follow these steps to determine whether you meet the additional basic conditions if the CGT asset is a share in a company or interest in a trust.

1. You either:
   - carried on a business just before the CGT event
   - meet the maximum net asset value test

2. Just before the CGT event, either:
   - you were a CGT concession stakeholder in the company or trust
   - the CGT concession stakeholders in the company or trust had a total small business participation percentage of at least 90% (the 90% test) in you.

3. The company or trust, when applying the modified connected entity rule in determining entities controlled by it, must either:
   - be a small business entity for the income year
   - meet the maximum net asset value test.

4. Your shares or interest must meet the modified active asset test.

CGT concession stakeholder

You are a CGT concession stakeholder of a company or trust if you are either:

- a significant individual
- the spouse of a significant individual and you have a small business participation percentage in the company or trust that is more than zero.

You can hold the small business participation percentage directly or indirectly through one or more interposed entities. You work out the small business participation percentage in the same way as the significant individual test explained below.

Example 1: CGT concession stakeholder

There are 100 issued shares in Company X, all with equal voting, dividend and distribution rights. Joe owns 99 shares and his wife, Anne, owns one share. Joe is a significant individual in the company and Anne has a small business participation percentage in the company greater than zero. Therefore, they are both CGT concession stakeholders. Anne and Joe may be entitled to the small business concessions when they sell their shares.

If a company or trust has claimed the small business 15-year exemption or the small business retirement exemption, a CGT concession stakeholder may receive an exempt amount from the company or trust if the conditions are satisfied.

Significant individual test

You are a significant individual in a company or trust if you have a small business participation percentage in the company or trust of at least 20%. This 20% can be made up of direct and indirect percentages.

A company or trust meets the significant individual test if it had at least one significant individual just before the CGT event.

To access the small business 15-year exemption, the company or trust must have had a significant individual for periods totalling at least 15 of the years that the CGT asset was owned.

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

Direct small business participation percentage

Companies

An entity's direct small business participation percentage in a company is the smallest percentage out of:

- the percentage of the voting power in the company that the entity is entitled to exercise (except for jointly owned shares)
- the percentage of any dividend payment that the entity is entitled to receive
- the percentage of any capital distribution that the entity is entitled to receive.

Take all classes of shares (other than redeemable shares) into account when determining an entity's participation percentage.

Ignore the voting power calculation for jointly owned shares, because neither owner individually controls the voting power.

Example 2: Smallest percentage

Lana has shares that entitle her to 30% of any dividends and capital distributions of Bean Co. The shares do not carry any voting rights.

Lana's direct small business participation percentage in Bean Co is 0%. Although she is entitled to 30% of dividends and capital distributions, her percentage share of the voting rights is nil. Lana must use the smallest percentage to calculate her small business participation percentage.

Example 3: Significant individual

A company has two different classes of shares, A and B, which have equal voting and distribution rights. Isaac holds 20% of the shares of each class.

The directors can decide to make a distribution of income or capital to either class of shares to the exclusion of the other class of shares. Isaac always receives 20% of any distribution made by the company, regardless of how the directors exercise their discretion. This makes Isaac a significant individual, holding 20% of the voting power.

If Isaac holds only the class A shares and no class B shares, he is not a significant individual. His right to receive the distribution will only be notional, and dependent on how the directors exercise their discretion to make distributions.

Trusts

An entity's direct small business participation percentage in a trust, where entities have entitlements to all the income and capital of the trust, is the lower percentage of either:

- the income of the trust that the entity is beneficially entitled to
- the capital of the trust that the entity is beneficially entitled to.

An entity's direct small business participation percentage in a trust (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) is the lower percentage of either:

- distributions of income that the entity is beneficially entitled to during the income year
- distributions of capital that the entity is beneficially entitled to during the income year.

Discretionary trusts with tax losses or no net income

An entity can use another method to work out their small business participation percentage in a discretionary trust if, in the CGT event year, both:

- the trustee did not make a distribution of income or capital during the income year
- the trust had no net income or had a tax loss for the income year.

The entity's direct small business participation percentage at the relevant time is the percentage of the distributions the entity was beneficially entitled to in the last income year before the CGT event in which the trustee made a distribution.

An entity's small business participation percentage is zero if either:

- the trust had net income and did not have a tax loss, and the trustee decided not to distribute
- the trustee has never made a distribution in the income years up to and including the CGT event year (including where the trust had no net income or had a tax loss in each of those income years).

Example 4: Discretionary trust that has had a tax loss

XYZ Trust entities don't have entitlements to all of the income and capital of the trust. The objects of the trust are Evan, Mario, Denise and Katrina.

After a bad trading year, XYZ Trust sells its shares in an operating company and makes a capital gain. XYZ Trust has a tax loss and makes no distributions in the CGT event year.

In the year prior to the CGT event year, the trustee makes a distribution of income to Evan and Mario of 20% each and to Denise and Katrina of 25% each.

Evan, Mario, Denise and Katrina each have a small business participation percentage in XYZ trust of at least 20%. They are therefore all significant individuals and CGT stakeholders in XYZ trust.

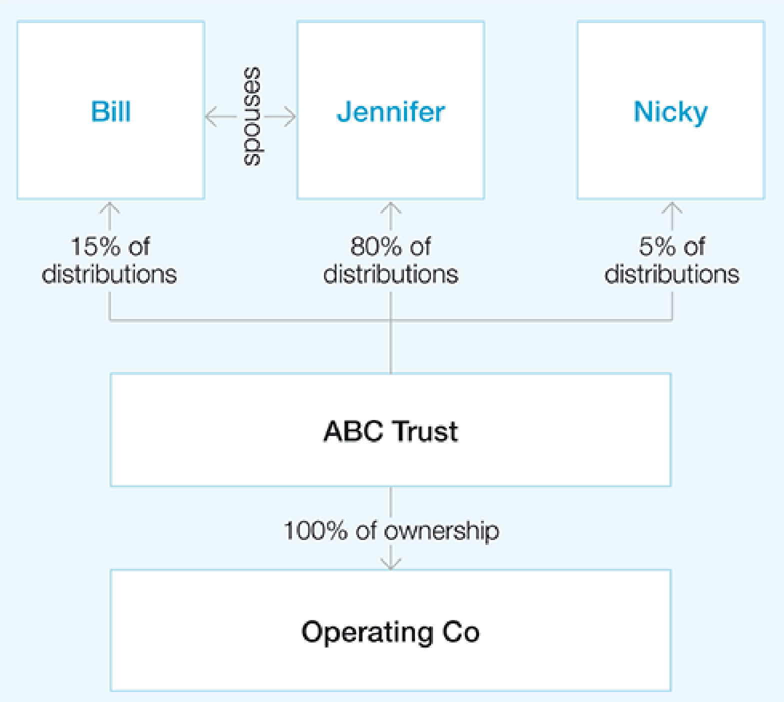
Indirect small business participation percentage

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

An indirect interest can be held through one or more interposed entities.

Example 5: Trusts – calculating participation percentage

ABC Trust owns 100% of the shares in Operating Co. Therefore, ABC Trust has a 100% direct interest (and no indirect interest) in Operating Co. Jennifer, Bill and Nicky are the objects of ABC trust.



Jennifer

Jennifer receives 80% of the distributions from ABC Trust. Therefore, she has a direct participation percentage of 80% in ABC Trust.

Jennifer’s participation percentage in Operating Co is calculated by multiplying Jennifer’s direct participation percentage in ABC Trust and ABC Trust’s total participation percentage in Operating Co:

- 80% × 100% = 80%

Jennifer has an 80% participation percentage in Operating Co, so she is a significant individual of Operating Co.

Bill

Jennifer's spouse, Bill, receives 15% of the distributions from ABC Trust. Therefore, he has a direct participation percentage of 15% in ABC Trust.

Bill’s participation percentage in Operating Co is calculated by multiplying his direct participation percentage in ABC Trust and ABC Trust’s total participation percentage in Operating Co:

- 15% × 100% = 15%

Bill has a 15% participation percentage in Operating Co, so he is not a significant individual of Operating Co.

However, as a spouse of a significant individual with a participation percentage greater than zero in the entity, Bill will be a CGT concession stakeholder.

Nicky

Nicky receives 5% of the distributions from ABC Trust. Therefore, she has a direct participation percentage of 5% in ABC Trust.

Nicky's participation percentage in Operating Co is calculated by multiplying her direct participation percentage in ABC Trust and ABC Trust's total participation percentage in Operating Co:

- 5% × 100% = 5%

Nicky has a 5% participation percentage in Operating Co, so she is not a significant individual of Operating Co. Nicky is not a CGT concession stakeholder.

As with the direct small business participation percentage, an object of a discretionary trust may calculate their indirect small business participation percentage to be more than zero, if the trust had a tax loss or no net income for the income year.

See also:

- Discretionary trusts with tax losses or no net income.

The 90% test

The 90% test only applies if there is an interposed entity between the CGT concession stakeholders and the company or trust in which the shares or interests are held. The interposed entity will be the entity accessing the concessions.

The test is satisfied if CGT concession stakeholders in the company or trust in which the shares or interest are held have a total small business percentage in the entity claiming the concession of at least 90%. As with the significant individual test, the participation percentage can be held directly or indirectly through multiple interposed entities.

Example 6: The 90% test for ABC Trust

Based on Example 5 above:

- Jennifer, a significant individual and CGT concession stakeholder of Operating Co, has an 80% small business participation percentage in ABC Trust
- Bill, a CGT concession stakeholder of Operating Co, has a 15% small business participation percentage in ABC Trust
- Nicky, who is not a CGT concession stakeholder of Operating Co, has a 5% small business participation percentage in ABC Trust.

At least 90% of the participation percentages in ABC Trust are held by CGT concession stakeholders of Operating Co (Jennifer and Bill). As a result, ABC Trust satisfies the ownership requirement if it sells its shares in Operating Co, and can access the concessions on those shares, provided the other conditions are met.

Example 7: The 90% test for a discretionary trust

DEF is a discretionary trust. Anna receives 90% of DEF's distributions.

DEF has shares in 50% of an operating company, which it sells.

The trust is not a CGT concession stakeholder in the company because it is not an individual.

Anna has an indirect interest in the operating company of 45% (90% × 50%). As this is more than 20%, she is a CGT concession stakeholder in the operating company.

As Anna's interest in DEF is 90% and she is a CGT concession stakeholder in the company that is sold, the 90% test is satisfied. Provided the other conditions are met, DEF can access the concessions on the capital gains it makes from selling the shares in the operating company.

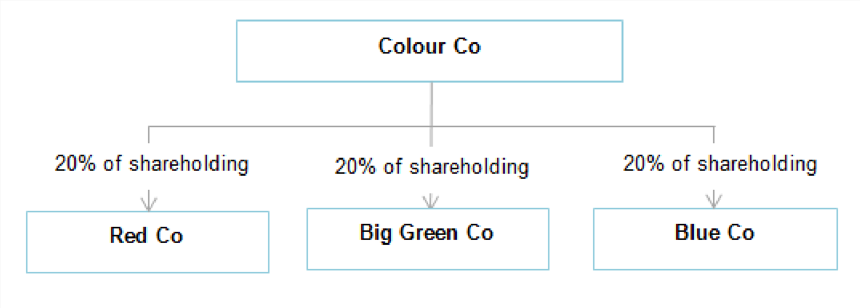
Modified connected entity rule

The company or trust must be a small business entity or satisfy the maximum net asset value test. When applying each of these tests, the company or trust must include the annual turnovers and assets of its affiliates and entities controlled by it.

Under the modified connected entity rule, the company or trust controls another entity if it has a control percentage of at least 20% or more in that other entity.

Any Commissioner's determination that the entity does not control another entity (a control percentage of at least 40% but less than 50%) is disregarded for the modified connected entity rule.

Example 8: modified connected entity rule



Colour Co is a small business entity with an aggregated turnover of less than $2 million (when applying the general connected entity rule of which none of Red Co, Big Green Co and Blue Co would be connected with Colour Co as Colour Co holds less than 40% of shares in each of them).

Big Green Co has an annual turnover of $5 million (from dealings unrelated to Colour Co) and the net value of its assets is $20 million.

To determine whether Colour Co is a small business entity or satisfies the maximum net asset value test when applying the modified connected entity rule, Colour Co must include the annual turnovers and the net asset values of Red Co, Big Green Co and Blue Co as they are controlled by Colour Co (Colour Co owns 20% of the shares in each of them.).

Given Big Green Co's annual turnover alone is $5 million, Colour Co would not be a small business entity with an aggregated turnover of less than $2 million.

Colour Co also would not satisfy the maximum net asset value test as the total net value of the assets owned by Colour Co and entities controlled by it exceeds $6 million given the net value of Big Green Co's assets alone is $20 million.

Modified active asset test

In determining whether your share or interest meets the modified active asset test, your share or interest must have been an active asset with some modifications to the 80% test.

Whilst the modified 80% test must be satisfied for at least half of the asset ownership period, it does not need to be applied on a day-to-day basis.

When applying the modified 80% test, a share in a company or an interest in a trust will continue to be an active asset at a later time if:

- it was an active asset at an earlier time
- it is reasonable to conclude that the share or interest is still an active asset at

the later time.

A temporary breach of this requirement will not result in the test being failed.

Follow these steps to work out if your share or interest meets the modified 80% test.

Step 1

Work out the total market value of both:

- the assets of the company or trust
- the assets of any entity in which the company or trust has a small business participation percentage (a later entity), multiplied by that percentage.

