



# Income Tax Assessment Act 1997

No. 38, 1997

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This compilation is in 12 volumes

- Volume 1: sections 1-1 to 36-55
- Volume 2: sections 40-1 to 67-30
- Volume 3: sections 70-1 to 121-35**
- Volume 4: sections 122-1 to 197-85
- Volume 5: sections 200-1 to 253-15
- Volume 6: sections 275-1 to 313-85
- Volume 7: sections 315-1 to 420-70
- Volume 8: sections 615-1 to 721-40
- Volume 9: sections 723-1 to 880-205
- Volume 10: sections 900-1 to 995-1
- Volume 11: Endnotes 1 to 3
- Volume 12: Endnote 4

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Income Tax Assessment Act 1997* that shows the text of the law as amended and in force on 21 September 2023 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## **Chapter 2—Liability rules of general application**

### **Part 2-25—Trading stock**

#### **Division 70—Trading stock**

##### **Table of Subdivisions**

	Guide to Division 70
70-A	What is trading stock
70-B	Acquiring trading stock
70-C	Accounting for trading stock you hold at the start or end of the income year
70-D	Assessable income arising from disposals of trading stock and certain other assets
70-E	Miscellaneous

##### **Guide to Division 70**

###### **70-1 What this Division is about**

This Division deals with amounts you can deduct, and amounts included in your assessable income, because of these situations:

- you acquire an item of trading stock;
- you carry on a business and hold trading stock at the start or the end of the income year;
- you dispose of an item of trading stock outside the ordinary course of business, or it ceases to be trading stock in certain other circumstances.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 70-5

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**Table of sections**

70-5 The 3 key features of tax accounting for trading stock

**70-5 The 3 key features of tax accounting for trading stock**

The purpose of income tax accounting for trading stock is to produce an overall result that (apart from concessions) properly reflects your activities with your trading stock during the income year.

There are 3 key features:

- (1) You bring your gross outgoings and earnings to account, not your net profits and losses on disposal of trading stock.
- (2) Those outgoings and earnings are on revenue account, not capital account. As a result:
  - (a) the gross outgoings are usually deductible as general deductions under section 8-1 (when the trading stock becomes trading stock on hand); and
  - (b) the gross earnings are usually assessable as ordinary income under section 6-5 (when the trading stock stops being trading stock on hand).
- (3) You must bring to account any difference between the value of your trading stock on hand at the start and at the end of the income year. This is done in such a way that, in effect:
  - (a) you account for the value of your trading stock as assessable income; and
  - (b) you carry that value over as a corresponding deduction for the next income year.

Note: You may not have to bring to account that difference if you are a small business entity: see Division 328.

**Subdivision 70-A—What is trading stock**

**Table of sections**

70-10 Meaning of *trading stock*

70-12 Registered emissions units

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**70-10 Meaning of *trading stock***

- (1) ***Trading stock*** includes:
- (a) anything produced, manufactured or acquired that is held for purposes of manufacture, sale or exchange in the ordinary course of a \*business; and
  - (b) \*live stock.
- (2) ***Trading stock*** does not include:
- (a) a \*Division 230 financial arrangement; or
  - (b) a \*CGT asset covered by section 275-105 that:
    - (i) is owned by a \*complying superannuation entity; or
    - (ii) is a \*complying superannuation asset of a \*life insurance company.

Note 1: Shares in a PDF are not trading stock. See section 124ZO of the *Income Tax Assessment Act 1936*.

Note 2: If a company becomes a PDF, its shares are taken not to have been trading stock before it became a PDF. See section 124ZQ of the *Income Tax Assessment Act 1936*.

**70-12 Registered emissions units**

A \*registered emissions unit is not \*trading stock.

**Subdivision 70-B—Acquiring trading stock****Table of sections**

70-15	In which income year do you deduct an outgoing for trading stock?
70-20	Non-arm's length transactions
70-25	Cost of trading stock is not a capital outgoing
70-30	Starting to hold as trading stock an item you already own

**70-15 In which income year do you deduct an outgoing for trading stock?**

- (1) This section tells you in which income year to deduct under section 8-1 (about general deductions) an outgoing incurred in

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 70-20

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connection with acquiring an item of \*trading stock. (The outgoing must be deductible under that section.)

- (2) If the item becomes part of your \*trading stock on hand before or during the income year in which you incur the outgoing, deduct it in that income year.
- (3) Otherwise, deduct the outgoing in the first income year:
  - (a) during which the item becomes part of your \*trading stock on hand; or
  - (b) for which an amount is included in your assessable income in connection with the disposal of that item.

Note You can deduct your capital costs of acquiring land carrying trees or of acquiring a right to fell trees, to the extent that the trees are felled for sale, or for use in manufacture, by you. (This is because the trees will then usually become your trading stock.) See section 70-120.

**70-20 Non-arm's length transactions**

If:

- (a) you incur an outgoing that is directly attributable to your buying or obtaining delivery of an item of your \*trading stock; and
- (b) you and the seller of the item did not deal with each other at \*arm's length; and
- (c) the amount of the outgoing is greater than the \*market value of what the outgoing is for;

the amount of the outgoing is instead taken to be that market value. This has effect for the purposes of applying this Act to you and also to the seller.

Note: This section also affects the value of the item of trading stock at the end of an income year if you value it at its cost under section 70-45 (Value of trading stock at end of income year).

**70-25 Cost of trading stock is not a capital outgoing**

An outgoing you incur in connection with acquiring an item of \*trading stock is not an outgoing of capital or of a capital nature.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: This means that paragraph 8-1(2)(a) does not prevent the outgoing from being a general deduction under section 8-1.

**70-30 Starting to hold as trading stock an item you already own**

(1) If you start holding as \*trading stock an item you already own, but do not hold as trading stock, you are treated as if:

(a) just before it became trading stock, you had sold the item to someone else (at \*arm's length) for whichever of these amounts you elect:

- its cost (as worked out under subsection (3) or (4));
- its \*market value just before it became trading stock; and

(b) you had immediately bought it back for the same amount.

Example: You start holding a depreciating asset as part of your trading stock. You are treated as having sold it just before that time, and immediately bought it back, for its cost or market value, whichever you elect. (Subdivision 40-D provides for the consequences of selling depreciating assets.)

The same amount is normally a general deduction under section 8-1 as an outgoing in connection with acquiring trading stock. The amount is also taken into account in working out the item's cost for the purposes of section 70-45 (about valuing trading stock at the end of the income year).

Note: Depending on how you elect under paragraph (1)(a), the sale may or may not give rise to a capital gain or a capital loss for the purposes of Parts 3-1 and 3-3 (about CGT). It does not if you elect to be treated as having sold the item for what would have been its cost: see subsection 118-25(2). However, it can if you elect market value.

*When you must make the election*

(2) You must make the election by the time you lodge your \*income tax return for the income year in which you start holding the item as \*trading stock. (If you do not make the election by then because you do not realise until later that you started to hold the item as trading stock, you must make the election as soon as is reasonable after realising that.)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 70-30

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However, the Commissioner can allow you to make it later (in either case).

*How to work out the item's cost*

- (3) The item's cost is what would have been its cost for the purposes of section 70-45 (about valuing trading stock at the end of the income year) if it had been your \*trading stock ever since you last acquired it. In working that out, disregard section 70-55 (about acquiring live stock by natural increase).
- (4) However, if you last acquired the item for no consideration, its cost is worked out using this table:

---

<b>Cost of item acquired for no consideration</b>		
<b>Item</b>	<b>In this case:</b>	<b>The cost is:</b>
1	you acquired the item during or after the 1998-99 income year, and the acquisition involved a *CGT event	the item's *market value when you last acquired it
2	you acquired the item before or during the 1997-98 income year, and the acquisition involved a disposal of the item to you within the meaning of former Part IIIA (Capital gains and capital losses) of the <i>Income Tax Assessment Act 1936</i>	the item's *market value when you last acquired it

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



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**Cost of item acquired for no consideration**

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Item	In this case:	The cost is:
3	your acquisition of the item involved the item: (a) devolving to you as someone's *legal personal representative; or (b) *passing to you as a beneficiary in someone's estate; and, if a *CGT event had happened in relation to the item just before you started holding it as *trading stock, a *capital gain or *capital loss could have resulted that would have been taken into account in working out your *net capital gain or *net capital loss for the income year of the event	(a) if the person died during or after his or her 1998-99 income year—the dead person's *cost base for the item just before his or her death; or (b) if the person died before or during his or her 1997-98 income year—the dead person's indexed cost base (within the meaning of former Part IIIA (Capital gains and capital losses) of the <i>Income Tax Assessment Act 1936</i> ) for the item just before his or her death (but worked out disregarding former section 160ZG (which affects the indexed cost base for a non-listed personal use asset) of that Act)
4	any other case where you last acquired the item for no consideration	a nil amount

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*Exceptions*

- (5) Subsection (1) does not apply if you start holding any of the following as \*trading stock because they are severed from land:
- (a) standing or growing crops;
  - (b) crop-stools;
  - (c) trees planted and tended for sale.
- (This does not prevent subsection (1) from applying to a severed item that you later start holding as trading stock.)
- (6) Subsection (1) does not apply if:
- (a) you start holding an item as \*trading stock; and
  - (b) immediately before you started holding the item as trading stock, you \*held the item as a \*registered emissions unit.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-25** Trading stock

**Division 70** Trading stock

**Section 70-35**

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Note: A transaction that this section treats as having occurred is disregarded for the purposes of these provisions of the *Income Tax Assessment Act 1936*:

- subsection 47A(10) (which treats certain benefits as dividends paid by a CFC)
- paragraph 103A(3A)(c) (which affects whether a company is a public company for an income year).

**Subdivision 70-C—Accounting for trading stock you hold at the start or end of the income year**

**Table of sections**

**General rules**

- 70-35 You include the value of your trading stock in working out your assessable income and deductions
- 70-40 Value of trading stock at start of income year
- 70-45 Value of trading stock at end of income year

**Special valuation rules**

- 70-50 Valuation if trading stock obsolete etc.
- 70-55 Working out the cost of natural increase of live stock
- 70-60 Valuation of horse breeding stock
- 70-65 Working out the horse opening value and the horse reduction amount

**General rules**

**70-35 You include the value of your trading stock in working out your assessable income and deductions**

- (1) If you carry on a \*business, you compare:
- (a) the \*value of all your \*trading stock on hand at the start of the income year; and
  - (b) the \*value of all your trading stock on hand at the end of the income year.

Note: You may not need to do this stocktaking if you are a small business entity: see Division 328.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) Your assessable income includes any excess of the \*value at the *end* of the income year over the value at the *start* of the income year.
- (3) On the other hand, you can deduct any excess of the \*value at the *start* of the income year over the value at the *end* of the income year.

**70-40 Value of trading stock at start of income year**

- (1) The *value* of an item of \*trading stock on hand at the start of an income year is the same amount at which it was taken into account under this Division or Subdivision 328-E (about trading stock for small business entities) at the end of the last income year.
- (2) The *value* of the item is a nil amount if the item was not taken into account under this Division or Subdivision 328-E (about trading stock for small business entities) at the end of the last income year.

**70-45 Value of trading stock at end of income year**

- (1) You must elect to *value* each item of \*trading stock on hand at the end of an income year at:
  - (a) its \*cost; or
  - (b) its market selling value; or
  - (c) its replacement value.

Note: An item's market selling value at a particular time may not be the same as its market value.

- (1A) In working out the \*cost, market selling value or replacement value of an item of \*trading stock (other than an item the \*supply of which cannot be a \*taxable supply) at the end of an income year, disregard an amount equal to the amount of the \*input tax credit (if any) to which you would be entitled if:
  - (a) you had \*acquired the item at that time; and
  - (b) the acquisition had been solely for a \*creditable purpose; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-25** Trading stock

**Division 70** Trading stock

**Section 70-50**

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Note: Some assets, such as shares, cannot be the subject of a taxable supply.

- (2) The rest of this Subdivision deals with cases where the normal operation of this section is modified, or where a different valuation method may or must be used. The table sets out other cases where that happens because of provisions outside this Subdivision.

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**Rules about the value of trading stock**

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<b>Item</b>	<b>For this situation:</b>	<b>See:</b>
2	In working out the attributable income of a non-resident trust estate, trading stock is taken to be valued at cost.	Section 102AAY of the <i>Income Tax Assessment Act 1936</i>
3	In working out the attributable income of a controlled foreign corporation, the corporation must value at cost.	Section 397 of the <i>Income Tax Assessment Act 1936</i>
4	Some anti-avoidance provisions reduce the amount that is taken to be the cost of an item of trading stock.	Subsections 52A(7), 82KH(1N), 82KL(6) and 100A(6B) of the <i>Income Tax Assessment Act 1936</i>
5	The value of the item at the end of an income year may be the same as at the start of the year for a small business entity	Subdivision 328-E of this Act
6	The hybrid mismatch rules disallow an amount of a deduction for an outgoing incurred in connection with acquiring an item of *trading stock	Section 832-60 of this Act

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**Special valuation rules**

**70-50 Valuation if trading stock obsolete etc.**

You may elect to **value** an item of your \*trading stock below all the values in section 70-45 if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) that is warranted because of obsolescence or any other special circumstances relating to that item; and
- (b) the value you elect is reasonable.

**70-55 Working out the cost of natural increase of live stock**

- (1) The **cost** of an animal you hold as \*live stock that you acquired by natural increase is whichever of these you elect:
  - (a) the actual cost of the animal;
  - (b) the cost prescribed by the regulations for each animal in the applicable class of live stock.
- (2) However, if you incur a service fee for insemination and, as a result, acquire a horse by natural increase, its **cost** is the greater of:
  - (a) the amount worked out under subsection (1); and
  - (b) the part of the service fee that is attributable to your acquiring the horse.
- (3) An election under this section must be made by the time you lodge your \*income tax return for the income year in which you acquired the animal. However, the Commissioner can allow you to make it later.

**70-60 Valuation of horse breeding stock**

- (1) For a horse at least 3 years old that you acquired under a contract and hold for breeding, you can elect a **value** other than the values in section 70-45.
- (2) The **value** you can elect for the horse at the end of the income year is worked out using the table:

<b>Value of horse breeding stock</b>	
<b>If the horse is:</b>	<b>... you can value it at this amount:</b>
female 12 years or over	\$1

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 70-65

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<b>Value of horse breeding stock</b>	
<b>If the horse is:</b>	<b>... you can value it at this amount:</b>
any other horse	the *horse opening value less the *horse reduction amount (see section 70-65)

- (3) However, if the value worked out under subsection (2) would be less than \$1, you must elect the *value* of \$1.
- (4) A horse's age is to be measured in whole years as at the end of the relevant income year. The age of a horse not born on 1 August is determined as if the horse had been born on the last 1 August before it was actually born.

**70-65 Working out the horse opening value and the horse reduction amount**

- (1) The *horse opening value* is:
- (a) if the horse has been your \*live stock ever since the start of the income year—its \*value as \*trading stock at the start of the income year; or
  - (b) otherwise—the horse's base amount (see subsection (3)).

- (2) The *horse reduction amount* is worked out as follows:
- (a) for female horses under 12 years of age:

$$\frac{\text{Base amount}}{\text{Reduction factor}} \times \frac{\text{Breeding days}}{\text{Days in income year}}$$

- (b) for any male horse:

$$\text{Base amount} \times \frac{\text{Nominated percentage}}{100} \times \frac{\text{Breeding days}}{\text{Days in income year}}$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(3) In this section:

**base amount** is the lesser of:

- (a) the horse's \*cost; and
- (b) the horse's \*adjustable value when it most recently became your \*live stock.

**breeding days** is the number of whole days in the income year since you most recently began to hold the horse for breeding.

**nominated percentage** is any percentage, up to 25%, you nominate when you make the election in section 70-60.

**reduction factor** is the greater of:

- (a) 3; and
- (b) the difference between 12 and the horse's age when you most recently began to hold it for breeding.

## **Subdivision 70-D—Assessable income arising from disposals of trading stock and certain other assets**

### **Guide to Subdivision 70-D**

#### **70-75 What this Subdivision is about**

Your assessable income includes the market value of an item of trading stock if you dispose of it outside the ordinary course of business or it ceases to be trading stock in certain other circumstances.

This Subdivision treats certain other assets in the same way as trading stock.

#### **Table of sections**

70-80 Why the rules in this Subdivision are necessary

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Section 70-80**

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**Operative provisions**

70-85	Application of this Subdivision to certain other assets
70-90	Assessable income on disposal of trading stock outside the ordinary course of business
70-95	Purchase price is taken to be market value
70-100	Notional disposal when you stop holding an item as trading stock
70-105	Death of owner
70-110	You stop holding an item as trading stock but still own it
70-115	Compensation for lost trading stock

**70-80 Why the rules in this Subdivision are necessary**

- (1) When you dispose of an item of your trading stock in the ordinary course of business, what you get for it is included in your assessable income (under section 6-5) as ordinary income.

Note: An incorporated body is treated as disposing of an item of its trading stock in the ordinary course of business if the body ceases to exist and disposes of the asset to a company that has not significantly different ownership: see Division 620.

- (2) If an item stops being your trading stock for certain other reasons, an amount is generally included in your assessable income to balance the reduction in trading stock on hand, which is a transaction on revenue account.
- (3) The other reasons for an item to stop being your trading stock are:
  - (a) you dispose of it outside the ordinary course of business; or
  - (b) interests in it change; or
  - (c) you die; or
  - (d) you stop holding it as trading stock.

**Operative provisions**

**70-85 Application of this Subdivision to certain other assets**

This Subdivision (except section 70-115) applies to certain assets of a \*business as if they were \*trading stock on hand of the entity that carries on that business. The assets are:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (a) standing or growing crops; and
- (b) crop-stools; and
- (c) trees planted and tended for sale.

Note: Section 70-115 assesses insurance or indemnity amounts for lost trading stock.

### **70-90 Assessable income on disposal of trading stock outside the ordinary course of business**

- (1) If you dispose of an item of your \*trading stock outside the ordinary course of a \*business:
  - (a) that you are carrying on; and
  - (b) of which the item is an asset;your assessable income includes the \*market value of the item on the day of the disposal.
- (1A) If the disposal is the giving of a gift of property by you for which a valuation under section 30-212 is obtained, you may choose that the \*market value is replaced with the value of the property as determined under the valuation. You can only make this choice if the valuation was made no more than 90 days before or after the disposal.
- (2) Any amount that you actually receive for the disposal is not included in your assessable income (nor is it \*exempt income).

Note 1: In the case of an asset covered by section 70-85 (which applies this Subdivision to certain other assets), the disposal will usually involve disposing of the land of which the asset forms part.

Note 2: For certain disposals of live stock by primary producers, special rules apply: see Subdivision 385-E.

Note 3: If the disposal is by way of gift, you may be able to deduct the gift: see Division 30 (Gifts).

Note 4: If the disposal is of trees, you can deduct the relevant portion of your capital costs of acquiring the land carrying the trees or of acquiring a right to fell the trees: see section 70-120.

Note 5: This section and section 70-95 also apply to disposals of certain items on hand at the end of 1996-97 that are not trading stock but were

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 70-95

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trading stock as defined in the *Income Tax Assessment Act 1936*: see section 70-10 of the *Income Tax (Transitional Provisions) Act 1997*.

**70-95 Purchase price is taken to be market value**

If an entity disposes of an item of the entity's \*trading stock outside the ordinary course of \*business, the entity acquiring the item is treated as having bought it for the amount included in the disposing entity's assessable income under section 70-90.

**70-100 Notional disposal when you stop holding an item as trading stock**

- (1) An item of \*trading stock is treated as having been disposed of outside the ordinary course of \*business if it stops being trading stock on hand of an entity (the *transferor*) and, immediately afterwards:
  - (a) the transferor is not the item's sole owner; but
  - (b) an entity that owned the item (alone or with others) immediately beforehand still has an interest in the item.

Example: A grocer decides to take her daughters into partnership with her. Her trading stock becomes part of the partnership assets, owned by the partners equally. As a result, it becomes trading stock on hand of the partnership instead of the grocer. This section treats the grocer as having disposed of the trading stock to the partnership outside the ordinary course of her business.

Note: If the transferor *is* the item's sole owner after it stops being trading stock on hand of the transferor, section 70-110 applies instead of this section.

- (2) As a result, the transferor's assessable income includes the \*market value of the item on the day it stops being \*trading stock on hand of the transferor.
- (3) The entity or entities (the *transferee*) that own the item immediately *after* it stops being \*trading stock on hand of the transferor are treated as having bought the item for the same value on that day.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Election to treat item as disposed of at closing value*

- (4) However, an election can be made to treat the item as having been disposed of for what would have been its \*value as \*trading stock of the *transferor* on hand at the end of an income year ending on that day.
- (5) If this election is made, this \*value is included in the transferor's assessable income for the income year that includes that day. The transferee is treated as having bought the item for the same value on that day.
- (6) This election can only be made if:
- (a) immediately *after* the item stops being \*trading stock on hand of the transferor, it is an asset of a \*business carried on by the transferee; and
  - (b) immediately *after* the item stops being trading stock on hand of the transferor, the entities that owned it immediately beforehand have (between them) interests in the item whose total value is at least 25% of the item's \*market value on that day; and
  - (c) the \*value elected is *less than* that market value; and
  - (d) the item is not a thing in action.
- (7) Also, the election can only be made before 1 September following the end of the \*financial year in which the item stops being \*trading stock on hand of the transferor. However, the Commissioner can allow the election to be made later.
- (8) An election must be in writing and signed by or on behalf of each of:
- (a) the entities that own the item immediately before it stops being \*trading stock on hand of the transferor; and
  - (b) the entities that own it immediately afterwards.
- (9) If a person whose signature is required for the election has died, the \*legal personal representative of that person's estate may sign instead.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 70-105

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*When election has no effect*

- (10) An election has no effect if:
- (a) the item stops being \*trading stock on hand of the transferor outside the course of ordinary family or commercial dealing; and
  - (b) the \*consideration receivable by the transferor (or by any of the entities constituting the transferor) substantially exceeds what would reasonably be expected to be the consideration receivable by the entity concerned if the \*market value of the item immediately before it stops being trading stock on hand of the transferor were the \*value elected under subsection (4).

Note: Section 960-255 may be relevant to determining family relationships for the purposes of paragraph (10)(a).

- (11) **Consideration receivable** by an entity means so much of the value of any benefit as it is reasonable to expect that the entity will obtain in connection with the item ceasing to be \*trading stock on hand of the transferor.

**70-105 Death of owner**

- (1) When you die, your assessable income up to the time of your death includes the \*market value at that time of the \*trading stock of your \*business (if any).

Note: In the case of trees, you can deduct the relevant portion of your capital costs of acquiring the land carrying the trees or of acquiring a right to fell the trees: see section 70-120.

- (2) The entity on which the \*trading stock devolves is treated as having bought it for its \*market value at that time.
- (3) However, your \*legal personal representative can elect to have included in your assessable income (instead of the \*market value) the amount that would have been the \*value of the \*trading stock at the end of an income year ending on the day of your death.
- (4) In the case of an asset covered by section 70-85 (which applies this Subdivision to certain other assets), your \*legal personal

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

representative can elect to have a nil amount included in your assessable income (instead of the \*market value).

- (5) Your \*legal personal representative can make an election only if:
  - (a) the \*business is carried on after your death; and
  - (b) the \*trading stock continues to be held as trading stock of that business, or the asset continues to be held as an asset of that business, as appropriate.
- (6) If an election is made, the entity on which the \*trading stock devolves is treated as having bought it for the amount referred to in subsection (3) or (4).
- (7) An election can only be made on or before the day when your \*legal personal representative lodges your \*income tax return for the period up to your death. However, the Commissioner can allow it to be made later.

#### **70-110 You stop holding an item as trading stock but still own it**

- (1) If you stop holding an item as \*trading stock, but still own it, you are treated as if:
  - (a) just before it stopped being trading stock, you had sold it to someone else (at \*arm's length and in the ordinary course of business) for its \*cost; and
  - (b) you had immediately bought it back for the same amount.

Example 1: You are a sheep grazer and take a sheep from your stock to slaughter for personal consumption. You are treated as having sold it for its cost. This amount is assessable income, just like the proceeds of sale of any of your trading stock.

Although you are also treated as having bought the sheep for the same amount, it would not be deductible because the sheep is for personal consumption.

Example 2: You stop holding an item as trading stock and begin to use it as a depreciating asset for the purpose of producing your assessable income. You are treated as having sold it for its cost. This amount is assessable income, just like the proceeds of sale of any of your trading stock.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Section 70-115**

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You are also treated as having bought the item for the same amount, which is relevant to working out the item's cost for capital allowance purposes (see Subdivision 40-C) and the item's cost base for CGT purposes (see Division 110).

- (2) This section does not apply if:
- (a) you stop holding an item as \*trading stock; and
  - (b) immediately after you stopped holding the item as trading stock, you start to \*hold the item as a \*registered emissions unit.

Note: A transaction that this section treats as having occurred is disregarded for the purposes of these provisions of the *Income Tax Assessment Act 1936*:

- subsection 47A(10) (which treats certain benefits as dividends paid by a CFC)
- paragraph 103A(3A)(c) (which affects whether a company is a public company for an income year).

**70-115 Compensation for lost trading stock**

Your assessable income includes an amount that:

- (a) you receive by way of insurance or indemnity for a loss of \*trading stock; and
- (b) is not assessable as \*ordinary income under section 6-5.

**Subdivision 70-E—Miscellaneous**

**Table of sections**

70-120    Deducting capital costs of acquiring trees

**70-120 Deducting capital costs of acquiring trees**

- (1) This section gives you deductions for your capital costs of acquiring land carrying trees or of acquiring a right to fell trees.

Note: This section is included in this Division because:

- trees felled for sale, or for use in manufacture, by you will usually become your trading stock; and
- before they are felled, the trees are covered by sections 70-90 and 70-105 because of section 70-85.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Land carrying trees*

- (2) You can deduct the amount you paid to acquire land carrying trees if:
- (a) some or all of the trees are felled during the income year for sale, or for use in manufacture, by you for the \*purpose of producing assessable income; or
  - (b) some or all of the trees are felled during the income year under a right you granted to another entity in consideration of payments as or by way of \*royalty; or
  - (c) the \*market value of some or all of the trees is included in your assessable income for the income year by section 70-90 (because you disposed of the trees outside the ordinary course of \*business) or section 70-105 (because of your death).

(It does not matter when you acquired the land.)

Note: The market value of trees is *not* included in your assessable income for the income year by section 70-105 (because of your death) if your legal personal representative elects under subsection 70-105(4) to have a nil amount included instead.

*Right to fell trees*

- (3) You can deduct the amount you paid to acquire a right to fell trees if:
- (a) some or all of the trees are felled during the income year for sale, or for use in manufacture, by you for the \*purpose of producing assessable income; or
  - (b) some or all of the trees are felled during the income year under a right you granted to another entity in consideration of payments as or by way of \*royalty.

(It does not matter when you acquired the right.)

*How much you can deduct for costs of acquiring land or right*

- (4) You can deduct for the income year so much of the amount you paid as is attributable to the trees covered by a paragraph of subsection (2) or (3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 70-120

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- (5) If you can deduct an amount because of paragraph (2)(c), you can also deduct for the income year so much of any other capital expenditure you incurred as is attributable to acquiring the trees covered by that paragraph (except so far as you have deducted it, or can deduct it, for any income year under a provision of this Act outside this section).

*No deduction for carbon sink forests*

- (5A) You cannot deduct under this section so much of an amount you paid or incurred as is attributable to the establishment of trees for which any entity has deducted, or can deduct, an amount for any income year under Subdivision 40-J.

*Non-arm's length transactions*

- (6) If:
- (a) you can deduct an amount under this section for expenditure incurred in connection with a transaction; and
  - (b) the parties to the transaction did not deal with each other at \*arm's length; and
  - (c) the amount of the expenditure is greater than the \*market value of what the expenditure is for;
- the amount of the expenditure is instead taken to be that market value. This has effect for the purposes of working out what you can deduct under this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



## **Part 2-40—Rules affecting employees and other taxpayers receiving PAYG withholding payments**

### **Division 80—General rules**

#### **Table of Subdivisions**

Guide to Division 80

#### **Guide to Division 80**

#### **80-1 What this Division is about**

This Division sets out rules that apply throughout the Part. The rules are about holding an office, the termination of employment, the transfer of property and receiving and making payments.

#### **Table of sections**

##### **Operative provisions**

80-5	Holding of an office
80-10	Application to the termination of employment
80-15	Transfer of property
80-20	Payments for your benefit or at your direction or request

#### **Operative provisions**

##### **80-5 Holding of an office**

If a person holds (or has held) an office, this Part applies to the person in the same way as it would apply if the person were (or had been) employed.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-40** Rules affecting employees and other taxpayers receiving PAYG withholding payments

**Division 80** General rules

Section 80-10

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**80-10 Application to the termination of employment**

For the purposes of this Part, treat the termination of employment as including:

- (a) retirement from employment; and
- (b) the cessation of employment because of death.

**80-15 Transfer of property**

- (1) Any of the following payments covered by this Part (but no others covered by this Part) can be or include a transfer of property:
  - (a) an \*employment termination payment;
  - (b) a \*genuine redundancy payment;
  - (c) an \*early retirement scheme payment;
  - (d) a payment covered by Subdivision 83-D (Foreign termination payments);
  - (e) a payment that would be an employment termination payment but for paragraph 82-130(1)(b) (see Subdivision 83-E).