In working out the total market value (Step 1 amount), exclude the market value of shares or interests held, directly or indirectly, by the company or trust.

Step 2

Work out the total market value of both:

- the active assets of the company or trust
- the active assets of a later entity, multiplied by that percentage.

Assets of a later entity are only active assets if both:

- the later entity, when applying the modified connected entity rule, either
  - is a small business entity
  - meets the maximum net asset value test in relation to a notional capital gain; and
- you either
  - have a small business participation percentage of at least 20% in the later entity
  - are a CGT concession stakeholder of the later entity.

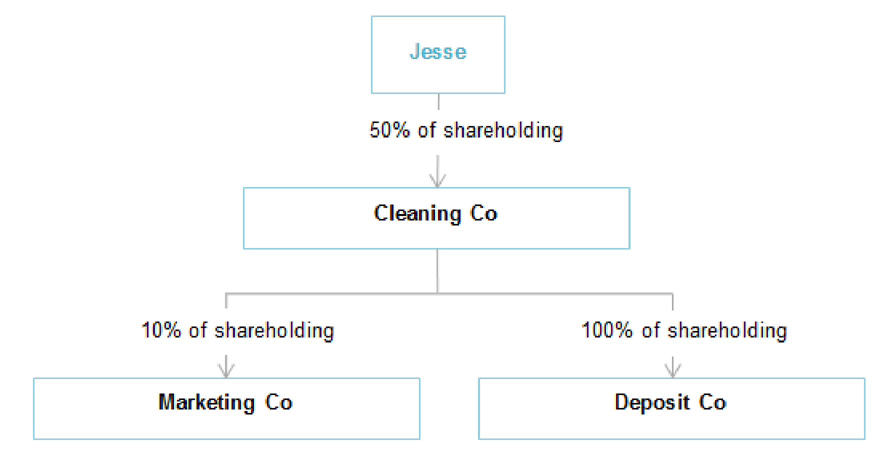
Step 3

At least 80% of the Step 1 amount must be made up of:

- active assets (the Step 2 amount)
- cash or financial instruments that are inherently connected with a business carried on by the company or trust, or a later entity.

Any cash or financial instrument acquired or held for a purpose that includes ensuring the company or trust satisfies this 80% requirement is disregarded.

Example 9: fails the modified active asset test



Jesse is a sole trader and is a small business entity with an aggregated turnover of less than $2 million (applying the general connected entity rule) for the 2018–19 income year.

Jesse owns 50% of the shares in Cleaning Co, which is a small business entity with an aggregated turnover of less than $2 million (applying the modified connected entity rule) for the 2018–19 income year. The total market value of Cleaning Co's assets (excluding shares in Marketing Co and Deposit Co) is $2.5 million, of which $2 million is the value of its active assets. Cleaning Co has no amount of cash and financial instruments inherently connected to its business.

Cleaning Co owns 10% of Marketing Co, which is a small business entity with an aggregated turnover of less than $2 million and is not an affiliate of Cleaning Co. The total market value of Marketing Co's assets is $1 million, of which $900,000 is the value of its active assets. The remaining $100,000 is cash and financial instrument inherently connected to its business.

Cleaning Co owns 100% of Deposit Co, whose only asset is cash of $1 million and it does not carry on a business.

There has been no significant change in the activities or holdings of Cleaning Co, Marketing Co and Deposit Co over the period Jesse has owned his shares.

On 9 November 2018, Jesse sells his shares in Cleaning Co.

The shares need to meet the modified active asset test for Jesse to qualify for the small business CGT concessions.

Step 1:

The total market value of the assets in Cleaning Co and other entities that Cleaning Co has a small business participation percentage in (that is, Marketing Co and Deposit Co) is $3.6 million. This is the sum of the value of:

- Cleaning Co's assets of $2.5 million

- Marketing Co's assets of $100,000 (calculated by multiplying the value of Marketing Co's assets by Cleaning Co's participation percentage in it, that is, $1 million × 10%)
- Deposit Co's asset of $1 million (calculated by multiplying the value of Deposit Co's assets by Cleaning Co's participation percentage in it, that is, $1 million × 100%).

Step 2:

The market value of Cleaning Co's active assets is $2 million.

An asset of Marketing Co can only be an active asset if Jesse is a CGT concession stakeholder of Marketing Co.

Jesse's participation percentage is 5% in Marketing Co, calculated as:

- 50% (Jesse's participation percentage in Cleaning Co), multiplied by 10% (Cleaning Co's participation in Marketing Co.

As Jesse's participation percentage in Marketing Co is less than 20% and Jesse is not a spouse of a significant individual in Marketing Co, he is not a CGT concession stakeholder of Marketing Co. None of Marketing Co's assets is an active asset under the modified active asset test.

Deposit Co has no active asset.

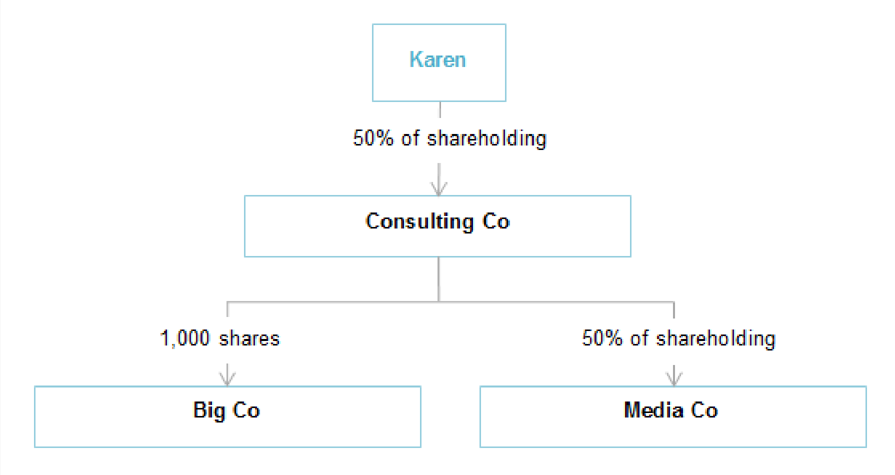
The Step 2 amount is $2 million.

Step 3:

The market value of active assets and cash and financial instruments inherently connected to a business carried on by Cleaning Co, Marketing Co and Deposit Co works out to be $2.1 million (that is, $2 million and $100,000).

As this is only 58% of the Step 1 amount ($2.1 million ÷ $3.6 million) and noting there have been no significant changes to the activities or holdings of the relevant entities during the ownership period, Jesse's shares in Cleaning Co do not meet the modified active asset test.

Example 10: meets the modified active asset test



Karen is a sole trader and is a small business entity with an aggregated turnover of less than $2 million (applying the general connected entity rule) for the 2018–19 income year.

Karen owns 50% of the shares in Consulting Co, which is a small business entity with an aggregated turnover of less than $2 million (applying the modified connected entity rule) for the 2018–19 income year.

The total market value of Consulting Co's assets (excluding the value of shares in Big Co and Media Co) is $1 million, of which $980,000 is the value of its active assets.

Consulting Co also owns 1,000 shares of the 10 million shares in Big Co. Consulting Co's small business participation percentage in Big Co is 0.01%. The total market value of Big Co's assets is $100 million.

Consulting Co also owns 50% of Media Co, which is a small business entity with an aggregated turnover of less than $2 million. The total market value of Media Co's assets is $1.2 million, of which $1 million is the value of its active assets.

There are no significant amount of cash and financial instruments inherently connected to the business of Consulting Co and Media Co.

There has been no significant change in the activities or holdings of Consulting Co, Big Co and Media Co over the period Karen has owned the shares.

On 20 April 2019, Karen sells her shares in Consulting Co.

The shares need to meet the modified active asset test for Karen to qualify for the small business CGT concessions.

Step 1:

The total market value of the assets in Consulting Co and other entities that the Consulting Co has a small business participation percentage in (that is, Big Co and Media Co) is $1,610,000. This is the sum of the value of:

- the Consulting Co's assets of $1 million
- the Big Co's assets of $10,000 (calculated by multiplying the value of Big Co's assets by Consulting Co's participation percentage in it, that is, $100 million × 0.01%)
- the Media Co's asset of $600,000 (calculated by multiplying the value of Media Co's asset by Consulting Co's participation percentage in it, that is, $1.2 million x 50%).

Step 2:

The market value of Consulting Co's active assets is $980,000.

An asset of Media Co can only be an active asset for Consulting Co if Karen is a CGT concession stakeholder of Media Co.

Karen's participation percentage is 25% in Media Co, calculated as:

- 50% (Karen's participation percentage in Consulting Co), multiplied by 50% (Consulting Co's participation percentage in Media Co).

As Karen's participation percentage in Media Co is at least 20%, the market value of Media Co's active assets of $500,000 is included in the Step 2 amount (calculated by multiplying the value of Media Co's active assets by Consulting Co's participation percentage in Media Co, that is, $1 million × 50%).

Big Co's assets are not included in the Step 2 amount as Karen is not a CGT concession stakeholder of Big Co.

The Step 2 amount is $1.48 million.

Step 3:

As the Step 2 amount is 92% of the Step 1 amount ($1.48 million ÷ $1.61 million) and noting there have been no significant changes to the activities or holdings of the relevant entities during the ownership period, Karen's shares meet the modified active asset test.

Capital gains made before 8 February 2018

If you made a capital gain relating to shares in a company or an interest in a trust before 8 February 2018, there are fewer conditions you need to meet to be eligible.

You must meet the basic conditions and just before the CGT event you must either:

- be a CGT concession stakeholder in the company or trust
- meet the 90% test.

Next step:

- Choosing and applying the concessions

See also:

- Affiliates
- Connected entities
- Basic conditions for the small business CGT concession

Affiliates

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/CGT-concessions/Affiliates/
- Last modified: 17 Jul 2017
- QC 52285

An affiliate is an individual or company that, in relation to their business affairs, acts or could reasonably be expected to act:

- in accordance with your directions or wishes, or
- in concert with you.

Trusts, partnerships and super funds can't be your affiliates. However, a trust, partnership or super fund may have an affiliate who is an individual or company.

Find out about:

- Acting in accordance or in concert
- Spouses and children
- Franchisees and franchisors

Example: Affiliates

Bob and Shirley are married. Bob has an events management business with an annual turnover of $1.7 million, and Shirley owns a consultancy business with an annual turnover of $1.8 million.

Bob acts in accordance with Shirley's wishes because he values her consultancy and business expertise. As a result, Bob is Shirley's affiliate because he acts in accordance with her directions and wishes in relation to his business. Shirley will need to count Bob's turnover in working out her aggregated turnover.

However, Shirley is not Bob's affiliate, because she does not act in accordance with his wishes or in concert with him in relation to her own business.

Example: Not affiliates

Matt and Sandy are married and share in the running of their household. Matt owns a cleaning business with an annual turnover of $1.7 million, and Sandy has a bakery with an annual turnover of $1.8 million.

They have nothing to do with each other’s businesses. They have:

- separate bank accounts for their businesses
- different business locations
- their own employees.

Neither Matt nor Sandy controls the management of the other’s business.

Even though Matt and Sandy are married, neither is an affiliate of the other because they:

- do not act in concert with each other in respect of their businesses, and
- do not act according to the directions or wishes of their spouse.

As a result, neither Matt nor Sandy has to include the annual turnover of the other’s business in calculating the aggregated turnover of their own business.

Acting in accordance or in concert

A person is not your affiliate merely because of the nature of a business relationship you and the person share. For example, if you're a partner in a partnership, another partner is not your affiliate merely because they act, or could reasonably be expected to act, in accordance with your directions or wishes in relation to the affairs of the partnership.

Similarly, companies and trusts are not affiliates of their directors and trustees respectively, and vice versa, merely because of the positions held.

Whether a person acts, or could reasonably be expected to act, in accordance with your directions or wishes, or in concert with you, is a question of fact dependent on all the circumstances of the particular case. Relevant factors include:

- the existence of a close family relationship between the parties
- the lack of any formal agreement or formal relationship between the parties dictating how the parties are to act in relation to each other
- the likelihood that the way the parties act, or could reasonably be expected to act, in relation to each other would be based on the relationship between the parties rather than on formal agreements or legal or fiduciary obligations

- the actions of the parties.

Generally, another business would not be acting in concert with you if they:

- have different employees
- have different business premises
- have separate bank accounts
- do not consult you on business matters
- conduct their business affairs independently in all regards.

Spouses and children

Neither your spouse nor child (that is, your child under 18) is automatically your affiliate. You must consider whether they are acting according to your directions or wishes, or in concert with you, in relation to their business affairs.

However, where you own an asset that your spouse or child uses in a business they carry on as an individual, they will be taken to be your affiliate for the purposes of the:

- active asset test
- $6 million maximum net asset value test, and
- $2 million aggregated turnover test.

Your spouse or child may also be taken to be your affiliate where:

- an asset is owned by you and that asset is used in a business carried on by an entity that your spouse (or child) owns or has an interest in, or
- an asset is owned by an entity that you own or have an interest in, and that asset is used in a business carried on by your spouse (or child), or an entity that your spouse or child has an interest in.