Note: An unused annual leave payment or an unused long service leave payment cannot include a transfer of property.

- (2) The amount of the payment is or includes the \*market value of the property.
- (3) The \*market value is reduced by the value of any consideration given for the transfer of the property.

**80-20 Payments for your benefit or at your direction or request**

- (1) This section applies for the purposes of:
  - (a) determining whether Division 82 or 83 applies to a payment; and
  - (b) determining whether a payment mentioned in Division 82 or 83 is made to you, or received by you.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) A payment is treated as being made to you, or received by you, if it is made:
- (a) for your benefit; or
  - (b) to another person or to an entity at your direction or request.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-40** Rules affecting employees and other taxpayers receiving PAYG withholding payments

**Division 82** Employment termination payments

Section 82-1

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**Division 82—Employment termination payments**

**Table of Subdivisions**

	Guide to Division 82
82-A	Employment termination payments: life benefits
82-B	Employment termination payments: death benefits
82-C	Key concepts

**Guide to Division 82**

**82-1 What this Division is about**

This Division tells you how employment termination payments are treated for the purpose of income tax.

**Subdivision 82-A—Employment termination payments: life benefits**

**Guide to Subdivision 82-A**

**82-5 What this Subdivision is about**

If you receive a life benefit termination payment, part of the payment may be tax free (the tax free component).

You are entitled to a tax offset on the remaining part of the payment (the taxable component), subject to limitations.

The extent of your entitlement to the offset depends on your age in the year you receive the offset, on the total amount of payments you receive in the same year, and on the total amount of payments you receive in consequence of the same employment termination.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Table of sections

### Operative provisions

82-10 Taxation of life benefit termination payments

## Operative provisions

### 82-10 Taxation of life benefit termination payments

#### *Tax free component*

- (1) The \*tax free component of a \*life benefit termination payment you receive is not assessable income and is not \*exempt income.

#### *Taxable component*

- (2) The \*taxable component of the payment is assessable income.
- (3) You are entitled to a \*tax offset that ensures that the rate of income tax on the amount mentioned in subsection (4) does not exceed:
- (a) if you are your \*preservation age or older on the last day of the income year in which you receive the payment—15%; or
  - (b) otherwise—30%.

Note: The remainder of the taxable component is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.

- (4) The amount is so much of the \*taxable component of the payment as does not exceed the smallest of the following:
- (a) the \*ETP cap amount reduced (but not below zero) by:
    - (i) if the payment is a payment of a kind referred to in subsection (6) (an ***excluded payment***)—the amount worked out under this subsection for each \*life benefit termination payment you have received earlier in the income year to the extent that it is an excluded payment; or
    - (ii) if the payment is not an excluded payment—the amount worked out under this subsection for each life benefit

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Section 82-10**

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termination payment you have received earlier in the income year;

- (b) the ETP cap amount reduced (but not below zero) by:
  - (i) if the payment is an excluded payment—the amount worked out under this subsection for each life benefit termination payment you have received earlier in consequence of the same employment termination (whether in the income year or an earlier income year) to the extent that it is an excluded payment; or
  - (ii) if the payment is not an excluded payment—the amount worked out under this subsection for each life benefit termination payment you have received earlier in consequence of the same employment termination (whether in the income year or an earlier income year);
- (c) if the payment is not an excluded payment—\$180,000, reduced (but not below zero) by your taxable income for the income year in which the payment is made.

Note 1: For the *ETP cap amount*, see section 82-160.

Note 2: If you have also received a death benefit termination payment in the same income year, your entitlement to a tax offset under this section is not affected by your entitlement (if any) to a tax concession for the death benefit termination payment (under section 82-65 or 82-70).

Note 3: Certain other life benefit termination payments made before 1 July 2012 may be treated as earlier payments under paragraph (4)(b): see section 82-10H of the *Income Tax (Transitional Provisions) Act 1997*.

- (5) In working out, for the purposes of paragraph (4)(c), your taxable income for the income year, disregard:
  - (a) the taxable component of the payment; and
  - (b) the taxable component of each \*life benefit termination payment you receive later in the income year.
- (6) Paragraph (4)(c) does not apply in relation to \*life benefit termination payments:
  - (a) that are \*genuine redundancy payments, or that would be genuine redundancy payments but for paragraph 83-175(2)(a); or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) that are \*early retirement scheme payments; or
  - (c) that include \*invalidity segments, or what would be invalidity segments included in such payments but for paragraph 82-150(1)(c); or
  - (d) that:
    - (i) are paid in connection with a genuine dispute; and
    - (ii) are principally compensation for personal injury, unfair dismissal, harassment, discrimination or a matter prescribed by the regulations; and
    - (iii) exceed the amount that could, at the time of the termination of your employment, reasonably be expected to be received by you in consequence of the voluntary termination of your employment.
- (7) If the payment is partly an excluded payment:
- (a) subsection (4) applies as if the payment were 2 payments as follows:
    - (i) first, a payment consisting only of the part of the payment that is an excluded payment;
    - (ii) second, another payment, made immediately after the first payment, consisting only of the part of the payment that is not an excluded payment; and
  - (b) subsection (4) applies to the second payment as if a reference in subsection (5) to the taxable component of a payment were a reference to so much of the taxable component as relates to the part of the payment that is not an excluded payment.
- (8) Despite subsections (4) and (7), the amount mentioned in subsection (4) in relation to the payment must not exceed either of the following:
- (a) the \*ETP cap amount reduced (but not below zero) by the amount worked out under subsection (4) for each \*life benefit termination payment you have received earlier in the income year;
  - (b) the ETP cap amount reduced (but not below zero) by the amount worked out under subsection (4) for each life benefit

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 82-60

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termination payment you have received earlier in consequence of the same employment termination (whether in the income year or an earlier income year).

**Subdivision 82-B—Employment termination payments: death benefits**

**Guide to Subdivision 82-B**

**82-60 What this Subdivision is about**

If you receive a death benefit termination payment after the death of a person, part of the payment may be tax free (the tax free component).

You are entitled to a tax offset on the remaining part of the payment (the taxable component), subject to limitations.

The extent of your entitlement to the offset depends on whether or not you were a death benefits dependant of the deceased, and on the total amount of payments you receive in consequence of the same employment termination.

If a death benefit termination payment is payable to the trustee of the estate of the deceased for the benefit of another person, the payment is taxed in the hands of the trustee in the same way as it would be taxed if it had been paid directly to the other person.

**Table of sections**

**Operative provisions**

82-65	Death benefits for dependants
82-70	Death benefits for non-dependants
82-75	Death benefits paid to trustee of deceased estate

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Operative provisions

### 82-65 Death benefits for dependants

#### *Tax free component*

- (1) The \*tax free component of a \*death benefit termination payment that you receive after the death of a person of whom you are a \*death benefits dependant is not assessable income and is not \*exempt income.

#### *Taxable component*

- (2) If you receive a \*death benefit termination payment after the death of a person of whom you are a \*death benefits dependant:
  - (a) the part of the \*taxable component of the payment mentioned in subsection (3) is not assessable income and is not \*exempt income; and
  - (b) the remainder of the taxable component (if any) of the payment is assessable income.

Note: The remainder of the taxable component is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.

- (3) The amount is so much of the \*taxable component of the payment as does not exceed the \*ETP cap amount.

Note: For the ETP cap amount, see section 82-160.

- (4) The \*ETP cap amount is reduced (but not below zero) by the amount worked out under subsection (3) for each \*death benefit termination payment (if any) you have received earlier in consequence of the same employment termination, whether in the income year or an earlier income year.

Note 1: See subsection 82-75(2) for the tax treatment of any amount by which you may have benefited from an employment termination payment to the trustee of the estate of the deceased.

Note 2: If you have also received a life benefit termination payment in the same income year, your entitlement to a tax concession under this

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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section is not affected by your entitlement (if any) to an offset for the life benefit termination payment (under section 82-10).

**82-70 Death benefits for non-dependants**

*Tax free component*

- (1) The \*tax free component of a \*death benefit termination payment that you receive after the death of a person of whom you are *not* a \*death benefits dependant is not assessable income and is not \*exempt income.

*Taxable component*

- (2) If you receive a \*death benefit termination payment after the death of a person of whom you are *not* a \*death benefits dependant, the \*taxable component of the payment is assessable income.
- (3) You are entitled to a \*tax offset that ensures that the rate of income tax on the amount mentioned in subsection (4) does not exceed 30%.

Note: The remainder of the taxable component is taxed at the top marginal rate in accordance with the *Income Tax Rates Act 1986*.

- (4) The amount is so much of the \*taxable component of the payment as does not exceed the \*ETP cap amount.

Note: For the ETP cap amount, see section 82-160.

- (5) The \*ETP cap amount is reduced (but not below zero) by the amount worked out under subsection (4) for each \*death benefit termination payment (if any) you have received earlier in consequence of the same employment termination, whether in the income year or an earlier income year.

Note 1: See subsection 82-75(3) for the tax treatment of any amount by which you may have benefited from an employment termination payment to the trustee of the estate of the deceased.

Note 2: If you have also received a life benefit termination payment in the same income year, your entitlement to a tax offset under this section is

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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not affected by your entitlement (if any) to an offset for the life benefit termination payment (under section 82-10).

### **82-75 Death benefits paid to trustee of deceased estate**

- (1) This section applies to you if:
- (a) you are the trustee of a deceased estate; and
  - (b) a \*death benefit termination payment is made to you in your capacity as trustee.

Note: See also subsection 101A(3) of the *Income Tax Assessment Act 1936*.

#### *Dependants of deceased benefit from payment*

- (2) To the extent that 1 or more beneficiaries of the estate who were \*death benefits dependants of the deceased have benefited, or may be expected to benefit, from the payment:
- (a) the payment is treated as if it had been made to you as a person who was a death benefits dependant of the deceased; and
  - (b) the payment is taken to be income to which no beneficiary is presently entitled.

Note: Section 82-65 deals with the taxation of employment termination payments made to persons who are death benefits dependants of deceased persons.

#### *Non-dependants of deceased benefit from payment*

- (3) To the extent that 1 or more beneficiaries of the estate who were *not* \*death benefits dependants of the deceased have benefited, or may be expected to benefit, from the payment:
- (a) the payment is treated as if it had been made to you as a person who was *not* a death benefits dependant of the deceased; and
  - (b) the payment is taken to be income to which no beneficiary is presently entitled.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: Section 82-70 deals with the taxation of employment termination payments made to persons who are *not* death benefits dependants of deceased persons.

**Subdivision 82-C—Key concepts**

**Guide to Subdivision 82-C**

**82-125 What this Subdivision is about**

This Subdivision defines an ***employment termination payment*** as a payment made in consequence of the termination of a person's employment that is received no later than 12 months after the termination (though the 12 month restriction is relaxed in some circumstances).

An employment termination payment can be a life benefit termination payment (received by the person whose employment is terminated) or a death benefit termination payment (received by another person after the death of a person whose employment is terminated).

Certain types of payments are declared not to be employment termination payments.

Various other terms used in describing the taxation treatment of employment termination payments are defined in the Subdivision.

**Table of sections**

**Operative provisions**

82-130	What is an <b><i>employment termination payment?</i></b>
82-135	Payments that are not <b><i>employment termination payments</i></b>
82-140	<b><i>Tax free component</i></b> of an employment termination payment
82-145	<b><i>Taxable component</i></b> of an employment termination payment
82-150	What is an <b><i>invalidity segment</i></b> of an employment termination payment?
82-155	What is a <b><i>pre-July 83 segment</i></b> of an employment termination payment?

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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82-160 What is the *ETP cap amount*?

## Operative provisions

### 82-130 What is an *employment termination payment*?

- (1) A payment is an *employment termination payment* if:
- (a) it is received by you:
    - (i) in consequence of the termination of your employment; or
    - (ii) after another person's death, in consequence of the termination of the other person's employment; and
  - (b) it is received no later than 12 months after that termination (but see subsection (4)); and
  - (c) it is *not* a payment mentioned in section 82-135.

Note 1: If a payment would be an employment termination payment but for paragraph (b), see subsection (4) and section 83-295.

Note 2: The holding of an office is treated as employment for this Part: see section 80-5. Also, the termination of employment is treated as including the termination of employment by retirement or by death: see section 80-10.

#### *Types of employment termination payment*

- (2) A *life benefit termination payment* is an \*employment termination payment to which subparagraph (1)(a)(i) applies.
- (3) A *death benefit termination payment* is an \*employment termination payment to which subparagraph (1)(a)(ii) applies.

#### *Exemption from 12 month rule*

- (4) Paragraph (1)(b) does not apply to you if:
- (a) you are covered by a determination under subsection (5) or (7); or
  - (b) the payment is a \*genuine redundancy payment or an \*early retirement scheme payment.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: The part of a genuine redundancy payment or an early retirement scheme payment worked out under section 83-170 is not an employment termination payment: see section 82-135.

- (5) The Commissioner may determine, in writing, that paragraph (1)(b) does not apply to you if the Commissioner considers the time between the employment termination and the payment to be reasonable, having regard to the following:
- (a) the circumstances of the employment termination, including any dispute in relation to the termination;
  - (b) the circumstances of the payment;
  - (c) the circumstances of the person making the payment;
  - (d) any other relevant circumstances.
- (6) A determination under subsection (5) is not a legislative instrument.
- (7) The Commissioner may, by legislative instrument, determine that paragraph (1)(b) does not apply to either or both of the following, as specified in the determination:
- (a) a class of payments;
  - (b) a class of recipients of payments.
- (8) A determination under subsection (7) may provide for paragraph (1)(b) not to apply in circumstances relating to any (or all) of the following, as specified in the determination:
- (a) a class of employment termination (including a class described by reference to disputes of a specified type);
  - (b) a class of payments;
  - (c) a class of persons making payments;
  - (d) the period after the employment termination until payment is received;
  - (e) any other relevant circumstances.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **82-135 Payments that are not *employment termination payments***

The following payments you receive are *not employment termination payments*:

- (a) a \*superannuation benefit (see Divisions 301 to 307);
- (b) a payment of a pension or an \*annuity (whether or not the payment is a superannuation benefit); and
- (c) an \*unused annual leave payment (see Subdivision 83-A);
- (d) an \*unused long service leave payment (see Subdivision 83-B);
- (e) the part of a \*genuine redundancy payment or an \*early retirement scheme payment worked out under section 83-170 (see Subdivision 83-C);
- (f) a payment to which Subdivision 83-D (Foreign termination payments) applies;
- (fa) a payment (or part of one) made by a company or trust as mentioned in subsection 152-310(2);
- (g) a payment that is an advance or a loan to you on terms and conditions that would apply if you and the payer were dealing at \*arm's length;
- (h) a payment that is deemed to be a \*dividend under this Act;
- (i) a capital payment for, or in respect of, personal injury to you so far as the payment is reasonable having regard to the nature of the personal injury and its likely effect on your capacity to \*derive income from personal exertion (within the meaning of the definition of *income derived from personal exertion* in subsection 6(1) of the *Income Tax Assessment Act 1936*);
- (j) a capital payment for, or in respect of, a legally enforceable contract in restraint of trade by you so far as the payment is reasonable having regard to the nature and extent of the restraint;
- (k) a payment:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Section 82-140**

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- (i) received by you, or to which you are entitled, as the result of the commutation of a pension payable from a \*constitutionally protected fund; and
  - (ii) wholly applied in paying any superannuation contributions surcharge (as defined in section 37 of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*);
- (l) a payment:
- (i) received by you, or to which you are entitled, as the result of the commutation of a pension payable by a superannuation provider (within the meaning of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*); and
  - (ii) wholly applied in paying any superannuation contributions surcharge (as defined in section 43 of that Act);
- (m) an amount included in your assessable income under Division 83A of this Act (which deals with employee share schemes).

Note: For paragraph (e)—the remaining part of a genuine redundancy payment or an early retirement scheme payment (apart from the amount mentioned in the paragraph) is an employment termination payment if section 82-130 applies to that part.

**82-140 Tax free component of an employment termination payment**

The *tax free component* of an \*employment termination payment is so much of the payment as consists of the following:

- (a) the \*invalidity segment of the payment;
- (b) the \*pre-July 83 segment of the payment.

**82-145 Taxable component of an employment termination payment**

The *taxable component* of an \*employment termination payment is the amount of the payment less the \*tax free component of the payment (see section 82-140).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



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**82-150 What is an *invalidity segment* of an employment termination payment?**

- (1) An \*employment termination payment includes an *invalidity segment* if:
- (a) the payment was made to a person because he or she stops being \*gainfully employed; and
  - (b) the person stopped being gainfully employed because he or she suffered from ill-health (whether physical or mental); and
  - (c) the gainful employment stopped before the person's \*last retirement day; and
  - (d) 2 legally qualified medical practitioners have certified that, because of the ill-health, it is unlikely that the person can ever be gainfully employed in capacity for which he or she is reasonably qualified because of education, experience or training.
- (2) Work out the amount of the *invalidity segment* by applying the following formula:

$$\text{Amount of *employment termination payment} \times \frac{\text{Days to retirement}}{\text{Employment days} + \text{Days to retirement}}$$

where:

*days to retirement* is the number of days from the day on which the person's employment was terminated to the \*last retirement day.

*employment days* is the number of days of employment to which the payment relates.

**82-155 What is a *pre-July 83 segment* of an employment termination payment?**

- (1) An \*employment termination payment includes a *pre-July 83 segment* if any of the employment to which the payment relates occurred before 1 July 1983.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(2) Work out the amount of the *pre-July 83 segment* as follows:

Step 1. Subtract the \*invalidity segment (if any) from the \*employment termination payment.

Step 2. Multiply the amount at step 1 by the fraction:

$$\frac{\text{Number of days of employment to which the payment relates that occurred before 1 July 1983}}{\text{Total number of days of employment to which the payment relates}}$$

**82-160** What is the *ETP cap amount*?

The *ETP cap amount* for the 2007-2008 income year is \$140,000. This amount is indexed annually.

Note 1: Subdivision 960-M shows how to index amounts. However, annual indexation does not necessarily increase the ETP cap amount: see section 960-285.

Note 2: The ETP cap amount may be reduced for the purpose of working out tax offsets for individual employment termination payments.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 83—Other payments on termination of employment**

### **Table of Subdivisions**

	Guide to Division 83
83-A	Unused annual leave payments
83-B	Unused long service leave payments
83-C	Genuine redundancy payments and early retirement scheme payments
83-D	Foreign termination payments
83-E	Other payments

### **Guide to Division 83**

#### **83-1 What this Division is about**

This Division sets out the taxation treatment for a variety of payments, other than employment termination payments, that are made in consequence of the termination of employment.

#### **Subdivision 83-A—Unused annual leave payments**

##### **Guide to Subdivision 83-A**

#### **83-5 What this Subdivision is about**

You are entitled to a tax offset for a payment that you receive in consequence of the termination of your employment that is for unused annual leave.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Division 83** Other payments on termination of employment

Section 83-10

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**Operative provisions**

- 83-10 Unused annual leave payment is assessable
- 83-15 Entitlement to tax offset

**Operative provisions**

**83-10 Unused annual leave payment is assessable**

*Application—annual leave*

- (1) This section applies to leave (**annual leave**) of the following types (whether it is made available as an entitlement or as a privilege):
  - (a) leave ordinarily known as annual leave, including recreational leave and annual holidays;
  - (b) any other leave made available in circumstances similar to those in which the leave mentioned in paragraph (a) is ordinarily made available.

*Unused annual leave payments*

- (2) Your assessable income includes an \*unused annual leave payment that you receive.
- (3) A payment that you receive in consequence of the termination of your employment is an **unused annual leave payment** if:
  - (a) it is for annual leave you have not used; or
  - (b) it is a bonus or other additional payment for annual leave you have not used; or
  - (c) it is for annual leave, or is a bonus or other additional payment for annual leave, to which you were not entitled just before the employment termination, but that would have been made available to you at a later time if it were not for the employment termination.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 83-15 Entitlement to tax offset

You are entitled to a \*tax offset to ensure that the rate of tax on an \*unused annual leave payment does not exceed 30%, to the extent that:

- (a) the payment was made in connection with a payment that includes, or consists of, any of the following:
  - (i) a \*genuine redundancy payment;
  - (ii) an \*early retirement scheme payment;
  - (iii) the \*invalidity segment of an \*employment termination payment or \*superannuation benefit; or
- (b) the payment was made in respect of employment before 18 August 1993.

### Subdivision 83-B—Unused long service leave payments

#### Guide to Subdivision 83-B

#### 83-65 What this Subdivision is about

You are entitled to a tax offset for a payment that you receive in consequence of the termination of your employment that is for unused long service leave.

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##### General

83-70	Application—long service leave
83-75	Meaning of <i>unused long service leave payment</i>
83-80	Taxation of unused long service leave payments
83-85	Entitlement to tax offset
83-90	Meaning of <i>pre-16/8/78 period, pre-18/8/93 period, post-17/8/93 period</i> and <i>long service leave employment period</i>

##### Employment wholly full-time or wholly part-time

83-95	How to work out amount of payment attributable to each period
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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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83-100 How to work out *unused days of long service leave* for each period

83-105 How to work out long service leave accrued in each period

**Employment partly full-time and partly part-time**

83-110 Leave accrued in pre-16/8/78, pre-18/8/93 and post-17/8/93 periods—employment full-time and part-time

**Long service leave taken at less than full pay**

83-115 Working out used days of long service leave if leave taken at less than full pay

**General**

**83-70 Application—long service leave**

This Subdivision applies to leave (*long service leave*) of the following types (whether it is made available as an entitlement or as a privilege), other than annual leave to which section 83-10 applies:

- (a) leave ordinarily known as long service leave, including long leave, furlough and extended leave;
- (b) any other leave made available in circumstances similar to those in which the leave mentioned in paragraph (a) is ordinarily made available;
- (c) if your employer has entered into a \*scheme or \*arrangement for leave and, because of the existence and nature of the scheme or arrangement, the employer does not have to comply with the requirements of a law of the Commonwealth, or of a State or Territory, relating to leave mentioned in paragraph (a) or (b)—leave made available under the scheme or arrangement.

**83-75 Meaning of *unused long service leave payment***

A payment that you receive in consequence of the termination of your employment is an *unused long service leave payment* if:

- (a) it is for long service leave you have not used; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) it is for long service leave to which you were not entitled just before the employment termination, but that would have been made available to you at a later time if it were not for the employment termination.

### 83-80 Taxation of unused long service leave payments

*Assessable and tax-free parts of unused long service leave payments*

- (1) If you receive an \*unused long service leave payment, your assessable income includes the part of the payment shown in this table:

<b>*Unused long service leave payments</b>		
<b>Item</b>	<b>To the extent the payment is attributable to the ...</b>	<b>Your assessable income includes this part of it ...</b>
1	*pre-16/8/78 period	5%
2	*pre-18/8/93 period	100%
3	*post-17/8/93 period	100%

- (2) The remainder of that part (if any) of an \*unused long service leave payment that is attributable to the \*pre-16/8/78 period is not assessable income and is not \*exempt income.

Note 1: If your employment was wholly full-time or wholly part-time during a period, see sections 83-95, 83-100 and 83-105 to work out the amount of an unused long service leave payment that is attributable to the period.

Note 2: If your employment was partly full-time and partly part-time during a period, see section 83-110 to work out the amount of an unused long service leave payment that is attributable to the period.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 83-85

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**83-85 Entitlement to tax offset**

- (1) You are entitled to a \*tax offset on an \*unused long service leave payment that ensures that the rate of income tax on the amount of the payment mentioned in subsection (2) does not exceed 30%.
- (2) The amount is the part of the \*unused long service leave payment included in your assessable income under subsection 83-80(1):
  - (a) to the extent that it is attributable to the \*pre-18/8/93 period; and
  - (b) to the extent that it is attributable to the \*post-17/8/93 period, if the payment was made in connection with a payment that includes, or consists of, any of the following:
    - (i) a \*genuine redundancy payment; or
    - (ii) an \*early retirement scheme payment; or
    - (iii) an \*invalidity segment of an \*employment termination payment or a \*superannuation benefit.

**83-90 Meaning of *pre-16/8/78 period*, *pre-18/8/93 period*, *post-17/8/93 period* and *long service leave employment period***

- (1) The *pre-16/8/78 period* consists of each day (if any) in your \*long service leave employment period that occurred before 16 August 1978.
- (2) The *pre-18/8/93 period* consists of each day (if any) in your \*long service leave employment period to which the payment relates that occurred after 15 August 1978 and before 18 August 1993.
- (3) The *post-17/8/93 period* consists of each day (if any) in your \*long service leave employment period to which the payment relates that occurred after 17 August 1993.
- (4) Your *long service leave employment period*, for a period of long service leave, is:
  - (a) the period of employment to which the long service leave relates; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (b) if your entitlement to long service leave changes so that it accrues over a shorter period—the period that would apply under paragraph (a) assuming the change had not happened.

## **Employment wholly full-time or wholly part-time**

### **83-95 How to work out amount of payment attributable to each period**

- (1) Work out how much of an \*unused long service leave payment is attributable to a period as follows:
- (a) for the \*pre-18/8/93 period or to the \*post-17/8/93 period—use the formula in subsection (2);
  - (b) for the \*pre-16/8/78 period—subtract the sum of the amounts (if any) worked out for paragraph (a) for the other 2 periods from the total amount of the payment.
- (2) For the \*pre-18/8/93 period or the \*post-17/8/93 period, the formula is:

$$\text{Amount of payment} \times \frac{\text{Unused long service leave days in the relevant period}}{\text{Total unused long service leave days}}$$

where:

***total unused long service leave days*** means the total number of unused days of long service leave in the \*long service leave employment period for the payment.

***unused long service leave days in the relevant period*** means the number of unused days of long service leave in the \*pre-18/8/93 period or the \*post-17/8/93 period (as applicable), worked out under section 83-100.

Note 1: For the meaning of ***unused days of long service leave***, see section 83-100.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Section 83-100**

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Note 2: Section 83-110 explains how to work out the period of unused long service leave if your employment was partly full-time and partly part-time during the period.

**83-100 How to work out *unused days of long service leave* for each period**

- (1) The number of *unused days of long service leave* for each of the \*pre-16/8/78 period, the \*pre-18/8/93 period and the \*post-17/8/93 period is the number of days of long service leave that accrued to you during that period less the number of days of long service leave that you used in the period.

*Exception if days used exceed days accrued in the pre-18/8/93 period and the post-17/8/93 period*

- (2) To the extent that the number of days of long service leave that you used during the \*pre-18/8/93 period or the \*post-17/8/93 period exceeds the number of days of long service leave that accrued to you during the period, apply the excess days as shown in this table:

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**How to apply excess days**

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<b>Item</b>	<b>If there are excess days in this period:</b>	<b>Apply the excess days as follows:</b>	<b>If, after you apply the excess days as shown in column 2, excess days remain, apply the remaining days as follows:</b>
1	*pre-18/8/93 period	Subtract the excess days from the unused days in the *post-17/8/93 period	Subtract the excess days from the unused days in the *pre-16/8/78 period
2	*post-17/8/93 period	Subtract the excess days from the unused days in the *pre-18/8/93 period	Subtract the excess days from the unused days in the *pre-16/8/78 period

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- (3) The number of *unused days of long service leave* in each period is the number of days after applying the table.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: Section 83-115 explains how to work out the number of days of long service leave you are taken to have used if you took long service leave at less than the full pay rate.

### 83-105 How to work out long service leave accrued in each period

- (1) Work out the number of days of long service leave that accrued to you during each part of your \*long service leave employment period as follows:
  - (a) for the \*pre-18/8/93 period or the \*post-17/8/93 period—use the formula in subsection (2);
  - (b) for the \*pre-16/8/78 period—subtract the sum of the number of days (if any) worked out under paragraph (a) for the other 2 periods from the total number of days of long service leave accrued to you during the long service leave employment period.
- (2) For the \*pre-18/8/93 period or the \*post-17/8/93 period, the formula is:

$$\frac{\text{Days of long service leave accrued during *long service leave employment period}}{\text{Days in relevant period}} \times \frac{\text{Days in *long service leave employment period}}{\text{Days in *long service leave employment period}}$$

where:

**relevant period** means the \*pre-18/8/93 period or the \*post 17/8/93 period (as applicable).

*How to treat fraction of day*

- (3) If long service leave accrued to you during the \*pre-18/8/93 period and the \*post-17/8/93 period but not during the \*pre-16/8/78 period, and the number of days worked out under subsection (2) for the post-17/8/93 period includes a fraction, treat the fraction as having accrued during the pre-18/8/93 period.
- (4) If long service leave accrued to you during all 3 periods and the number of days worked out under subsection (2) for the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

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\*post-17/8/93 period or the \*pre-18/8/93 period includes a fraction, treat the fraction as having accrued during the \*pre-16/8/78 period.

**Employment partly full-time and partly part-time**

**83-110 Leave accrued in pre-16/8/78, pre-18/8/93 and post-17/8/93 periods—employment full-time and part-time**

- (1) This section applies if the \*long service leave employment period for an \*unused long service leave payment includes:
  - (a) 1 or more periods when you were employed on a full-time basis; and
  - (b) 1 or more periods when you were employed on a part-time basis.
- (2) Work out how much of the payment is attributable to the period or periods when you were employed on a full-time basis (the **full-time payment**) and how much to the period or periods when you were employed on a part-time basis (the **part-time payment**).
- (3) The amount of the payment that is attributable to each of the \*pre-16/8/78 period, the \*pre-18/8/93 period and the \*post-17/8/93 period is the sum of the amounts worked out in accordance with sections 83-95, 83-100 and 83-105 that would be attributable to those periods if the full-time payment and the part-time payment were each \*unused long service leave payments.