Your spouse or child is treated as your affiliate when working out whether the entity that owns the asset is an affiliate of, or connected with, the entity that uses the asset in their business. If by treating your spouse or child as your affiliate the result is that the business entity is taken to be an affiliate of, or connected with, the entity that owns the asset, then the affiliate rule will also apply to treat the spouse or child as an affiliate of the individual for the purposes of the small business CGT concessions in relation to:

- all the basic conditions for eligibility, and
- calculating aggregated turnover and net asset value.

This rule only applies in relation to eligibility for the small business CGT concessions, and not the other small business entity concessions.

If this second stage of the affiliate rule applies, it will also apply for any gain that arises from any asset that either the asset owner or the business entity, or the individual or their spouse or child, owns. This affiliate rule works both ways, so that the individual is also taken to be an affiliate of their spouse or child. However, it only applies for as long as:

- the person is their spouse or the child is under 18 years, and

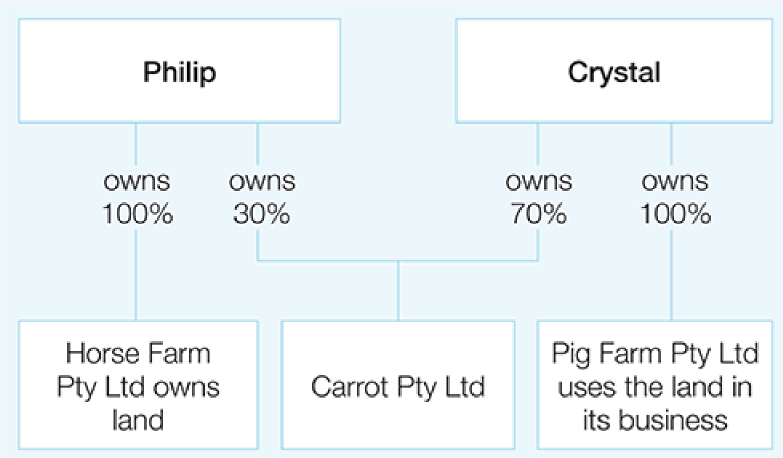
- any asset is being passively held.

This affiliate rule for spouses and children also has application for the meaning of active asset.

This affiliate rule applies only if the business entity is not already an affiliate of, or connected with, the asset-owner.

Example: Passively-held assets

Philip owns 100% of Horse Farm Pty Ltd, which owns land. Horse Farm Pty Ltd does not carry on a business. However, Philip's spouse, Crystal, owns Pig Farm Pty Ltd, which uses the Horse Farm land to carry on a business. In addition, Philip owns 30% of another entity, Carrot Pty Ltd, and Crystal owns 70% of Carrot Pty Ltd.



Crystal is treated as Philip's affiliate in determining whether Pig Farm Pty Ltd (the entity that uses the land in its business) is connected with Horse Pty Ltd (the entity that owns the land). The affiliate rule applies because one entity (Horse Farm) owns a CGT asset that another entity (Pig Farm) uses in its business.

Pig Farm Pty Ltd is connected with Horse Farm Pty Ltd because Philip controls Horse Farm and Philip, together with his affiliate, Crystal, control Pig Farm. Horse Farm and Pig Farm are both controlled by the same third entity, Philip.

This makes the land that Horse Farm Pty Ltd owns an active asset. The land would also have to meet the requirements of the active asset test.

Therefore, Horse Farm Pty Ltd could access the small business CGT concessions if its maximum net asset value is not more than $6 million. Horse Farm could also access the concessions if Pig Farm's aggregated turnover is less than $2 million.

Because Crystal is treated as Philip's affiliate in determining whether Pig Farm is an affiliate of, or connected with, Horse Farm, Crystal is also treated as Philip's affiliate for testing whether Carrot Pty Ltd is connected with Horse Farm. Carrot is connected with Horse Farm because Philip controls Horse Farm and Philip, together with his affiliate, Crystal, control Carrot Pty Ltd.

In seeking access to the small business CGT concessions via the maximum net asset value test, Horse Farm Pty Ltd would need to include the net assets of its affiliates and entities connected with it (Pig Farm Pty Ltd and Carrot Pty Ltd).

In seeking access to the small business CGT concessions via the small business entity turnover test, Pig Farm's aggregated turnover would include the annual turnovers of its affiliates and entities connected with it (Carrot Pty Ltd if it carries on business and has turnover). Horse Farm Pty Ltd must not be carrying on business to qualify under this basic condition.

Franchisees and franchisors

Franchisees are not necessarily affiliates of the franchisor simply because of the franchise arrangement. Whether the franchisee acts in concert with the franchisor in respect of their franchise business depends on, among other things, the nature of the franchise agreement between them.

The affiliate relationship does not include the relationship between the 'controller' of an entity and the entity itself. The relationship in these situations is considered to be dictated more by obligations imposed by law, formal agreements and fiduciary obligations. Accordingly, companies, trusts and partnerships are not considered to be affiliates (and vice versa) of the various officers, persons and entities that are related to the company, trust or partnership in various capacities – for example, the trustees and beneficiaries of a trust, the directors and shareholders of a company, and the partners in a partnership.

See also:

- Passively-held assets
- Partner's assets

Connected entities

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/CGT-concessions/Connected-entities/

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An entity is connected with another entity if:

- either entity controls the other entity, or
- both entities are controlled by the same third entity.

Find out about:

- Control of a partnership, company or trust (except a discretionary trust)
- Control of a discretionary trust
- Nominating a beneficiary as controller of the trust
- Indirect control of an entity

For passively-held assets and partner's assets there are additional circumstances where an entity can be taken to be connected with you.

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 net income 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.

The meaning of an equity interest includes, but is not limited to, a share in a company.

Example

Olivia and Jill conduct a professional practice in partnership. As they each have a 50% interest in the partnership, they each control the partnership. Therefore, the partnership is connected with each partner, and Olivia and Jill are each connected with the partnership.

Example

Joseph is a sole trader. He also owns shares in a company that carry 50% of the voting power in the company. The net value of his CGT assets (apart from the shares in the company) is $3 million. In determining whether he satisfies the maximum net asset value test, Joseph must take into account the net value of his CGT assets ($3 million) and the net value of the company's CGT assets because the company is connected with him. He does not include the market value of his shares in the company in the net value of his CGT assets because this amount is already reflected in the net value of the company's CGT assets.

Between 40% and 50% control

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.

Whether or not a third entity has a control percentage of at least 40% may assist in determining whether the third entity controls the other entity, but it is not decisive. For example, a third entity may control a discretionary trust because the trustee acts, or could reasonably be expected to act, in accordance with the directions or wishes of the third entity even if the third entity's control percentage is zero. In working out the third entity's control percentage, the interests of any affiliates of the third entity are taken into account.

Alternatively, it is possible that both of the entities with a control percentage of at least 40%, or both an entity with a control percentage of at least 40% and an entity that controls the other entity in another way, may control the other entity if responsibilities are shared.

Example

Lachlan owns 48% of the shares in Ayoubi Art Supplies. He plays no part in the day-to-day or strategic decision-making of the business. Daniel owns 42% of the shares in the company. The remaining 10% of shares are beneficially owned by a third shareholder who does not take part in the management of the business. All shares carry the same voting rights and Daniel makes all day-to-day and strategic decisions for the company. Even though Lachlan owns 48% of the shares in Ayoubi Art Supplies, he would not be taken to control the company if the Commissioner was satisfied that the company is controlled by Daniel.

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.

All the circumstances of the case need to be considered in determining whether you satisfy this test. For example, the mere presence in the trust deed of a requirement that the trustee should have no regard to such directions or wishes would not be sufficient.

Some factors that might be considered include:

- the way in which the trustee has acted in the past
- the relationship between the trustee and the entity or its affiliates, and the relationship the trustee has with both the entity and its affiliates
- the amount of any property or services transferred to the trust by the entity or its affiliates, or by both the entity and its affiliates
- any arrangement or understanding between the entity and any person who has benefited under the trust in the past.

This entity may control a discretionary trust in addition to any beneficiary with control as described below.

Control by beneficiary

The level of actual distributions made by a discretionary trust is used to determine who controls the trust. 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 trustee paid to, or applied for the benefit of, the beneficiary or their affiliates, or both the beneficiary and any of its affiliates, any of the income or capital of the trust, and
- the amounts paid or applied were at least 40% (the control percentage) of the total amount of income or capital paid or applied for that income year (subject to the Commissioner's discretion where the control percentage is between 40% and 50%).

Exempt entities and deductible gift recipients are not treated as controlling a discretionary trust, regardless of the percentage of distributions made to them.

To determine whether a particular beneficiary controls a trust, amounts paid to or applied for the benefit of any of the beneficiary's affiliates are also included when determining whether the beneficiary reaches the 40% threshold.

Distributions of income and capital made to the same beneficiary are considered separately (that is, not added together) to determine if the beneficiary reaches the 40% threshold.

Public entities can also be taken to control a discretionary trust if distributions to them meet the 40% control percentage. A public entity is a publicly traded company or unit trust, a mutual insurance company, a mutual affiliate company or a company in which all the shares are beneficially owned by one or more of those entities.

Where a discretionary trust makes a contribution to a super (or similar) fund for an employee who is also a beneficiary of the trust, this payment is not considered to be a distribution of income or capital of the trust. This is because the payment is made for the person in their capacity as employee and not in their capacity as beneficiary.

Example

The XY discretionary trust sold a business asset during the year and made a capital gain. The trust made the following percentage distributions of income and capital for the previous year (there were no distributions of any kind for any of the earlier years, nor did the trust have a tax loss in any previous year):

Previous year distributions

Distribution to	Income	Capital
Mr X	50%	0
Mrs X	50%	0
Mr Y	0	30%
Mrs Y	0	70%

As Mr and Mrs X each received at least 40% of the total distributions of income from the trust, they each control the trust. As Mrs Y received at least 40% of the total distributions of capital from the trust, she also controls the trust. However, as Mr Y received less than 40% (and Mrs Y is not his affiliate) he does not control the trust..

Example

The Z discretionary trust sold a business asset during the year ended 30 June 2016 and made a capital gain. None of the Z family members are affiliates of each other. The trust made percentage distributions of income for the previous four years as follows (there were no distributions of capital and no tax losses for any year):

Four-year distributions

Distribution to	2011–12	2012–13	2013–14	2014–15
Mrs Z	100%	0	25%	20%
Mr Z	0	0	25%	0
Child 1 (under 18)	0	25%	25%	40%
Child 2 (under 18)	0	25%	25%	40%
Exempt entity	0	50%	0	0

All four prior years need to be examined to identify everyone who controls the trust.

Control of trust

Year	Person or people controlling the trust
2011–12	Mrs Z controls the trust, as she received at least 40% of distributions.
2012–13	No one controls the trust in this year, because none of the individual Z family members received at least 40% of the distributions. Although the exempt entity received at least 40% of the total distributions, it is not taken to control the trust.
2013–14	Again, no one controls the trust in this year.
2014–15	As the children each received at least 40% of the total distributions, they are taken to control the trust.

Accordingly, Mrs Z and each child control the trust.

Nominating a beneficiary as controller of the trust

The trustee of a discretionary trust may nominate up to four beneficiaries as being controllers of the trust for an income year in which the trust had a tax loss or no net income and in which the trustee did not make a distribution of income or capital of the trust.

In such a case, the trust might not have had the funds to make a distribution, which would prevent it from being controlled in that year. The trustee may wish to make the nomination to ensure that a particular CGT asset is treated as an active asset for that year.

The nomination must be in writing and signed by the trustee and each nominated beneficiary.

A nominated beneficiary is connected with the trust (and the trust is connected with the nominated beneficiary) for the purposes of the maximum net asset value test, the aggregated turnover test and the active asset test.

Indirect control of an entity

The control tests for the 'connected with' rules are designed to look through business structures that include interposed entities. If an entity (the first entity) directly controls a second entity, and the second entity controls (whether directly or indirectly) a third entity, the first entity is also taken to control the third entity.

For example, consider the following situation:

- a small business entity has a 50% direct interest in Company A
- Company A has a 50% direct and indirect interest in Company B
- Company B has a 30% direct and indirect interest in Company C.

In this situation, the small business entity controls companies A and B but not company C.

Exception where interposed entity is a public entity

The indirect control test does not apply if an entity controls a public entity and that public entity controls a third entity, unless the first entity actually controls the third entity, for example, because it holds 50% of the voting shares of the third entity.

Example

If an entity (E1) controls a public entity (E2) that in turn controls another entity (E3), E1 will not be deemed to control E3 merely because it controls E2. However, E1 will control E3 if, for example, E1 beneficially owns shares that carry a right to 50% of the voting rights in E3.

Next step:

- Choosing and applying the concessions

Choosing and applying the concessions

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/CGT-concessions/Choosing-and-applying-the-concessions/
- Last modified: 17 Jul 2017
- QC 52287

On this page:

Applying capital losses

If the small business 15-year exemption applies, you don't reduce the capital gain by any capital losses before you apply that concession.

In all other cases, you apply the CGT discount and the small business concessions to the capital gain after the capital gain has been reduced by any current and prior year capital losses.

If you have more than one capital gain, you can choose the order in which your capital gains are reduced by your capital losses.

Example: Capital losses

Lana has owned a small parcel of land for three years and used it in her business for the last two years. She decides to sell the land and makes a capital gain of $17,000.

In the same year she also makes a capital loss of $3,000 from the sale of another asset.

She must offset the loss against the gain before applying any of the remaining concessions:

$17,000 − $3,000 = $14,000

Lana may be able to reduce her capital gain further using the CGT discount and one or more of the other small business CGT concessions.