**Long service leave taken at less than full pay**

**83-115 Working out used days of long service leave if leave taken at less than full pay**

If you used days of long service leave at a rate of pay that is less than the rate to which you are entitled, the number of days of long service leave you are taken to have used (disregarding fractions of days) is as follows:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

$$\text{Actual days of long service leave} \times \frac{\text{Rate of pay at which leave was actually taken}}{\text{Rate of pay to which you were entitled when taking leave}}$$

Example: If you took 100 actual days of long service leave at a rate of pay of \$30 per hour, while the rate of pay to which you were entitled when taking leave is \$40 per hour, you are taken to have used 75 days of long service leave, worked out as follows:

$$100 \text{ actual days of long service leave} \times \frac{30}{40} = 75 \text{ days of long service leave you are taken to have used}$$

### **Subdivision 83-C—Genuine redundancy payments and early retirement scheme payments**

#### **Guide to Subdivision 83-C**

#### **83-165 What this Subdivision is about**

This Subdivision defines what are genuine redundancy payments and early retirement scheme payments.

If you receive a genuine redundancy payment or an early retirement scheme payment, you do not have to pay income tax on the payment so far as it does not exceed a certain amount worked out under this Subdivision.

A part of a genuine redundancy payment or an early retirement scheme payment that is not tax free under this Subdivision will normally be an employment termination payment.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 83-170

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**Table of sections**

**Operative provisions**

83-170	Tax-free treatment of genuine redundancy payments and early retirement scheme payments
83-175	What is a <i>genuine redundancy payment</i> ?
83-180	What is an <i>early retirement scheme payment</i> ?

**Operative provisions**

**83-170 Tax-free treatment of genuine redundancy payments and early retirement scheme payments**

- (1) This section applies if you receive a \*genuine redundancy payment or an \*early retirement scheme payment.

Note: A payment cannot be both a genuine redundancy payment and an early retirement scheme payment, because of the nature of each of these types of payment: see sections 83-175 and 83-180.

- (2) So much of the relevant payment as does not exceed the amount worked out under subsection (3) is not assessable income and is not \*exempt income.

- (3) Work out the amount using the formula:

$$\text{Base amount} + \left( \text{Service amount} \times \text{Years of service} \right)$$

where:

**base amount** means:

- (a) for the income year 2006-2007—\$6,783; and
- (b) for a later income year—the amount mentioned in paragraph (a) indexed annually.

Note: Subdivision 960-M shows you how to index the base amount.

**service amount** means:

- (a) for the income year 2006-2007—\$3,392; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) for a later income year—the amount mentioned in paragraph (a) indexed annually.

Note: Subdivision 960-M shows you how to index the service amount.

**years of service** means the number of whole years in the period, or sum of periods, of employment to which the payment relates.

Note: The remaining part of a genuine redundancy payment or an early retirement scheme payment (apart from the amount mentioned in subsection (3)) is an employment termination payment if section 82-130 applies to that part.

### **83-175 What is a *genuine redundancy payment*?**

- (1) A ***genuine redundancy payment*** is so much of a payment received by an employee who is dismissed from employment because the employee's position is genuinely redundant as exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of his or her employment at the time of the dismissal.
- (2) A ***genuine redundancy payment*** must satisfy the following conditions:
  - (a) the employee is dismissed before the earlier of the following:
    - (i) the day the employee reached \*pension age;
    - (ii) if the employee's employment would have terminated when he or she reached a particular age or completed a particular period of service—the day he or she would reach the age or complete the period of service (as the case may be);
  - (b) if the dismissal was not at \*arm's length—the payment does not exceed the amount that could reasonably be expected to be made if the dismissal were at arm's length;
  - (c) at the time of the dismissal, there was no \*arrangement between the employee and the employer, or between the employer and another person, to employ the employee after the dismissal.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 83-180

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- (3) However, a ***genuine redundancy payment*** does not include any part of a payment that was received by the employee in lieu of \*superannuation benefits to which the employee may have become entitled at the time the payment was received or at a later time.

*Payments not covered*

- (4) A payment is *not* a ***genuine redundancy payment*** if it is a payment mentioned in section 82-135 (apart from paragraph 82-135(e)).

Note: Paragraph 82-135(e) provides that the part of a genuine redundancy payment or an early retirement scheme payment worked out under section 83-170 is not an employment termination payment.

**83-180 What is an *early retirement scheme payment*?**

- (1) An ***early retirement scheme payment*** is so much of a payment received by an employee because the employee retires under an \*early retirement scheme as exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of his or her employment at the time of the retirement.
- (2) An ***early retirement scheme payment*** must satisfy the following conditions:
- (a) the employee retires before the earlier of the following:
    - (i) the day the employee reached \*pension age;
    - (ii) if the employee's employment would have terminated when he or she reached a particular age or completed a particular period of service—the day he or she would reach the age or complete the period of service (as the case may be);
  - (b) if the retirement is not at \*arm's length—the payment does not exceed the amount that could reasonably be expected to be made if the retirement were at arm's length;
  - (c) at the time of the retirement, there was no \*arrangement between the employee and the employer, or between the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



employer and another person, to employ the employee after the retirement.

- (3) A scheme is an **early retirement scheme** if:
- (a) all the employer's employees who comprise such a class of employees as the Commissioner approves may participate in the scheme; and
  - (b) the employer's purpose in implementing the scheme is to rationalise or re-organise the employer's operations by making any change to the employer's operations, or the nature of the work force, that the Commissioner approves; and
  - (c) before the scheme is implemented, the Commissioner, by written instrument, approves the scheme as an early retirement scheme for the purposes of this section.
- (4) A scheme is also an **early retirement scheme** if:
- (a) paragraph (3)(a) or (b) does not apply; and
  - (b) the Commissioner is satisfied that special circumstances exist in relation to the scheme that make it reasonable to approve the scheme; and
  - (c) before the scheme is implemented, the Commissioner, by written instrument, approves the scheme as an early retirement scheme for the purposes of this section.
- (5) However, an **early retirement scheme payment** does not include any part of the payment that was paid to the employee in lieu of \*superannuation benefits to which the employee may have become entitled at the time the payment was made or at a later time.

*Payments not covered*

- (6) A payment is *not* an **early retirement scheme payment** if it is a payment mentioned in section 82-135 (apart from paragraph 82-135(e)).

Note: Paragraph 82-135(e) provides that the part of a genuine redundancy payment or an early retirement scheme payment worked out under section 83-170 is not an employment termination payment.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-40** Rules affecting employees and other taxpayers receiving PAYG withholding payments

**Division 83** Other payments on termination of employment

Section 83-230

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**Subdivision 83-D—Foreign termination payments**

**Guide to Subdivision 83-D**

**83-230 What this Subdivision is about**

This Subdivision deals with termination payments that arise out of foreign employment.

These payments are not employment termination payments, and are tax free (except for amounts worked out under this Subdivision).

**Table of sections**

**Operative provisions**

83-235 Termination payments tax free—foreign resident period

83-240 Termination payments tax free—Australian resident period

**Operative provisions**

**83-235 Termination payments tax free—foreign resident period**

A payment received by you is not assessable income and is not \*exempt income if:

- (a) it was received in consequence of the termination of your employment in a foreign country; and
- (b) it is not a \*superannuation benefit; and
- (c) it is not a payment of a pension or an \*annuity (whether or not the payment is a superannuation benefit); and
- (d) it relates only to a period of employment when you were not an Australian resident.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**83-240 Termination payments tax free—Australian resident period**

- (1) A payment received by you is not assessable income and is not \*exempt income if:
- (a) it was received in consequence of:
    - (i) the termination of your employment in a foreign country; or
    - (ii) the termination of your engagement on qualifying service on an approved project (within the meaning of section 23AF of the *Income Tax Assessment Act 1936*), in relation to a foreign country; and
  - (b) it relates only to the period of that employment or engagement; and
  - (c) it is not a \*superannuation benefit; and
  - (d) it is not a payment of a pension or an \*annuity (whether or not the payment is a superannuation benefit); and
  - (e) you were an Australian resident during the period of the employment or engagement; and
  - (f) the payment is not exempt from income tax under the law of the foreign country; and
  - (g) for a period of employment—your foreign earnings from the employment are exempt from income tax under section 23AG of the *Income Tax Assessment Act 1936*; and
  - (h) for a period of engagement—your \*eligible foreign remuneration from the service is exempt from income tax under section 23AF of that Act.
- (2) For the purposes of subparagraph (1)(a)(ii), treat the termination of engagement on qualifying service on an approved project as including:
- (a) retirement from the engagement; and
  - (b) cessation of the engagement because of the person's death.

Note: The termination of a person's employment is treated in the same way: see section 80-10.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-40** Rules affecting employees and other taxpayers receiving PAYG withholding payments

**Division 83** Other payments on termination of employment

Section 83-290

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**Subdivision 83-E—Other payments**

**Guide to Subdivision 83-E**

**83-290 What this Subdivision is about**

If a payment you receive in consequence of the termination of your employment is made more than 12 months after the termination of your employment, it does not qualify as an employment termination payment, subject to certain exceptions (see section 82-130).

The payment is treated as assessable income and no tax concession is allowed under Division 82.

**Table of sections**

**Operative provisions**

83-295 Termination payments made more than 12 months after termination etc.

**Operative provisions**

**83-295 Termination payments made more than 12 months after termination etc.**

A payment received by you that would be an \*employment termination payment but for paragraph 82-130(1)(b) is assessable income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 83A—Employee share schemes**

### **Table of Subdivisions**

	Guide to Division 83A
83A-A	Objects of Division and key concepts
83A-B	Immediate inclusion of discount in assessable income
83A-C	Deferred inclusion of gain in assessable income
83A-D	Deduction for employer
83A-E	Miscellaneous

### **Guide to Division 83A**

#### **83A-1 What this Division is about**

Your assessable income includes discounts on shares, rights and stapled securities you (or your associate) acquire under an employee share scheme.

You may be entitled:

- (a) to have the amount included in your assessable income reduced; or
- (b) to have the income year in which it is included deferred.

### **Subdivision 83A-A—Objects of Division and key concepts**

#### **Table of sections**

83A-5	Objects of Division
83A-10	Meaning of <i>ESS interest</i> and <i>employee share scheme</i>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 83A-5

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**83A-5 Objects of Division**

The objects of this Division are:

- (a) to ensure that benefits provided to employees under \*employee share schemes are subject to income tax at the employees' marginal rates under \*income tax law (instead of being subject to \*fringe benefits tax law); and
- (b) to increase the extent to which the interests of employees are aligned with those of their employers, by providing a tax concession to encourage lower and middle income earners to acquire \*shares under such schemes; and
- (c) to increase the number of new entrepreneurial companies in Australia by assisting them to attract and retain employees by providing those employees with a tax concession for acquiring shares under such schemes.

**83A-10 Meaning of *ESS interest* and *employee share scheme***

- (1) An ***ESS interest***, in a company, is a beneficial interest in:
  - (a) a \*share in the company; or
  - (b) a right to acquire a beneficial interest in a share in the company.
- (2) An ***employee share scheme*** is a \*scheme under which \*ESS interests in a company are provided to employees, or \*associates of employees, (including past or prospective employees) of:
  - (a) the company; or
  - (b) \*subsidiaries of the company;in relation to the employees' employment.

Note: See section 83A-325 for relationships similar to employment.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 83A-B—Immediate inclusion of discount in assessable income**

### **Guide to Subdivision 83A-B**

#### **83A-15 What this Subdivision is about**

Generally, a discount you receive on shares, rights or stapled securities you acquire under an employee share scheme is included in your assessable income when you acquire the beneficial interest in those shares, rights or securities.

You may be entitled to reduce the amount included in your assessable income if you meet one of 2 sets of conditions.

If you are a foreign resident, only the part of the discount that relates to your employment in Australia is included in your assessable income.

#### **Table of sections**

##### **Operative provisions**

83A-20	Application of Subdivision
83A-25	Discount to be included in assessable income
83A-30	Amount for which discounted ESS interest acquired
83A-33	Reducing amounts included in assessable income—start ups
83A-35	Reducing amounts included in assessable income—other cases
83A-45	Further conditions for reducing amounts included in assessable income

#### **Operative provisions**

##### **83A-20 Application of Subdivision**

- (1) This Subdivision applies to an \*ESS interest if you acquire the interest under an \*employee share scheme at a discount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 2** Liability rules of general application

**Part 2-40** Rules affecting employees and other taxpayers receiving PAYG withholding payments

**Division 83A** Employee share schemes

**Section 83A-25**

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Note 1: This Subdivision does not apply if Subdivision 83A-C applies: see section 83A-105.

Note 2: If an associate of yours acquires an interest in relation to your employment, this Division applies as if you, rather than your associate, acquired the interest: see section 83A-305.

- (2) However, this Subdivision does not apply if the \*ESS interest is a beneficial interest in a \*share that you acquire as a result of exercising a right, if you acquired a beneficial interest in the right under an \*employee share scheme.

**83A-25 Discount to be included in assessable income**

- (1) Your assessable income for the income year in which you acquire the \*ESS interest includes the discount given in relation to the interest.

Note: Regulations made for section 83A-315 may be relevant to working out whether you acquire the ESS interest at a discount.

- (2) Treat an amount included in your assessable income under subsection (1) as being from a source other than an \*Australian source to the extent that it relates to your employment outside Australia.

Note: For the CGT treatment of employee share schemes, see Subdivision 130-D.

**83A-30 Amount for which discounted ESS interest acquired**

- (1) For the purposes of this Act (other than this Division), the \*ESS interest (and the \*share or right of which it forms part) is taken to have been acquired for its \*market value (rather than for its discounted value).

Note: Regulations made for the purposes of section 83A-315 may substitute a different amount for the market value of the ESS interest.

- (2) Subsection (1) does not apply to an \*ESS interest that is a beneficial interest in a right (or to the right of which it forms part),

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



if section 83A-33 (about start ups) reduces the amount to be included in your assessable income in relation to the interest.

### **83A-33 Reducing amounts included in assessable income—start ups**

- (1) Reduce the total amount included in your assessable income under subsection 83A-25(1) for an income year by the total of the amounts included in your assessable income under that subsection, for the income year, for \*ESS interests to which all of the following provisions apply:
  - (a) subsections (2) to (6) of this section;
  - (b) section 83A-45 (about further conditions);
  - (c) for ESS interests that are beneficial interests in \*shares—subsection 83A-105(2) (about broad availability of schemes).

#### *No equity interests listed on a stock exchange*

- (2) This subsection applies to an \*ESS interest in a company (the **first company**) if no \*equity interests in any of the following companies are listed for quotation in the official list of any \*approved stock exchange at the end of the first company's most recent income year before you acquired the interest:
  - (a) the first company;
  - (b) any \*subsidiary of the first company at the end of that income year;
  - (c) any holding company (within the meaning of the *Corporations Act 2001*) of the first company at the end of that income year;
  - (d) any subsidiary of a holding company (within the meaning of that Act) of the first company at the end of that income year.

Note: For identifying any holding company, see also subsection (7).

#### *Incorporated for less than 10 years*

- (3) This subsection applies to an \*ESS interest in a company if:
  - (a) the company (the **first company**); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Section 83A-33**

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(b) each of the other companies referred to in subsection (2); was incorporated by or under an \*Australian law or \*foreign law less than 10 years before the end of the first company's most recent income year before you acquired the interest.

*Company has aggregated turnover not exceeding \$50 million*

- (4) This subsection applies to an \*ESS interest in a company if the company has an \*aggregated turnover not exceeding \$50 million for the company's most recent income year before the income year in which you acquire the ESS interest.

Note: For working out aggregated turnover, see also subsection (7).

*Conditions relating to market value*

- (5) This subsection applies to an \*ESS interest in a company if:
- (a) in the case of an ESS interest that is a beneficial interest in a \*share—the discount on the ESS interest is no more than 15% of its \*market value when you acquire it; or
  - (b) in the case of an ESS interest that is a beneficial interest in a right—the amount that must be paid to exercise the right is greater than or equal to the market value of an ordinary share in the company when you acquire the ESS interest.

*Employer to be an Australian resident company*

- (6) This subsection applies to an \*ESS interest you acquire under an \*employee share scheme if, when you acquire the interest, your employer is an Australian resident.

*Disregard certain investments*

- (7) For the purposes of subsections (2) and (4), disregard:
- (a) \*eligible venture capital investments by a \*VCLP, \*ESVCLP or \*AFOF; and
  - (b) investments by an \*exempt entity that is a \*deductible gift recipient;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

when identifying any holding company (within the meaning of the *Corporations Act 2001*) or working out \*aggregated turnover.

### **83A-35 Reducing amounts included in assessable income—other cases**

#### *Reduction and income test*

- (1) Reduce the total amount included in your assessable income under subsection 83A-25(1) for an income year by the total of the amounts included in your assessable income under that subsection, for the income year, for \*ESS interests to which all of the following provisions apply:
  - (a) subsections (6) and (7) of this section;
  - (b) section 83A-45 (about further conditions).
- (2) However:
  - (a) do not reduce the total amount by more than \$1,000; and
  - (b) only make the reduction if the sum of the following does not exceed \$180,000:
    - (i) your taxable income for the income year (including any amount that would be included in your taxable income if you disregarded this section, but not including your \*assessable FHSS released amount for the income year);
    - (ii) your \*reportable fringe benefits total for the income year;
    - (iii) your \*reportable superannuation contributions (if any) for the income year;
    - (iv) your \*total net investment loss for the income year; and
  - (c) subsection (1) does not apply if section 83A-33 (about start ups) reduces the amount to be included in your assessable income for the income year for the \*ESS interests.

#### *Scheme must be non-discriminatory*

- (6) This subsection applies to an \*ESS interest you acquire under an \*employee share scheme if, when you acquire the interest, both:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Section 83A-35**

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- (a) the employee share scheme; and
- (b) any scheme for the provision of financial assistance in respect of acquisitions of ESS interests under the employee share scheme;

are operated on a non-discriminatory basis in relation to at least 75% of the permanent employees of your employer who have completed at least 3 years of service (whether continuous or non-continuous) with your employer and who are Australian residents.

*No risk of losing interest or share under the conditions of the scheme*

- (7) This subsection applies to an \*ESS interest you acquire under an \*employee share scheme if, when you acquire the interest:
  - (a) if the ESS interest is a beneficial interest in a \*share—there is no real risk that, under the conditions of the scheme, you will forfeit or lose the ESS interest (other than by disposing of it); or
  - (b) if the ESS interest is a beneficial interest in a right to acquire a beneficial interest in a \*share:
    - (i) there is no real risk that, under the conditions of the scheme, you will forfeit or lose the ESS interest (other than by disposing of it, exercising the right or letting the right lapse); and
    - (ii) there is no real risk that, under the conditions of the scheme, if you exercise the right, you will forfeit or lose the beneficial interest in the share (other than by disposing of it).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**83A-45 Further conditions for reducing amounts included in assessable income**

*Employment*

- (1) This subsection applies to an \*ESS interest in a company if, when you acquire the interest, you are employed by:
- (a) the company; or
  - (b) a \*subsidiary of the company.

*Employee share scheme relates only to ordinary shares*

- (2) This subsection applies to an \*ESS interest you acquire under an \*employee share scheme if, when you acquire the interest, all the ESS interests available for acquisition under the scheme relate to ordinary \*shares.

*Integrity rule about share trading and investment companies.*

- (3) This subsection applies to an \*ESS interest in a company unless, when you acquire the interest:
- (a) the predominant business of the company (whether or not stated in its constituent documents) is the acquisition, sale or holding of \*shares, securities or other investments (whether directly or indirectly through one or more companies, partnerships or trusts); and
  - (b) you are employed by the company; and
  - (c) you are also employed by any other company that is:
    - (i) a \*subsidiary of the first company; or
    - (ii) a holding company (within the meaning of the *Corporations Act 2001*) of the first company; or
    - (iii) a subsidiary of a holding company (within the meaning of the *Corporations Act 2001*) of the first company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 83A-45

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*Minimum holding period*

- (4) This subsection applies to an \*ESS interest you acquire under an \*employee share scheme if, at all times during the interest's \*minimum holding period, the scheme is operated so that every acquirer of an ESS interest (the *scheme interest*) under the scheme is not permitted to dispose of:

- (a) the scheme interest; or
- (b) a beneficial interest in a \*share acquired as a result of the scheme interest;

during the scheme interest's minimum holding period.

Note: This subsection is taken to apply in the case of a takeover or restructure: see subsection 83A-130(3).

- (5) An \*ESS interest's *minimum holding period* is the period starting when the interest is acquired under the \*employee share scheme and ending at the earlier of:

- (a) 3 years later, or such earlier time as the Commissioner allows if the Commissioner is satisfied that:
  - (i) the operators of the scheme intended for subsection (4) to apply to the interest during the 3 years after that acquisition of the interest; and
  - (ii) at the earlier time that the Commissioner allows, all \*membership interests in the relevant company were disposed of under a particular \*scheme; and
- (b) when the acquirer of the interest ceases being employed by the relevant employer.

*10% limit on shareholding and voting power*

- (6) This subsection applies to an \*ESS interest in a company if, immediately after you acquire the interest:
- (a) you do not hold a beneficial interest in more than 10% of the \*shares in the company; and
  - (b) you are not in a position to cast, or to control the casting of, more than 10% of the maximum number of votes that might be cast at a general meeting of the company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (7) For the purposes of subsection (6), you are taken to:
- (a) hold a beneficial interest in any \*shares in the company that you can acquire under an \*ESS interest that is a beneficial interest in a right to acquire a beneficial interest in such shares; and
  - (b) be in a position to cast votes as a result of holding that interest in those shares.

### **Subdivision 83A-C—Deferred inclusion of gain in assessable income**

#### **Guide to Subdivision 83A-C**

##### **83A-100 What this Subdivision is about**

If there is a real risk you might forfeit the share, right or stapled security you acquired under an employee share scheme, you don't include the discount in your assessable income when you acquired it. Instead, in the first income year you are able to dispose of the share, right or security, your assessable income will include any gain you have made to that time. If 15 years pass, the gain is included in that income year instead.

This deferred taxing point can also apply to:

- (a) a share or stapled security you acquire under salary sacrifice arrangements, if you get no more than \$5,000 worth of shares under those arrangements; or
- (b) a right, if the scheme restricted you immediately disposing of the right, and stated that this Subdivision applies.

#### **Table of sections**

##### **Main provisions**

83A-105 Application of Subdivision

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- 83A-110 Amount to be included in assessable income
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- 83A-120 ESS deferred taxing point—rights to acquire shares
- 83A-125 Tax treatment of ESS interests held after ESS deferred taxing points

**Takeovers and restructures**

- 83A-130 Takeovers and restructures

**Main provisions**

**83A-105 Application of Subdivision**

*Scope of Subdivision*

- (1) This Subdivision applies, and Subdivision 83A-B does not apply, to an \*ESS interest in a company if:
  - (a) Subdivision 83A-B would, apart from this section, apply to the interest (see section 83A-20); and
  - (aa) after applying section 83A-315, there is still a discount given in relation to the interest; and
  - (ab) section 83A-33 (about start ups) does not reduce the amount to be included in your assessable income in relation to the interest; and
  - (b) subsections 83A-45(1), (2), (3) and (6) apply to the interest; and
  - (c) if the interest is a beneficial interest in a \*share:
    - (i) subsection (2) of this section applies to the interest; and
    - (ii) subsection (3) or (4) applies to the interest; and
  - (d) if the interest is a beneficial interest in a right to acquire a beneficial interest in a share—subsection (3) or (6) applies to the interest.

- Note: Subsections 83A-45(1), (2), (3) and (6) contain conditions relating to the following:
- (a) your employment;
  - (b) the types of shares available under the employee share scheme;
  - (c) share trading and investment companies;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(d) your shareholding and voting power in the company.

*Broad availability of schemes*

- (2) This subsection applies to an \*ESS interest you acquire under an \*employee share scheme if, when you acquire the interest, at least 75% of the permanent employees of your employer who have completed at least 3 years of service (whether continuous or non-continuous) with your employer and who are Australian residents are, or at some earlier time had been, entitled to acquire:
- (a) ESS interests under the scheme; or
  - (b) ESS interests in:
    - (i) your employer; or
    - (ii) a holding company (within the meaning of the *Corporations Act 2001*) of your employer; under another employee share scheme.

*Real risk of losing interest or share under the conditions of the scheme*

- (3) This subsection applies to an \*ESS interest you acquire under an \*employee share scheme if, when you acquire the interest:
- (a) if the ESS interest is a beneficial interest in a \*share—there is a real risk that, under the conditions of the scheme, you will forfeit or lose the ESS interest (other than by disposing of it); or
  - (b) if the ESS interest is a beneficial interest in a right to acquire a beneficial interest in a share:
    - (i) there is a real risk that, under the conditions of the scheme, you will forfeit or lose the ESS interest (other than by disposing of it, exercising the right or letting the right lapse); or
    - (ii) there is a real risk that, under the conditions of the scheme, if you exercise the right, you will forfeit or lose the beneficial interest in the share (other than by disposing of it).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Section 83A-105**

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*Salary sacrifice arrangement*

- (4) This subsection applies to an \*ESS interest you acquire under an \*employee share scheme during an income year at a discount if:
- (a) the interest is provided:
    - (i) because you agreed to acquire the interest in return for a reduction in your salary or wages that would not have happened apart from the agreement; or
    - (ii) as part of your remuneration package, in circumstances where it is reasonable to conclude that your salary or wages would be greater if the interest was not made part of that package; and
  - (b) at the time you acquire the interest:
    - (i) the discount equals the \*market value of the ESS interest; and
    - (ii) all of the ESS interests available for acquisition under the scheme are ESS interests to which subsection (3) applies, beneficial interests in \*shares, or both; and
    - (iii) the governing rules of the scheme expressly state that this Subdivision applies to the scheme (subject to the requirements of this Act); and
  - (c) the total \*market value of the \*ESS interests in your employer and any holding company (within the meaning of the *Corporations Act 2001*) of your employer:
    - (i) that you acquire during the year under any employee share scheme or schemes; and
    - (ii) to which both this Subdivision and this subsection apply;does not exceed \$5,000.
- (5) For the purposes of paragraph (4)(c), work out the \*market value of each \*ESS interest as at the time you acquire it.

Note: Regulations made for the purposes of section 83A-315 may substitute a different amount for the market value of the ESS interest.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Scheme's rules state that this Subdivision applies*

- (6) This subsection applies to an \*ESS interest you acquire under an \*employee share scheme during an income year at a discount if:
- (a) the interest is a beneficial interest in a right; and
  - (b) at the time you acquired the interest:
    - (i) the scheme genuinely restricted you immediately disposing of the right; and
    - (ii) the governing rules of the scheme expressly stated that this Subdivision applies to the scheme (subject to the requirements of this Act).

### **83A-110 Amount to be included in assessable income**

- (1) Your assessable income for the income year in which the \*ESS deferred taxing point for the \*ESS interest occurs includes the \*market value of the interest at the ESS deferred taxing point, reduced by the \*cost base of the interest.

Note: Regulations made for the purposes of section 83A-315 may substitute a different amount for the market value of the ESS interest.

- (2) Treat an amount included in your assessable income under subsection (1) as being from a source other than an \*Australian source to the extent that it relates to your employment outside Australia.

Note: For the CGT treatment of employee share schemes, see Subdivision 130-D.

### **83A-115 ESS deferred taxing point—shares**

*Scope*

- (1) This section applies if the \*ESS interest is a beneficial interest in a \*share.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 83A-120

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*Meaning of ESS deferred taxing point*

- (2) The **ESS deferred taxing point** for the \*ESS interest is the earlier of the times mentioned in subsections (4) and (6).
- (3) However, the **ESS deferred taxing point** for the \*ESS interest is instead the time you dispose of the interest, if that time occurs within 30 days after the time worked out under subsection (2).

*No restrictions on disposing of share*

- (4) The first possible taxing point is the earliest time when:
  - (a) there is no real risk that, under the conditions of the \*employee share scheme, you will forfeit or lose the \*ESS interest (other than by disposing of it); and
  - (b) if, at the time you acquired the interest, the scheme genuinely restricted you immediately disposing of the interest—the scheme no longer so restricts you.

*Maximum time period for deferral*

- (6) The 2nd possible taxing point is the end of the 15 year period starting when you acquired the interest.

**83A-120 ESS deferred taxing point—rights to acquire shares**

*Scope*

- (1) This section applies if the \*ESS interest is a beneficial interest in a right to acquire a beneficial interest in a \*share.

*Meaning of ESS deferred taxing point*

- (2) The **ESS deferred taxing point** for the \*ESS interest is the earliest of the times mentioned in subsections (4), (6) and (7).
- (3) However, the **ESS deferred taxing point** for the \*ESS interest is:
  - (a) the time you dispose of the ESS interest (other than by exercising the right); or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) if you exercise the right—the time you dispose of the beneficial interest in the \*share;  
if that time occurs within 30 days after the time worked out under subsection (2).

*No restrictions on disposing of right*

- (4) The first possible taxing point is the earliest time when:
- (a) you have not exercised the right; and
  - (b) there is no real risk that, under the conditions of the \*employee share scheme, you will forfeit or lose the \*ESS interest (other than by disposing of it, exercising the right or letting the right lapse); and
  - (c) if, at the time you acquired the ESS interest, the scheme genuinely restricted you immediately disposing of the ESS interest—the scheme no longer so restricts you.