Order to apply the discount and concessions

The small business 15-year exemption takes priority over the other small business concessions and the CGT discount. If the small business 15-year exemption applies, you entirely disregard the capital gain so there's no need to apply any further concessions.

If the 15-year exemption doesn't apply, you apply the CGT discount (if applicable) to the capital gain before applying the remaining small business concessions.

Example: CGT discount

After offsetting her $3,000 capital losses against her $17,000 capital gain, Lana is left with a capital gain of $14,000. As she is eligible for the CGT discount, she can reduce the remaining capital gain by 50%:

$14,000 × 50% = $7,000

Lana may be able to reduce her capital gain further using one or more of the other small business CGT concessions.

If the capital gain is from a depreciating asset, you can't use any of the remaining small business CGT concessions. If it's not from a depreciating asset, you may be able to reduce your capital gain further under the remaining small business CGT concessions.

If you satisfy the conditions for more than one of the remaining small business concessions, you can apply each of those concessions to different parts of the capital gain.

After applying any capital losses, individuals and trusts eligible for both the CGT discount and the small business 50% active asset reduction can reduce a capital gain by 75%, that is, by 50%, then 50% of the remainder.

Example

Ken is a small business operator who sells an active asset that he has owned for more than 12 months. He makes a capital gain of $20,000. Ken also has a separate capital loss of $4,000. Assuming he satisfies all the conditions for the CGT discount and the small business 50% active asset reduction, Ken calculates his net capital gain as follows:

Capital gain	$20,000
Capital loss	$4,000
Take the loss away from the gain	$16,000
Apply 50% CGT discount ($16,000 × 50%)	$8,000
Apply 50% small business active asset reduction ($8,000 × 50%)	$4,000

Reduced capital gain	$4,000

Ken may be able to further reduce his $4,000 (reduced) capital gain by using the small business retirement exemption and small business rollover if he satisfies the conditions for those concessions.

Step-by-step: Order to apply the discount and concessions

Work through the following steps to determine how to apply the discount and concessions to capital gains you've made during the income year.

Remember that for a depreciating asset, you make a capital gain only to the extent you've used the depreciating asset for a non-taxable purpose.

- Step 1: Do you satisfy the basic conditions for the small business CGT concessions?
  - Yes: Go to step 2.
  - No: You don't qualify for any of the small business CGT concessions. You may be eligible for the CGT discount.
- Step 2: Do you qualify for the small business 15-year exemption? (Not relevant to capital gains from depreciating assets.)
  - Yes: Disregard the entire capital gain. You don't need to apply any of the other CGT concessions.
  - No: Go to step 3.
- Step 3: Offset any capital losses against the capital gain.
- Step 4: If you are eligible for the CGT discount, reduce the remaining capital gain.
- Step 5: Is the capital gain from a depreciating asset (used at least partly for a non-taxable purpose)?
  - Yes: You're not eligible for any other concessions and can't reduce your capital gain any further.
  - No: Go to step 6.
- Step 6: Apply the 50% active asset reduction to reduce the remaining capital gain. (You can choose not to apply the reduction and go straight to the small business retirement exemption or rollover at step 7.)
- Step 7: If you qualify for the small business retirement exemption or rollover, reduce the remaining capital gain.

The amount remaining is the net capital gain to be included in your assessable income for the year.

Choosing small business concessions

You must choose the 15-year exemption, the retirement exemption, and the rollover for those concessions to apply. However, the 50% active asset reduction applies automatically if the basic conditions are satisfied and you haven't specifically chosen that it not apply.

Generally, you need to make your choice by the latest of:

- the day you lodge your income tax return for the income year in which the relevant CGT event happened
- a later day that we allow.

The way you prepare your income tax return is generally sufficient evidence of the choice you've made. However, the retirement exemption requires you to keep a written record of the amount you choose to disregard.

See also:

- 15-year exemption
- 50% active asset reduction
- Retirement exemption
- Rollover
- Requesting an extension of time

Small business 15-year exemption

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/CGT-concessions/Small-business-15-year-exemption/
- Last modified: 17 Jul 2017
- QC 52288

If your business has continuously owned an active asset for 15 years and you're aged 55 or over and are retiring or permanently incapacitated, you won't have an assessable capital gain when you sell the asset (assuming the basic conditions for the small business concessions are satisfied).

Find out about:

- Interaction with other concessions
- Conditions you must meet
- Consequences of applying the exemption

See also:

- Basic conditions for the small business CGT concessions
- Subdivision 152-B *Income Tax Assessment Act 1997*

Interaction with other concessions

If you qualify for the small business 15-year exemption, you can entirely disregard the capital gain and don't need to apply any other concessions. Also, you don't have to apply capital losses against your capital gain before applying the 15-year exemption.

If the conditions are satisfied and you make a capital loss from the CGT event, you may use the capital loss to reduce other capital gains.

Conditions you must meet

You can disregard a capital gain from a CGT event happening to a CGT asset if you:

- satisfy the basic conditions for the small business CGT concessions (the active asset test requires the asset to have been an active asset for at least 7.5 years of the whole period of ownership)
- continuously owned the CGT asset for the 15-year period ending just before the CGT event happened.

If you are an individual you must also meet the following conditions:

- when the CGT event happened you were
  - permanently incapacitated, or
  - at least 55 years old and the event happened in connection with your retirement
- if the CGT asset is a share in a company or an interest in a trust, that company or trust must have had a significant individual for periods totalling at least 15 years during the entire time you owned the share or interest, even if it was not the same significant individual during the whole period.

If you are a company or trust you must also meet the following conditions:

- you had a significant individual for a total of at least 15 years of the whole period of ownership (even if it was not the same significant individual during the whole period), and
- the individual who was a significant individual just before the CGT event was
  - at least 55 years old at that time and the event happened in connection with their retirement, or
  - permanently incapacitated at that time.

For CGT assets acquired or transferred under the rollover provisions relating to assets compulsorily acquired, lost or destroyed, or those relating to marriage or relationship breakdown, there are modified rules about the requirement that the asset be continuously owned for at least 15 years.

Example

Ruth and Geoff are partners in a partnership that conducts a farming business on land they purchased in 1990 and have owned continuously since that time. The net value of their CGT assets for the purpose of the maximum net asset value test is less than $6 million.

Ruth and Geoff are both over 60 years old and wish to retire. As they have no children, they decide to sell the major asset of the farming business, the land. They sell the land for a total capital gain of $100,000. Both Ruth and Geoff qualify for the small business 15-year exemption in relation to the capital gain.

In determining whether you meet the conditions, you may also need to consider the following circumstances:

- Death and the 15-year exemption
- Discretionary trusts with tax losses or no net income
- Event in connection with retirement
- Permanent incapacity
- Involuntary disposals
- Separate interests in the same CGT asset

Death and the 15-year exemption

You may be eligible for the concessions if you make a capital gain on an asset within two years of a person's death, if that asset is or was part of that individual’s estate, and you are a:

- beneficiary of the deceased estate
- legal personal representative (executor), or
- trustee or beneficiary of the testamentary trust (trusts created by a will).

You may also be eligible if you, together with the deceased, owned the asset as joint tenants.

You will be eligible for the 15-year exemption to the same extent that the deceased would have been just prior to their death, except that:

- the CGT event does not need to be in connection with the retirement of the deceased
- the deceased needs to have been 55 or older immediately before their death, rather than at the time of the CGT event.

We can extend the two-year period.

See also:

- Death and the small business CGT concessions
- Requesting an extension of time

Discretionary trusts with tax losses or no net income

For the CGT event year, if a discretionary trust has no net income (or had a tax loss) and did not make a distribution of income or capital, it may work out the small business participation percentages by focusing on the most recent year in which a distribution was made prior to the CGT event year.

See also:

- Discretionary trusts with tax losses or no net income

Event in connection with retirement

Whether a CGT event happens in connection with an individual's retirement depends on the particular circumstances of each case. There would need to be at least a significant reduction in the number of hours the individual works or a significant change in the nature of their present activities to be regarded as a retirement. However, it isn't necessary for there to be a permanent and everlasting retirement from the workforce.

Example: Sale of business connected with retirement

Nicolas is 57 when he sells his small business. Under the terms of the sale, he agrees to be employed by the new owner for a few hours each week for two years.

The sale of the business would be in connection with Nicholas' retirement. He has permanently or indefinitely ceased being self-employed and has begun gainful employment on a much reduced scale with another party, although still performing similar activities.

Example: Sale of business not connected with retirement

Mai Loan and her spouse, Diem, are both pharmacists, both over 55 years old, and carry on a small business through two pharmacies. They sell one (making a capital gain) and, accordingly, reduce their working hours from 60 hours per week each to 45 and 35 hours per week respectively.

There has been some change to their activities in terms of hours worked and location, but there has not been a significant reduction in the number of hours or a significant change in the nature of their activities; therefore, there has been no ‘retirement’.

If, on the other hand, one spouse stopped working altogether, there would be a significant reduction in the number of hours that spouse was engaged in the business activities. Therefore, the sale would be in connection with the retirement of that spouse.

A CGT event may be ‘in connection with your retirement’ even if it occurs at some time before retirement. Whether particular cases satisfy the conditions depends very much on the facts of each case.

Example: Sale of assets prior to retirement

Hannah is a small business operator who is over 55 years old. She sells some business assets as part of a wind-down in business activity ahead of selling the business. Within six months, she sells the business and ends her present activities.

If it can be shown that the earlier CGT event was integral to Hannah's plan to cease her activities and retire, the CGT event may be accepted as happening in connection with retirement.

Similarly, the words ‘in connection with’ can apply where the CGT event occurs sometime after retirement. Again, this would depend on the particular facts, and would need to be considered on a case-by-case basis.

Example: Sale of assets after retirement

A small business operator retires and his children take over the running of the business. Within six months, they sell some business assets and make a capital gain.

Several reasons may have prompted the sale of the assets. If there is no relevant connection with the small business operator’s retirement, the requirement would not be satisfied. However, if it can be shown that the reason for the disposal of the assets is connected to retirement and the later sale is integral to the small business operator’s retirement plan, the sale may be accepted as happening in connection with retirement.

Permanent incapacity

Whether an individual is permanently incapacitated at the time of the CGT event depends on the particular circumstances of each case. Based on the meaning of the term 'permanent incapacity' in retirement and superannuation law, an indicative description is:

- Ill health (whether physical or mental), where it is reasonable to consider that the person is unlikely, because of the ill health, to engage again in gainful employment for which the person is reasonably qualified by education, training or experience. The incapacity does not necessarily need to be permanent in the sense of everlasting.

Example: Permanent incapacity

Jack had been in business for many years. He developed severe health problems that continued to deteriorate to the point where he was incapable of operating the business and, as a result, he sold it.

At the time he sold the business, Jack's doctor provided a written statement that Jack suffered ill health to the extent that he was unlikely to be able to engage again in gainful employment for which he was reasonably qualified. Jack was under 55 years old when he sold the business.

Having regard to all the circumstances, Jack would be considered to be permanently incapacitated at the time the business was sold. As a result, he may qualify for the small business 15-year exemption if he satisfies other conditions.

Example: Incapacity not permanent

Fred had been running a landscape gardening business for over 20 years. One day, Fred fell out of a tree and badly broke both arms and a leg. He was in hospital for several weeks, then continued his recovery at home for several more weeks. The doctor said his recovery would take some time. Fred underwent extensive physiotherapy for several months, and it was nearly a year before he regained full use of his arms and legs and was able to undertake normal activities again.

During this time, as Fred could not operate the business effectively, he sold it. He was under 55 years old at the time of the sale.

Although Fred suffered a serious injury that required an extensive period of rehabilitation, he was always expected to regain his physical capabilities. Having regard to all the circumstances, it could not be said that Fred was permanently incapacitated at the time he sold the business. The 15-year exemption would not be available in this case.

Example: Incapacity expected to be permanent

Yoko had been in business for many years. She suffered a severe stroke that left her paralysed down one side of her body and confined to a wheelchair. Because of the extent of the damage, the doctors thought it unlikely that she would regain much movement in her affected limbs.

As Yoko was incapable of operating her business, she sold it. She was under 55 years old at the time of the sale.

Yoko underwent an extensive program of physiotherapy and exercises over an extended period. After 18 months, she had surpassed expectations and regained most of her movement.

Even allowing for her remarkable recovery, at the time Yoko sold her business the prevailing medical opinion was that she was unlikely to be able to engage again in gainful employment for which she was reasonably qualified. Considering all the circumstances, Yoko would be considered to be permanently incapacitated at the time the business was sold.

Involuntary disposals

A requirement of the small business 15-year exemption is that you must have continuously owned the CGT asset for at least 15 years. However, there are modified rules for CGT assets acquired or transferred under the rollover provisions relating to assets compulsorily acquired, lost or destroyed, or to marriage or relationship breakdown.

See also:

- Subdivisions 124-B and 126-A *Income Tax Assessment Act 1997*

If you acquired a replacement asset to satisfy the rollover requirements for the compulsory acquisition, loss or destruction of a CGT asset, the replacement asset is treated as if you acquired it when you acquired the original asset.

If you have a CGT asset transferred to you because of a marriage or relationship breakdown, and the capital gain arising from that transfer was rolled over under the marriage or relationship breakdown rollover provisions, for the purpose of determining whether the 15-year requirement has been satisfied you can choose to:

- include the ownership period of your former spouse, or
- begin the ownership period from the time the asset was transferred to you.