*Maximum time period for deferral*

- (6) The 2nd possible taxing point is the end of the 15 year period starting when you acquired the interest.

*No restrictions on disposing of a share after exercising the right*

- (7) The 3rd possible taxing point is the earliest time when:
- (a) you exercise the right; and
  - (c) there is no real risk that, under the conditions of the scheme, after exercising the right, you will forfeit or lose the beneficial interest in the \*share (other than by disposing of it); and
  - (d) if, at the time you acquired the ESS interest, the scheme genuinely restricted you immediately disposing of the beneficial interest in the share if you exercised the right—the scheme no longer so restricts you.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 83A-125

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**83A-125 Tax treatment of ESS interests held after ESS deferred taxing points**

For the purposes of this Act (other than this Division), the \*ESS interest (and the \*share or right of which it forms part) is taken to have been acquired immediately after the \*ESS deferred taxing point for the interest for its \*market value, unless the ESS deferred taxing point occurs at the time the interest is disposed of.

Note: Regulations made for the purposes of section 83A-315 may substitute a different amount for the market value of the ESS interest.

**Takeovers and restructures**

**83A-130 Takeovers and restructures**

*Object and scope*

- (1) The object of this section is to allow this Division to continue to apply if:
  - (a) at least one of the following applies:
    - (i) an \*arrangement (the **takeover**) is entered into that is intended to result in a company (the **old company**) becoming a \*100% subsidiary of another company;
    - (ii) \*ESS interests in a company (the **old company**) acquired under \*employee share schemes can reasonably be regarded as having been replaced, wholly or partly, by ESS interests in one or more other companies as a result of a change (the **restructure**) in the ownership (including the structure of the ownership) of the old company or a \*demerger subsidiary of the old company; and
  - (b) just before the takeover or restructure, you held ESS interests (the **old interests**) in the old company that you acquired under an employee share scheme.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Treat new interests as continuations of old interests*

- (2) For the purposes of this Division, treat any \*ESS interests (the ***new interests***) in a company (the ***new company***) that you acquire in connection with the takeover or restructure as a continuation of the old interests, to the extent that:
- (a) as a result of the arrangement or change, you stop holding the old interests; and
  - (b) the new interests can reasonably be regarded as matching any of the old interests.

Note: In determining to what extent something can reasonably be regarded as matching any of the old interests, one of the factors to consider is the respective market values of that thing and of the old interests.

- (3) Subsection 83A-45(4) (about the minimum holding period) is taken to apply to the \*ESS interests.
- (4) Subsections (2) and (3) only apply if the new interests relate to ordinary \*shares.

*Old interest not matched by new interests*

- (5) For the purposes of this Division, treat yourself as having disposed of the old interests to the extent that, in connection with the takeover or restructure, you acquire anything that:
- (a) can reasonably be regarded as matching any of the old interests; but
  - (b) is not treated by subsection (2) as a continuation of those interests.

*Continuation of your employment*

- (6) For the purposes of this Division, treat your employment by:
- (a) the new company; or
  - (b) a \*subsidiary of the new company; or
  - (c) a holding company (within the meaning of the *Corporations Act 2001*) of the new company; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(d) a subsidiary of a holding company (within the meaning of the *Corporations Act 2001*) of the new company;  
as a continuation of the employment in respect of which you acquired the old interests.

*Apportionment of cost base of old interests*

- (7) Treat yourself as having given, as consideration for the assets mentioned in subsection (8), the amount worked out by apportioning among those assets, according to their respective \*market values immediately after the takeover or restructure, the total of:
- (a) the \*cost bases of the old interests when you stop holding them; and
  - (b) the cost bases of the assets mentioned in paragraph (8)(b) immediately after the takeover or restructure (ignoring the effect of this subsection).
- (8) The assets are:
- (a) the things that:
    - (i) you acquired in connection with the takeover or restructure; and
    - (ii) can reasonably be regarded as matching the old interests;  
(including all of the new interests); and
  - (b) in a case covered by subparagraph (1)(a)(ii)—any \*ESS interests in the old company that:
    - (i) you held just before, and continue to hold just after, the restructure; and
    - (ii) that can reasonably be regarded as matching the old interests.

*Exceptions*

- (9) This section only applies if:
- (a) at or about the time you acquire the new interests, you are employed as mentioned in subsection (6); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (b) at the time you acquire the new interests:
  - (i) you do not hold a beneficial interest in more than 10% of the \*shares in the new company; and
  - (ii) you are not in a position to cast, or to control the casting of, more than 10% of the maximum number of votes that might be cast at a general meeting of the new company.
  
- (10) For the purposes of paragraph (9)(b), you are taken to:
  - (a) hold a beneficial interest in any \*shares in the new company that you can acquire under an \*ESS interest that is a beneficial interest in a right to acquire a beneficial interest in such shares; and
  - (b) be in a position to cast votes as a result of holding that interest in those shares.

### **Subdivision 83A-D—Deduction for employer**

#### **Guide to Subdivision 83A-D**

##### **83A-200 What this Subdivision is about**

You can deduct an amount for shares, rights or stapled securities you provide to your employees under an employee share scheme if they are eligible for a reduction in their assessable income under section 83A-35. The amount you can deduct is equal to that reduction.

You must defer any deduction you are entitled to for amounts you provide to finance your employees acquiring interests in shares, rights or stapled securities under an employee share scheme until the employees have actually acquired those interests.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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83A-205 Deduction for employer

83A-210 Timing of general deductions

**Operative provisions**

**83A-205 Deduction for employer**

- (1) You can deduct an amount for an income year if:
  - (a) during the year you provided one or more \*ESS interests to an individual under an \*employee share scheme; and
  - (b) you did so as:
    - (i) the employer of the individual; or
    - (ii) a holding company (within the meaning of the *Corporations Act 2001*) of the employer of the individual; and
  - (c) section 83A-35 applies to reduce the amount included in the individual's assessable income under subsection 83A-25(1) in relation to some or all of the interests.
- (2) Disregard paragraph 83A-35(2)(b) (income test) for the purposes of paragraph (1)(c) of this section.
- (3) The amount of the deduction is the amount of the reduction mentioned in paragraph (1)(c).

*Deduction to be apportioned if interest provided by multiple entities*

- (4) The amount of the deduction worked out under subsection (3) must be apportioned between 2 or more entities on a reasonable basis if the entities jointly provide an \*ESS interest for which an amount can be deducted under subsection (1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **83A-210 Timing of general deductions**

If:

- (a) at a particular time, you provide another entity with money or other property:
    - (i) under an \*arrangement; and
    - (ii) for the purpose of enabling an individual (the *ultimate beneficiary*) to acquire, directly or indirectly, an \*ESS interest under an \*employee share scheme in relation to the ultimate beneficiary's employment (including past or prospective employment); and
  - (b) that particular time occurs before the time (the *acquisition time*) the ultimate beneficiary acquires the \*ESS interest;
- then, for the purpose of determining the income year (if any) in which you can deduct an amount in respect of the provision of the money or other property, you are taken to have provided the money or other property at the acquisition time.

### **Subdivision 83A-E—Miscellaneous**

#### **Table of sections**

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83A-310	Forfeiture etc. of ESS interest
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83A-330	Application of Division to ceasing employment
83A-335	Application of Division to stapled securities
83A-340	Application of Division to indeterminate rights

### **83A-305 Acquisition by associates**

- (1) If an \*associate (other than an \*employee share trust) of an individual acquires an \*ESS interest in relation to the individual's employment (including past or prospective employment), then, for the purposes of this Division:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) treat the interest as having being acquired by the individual (instead of the associate); and
- (b) treat any circumstance, right or obligation existing or not existing in relation to the interest in relation to the associate as existing or not existing in relation to the individual; and
- (c) treat anything done or not done by or in relation to the associate in relation to the interest as being done or not done by or in relation to the individual.

Example 1: The following are attributed to the employee, rather than to the associate:

- (a) the associate's voting rights;
- (b) the associate's ability or inability to dispose of the ESS interest;
- (c) whether there is a real risk that the associate may lose the ESS interest;
- (d) the associate's cost base for the ESS interest.

Example 2: If the associate disposes of the ESS interest, the employee is taken to have disposed of the ESS interest instead.

- (2) For the purposes of subsections 83A-45(6) and (7), subsection (1) of this section also applies if the \*associate acquired the \*ESS interest otherwise than in relation to the individual's employment.

**83A-310 Forfeiture etc. of ESS interest**

- (1) This Division (apart from this Subdivision) is taken never to have applied in relation to an \*ESS interest acquired by an individual under an \*employee share scheme if:
  - (a) disregarding this section, an amount is included in the individual's assessable income under this Division in relation to the interest; and
  - (b) either:
    - (i) the individual forfeits the interest; or
    - (ii) in the case of an ESS interest that is a beneficial interest in a right—the individual forfeits or loses the interest (without having disposed of the interest or exercised the right); and
  - (c) the forfeiture or loss is not the result of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) a choice made by the individual (other than a choice to which subsection (2) applies); or
  - (ii) a condition of the scheme that has the direct effect of protecting (wholly or partly) the individual against a fall in the \*market value of the interest.
- (2) This subsection applies to the following choices by the individual:
- (a) a choice to cease particular employment;
  - (b) in the case of an \*ESS interest that is a beneficial interest in a right:
    - (i) a choice not to exercise the right before it lapsed; or
    - (ii) a choice to allow the right to be cancelled.

### **83A-315 Market value of ESS interest**

- (1) Whenever this Division (other than section 83A-20) uses the \*market value of an \*ESS interest, instead use the amount specified in the regulations for the purposes of this section in relation to the interest, if the regulations specify such an amount.
- (2) To avoid doubt, apply the rule in subsection (1) to the \*market value component of any calculation for the purposes of this Division that involves market value.

Example: If the regulations specify an amount in relation to an ESS interest, use that amount instead of the market value of the interest in working out:

- (a) whether there is a discount given in relation to interest; and
- (b) if so—the amount of the discount.

### **83A-320 Interests in a trust**

- (1) This section applies if, at a time:
  - (a) you hold an interest in a trust whose assets include \*shares; and
  - (b) that interest corresponds to a particular number of the shares (even if the interest does not correspond to particular shares).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) For the purposes of this Division, treat yourself as holding at that time a beneficial interest in each of a number of the \*shares included in the assets of the trust equal to the number mentioned in paragraph (1)(b).
- (3) If there are 2 or more classes of \*shares included in the assets of the trust, this section operates separately in relation to each class as if the shares in that class were all the shares included in the assets of the trust.
- (4) This section applies to rights to acquire beneficial interests in \*shares in the same way it applies to shares.

Note: For the CGT treatment of employee share schemes, see Subdivision 130-D.

**83A-325 Application of Division to relationships similar to employment**

This Division applies to an individual covered by column 1 of an item in the table as if:

- (a) he or she were employed by the entity referred to in column 2 of that item; and
- (b) the thing referred to column 3 of that item constituted that employment.

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**Application of Division to relationships similar to employment**

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<b>Item</b>	<b>Column 1 This Division applies to an individual who:</b>	<b>Column 2 as if he or she were employed by:</b>	<b>Column 3 and this constituted that employment:</b>
1	receives, or is entitled to receive, *work and income support withholding payments (otherwise than as an employee)	the entity that pays or provides the work and income support withholding payments (or is liable to do so)	the relationship because of which the entity pays or provides the work and income support withholding payments to the individual (or is liable to do so).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Application of Division to relationships similar to employment**

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Item	Column 1 This Division applies to an individual who:	Column 2 as if he or she were employed by:	Column 3 and this constituted that employment:
2	is engaged in service in a foreign country as the holder of an office	the entity by whom the individual is so engaged	the holding of the office.
3	provides services to an entity (other than services covered by a previous item in this table and services provided as an employee)	the entity	the *arrangement between the individual and the entity under which those services are provided.

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**83A-330 Application of Division to ceasing employment**

For the purposes of this Division, you are treated as ceasing employment when you are no longer employed by any of the following:

- (a) your employer in that employment;
- (b) a holding company (within the meaning of the *Corporations Act 2001*) of your employer;
- (c) a \*subsidiary of your employer;
- (d) a \*subsidiary of a holding company (within the meaning of the *Corporations Act 2001*) of your employer.

**83A-335 Application of Division to stapled securities**

- (1) This Division applies in relation to a stapled security in the same way as it applies in relation to a \*share in a company, if at least one of the \*ownership interests that are stapled together to form the stapled security is a share in the company.

Note: This means the Division also applies to rights to acquire such a stapled security in the same way it applies to rights to acquire a share.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) This Division applies in relation to a stapled security in the same way as it applies in relation to an ordinary \*share in a company, if at least one of the \*ownership interests that are stapled together to form the stapled security is an ordinary share in the company.
- (3) For the purposes of this Division, in relation to a stapled security or right to acquire a beneficial interest in a stapled security, a company is taken to include (as part of the company) each \*stapled entity for the stapled security, if at least one of the \*ownership interests that are stapled together to form the stapled security is a \*share in the company.

**83A-340 Application of Division to indeterminate rights**

- (1) This section applies if:
  - (a) you acquire a beneficial interest in a right; and
  - (b) the right later becomes a right to acquire a beneficial interest in a \*share.

Example 1: You acquire a right to acquire, at a future time:

- (a) shares with a specified total value, rather than a specified number of shares; or
- (b) an indeterminate number of shares.

Example 2: You acquire a right under which the provider must provide you with either ESS interests or cash, whichever the provider chooses.

- (2) This Division applies as if the right had always been a right to acquire the beneficial interest in the \*share.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Part 2-42—Personal services income**

### **Division 84—Introduction**

#### **Guide to Part 2-42**

#### **84-1 What this Part is about**

This Part is about 2 issues relating to personal services income.

Division 85 limits the entitlements of individuals to deductions relating to their personal services income.

Division 86 sets out the tax consequences of individuals' personal services income being diverted to other entities (often called alienation of the income).

These Divisions do not affect individuals or other entities that conduct personal services businesses. Division 87 defines personal services businesses.

Note: This Part may not apply until the 2002-03 income year to participants in the prescribed payments system on 13 April 2000: see item 26 of Schedule 1 to the *New Business Tax System (Alienation of Personal Services Income) Act 2000*.

#### **Table of sections**

84-5	Meaning of <i>personal services income</i>
84-10	This Part does not imply that individuals are employees

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Operative provisions

### 84-5 Meaning of *personal services income*

- (1) Your \*ordinary income or \*statutory income, or the ordinary income or statutory income of any other entity, is your ***personal services income*** if the income is mainly a reward for your personal efforts or skills (or would mainly be such a reward if it was your income).

Example 1: NewIT Pty. Ltd. provides computer programming services, but Ron does all the work involved in providing those services. Ron uses the clients' equipment and software to do the work. NewIT's ordinary income from providing the services is Ron's personal services income because it is a reward for his personal efforts or skills.