If you choose to include your former spouse's ownership period of the CGT asset, that asset is treated as if you acquired it when your former spouse acquired the asset.

Example: Relationship breakdown rollover

Cameron and Therese were married for 10 years, during which time Cameron owned a farm on which he operated a dairy business. Since their divorce, Therese has owned the farm. It was transferred to her in circumstances under which Cameron obtained a rollover under the marriage or relationship breakdown rollover provisions. Therese has operated the dairy business for the past five years.

Therese can sell the farm and obtain the 15-year exemption (if she is 55 years old or older and sells the farm to retire or is incapacitated) if she chooses to adopt Cameron's ownership and active asset periods.

Separate interests in the same CGT asset

If you own separate interests in the same CGT asset and sell those interests together, the 15-year exemption applies only to interests in the asset that you have owned continuously for at least 15 years. The exemption does not apply to any interest you have owned for less than 15 years. This is because interests in an asset acquired at different times are separate CGT assets.

Example: Separate interests in asset

On 1 December 1992, Janet purchased a 40% interest in a 400-hectare parcel of grazing land. On 1 December 1997, she purchased the remaining 60% interest in the land. On 15 December 2010 (Janet's 60th birthday), she sold the land and retired.

While Janet owned the 40% interest she purchased in 1992 for at least 15 years, she owned the 60% interest she purchased in 1997 for just over 13 years. The two interests are separate CGT assets and, accordingly, the capital gain made on the sale of the 60% interest is not eligible for the 15-year exemption (it may be eligible for other CGT concessions).

Consequences of applying the exemption

Distributions of the exemption amount

If a capital gain made by a company or trust is disregarded under the small business 15-year exemption, or would have been except that the capital gain was disregarded anyway because the relevant CGT asset was acquired before 20 September 1985, any distributions made by the company or trust of that exempt amount to a CGT concession stakeholder is:

- not included in the assessable income of the CGT concession stakeholder,

and
- not deductible to the company or trust

if certain conditions are satisfied.

The conditions are:

- the company or trust must make a payment before the later of
  - two years after the relevant CGT event that resulted in the capital gain
  - six 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
  - in appropriate circumstances, such further time as allowed by us

- the payment must be made to an individual who was a CGT concession stakeholder of the company or trust just before the CGT event
- the total payments made to each CGT concession stakeholder must not exceed an amount determined by multiplying the CGT concession stakeholder's participation percentage by the exempt amount.

The CGT concession stakeholder's participation percentage is:

- for a company or a trust (where entities have entitlements to all the income or capital of the trust): the stakeholder's small business participation percentage in the company or trust just before the CGT event, and
- for a trust (where entities do not have entitlements to all the income or capital of the trust), the amount (expressed as a percentage) worked out using the formula 100 ÷ N (where N is the number of CGT concession stakeholders of the trust just before the CGT event).

Example: Exempt distribution from a company

Joe is a significant individual of Company X, owning 60% of the shares in the company. Joe's wife, Anne, owns the remaining 40% of shares in the company. The company makes a capital gain of $10,000, which it can disregard under the small business 15-year exemption because Joe is 56 and both Joe and Anne are planning to retire.

Six months after the CGT event, the company distributes the amount of the exempt capital gain to the shareholders. As CGT concession stakeholders, Joe and Anne both qualify for the small business 15-year distribution exemption. The amount that is exempt is calculated as follows:

- For Joe: 60% of $10,000 = $6,000
- For Anne: 40% of $10,000 = $4,000

If it is decided to distribute $8,000 each to Joe and Anne, they can exclude from their assessable incomes for the income year an amount of $6,000 and $4,000 respectively. The balance is likely to be assessable as a dividend.

Example: Exempt distribution from a discretionary trust

The beneficiaries of the M family discretionary trust are the members of the M family and two employees of the family business carried on by the trustee of the trust. Mrs M and Mr M and their three children are significant individuals of the discretionary trust and are, therefore, CGT concession stakeholders.

The trustee of the trust sells a CGT asset of the business and makes a capital gain of $50,000. The gain qualifies for the small business 15-year exemption because Mr M is 58 years old and plans to retire from the family business. In the next income year, the trustee distributes that amount equally to Mrs M and Mr M, and their three children.

As CGT concession stakeholders, Mrs M and Mr M and their three children are each able to treat the distribution of $10,000 as an exempt amount.

Impact on super

From 1 July 2007, if you are contributing a 15-year exemption amount to a super fund or retirement savings account (RSA), the amount is generally a non-concessional contribution. To exclude the amount from your non-concessional contributions cap and have it count towards your CGT cap amount instead ($1,415,000 for 2016–17), you must notify the fund on the Capital gains tax cap election. You must complete this election by no later than the time you make the contribution.

Effect of look-through earnout rights on contributions relating to a 15-year exemption amount

If you are an individual who disregarded the capital gain under the small business 15-year exemption and you are contributing some or all of the capital proceeds to super, the contribution must be made on or before the later of

- the day you lodge your income tax return for the income year in which the relevant CGT event happened
- 30 days after you received capital proceeds.

If you receive a 15-year exemption amount from a company or trust the contribution must be made within 30 days after the entity made the payment to you.

See also:

- 50% active asset reduction
- Retirement exemption

- Rollover
- Small business restructure rollover

Small business 50% active asset reduction

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/CGT-concessions/Small-business-50--active-asset-reduction/
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You can reduce the capital gain on an active asset by 50% (in addition to the 50% CGT discount if you've owned it for 12 months or more).

Find out about:

- Interaction with other concessions
- Conditions you must meet
- Consequences of applying the reduction

See also:

- Basic conditions for the small business CGT concessions
- Subdivision 152-C *Income Tax Assessment Act 1997*

Interaction with other concessions

If you don't qualify for the small business 15-year exemption, the small business 50% active asset reduction may apply to reduce the capital gain.

Unlike the other small business concessions, the small business 50% active asset reduction applies automatically if the basic conditions are satisfied, unless you choose for it not to apply.

You might prefer for it not to apply, and instead choose the small business retirement exemption or the small business rollover, if this gives you the best result for your circumstances. For example, a company or trust may make larger tax-free payments under the small business retirement exemption.

Otherwise, the small business retirement exemption or the small business rollover (or both) may apply to the capital gain that remains after applying the small business 50% active asset reduction.

Conditions you must meet

To apply the small business 50% active asset reduction, you need to satisfy only the basic conditions. There are no further requirements.

See also:

- Basic conditions for the small business CGT concessions

Example: Small business 50% active asset reduction

Lana owns a small parcel of land that she has used in her business for more than 12 months. She sells the land and makes a capital gain of $17,000. In the same year she also makes a capital loss of $3,000 from the sale of another asset.

After offsetting her $3,000 capital loss against her $17,000 capital gain, Lana is left with a capital gain of $14,000. As she is eligible for the CGT discount, she can reduce the remaining capital gain by 50%:

$14,000 × 50% = $7,000

Lana qualifies for the small business 50% reduction because she meets the basic conditions. Therefore, she can reduce her capital gain by a further 50%:

$7,000 − (50% × $7,000) = $3,500

Lana may be able to disregard her capital gain further using the small business retirement exemption or defer it using the small business rollover.

Consequences of applying the reduction

If you satisfy the basic conditions, the capital gain that remains after applying any current year capital losses and any unapplied prior year net capital losses, and the CGT discount (if applicable), is reduced by 50%.

This means if you're an individual or a trust and you've applied the CGT discount and the small business 50% active asset reduction, the capital gain (after being reduced by any capital losses applied against it) is effectively reduced by 75% (that is, 50% then 50% of the remainder).

Beneficiaries of trusts

If a trust makes a capital gain, its net capital gain for the income year is generally calculated in the same way as for other entities – that is, by reducing any capital gains by any capital losses and then by any relevant concessions.

The net capital gain is included in the net income of the trust. A beneficiary who is 'specifically entitled' to a capital gain will generally be assessed on that gain, regardless of whether the benefit they receive or are expected to receive is income or capital of the trust.

Capital gains to which no beneficiary is specifically entitled will be allocated proportionately to beneficiaries based on their present entitlement to income of the trust estate (excluding capital gains and franked distributions to which any entity is specifically entitled). This is called the adjusted Division 6 percentage.

There are special rules that enable concessions obtained by a trust to be passed on to the beneficiaries of the trust who are entitled to a share of the trust's net capital gain.

A beneficiary must 'gross up' their share of any capital gain received from a trust by:

- multiplying that amount by two, if the trust has applied either the CGT discount or the small business 50% active asset reduction, or
- multiplying that amount by four, if the trust has applied both the CGT discount and the small business 50% active asset reduction.

The beneficiary's share of the trust capital gains (grossed up if required) is then taken into account in the method statement for calculating the beneficiary's net capital gain to be included in their assessable income by:

- the trust capital gains being firstly reduced by any capital losses of the beneficiary, and
- any trust capital gain remaining being reduced by the CGT discount (unless the beneficiary is a company – see below) and the small business 50% active asset reduction, if the trust's capital gain was reduced by these two concessions to arrive at the beneficiary's net capital gain.

A corporate beneficiary of a trust must gross up (as above) their share of any net capital gains received from a trust that have been reduced (by the trust) by the CGT discount. They are not entitled to reduce this grossed-up amount by the CGT discount because companies are ineligible for the CGT discount.

Example: Beneficiary of trust

The LemInvest unit trust makes a capital gain of $100,000 when it disposes of an active asset. LemInvest has no capital losses and satisfies all the conditions for the CGT discount and the small business 50% active asset reduction. The trust's net capital gain is $25,000 (no other concessions apply).

LemInvest has one individual beneficiary, Gert, who is presently entitled to the net income of the trust. She has a separate capital loss of $10,000.

Gert works out her net capital gain as follows:

Share of trust net capital gain	$25,000
Gross up this amount by multiplying by 4	$100,000

($25,000 × 4)	
Deduct capital losses ($10,000)	$90,000
Apply 50% CGT discount ($90,000 × 50%)	$45,000
Apply 50% reduction ($45,000 × 50%)	$22,500
Net capital gain	$22,500

See also:

- *Income Tax Assessment Act 1997* Subdivision 115-C

Fixed trust distributions and 50% active asset reduction

If a beneficiary's interest in a trust is fixed (for example, an interest in a unit trust), there are rules to deal with the situation where the trust distributes to the beneficiary an amount of capital gain that was excluded from the trust's net income because it claimed the small business 50% active asset reduction.

The distribution of the small business 50% active asset reduction amount is a non-assessable amount under CGT event E4.

The payment of the amount will firstly reduce the cost base of the beneficiary's interest in the trust. If the cost base is reduced to nil, a capital gain may arise in respect of the beneficiary's interest in the trust. This capital gain may qualify for the CGT discount (after applying any capital losses) if the interest in the trust has been owned by the beneficiary for at least 12 months.

If a beneficiary's interest in a trust is not fixed (for example, the trust is a discretionary trust) there are no CGT consequences for the beneficiary.

See also:

- *Income Tax Assessment Act 1997* Section 104-70
- 15-year exemption
- Retirement exemption
- Rollover
- Small business restructure rollover

Small business retirement exemption

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/CGT-concessions/Small-business-retirement-exemption/
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You may choose to disregard all or part of a capital gain under the small business retirement exemption if you satisfy certain conditions. If you're an individual who chooses the retirement exemption, you don't need to terminate any activity or cease business. This concession allows you to provide for your retirement. If you're a CGT concession stakeholder and receive payments under the retirement exemption, you're not required to terminate your employment.

Find out about:

- Interaction with other concessions
- Conditions you must meet
- Termination of employment not required
- Deemed dividends
- Capital proceeds received in instalments
- Receiving actual capital proceeds not required
- CGT retirement exemption limit
- Consequences of choosing the exemption

See also:

- Subdivision 152-D *Income Tax Assessment Act 1997*

Interaction with other concessions

You may choose to apply the small business retirement exemption (if you're not eligible for the 15-year exemption):

- after the small business 50% active asset reduction, that is, to the remaining 50% (or if the CGT discount has also applied, the remaining 25%) of the capital gain after capital losses have been applied
- instead of the small business 50% active asset reduction, that is, to the capital gain that remains after you have applied any CGT discount and capital losses (this choice might allow a company or trust to make larger tax-free payments under the small business retirement exemption)
- where there has been a change in status of a CGT asset that was a replacement or capital improved asset in a rollover under subdivision 152-E (CGT event J2) where a change happens in circumstances where a share in a company or an interest in a trust was a replacement asset in a rollover under subdivision 152-E (CGT event J2)
- where you chose the rollover under subdivision 152-E and by the end of the relevant period you had not acquired a replacement asset, or made any capital

improvements (CGT event J5), or
- where you chose the rollover under subdivision 152-E and by the end of the relevant period the amount you incurred on a replacement asset was less than the amount chosen for the rollover (CGT event J6).

Unless the capital gain arises from CGT event J5 or J6, you may choose the small business rollover instead of the retirement exemption (if the conditions are satisfied) or you may choose both concessions for different parts of the remaining capital gain.

See also:

- Types of CGT events

Conditions you must meet

Individual

If you're an individual, you can choose to disregard all or part of a capital gain if:

- you satisfy the basic conditions for the small business CGT concessions
- you keep a written record of the amount you chose to disregard (the CGT exempt amount), and
- if you're under 55 years old just before you choose to use the retirement exemption, you make a personal contribution equal to the exempt amount to a complying super fund or retirement savings account (RSA).

You must make the contribution:

- when you made the choice to use the retirement exemption, or when you received the proceeds (whichever is later), or
- when you made the choice to use the retirement exemption if the relevant event is CGT event J2, J5 or J6.

If you choose the retirement exemption after you've received the capital proceeds (for example, when you lodge your income tax return), you're not required to make the contribution until you make the choice. Accordingly, you may use the capital proceeds for other purposes before making the choice. However, once you make the choice, you must immediately make a contribution of an amount equal to the exempt amount if you were less than 55 years old just before you made the choice.

To satisfy this requirement, you must pay the amount into a complying super fund or RSA by the relevant date. This is an important requirement. Failure to immediately contribute the amount will mean the conditions are not satisfied, and the retirement exemption will not be available.

If you're 55 years old or older when you make the choice to access the retirement exemption, there is no requirement to pay any amount to a complying super fund or RSA, even though you may have been under 55 years old when you received the capital proceeds.

If the gain arises as a result of CGT events J5 or J6 (about the replacement asset conditions not being met for the small business rollover concession) you can choose the retirement exemption for those gains without having to satisfy the basic conditions again. This is because you would have already satisfied the basic conditions at the time you chose the rollover.

If you receive the capital proceeds in instalments, the above requirements about making a contribution apply to each instalment (up to the asset's CGT exempt amount). If your capital proceeds from the disposal of a CGT asset are increased by one or more financial benefits that you receive under a look-through earnout right relating to that CGT disposal, you are treated as receiving those capital proceeds in instalments.

Death and the retirement exemption

You may be eligible for the retirement exemption if you make a capital gain on an asset within two years of a person's death, if that asset is or was part of that individual's estate, and you're a:

- beneficiary of the deceased estate
- legal personal representative (executor), or
- trustee or beneficiary of the testamentary trust (trust created by a will).

You may also be eligible if you, together with the deceased, owned the asset as joint tenants.

You'll be eligible for the retirement exemption to the same extent that the deceased would have been just prior to their death, except that there is no requirement for the deceased to contribute an amount to a complying super fund or RSA.

We can extend the two-year period in certain circumstances.

See also:

- Requesting an extension of time
- Death and the small business CGT concessions

Company or trust

If you're a company or trust, other than a public entity, you can also choose to disregard all or part of a capital gain where you meet all the following conditions:

- you satisfy the basic conditions
- you satisfy the significant individual test
- you keep a written record of the amount you choose to disregard (the exempt amount) and, if there is more than one CGT concession stakeholder, each stakeholder's percentage of the exempt amount (one may be nil, but together they must add up to 100%)
- you make a payment to at least one of your CGT concession stakeholders worked out by reference to each individual's percentage of the exempt amount
- the payment is equal to the exempt amount or the amount of capital proceeds, whichever is less, and
- where you receive the capital proceeds in instalments, you make a payment to

a CGT concession stakeholder for each instalment in succession (up to the asset's CGT exempt amount). If your capital proceeds from the disposal of a CGT asset are increased by one or more financial benefits that you receive under a look-through earnout right relating to that CGT disposal, you are treated as receiving those capital proceeds in instalments.

You must make payments:

- if you choose the retirement exemption for a J2, J5 or J6 event, seven days after you choose to disregard the capital gain
- in any other case, by the later of
  - seven days after you choose to disregard the capital gain
  - seven days after you receive the capital proceeds from the CGT event.

If a CGT concession stakeholder is under 55 years old just before a payment is made in relation to them, the company or trust must make the payment to the CGT concession stakeholder by contributing it to a complying super fund or RSA on their behalf. The company or trust must notify the trustee of the fund or the RSA at the time of the contribution that the contribution is being made in accordance with the requirements of the retirement exemption.

There is no requirement to make this contribution if the stakeholder was 55 years old or older.

Therefore, if you choose the retirement exemption after you have received the capital proceeds (for example, when you lodge your tax return), there is no requirement to make any payment until you have made the choice. Accordingly, you may use the capital proceeds for other purposes before choosing. However, once you choose, you must make the payment by the end of seven days after making the choice.

This is an important requirement. Failure to make a payment by the end of seven days after making the choice to a CGT concession stakeholder (if they are 55 years old or older) or into a complying super fund or RSA (if the stakeholder is under 55 years old) will mean the conditions are not satisfied and the retirement exemption will not be available.

If the gain arises as a result of CGT events J5 or J6 (when the replacement asset conditions have not been met for the small business rollover concession) you can choose the retirement exemption for those gains without having to satisfy the basic conditions again. This is because you would have already satisfied the basic conditions at the time you chose the rollover.

The requirement for companies and trusts to make a payment to at least one CGT concession stakeholder can be satisfied by making the payment directly, or indirectly, through one or more interposed entities to a CGT concession stakeholder. There are no tax consequences for the interposed entity that receives and passes on the payments.

Example: small business retirement exemption

After offsetting her capital losses and applying the CGT discount and the small business 50% active asset reduction, Lana has a capital gain of $3,500.

Lana could choose the small business retirement exemption but, as she is younger than 55 years old, she would need to pay the amount into a complying super fund or RSA.

Lana decides she needs the funds to reinvest in the business and so does not choose the retirement exemption.

Termination of employment not required

Where payments are made by a company or trust to a CGT concession stakeholder, the stakeholder is not required to cease any activity or office holding.

For an individual choosing the retirement exemption, there is no requirement to terminate any activity or cease their business.

Deemed dividends

Payments made to a CGT concession stakeholder who is an employee, to satisfy the retirement exemption requirements, are not deemed to be in consequence of termination of employment for the purposes of section 109 of the ITAA 1936 (about excessive payments to shareholders, directors and associates being deemed to be dividends).

Division 7A of the ITAA 1936 also does not apply to treat such payments made by a company or trust as dividends.

Payments made to satisfy the retirement exemption requirements are not treated as a dividend or frankable distribution provided you are:

- a company making a payment to
  - a CGT concession stakeholder or
  - an interposed entity, or
- an interposed entity receiving a payment and passing that payment on.

See also:

- Interposed entities receiving or making payments
- *Income Tax Assessment Act 1936* Division 7A

Capital proceeds received in instalments

If a company or trust receives the capital proceeds from a CGT event in instalments and chooses the retirement exemption, it must make a payment to at least one of its CGT concession stakeholders on receipt of each instalment, up to the CGT exempt amount. The payment must be made by the later of seven days after the choice is made or seven days after an instalment of the capital proceeds is received.

In this situation, the total amount of each instalment must be paid until the total of the payments equals the capital gain being disregarded. In other words, the requirement to make a payment must be satisfied to the greatest extent possible out of the initial instalments, rather than in some other way, such as an apportionment across all the instalments received.

If an individual receives capital proceeds in instalments, each instalment is treated as a separate payment. This means that each instalment is looked at separately and in succession in applying the exemption up to the individual's CGT exempt amount.

Receiving actual capital proceeds not required

It is not essential to receive actual capital proceeds from the CGT event to be able to choose the retirement exemption. The retirement exemption is available where a capital gain is made when an active asset is gifted and the market value substitution rule has applied, or where CGT event J2, J5 or J6 happens.

Example: Capital proceeds not received

In December 2006, Harry retired from farming and transferred the farm, which he acquired in 1996, to his son for no consideration. The market value of the farm was $1 million, so the market value substitution rule applies to deem the capital proceeds to equal the market value of the farm. As the cost base of the farm was $600,000, Harry made a capital gain of $400,000.

Harry reduced his capital gain by the 50% CGT discount to $200,000 and then further, by the 50% active asset reduction, to $100,000. Even though he has not received any capital proceeds, Harry may choose the retirement exemption for the full amount of the remaining $100,000 capital gain (assuming the other retirement exemption conditions are satisfied).

To access the exemption on a gain made by a company or trust for which there are no actual proceeds, the company or trust must make a payment of the disregarded capital gain to at least one of its CGT concession stakeholders.

CGT retirement exemption limit

The amount of the capital gain that you choose to disregard (that is, the CGT exempt amount) must not exceed your 'CGT retirement exemption limit' or, in the case of a company or trust, the CGT retirement exemption limit of each CGT concession stakeholder receiving a payment.

An individual's lifetime CGT retirement exemption limit is $500,000, reduced by any previous CGT exempt amounts the individual has disregarded under the retirement exemption. This includes amounts disregarded under former (repealed) retirement exemption provisions. For a company or trust with eight CGT concession stakeholders (four significant individuals and their four spouses, where each spouse has a small business participation percentage greater than zero) the limit is effectively $4 million, that is, $500,000 for each stakeholder.

A company or trust may determine the percentage of the exempt amount attributable to each stakeholder, having regard to each stakeholder’s retirement exemption limit (or remaining limit).

Example: Retirement exemption limit

Daryl and his wife, Mary, each own 50% of the shares in a company and are both significant individuals of the company. The company makes a capital gain and specifies Daryl’s percentage of the exempt amount to be 90%, which means that the percentage specified for Mary must be 10%. Daryl’s retirement exemption limit is $500,000.

To determine whether his exemption limit is exceeded, Daryl would take 90% of the exempt amount, add that to amounts previously specified, and see whether the total exceeds $500,000.

Consequences of choosing the exemption

If you choose this exemption, you disregard the amount of the capital gain you have chosen as the CGT exempt amount.

The amount of any capital gain that exceeds the CGT exempt amount does not qualify for this exemption.

Payments made to CGT concession stakeholder

If you're a CGT concession stakeholder, a payment you receive from a company or trust to satisfy the retirement exemption requirements is not assessable income and is not exempt income.

If you're a company or trust making the payment, it is not able to be deducted from your assessable income.

Interposed entities receiving or making payments

If you're a company or trust receiving a payment (whether directly or indirectly through one or more interposed entities) that another company or trust made to satisfy the retirement exemption requirements, and you're passing that payment on to a CGT concession stakeholder or another interposed entity:

- the payment you receive is not included in your assessable income and is not exempt income, and
- the payment you make is not deductible from your assessable income.

Amounts that are not assessable income and not exempt income have no implications for tax losses of previous years.

A payment you make to satisfy the retirement exemption requirements is not treated as a dividend nor a frankable distribution provided:

- you are an interposed entity receiving a payment and passing that payment on, or
- you are a company making a payment to
  - a CGT concession stakeholder, or
  - an interposed entity.

This is the case despite section 109 of the ITAA 1936, which can treat excessive payments to shareholders, directors and associates as dividends. Therefore, section 109 has no application to these payments.

Division 7A of the ITAA 1936 also does not apply to treat such payments made by a company or trust as dividends.

See also:

- *Income Tax Assessment Act 1936* Division 7A

Superannuation consequences

From 1 July 2007, if you're contributing a retirement exemption amount to a super fund or RSA, the amount is generally a non-concessional contribution. To exclude the amount from your non-concessional contributions cap and have it count towards your CGT cap amount instead ($1,415,000 for 2016–17), you must notify the fund using the Capital gains tax cap election. You must complete this form by no later than the time you make the contribution.

See also:

- 15-year exemption
- 50% active asset reduction
- Rollover
- Small business restructure rollover

Small business rollover

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/CGT-concessions/Small-business-rollover/
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The small business rollover allows you to defer all or part of a capital gain made from a CGT event happening to an active asset.

Find out about:

- Interaction with other concessions
- Conditions you must meet
- Consequences of choosing the rollover

See also:

- *Income Tax Assessment Act 1997* Subdivision 152-E

Interaction with other concessions

You may choose to apply the small business rollover to as much of the capital gain as you decide.

You may apply this small business rollover concession:

- after firstly using the small business 50% active asset reduction (if you choose to apply it), and then the 50% CGT discount (if applicable), or
- after you've applied any capital losses and CGT discount (if applicable)
  - this might ultimately allow a company or trust to make larger tax-free payment under the small business retirement exemption if they choose the retirement exemption after the deferred capital gain has crystallised, for example, when the replacement asset is later sold.

Alternatively, you may choose the small business retirement exemption if its conditions are satisfied, or you may choose both concessions for different parts of the remaining capital gain.

Conditions you must meet

To qualify for the small business rollover, you need to satisfy the basic conditions for the small business CGT concessions. You can choose to obtain a rollover even if you haven't yet acquired a replacement asset or incurred expenditure on a capital improvement to an existing asset.

Example: small business rollover

Instead of choosing the retirement exemption, Lana decides that she will search for a suitable replacement asset to use in her business. As she meets all basic conditions, she qualifies for the small business rollover.

This means she can defer her capital gain remaining after all other concessions have applied ($3,500).

After six months, Lana acquires another small parcel of land immediately adjoining the main business premises to use in her business. The replacement land costs $10,000, and it is her active asset before the end of the replacement asset period, so she meets the further conditions.

This deferred capital gain of $3,500 may later become assessable if Lana:

- sells the land
- stops using it in her business.

However, she could then choose a further small business rollover if she acquires another replacement active asset. Alternatively, Lana could choose the retirement exemption.

Consequences of choosing the rollover

If you choose the rollover, the capital gain will not be included in your assessable income.

Further CGT events happen if you previously chose the rollover and certain conditions are not met by the end of the replacement asset period. This period starts one year before the last CGT event in the income year for which you obtained the rollover and ends at the later of:

- two years after that last CGT event
- six months after the latest time a possible financial benefit becomes or could become due under a look-through earnout right relating to the CGT asset and the disposal.

For example, further CGT events will happen, and a capital gain will arise, if:

- you don't acquire the replacement assets or make capital improvements to existing assets within the replacement asset period, or the assets are not active assets at the end of that period (CGT event J5)
- the rollover amount is greater than your expenditure on the replacement asset or capital improved asset (CGT event J6)
- after the end of the replacement asset period, there's a change in the status of a replacement or capital improved asset you chose for the small business rollover (CGT event J2).

For a share in a company or interest in a trust to be an active asset, the company or trust must satisfy the 80% test, that is, the market value of the active assets and certain financial instruments of the company or trust must be 80% or more of the total of the market value of all the assets of the company or trust.

We can allow a longer replacement asset period.

Example: Replacement asset test

Jordan owns 50% of the shares in Company A and Company B. This makes him a CGT concession stakeholder in both companies. The companies are connected with Jordan because he controls both of them.

Company A owns land that it leases to Jordan for use in a business. It sells the land at a profit and buys shares in Company B as replacement assets. All of Company B's assets are active assets.

The replacement asset test is satisfied because the shares are active assets and Jordan is connected with Company A and is a CGT concession stakeholder in Company B.

Distributions

If a company or trust chooses the rollover for a capital gain and then distributes an amount out of the gain to a shareholder or beneficiary, the distribution is not exempt – that is, the concession does not flow through to the individuals. Such distributions by a company are likely to be assessable to the shareholder as an unfranked dividend.

Failure to acquire a replacement asset or make a capital improvement after a rollover (CGT event J5)

CGT event J5 happens if you choose to obtain a rollover, and by the end of the replacement asset period:

- you have not acquired a replacement asset, and have not made a capital improvement to an existing asset
- the replacement or capital improved asset is not your active asset (for example, you have sold it, it has become your trading stock, or it is no longer used in the business), or
- where the replacement asset is a share in a company or an interest in a trust
  - the share or trust interest fails the 80% test (unless the failure is only of a temporary nature)
  - you, or an entity connected with you, are not a CGT concession stakeholder in the company or trust, or
  - CGT concession stakeholders in the company or trust do not have a small business participation percentage in you of at least 90%.

Consequences of CGT event J5

When CGT event J5 happens, you make a capital gain equal to the amount of the capital gain previously disregarded under the small business rollover.

The time of the event is at the end of the replacement asset period.

We may extend the replacement asset period.

A capital gain from CGT event J5 may be eligible for the retirement exemption if you meet the relevant conditions. You don’t need to meet the basic conditions again, but you must meet the retirement exemption conditions. However, you can't apply the 50% discount, small business 50% active asset reduction, or the 15-year exemption to reduce this gain.

Example: CGT event J5

In September 2014, Luke made a capital gain of $80,000 on an active asset and met the maximum net asset value test. Luke disregarded the whole capital gain under the small business rollover.

In September 2016 (the end of the two-year period), Luke did not have any replacement or capital improved assets. CGT event J5 happens and Luke makes a capital gain of $80,000 in September 2016.

Rollover amount greater than cost of replacement asset (CGT event J6)

CGT event J6 happens if:

- you choose to obtain a rollover
- by the end of the replacement asset period you acquired a replacement asset or made a capital improvement to an asset, CGT event J5 has not happened and the amount you chose to roll over is greater than the sum of the following amounts
    - the amount paid to acquire the replacement asset (that is, the first element of the cost base of the replacement asset)
    - any incidental costs incurred in acquiring that asset, which can include giving property (that is, the second element of the cost base of the replacement asset), and
    - the amount expended on capital improvements to one or more assets that were acquired or already owned (that is, fourth element expenditure).

Consequences of CGT event J6

When CGT event J6 happens, you make a capital gain equal to the difference between:

- the amount of the capital gain disregarded under the small business rollover, and

- the amount incurred on the replacement asset or capital improvements.

The time of the event is at the end of the replacement asset period.

We may extend the replacement asset period.

When CGT event J6 occurs, you may be eligible for the retirement exemption, provided you meet the relevant conditions for that exemption. You don’t need to meet the basic conditions again. However, you can't apply the 50% discount, small business 50% active asset reduction, or the 15-year exemption to reduce this gain.

Example: CGT event J6

In October 2014, Nicky made a capital gain of $700,000 on an active asset and met the maximum net asset value test. Nicky chose to disregard the whole capital gain.

In November 2015, Nicky purchased new business premises for $300,000 and spent $150,000 on improving some other assets. The replacement and capital improved assets met all of the relevant conditions.

However, the amount of expenditure on the replacement and capital improved assets was only $450,000. The capital gain that was rolled over was $700,000.

In October 2016, two years after the original CGT event, CGT event J6 happens because there has been insufficient expenditure and Nicky makes a capital gain of $250,000. The rollover of $450,000 of the original capital gain continues.

Change in status of replacement asset (CGT event J2)

A CGT event (CGT event J2) happens if, after the end of the replacement asset period, there is a change in the status of a replacement or capital improved asset you chose for the small business rollover.

Examples of CGT event J2 include:

- the replacement or capital improved asset stops being your active asset, for example, you dispose of the asset or you stop using it or holding it ready for use in your business
- the replacement or capital improved asset becomes your trading stock
- you start to use the replacement or capital improved asset solely to produce exempt income
- where the replacement asset is a share in a company or an interest in a trust
    - the share or interest stops being an active asset, that is, the share or trust interest fails the 80% test (and the failure is more than just temporary in nature), or

  - a liquidator or administrator of the company declares the shares worthless (CGT event G3), or
  - you, or an entity connected with you, cease to be a CGT concession stakeholder in the company or trust (or that entity is no longer connected with you), or
  - CGT concession stakeholders in the company or trust cease to have a small business participation percentage in you of at least 90%.

Consequences of CGT event J2

When CGT event J2 happens to your replacement or capital improved asset, you make a capital gain equal to the gain previously disregarded under the small business rollover.

If there was more than one replacement or capital improved asset and a change happens to only some of the assets, the capital gain is the difference between the amount that was originally rolled over and the relevant expenditure on the remaining replacement or improved assets that satisfied the relevant conditions.

The time of the event is when the change happens.

A capital gain from CGT event J2 may qualify for:

- further rollover, if you acquire another replacement asset, or
- the retirement exemption.

This is provided you meet the relevant conditions for the rollover or exemption. You can't apply the CGT discount, the 15-year exemption, or the small business 50% active asset reduction to reduce this capital gain.

If you dispose of a replacement or capital improved asset, another CGT event (CGT event A1) happens in addition to CGT event J2. Any capital gain you make from CGT event A1 on the disposal of the replacement or capital improved asset may qualify for any of the small business CGT concessions, if the relevant conditions are satisfied.

Example: CGT event J2

Peter disposes of an active asset for $10,000, making a capital gain of $2,000. He buys two replacement assets (not being depreciating assets) for $5,000 each, and chooses the small business rollover.

$1,000 of the capital gain is disregarded for each replacement asset.

Peter later sells one of the replacement assets for $7,500 – so he makes a capital gain of $2,500.

He also makes a capital gain of $1,000 because the sale of the replacement asset results in that asset no longer being an active asset. The $1,000 capital gain is the capital gain made on the disposal of the active asset that was rolled over in respect of this replacement asset.

Peter’s capital gain of $1,000 made from the crystallising of the deferred capital gain (CGT event J2) may be eligible for further rollover relief or the retirement exemption. The capital gain of $2,500 made from the disposal of the replacement asset (CGT event A1) may be eligible for any of the concessions if the relevant conditions are satisfied.

If CGT event J6 had previously happened in relation to the rollover, the capital gain is the same as calculated above, less the capital gain previously made under CGT event J6.

If CGT event J2 has previously happened in relation to the rollover, the capital gain is the same as calculated above, less the capital gain previously made under CGT event J2.

See also:

- Types of CGT events
- 15-year exemption
- 50% active asset reduction
- Retirement exemption
- Small business restructure rollover
- Requesting an extension of time

Small business restructure rollover

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/CGT-concessions/Small-business-restructure-rollover/
- Last modified: 03 Apr 2019
- QC 48586

The small business restructure rollover allows small businesses to transfer active assets from one entity (the transferor) to one or more other entities (transferees), on or after 1 July 2016, without incurring an income tax liability.

This rollover applies to the transfer of active assets that are capital gains tax (CGT) assets, trading stock, revenue assets or depreciating assets.

You can access this concession if your aggregated turnover is less than $10 million.

Next steps:

- Eligible entities
- When the rollover is available
- Tax implications
- Other implications
- Commissioner's remedial power modification

Eligible entities

The rollover applies if each party to the transfer is one of the following in the income year in which the transfer occurs:

- a small business entity
- an entity that has an affiliate that is a small business entity
- an entity that is connected with a small business entity
- a partner in a partnership that is a small business entity.

This means that an entity not carrying on a business, but holding assets for a small business entity, may be able to apply the rollover. For example, where one entity owns a property in which another connected entity is carrying on a business.

See also:

- Small business entity concessions
- Affiliates
- Connected entities

When the rollover is available

Part of a genuine restructure

The rollover is available where the transfer of assets forms part of a genuine restructure as opposed to an artificial or inappropriately tax-driven scheme.

Determining whether a restructure is 'genuine' depends on all the facts surrounding the restructure.

To provide certainty to small business owners, a safe harbour rule is included that provides an alternative way of satisfying the requirement that a restructure is genuine.

See also:

- Small Business Restructure Rollover: genuine restructure of an ongoing business

No change to ultimate economic ownership

To be eligible for this rollover, the transaction must not result in a change to the ultimate economic ownership of transferred assets.

The ultimate economic owners of an asset are the individuals who, directly or indirectly, own an asset. Where there is more than one individual with ultimate economic ownership, there is an additional requirement that each individual's share of ultimate economic ownership be maintained.

Example: Ultimate ownership unchanged

Penny runs a small furniture manufacturing business as a sole trader. She wishes to run the business through a unit trust.

Penny sets up the Just Me Unit Trust with herself as sole unit holder, and transfers the active assets of the business to the trust. This would not result in a change in ultimate economic ownership of those assets.

Example: Changed share of ownership

Amy, Joanna and Remy run a delivery business as equal partners and want to transfer their interests in the assets of the partnership to a company. Joanna and Remy are a couple.

Amy, Joanna and Remy establish a company, whereby 300 identical shares are issued:

- 100 shares are issued to Amy
- 150 shares are issued to Joanna
- 50 shares are issued to Remy.

This is because Remy has other income and Joanna and Remy, as a couple, want to lower their overall income tax bill.

While this doesn't change the individuals who have the ultimate economic ownership of the asset, there is a change in the proportionate share of that ultimate economic ownership. Accordingly, Amy, Joanna and Remy cannot use the small business restructure rollover.

However, if the shares were distributed equally between the partners, the ultimate economic ownership of the assets would be unchanged, and Amy, Joanna and Remy could use the rollover, subject to satisfying the other conditions.

Discretionary trusts

Non-fixed (discretionary) trusts may be able to meet the requirements for ultimate economic ownership, for example, where there is no practical change in which individuals economically benefit from the assets before and after the transfer.

Family trusts may meet an alternative ultimate economic ownership test where:

- the trustee has made a family trust election, and
- every individual who had ultimate economic ownership of the transferred asset before the transfer, and every individual who has ultimate economic ownership after the transfer, must be members of the family group relating to the family trust.

See also:

- Small business restructure roll-over: consequences of a roll-over
- Family Trust elections (FTEs)

Eligible assets

This rollover applies to active assets that are CGT assets, depreciating assets, trading stock or revenue assets transferred between entities as part of a genuine restructure of an ongoing business.

Active assets are assets used, or held ready for use, in the course of carrying on a business.

The rollover is not available for any other business assets. Assets such as loans to shareholders of a company are not active assets of the business carried on by the creditor, and as such are not eligible.

Tax implications

There are a number of tax implications you need to consider if you choose to apply the small business restructure rollover. Generally:

- assets transferred under the rollover will not result in an income tax liability arising for either party at the time of the transfer
- the transferor is taken to have received an amount for the transferred asset equal to the transferor's cost of the asset for income tax purposes
- the transferee will be taken to have acquired the asset at the time of the transfer for an amount that equals the transferor's cost just before transfer.

CGT assets

The following apply to transferred CGT assets:

- Pre-CGT assets will retain their pre-CGT status after the transfer.
- To be eligible to claim the CGT discount for any subsequent sale of the asset, you will need to wait at least 12 months before a CGT event happens to that asset.
- For the purposes of determining eligibility for the 15 year CGT exemption, the transferee is taken as having acquired the asset when the transferor acquired it.

See also:

- General depreciation rules
- Working out your capital gain

Trading stock

The rollover cost of an asset that is trading stock is either the:

- cost of the item for the transferor at the time of the transfer, or
- value of the item for the transferor at the start of the income year, if the transferor held the item as trading stock at that time.

Depreciating assets

The rollover prevents the transferor from having to make a balancing adjustment when assets are transferred. This allows the transferee to deduct the decline in value of the depreciating asset using the same method and effective life as the transferor was using.

Revenue assets

If the asset is a revenue asset, the rollover cost is the amount that would result in the transferor not making a profit or loss on the transfer. The transferee will inherit the same cost attributes as the transferor just before transfer.

Other implications

You may also need to consider the following:

- There may be potential liabilities such as stamp duty or goods and services tax (GST) consequences to consider prior to restructuring.
- Even though a restructure may satisfy the rollover requirements, this does not prevent the general anti-avoidance rule from applying to a scheme involving the application of the rollover.
- For shares or interests in a company or trust
  - this rollover does not require that market value consideration, or any consideration, be given in exchange for the transferred assets
  - where membership interests are issued as consideration for the transfer, the cost base or reduced cost base of those new membership interests should be worked out based on the following formula:
    (Sum of rollover costs and adjustable values of the rollover assets minus liabilities the transferee assumes for the assets) divided by number of new membership interests
  - an integrity rule is included to ensure that a capital loss on any direct or indirect membership interest in the transferor or transferee that is made subsequent to the rollover will be disregarded.

Commissioner's remedial power modification

On December 20, 2017, a Commissioner's remedial power instrument was made. This instrument, which has effect from 8 May 2018, modifies the operation of the small business restructure rollover to ensure that no direct income tax consequences will arise from the transfer of depreciating assets undertaken as part of a transaction that otherwise qualifies for small business restructure roll-over relief.

See also:

- [Small business restructure roll-over: consequences of a roll-over]
- [Income Tax Assessment Act 1997 Subdivision 152-A]

Death and small business CGT concessions

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/CGT-concessions/Death-and-small-business-CGT-concessions/
- Last modified: 17 Jul 2017
- QC 52292

When a person dies, their assets devolve (are transferred) to their legal personal representative (LPR) or are acquired by a surviving joint tenant, where the deceased owned those assets as joint tenants with another person. In effect, there is a change of ownership of the assets and, therefore, a CGT event happens. However, any capital gain or loss from this CGT event is disregarded, as is any capital gain or loss that:

- the LPR makes when the asset passes to a beneficiary in the estate, or
- that is made as a result of the asset being acquired by a surviving joint tenant.

The LPR, beneficiary or surviving joint tenant is taken to have acquired the assets on the date of death. Generally, the cost base of the assets is transferred to the assets in the hands of the LPR, beneficiary or joint tenant. However, market value is used if the deceased acquired the assets before 20 September 1985.

In effect, with the disregarding of any capital gain upon death and transferring the cost base upon death of the asset owner, any unrealised capital gain is deferred until a later sale of the asset by the LPR, beneficiary or joint tenant.

The LPR or beneficiary of the deceased estate will be eligible for the small business CGT concessions where:

- the asset is disposed of within two years of the date of death (although we may allow a longer period by granting an extension of time), and
- the asset would have qualified for the small business CGT concessions if the deceased had disposed of the asset immediately before their death.

Provided these conditions are satisfied, the small business CGT concessions are also available to the trustee of a trust established by the will of the deceased, a beneficiary of such a trust, and a surviving joint tenant.

For the retirement exemption, there is no need for the amount to be paid into a super fund, even if the deceased was less than 55 years old just before his or her death.

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.

On this page:

See also:

- Requesting an extension of time

Disposal of asset after two-year time limit

If a person carrying on a business dies and their assets devolve to their LPR, beneficiary, surviving joint tenant, or trustee or beneficiary of a testamentary trust (the transferee), the active asset test is applied to the transferee in relation to any capital gain made on a sale of the assets after the two-year time limit (or such further time that we allow).

This means if the transferee does not continue to carry on the deceased's business, or use the asset in another business, after the two-year time limit, the active asset test may not be satisfied and the small business concessions may not be available.

Previous small business rollover

If, just before dying, a person still owned a replacement or capital improved asset from an earlier small business rollover, CGT event J2 will happen upon the person's death. This is because the replacement or capital improved asset will stop being the deceased's active asset, having devolved to their LPR.

However, the general rules concerning death, in addition to disregarding any capital gain made on the replacement asset from CGT event A1, will also disregard the capital gain from CGT event J2. Although any capital gain from CGT event A1 is effectively deferred until a later sale of the asset by the LPR or beneficiary, the capital gain from CGT event J2 is not transferred to the LPR or beneficiary. This means the capital gain from CGT event J2 is permanently disregarded under the general rules concerning death.

Example: Disregarding CGT event J2

Jack disposed of an active asset and made a capital gain of $400,000. After applying the CGT discount and the active asset reduction, his remaining capital gain was $100,000. Jack acquired a replacement asset (for more than $100,000) and chose the small business rollover, disregarding the remaining capital gain of $100,000. Jack continued to carry on his business using the replacement asset until his death.

On Jack's death, the replacement asset (which had increased in value) devolved to his LPR. Accordingly, CGT event A1 and CGT event J2 happened.

The capital gains from CGT event A1 and CGT event J2 are disregarded under the general rules concerning death. The capital gain on the replacement asset from CGT event A1 is effectively deferred until a later sale of the asset by the LPR or beneficiary. However, the $100,000 capital gain from CGT event J2 is not transferred to the LPR or beneficiary and, as a result, remains permanently disregarded.

See also:

- Keeping records for CGT small business concessions
- Requesting an extension of time

Keeping records for CGT small business concessions

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/CGT-concessions/Keeping-records-for-CGT-small-business-concessions/
- Last modified: 17 Jul 2017
- QC 52293

You must keep records of everything that may be relevant to working out whether you have made a capital gain or loss from a CGT asset.

This means you need records to substantiate the purchase and disposal of any CGT asset, as well as other costs relating to the asset. Records can include contracts, valuations, and details of commissions and legal fees you paid. Penalties can apply if you don't keep the records for at least five years after the relevant CGT event.

If you use information from those records in a later tax return, you may have to keep your records for longer. If you've applied a net capital loss, you should generally keep your records of the CGT event that resulted in the loss until the end of any period of review for the income year in which the net capital loss is fully applied.

The records must:

- show the nature of the act, transaction, event or circumstance, and the date it happened
- be in English, or in a form that can be readily translated into English.

If you don't keep proper CGT records you might have to pay:

- extra expenses to establish the cost of an asset when you dispose of it
- more tax than necessary.

CGT asset register

A convenient way to keep the required records is a CGT asset register. This is a register of information about your CGT assets that you have transferred from your CGT records (for example, invoices, receipts and contracts).

For most assets this information includes:

- the date you acquired the asset
- the cost of the asset
- a description, amount and date for each cost associated with purchasing the asset (for example, stamp duty and legal fees)
- the date the asset was disposed of
- the amount you received when you disposed of the asset
- any other information relevant to working out your CGT obligation.

You can discard your CGT records five years after having an asset register entry certified if you meet all of the following:

- you enter all the necessary information about an asset in your CGT asset register
- the entry is in English and is certified in writing by an approved person (for example, a registered tax agent)
- the asset register entry is certified after 31 December 1997 (although you may have acquired the asset before this date).

If you don't keep an asset register, you generally have to keep CGT records for at least five years after you dispose of an asset. For example, if you hold an asset for 10 years and then sell it, you would have to keep the records for 15 years.

Example: CGT asset register

Max bought a business property on 1 January 2005.

His tax agent advised him to transfer the relevant CGT information from his records to an asset register. He transferred the records of the:

- date he purchased the property
- purchase price
- stamp duty.

His agent certified the register on 1 July 2005.

Max sold the property on 15 September 2010.

Because Max had recorded the details of the property on an asset register, he had to keep records relating to the property only until 1 July 2010, rather than 15 September 2015.

See also:

- Record keeping for CGT

Small business concessions in prior years

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/CGT-concessions/Small-business-concessions-in-prior-years/
- Last modified: 17 Jul 2017
- QC 52301

The rules for the small business CGT concessions have changed over the years.

The information in this part of the website is accurate for capital gains occurring in the 2015–16 income year.

For prior years, see:

- Capital gains tax concessions for small business 2014–15
- Advanced guide to capital gains tax concessions for small business 2013–14
- Advanced guide to capital gains tax concessions for small business 2012–13
- Advanced guide to capital gains tax concessions for small business 2011–12
- Advanced guide to capital gains tax concessions for small business 2010–11
- Advanced guide to capital gains tax concessions for small business 2009–10
- Advanced guide to capital gains tax concessions for small business 2008–09
- Advanced guide to capital gains tax concessions for small business 2007–08
- Advanced guide to capital gains tax concessions for small business 2006–07
- Advanced guide to capital gains tax concessions for small business 2005–06

PAYG instalments concession

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/PAYG-instalment-concession/
- Last modified: 14 May 2021
- QC 22665

As a small business, you can pay your pay as you go (PAYG) instalments using an amount we calculate for you. It's quick and easy because you don’t have to work out your instalments yourself.

We calculate your instalment amounts by:

- using information from your most recent tax return
- adjusting them for any likely growth in your business and investment income.

If you are not a small business because your turnover is $10 million or more – but is less than $50 million – you can pay your PAYG instalments using an amount we calculate for you from 1 July 2021.

Pay using the instalment amount

To start paying using the instalment amount, simply complete the details under Option 1 on your first activity statement or instalment notice for the income year. You’ll then pay using an instalment amount for the rest of the year.

If you want to change to a different payment option later, you will need to wait until the first quarter of the next income year.

If your aggregated turnover is more than $10 million but less than $50 million, you will need to call us on 13 28 66 before 28 October 2021 to request to pay by the instalment amount method.

See also:

- Who can pay using the instalment amount (Option 1)
- How to complete your activity statement
- Contact us

FBT concessions

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/FBT-concessions/
- Last modified: 10 Dec 2020
- QC 22666

As a small business, you may be eligible for fringe benefits tax (FBT) concessions.

The turnover threshold for FBT concessions is:

- $50 million from 1 April 2021 – if you are not a small business because your turnover is $10 million or more
- $10 million from 1 April 2017 until 31 March 2021
- $2 million up to 31 March 2017.

FBT car parking exemption

If you are a small business employer, car parking benefits you provide are exempt if:

- the parking is not provided in a commercial car park
- you are not a government body, a listed public company, or a subsidiary of a listed public company
- for the last income year before the relevant FBT year – either
  - your gross total income was less than $10 million
  - your turnover was less than $10 million (or $50 million from 1 April 2021).

See also:

- Small business car parking exemption

FBT work-related devices exemption

From 1 April 2016, small businesses can provide their employees with multiple work-related portable electronic devices that have substantially identical functions in the same FBT year, and all the devices will be exempt from FBT. This applies to devices that are primarily used for work, such as laptops, tablets, calculators, GPS navigation receivers and mobile phones.

From 1 April 2021, the turnover threshold to determine if you can access this exemption increases to $50 million for an income year that ends or starts in the relevant FBT year.

This benefit may be in addition to or part of the employee's salary or wages package.

See also:

- Work-related portable electronic device exemption

Super concessions

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/Super-concessions/
- Last modified: 24 Jul 2017
- QC 50142

As a small business, you may be eligible for super concessions.

Superannuation clearing house

The Small Business Superannuation Clearing House helps you pay super guarantee contributions for all your employees in a single electronic payment.

If you have 19 or fewer employees or a turnover under $10 million you can access this service.

Next step:

- Small Business Superannuation Clearing House

Contributions to your super fund

You may be able to contribute amounts from the capital gains tax (CGT) 15-year asset exemption and retirement exemption to your super fund without affecting your non-concessional contributions limits.

The turnover threshold for this concession is $2 million as is relates to CGT concessions (this threshold has not changed).

See also:

- Capital gains tax cap election – instructions and form
- Non-concessional contributions cap

GST and excise concessions

- https://www.ato.gov.au/Business/Small-business-entity-concessions/Concessions/GST-and-excise-concessions/
- Last modified: 10 Jun 2021
- QC 22661

As a small business, you may be eligible for GST and excise concessions. The aggregated turnover threshold for these concessions is:

- $10 million from 1 July 2016
- $2 million until 30 June 2016.

If you are not a small business because your turnover is $10 million or more but less than $50 million, you may still be eligible for the excise concession from 1 July 2021.

On this page

- Accounting for GST on a cash basis

- Paying GST by instalments
- Annual apportionment of GST input tax credits
- Excise concession

Accounting for GST on a cash basis

Accounting on a cash basis means you account for GST on the business activity statement that covers the period in which you made the sales and purchases. Accordingly, you would then claim any GST credits in the same tax period.

You need to notify us that you have elected to access this concession by:

- contacting us
- writing to us at the address below

  Australian Taxation Office
  GPO Box 9935
  [insert the name and postcode of your capital city]

  For example:

  Australian Taxation Office
  GPO Box 9935
  SYDNEY NSW 2001

See also

- Accounting for GST on a cash basis

Paying GST by instalments

You can pay GST by instalments that we work out for you and vary this amount each quarter if you choose.

Contact us to find out if you are eligible.

See also

- GST instalments
- Varying your GST instalments
- How we can help

Annual apportionment of GST input tax credits

If you purchase items that you use partly for private purposes, you can choose to claim full GST credits for these items on your activity statements and make a single adjustment to account for the private use percentage after the end of your income year.

You don’t need to notify us that you are using this concession, but you should keep a record, showing the date it was made and when it took effect.

See also

- [GST and annual private apportionment]

Excise concession

You can apply to defer settlement of your excise duty and excise equivalent customs duty from a weekly to a monthly reporting cycle. If approved, you can then lodge your excise return and pay your duty liability on or before the 21st day of the following month.

To change to a monthly reporting cycle, you must apply in writing to vary your periodic settlement permission (PSP).

Next steps

- Lodging, paying and rates – excisable alcohol
- Lodging, paying and rates - excisable fuel
- Reporting excise equivalent goods and paying duty