Example 2: Trux Pty. Ltd. owns one semi-trailer, and Tom is the only person who drives it. Trux's ordinary income from transporting goods is not Tom's personal services income because it is produced mainly by use of the semi-trailer, and not mainly as a reward for Tom's personal efforts or skills.

Example 3: Jim works as an accountant for a large accounting firm that employs many accountants. None of the firm's ordinary income or statutory income is Jim's personal services income because it is produced mainly by the firm's business structure, and not mainly as a reward for Jim's personal efforts or skills.

- (2) Only individuals can have personal services income.
- (3) This section applies whether the income is for doing work or is for producing a result.
- (4) The fact that the income is payable under a contract does not stop the income being mainly a reward for your personal efforts or skills.

### 84-10 This Part does not imply that individuals are employees

The application of this Part to an individual does not imply, for the purposes of any \*Australian law or any instrument made under an Australian law, that the individual is an employee.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 85—Deductions relating to personal services income**

### **Guide to Division 85**

#### **85-1 What this Division is about**

This Division sets out amounts, relating to personal services income, that an individual cannot deduct. In particular, deductions that are unavailable to an employee are similarly unavailable to an individual who has personal services income and who is not an employee.

However, this Division does not apply if the individual is conducting a personal services business or receives the income as an employee or office holder.

#### **Table of sections**

85-5	Object of this Division
85-10	Deductions for non-employees relating to personal services income
85-15	Deductions for rent, mortgage interest, rates and land tax
85-20	Deductions for payments to associates etc.
85-25	Deductions for superannuation for associates
85-30	Exception: personal services businesses
85-35	Exception: employees, office holders and religious practitioners
85-40	Application of Subdivision 900-B to individuals who are not employees

### **Operative provisions**

#### **85-5 Object of this Division**

The object of this Division is to ensure that individuals who are not conducting \*personal services businesses cannot deduct certain amounts (such as amounts that employees cannot deduct).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Section 85-10**

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Note: This Division also affects the extent to which a personal services entity is entitled to deductions relating to gaining or producing an individual's personal services income: see section 86-60.

**85-10 Deductions for non-employees relating to personal services income**

- (1) You cannot deduct under this Act an amount to the extent that it relates to gaining or producing that part of your \*ordinary income or \*statutory income that is your \*personal services income if:
- (a) the income is not payable to you as an employee; and
  - (b) you would not be able to deduct the amount under this Act if the income were payable to you as an employee.

Example: Ruth is an architect who works as an independent contractor for one firm. She is not conducting a personal services business. On most days she travels from her home to the business premises of the firm, where she does her work. She also has a home office, where she does some of her work.

This section confirms that Ruth cannot deduct her expenses of travelling between her home and the firm's premises because she could not deduct them if she were an employee.

- (2) Subsection (1) does not stop you deducting an amount to the extent that it relates to:
- (a) gaining work; or  
Examples: Advertising, tendering and quoting for work.
  - (b) insuring against loss of your income or your income earning capacity; or  
Examples: Sickness, accident and disability insurance.
  - (c) insuring against liability arising from your acts or omissions in the course of earning income; or  
Examples: Public liability insurance and professional indemnity insurance.
  - (d) engaging an entity that is not your \*associate to perform work; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (e) engaging your \*associate to perform work that forms part of the principal work for which you gain or produce your \*personal services income; or
- (f) contributing to a fund in order to obtain \*superannuation benefits for yourself or for your \*SIS dependants in the event of your death; or

Note: For deductions for superannuation contributions: see Subdivision 290-C.

- (g) meeting your obligations under a \*workers' compensation law to pay premiums, contributions or similar payments or to make payments to an employee in respect of \*compensable work-related trauma; or
- (h) meeting your obligations, or exercising your rights, under the \*GST law.

### **85-15 Deductions for rent, mortgage interest, rates and land tax**

You cannot deduct under this Act an amount of rent, mortgage interest, rates or land tax:

- (a) for some or all of your residence; or
  - (b) for some or all of your \*associate's residence;
- to the extent that the amount relates to gaining or producing your \*personal services income.

### **85-20 Deductions for payments to associates etc.**

- (1) You cannot deduct under this Act:
  - (a) any payment you make to your \*associate; or
  - (b) any amount you incur arising from an obligation you have to your associate;to the extent that the payment or amount relates to gaining or producing your \*personal services income.
- (2) Subsection (1) does not stop you deducting a payment or amount to the extent that it relates to engaging your \*associate to perform

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 85-25

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work that forms part of the principal work for which you gain or produce your \*personal services income.

- (3) An amount or payment that you cannot deduct because of this section is neither assessable income nor \*exempt income of your \*associate.

**85-25 Deductions for superannuation for associates**

- (1) You cannot deduct under this Act a contribution you make to a fund or an \*RSA to provide for \*superannuation benefits payable for your \*associate, to the extent that the associate's work for you relates to gaining or producing your \*personal services income.
- (2) Subsection (1) does not stop you deducting a contribution to the extent that your \*associate's performance of work forms part of the principal work for which you gain or produce your \*personal services income.
- (3) However, if subsection (2) applies, your deduction cannot exceed the amount you would have to contribute, for the benefit of the \*associate, to a \*complying superannuation fund or an \*RSA in order to ensure that you did not have any \*individual superannuation guarantee shortfalls in respect of the associate for any of the \*quarters in the income year.
- (4) To work out the amount you would have to contribute for the purposes of subsection (3), the \*associate's salary or wages, for the purposes of the *Superannuation Guarantee (Administration) Act 1992*, are taken to be the amount that neither section 85-10 nor 85-20 prevent you deducting for salary or wages you paid to the associate.

Note: See paragraph 85-10(2)(e) for deductions relating to employment of associates.

**85-30 Exception: personal services businesses**

This Division does not apply to an amount, payment or contribution to the extent that the amount, payment or contribution

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

relates to income from you conducting a \*personal services business.

**85-35 Exception: employees, office holders and religious practitioners**

- (1) This Division does not apply to an amount, payment or contribution to the extent that the amount, payment or contribution relates to \*personal services income that you receive as:
  - (a) an employee; or
  - (b) an individual referred to in paragraph 12-45(1)(a), (b), (c), (d) or (e) (about payments to office holders) in Schedule 1 to the *Taxation Administration Act 1953*.
- (2) This Division does not apply to an amount, payment or contribution to the extent that the amount, payment or contribution relates to a payment referred to in section 12-47 in Schedule 1 to the *Taxation Administration Act 1953* (payments to \*religious practitioners).

**85-40 Application of Subdivision 900-B to individuals who are not employees**

This Division does not have the effect of applying Subdivision 900-B (about substantiating work expenses) to an individual who is not an employee.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 86—Alienation of personal services income**

### **Table of Subdivisions**

#### **Guide to Division 86**

- 86-A General
- 86-B Entitlement to deductions

### **Guide to Division 86**

#### **86-1 What this Division is about**

Income from the rendering of your personal services is treated as your assessable income if it is the income of another entity and is not promptly paid to you as salary.

However, this does not apply if the other entity is conducting a personal services business.

There are limits to the other entity's entitlement to deductions to offset against the amount treated as your income.

#### **86-5 A simple description of what this Division does**

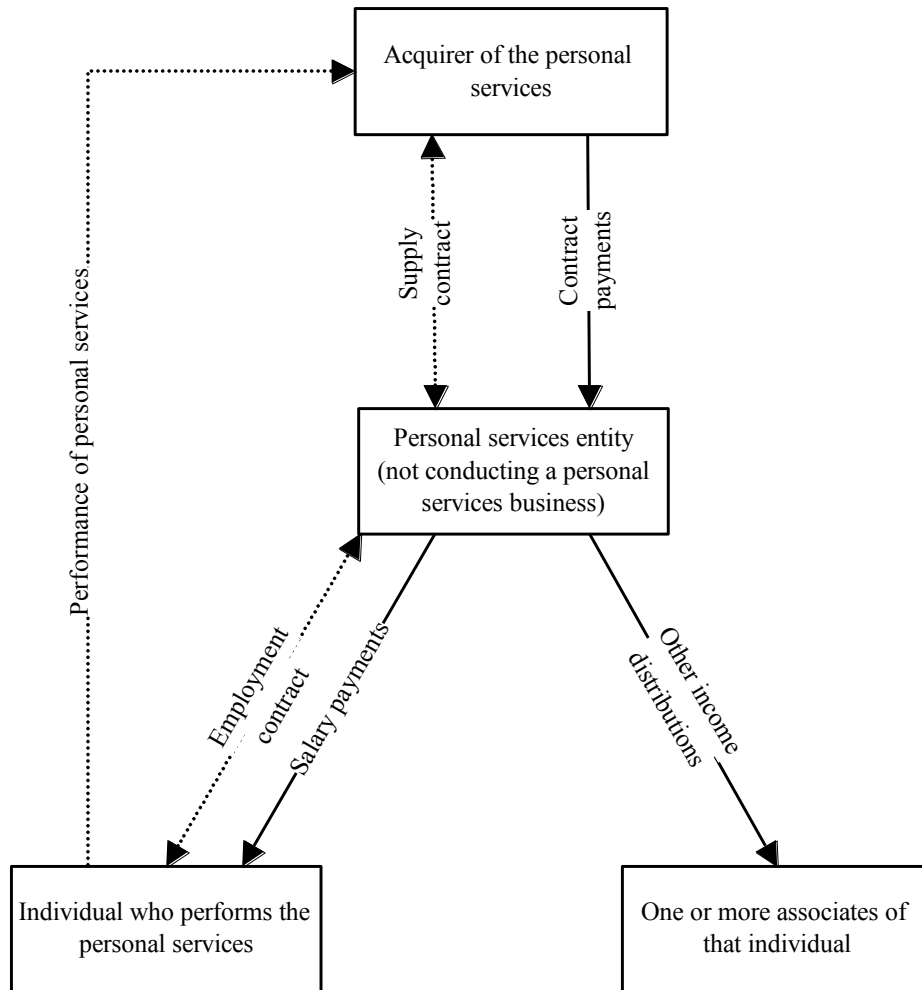
- (1) This diagram shows an example of a simple arrangement for the alienation of personal services income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note 1: Solid lines indicate actual payments between the parties. Dotted lines indicate other interactions between the parties.

Note 2: This Division also applies to different and more complex arrangements.

- (2) This Division has the effect of attributing the personal services entity's income from the personal services to the individual who performed them (unless the income is promptly paid to the

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 86-10

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individual as salary). Certain deduction entitlements of the personal services entity can reduce the amount of the attribution.

**Subdivision 86-A—General**

**Table of sections**

86-10	Object of this Division
86-15	Effect of obtaining personal services income through a personal services entity
86-20	Offsetting the personal services entity's deductions against personal services income
86-25	Apportionment of entity maintenance deductions among several individuals
86-27	Deduction for net personal services income loss
86-30	Assessable income etc. of the personal services entity
86-35	Later payments of, or entitlements to, personal services income to be disregarded for income tax purposes
86-40	Salary payments shortly after an income year

**86-10 Object of this Division**

The object of this Division is to ensure that individuals cannot reduce or defer their income tax (and other liabilities) by alienating their \*personal services income through companies, partnerships or trusts that are not conducting \*personal services businesses.

Note: The general anti-avoidance provisions of Part IVA of the *Income Tax Assessment Act 1936* may still apply to cases of alienation of personal services income that fall outside this Division.

**86-15 Effect of obtaining personal services income through a personal services entity**

*Amounts included in your assessable income*

- (1) Your assessable income includes an amount of \*ordinary income or \*statutory income of a \*personal services entity that is your \*personal services income.

Example: Continuing example 1 in section 84-5: Assume that NewIT only provides services to one client. Ron's assessable income includes

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

ordinary income of NewIT from providing the computer programming services, because the income is Ron's personal services income.

Note: The amount included in your assessable income can be reduced by certain deductions to which the personal services entity is entitled: see section 86-20.

- (2) A **personal services entity** is a company, partnership or trust whose \*ordinary income or \*statutory income includes the \*personal services income of one or more individuals.

*Exception: personal services businesses*

- (3) This section does not apply if that amount is income from the \*personal services entity conducting a \*personal services business.

Note: Even if the entity is conducting a personal services business, it is possible that some of its income is not income from conducting that business.

*Exception: amounts promptly paid to you as salary or wages*

- (4) This section does not apply to the extent that:
- (a) the \*personal services entity pays that amount to you, as an employee, as salary or wages; and
  - (b) the payment is made before the end of the 14th day after the \*PAYG payment period during which the amount became \*ordinary income or \*statutory income of the entity.

Note: The entity is obliged to withhold amounts from salary or wages paid before the end of that day: see section 12-35 in Schedule 1 to the *Taxation Administration Act 1953*.

*Exception: exempt income etc.*

- (5) This section only applies to the extent that that amount would be assessable income of the personal services entity if this Division did not apply.

Example: If the entity's income includes an amount that is your personal services income for a service on which GST is payable, the amount included in your assessable income will not include the GST, because the GST is neither assessable income nor exempt income of the entity: see section 17-5.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 86-20

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**86-20 Offsetting the personal services entity's deductions against personal services income**

- (1) The amount of your \*personal services income included in your assessable income under section 86-15 may be reduced (but not below nil) by the amount of certain deductions to which the \*personal services entity is entitled.

Note 1: Subdivision 86-B limits a personal services entity's entitlement to deductions.

Note 2: If the amount of the deductions exceeds the amount of the personal services income, a deduction for the excess is available to you under section 86-27. The personal services entity cannot deduct the amount of the excess: see section 86-87.

- (2) Use this method statement to work out whether, and by how much, the amount is reduced:

*Method statement*

- Step 1. Work out, for the income year, the amount of any deductions (other than \*entity maintenance deductions or deductions for amounts of salary or wages paid to you) to which the \*personal services entity is entitled that are deductions relating to your \*personal services income.
- Step 2. Work out, for the income year, the amount of any \*entity maintenance deductions to which the \*personal services entity is entitled.
- Step 3. Work out the \*personal services entity's assessable income for that income year, disregarding any income it receives that is your \*personal services income or the personal services income of anyone else.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Step 4.** Subtract the amount under step 3 from the amount under step 2.

Note 1: Step 4 ensures that, before entity maintenance deductions can contribute to the reduction, they are first exhausted against any income of the entity that is not personal services income.

Note 2: If the personal services entity receives another individual's personal services income, see section 86-25.

**Step 5.** If the amount under step 4 is greater than zero, the amount of the reduction under subsection (1) is the sum of the amounts under steps 1 and 4.

**Step 6.** If the amount under step 4 is not greater than zero, the amount of the reduction under subsection (1) is the amount under step 1.

Example 1: Continuing example 1 in section 84-5: Assume these additional facts:

- \$120,000 of NewIT's income is Ron's personal services income;
- NewIT has deductions (including superannuation contributions) of \$50,000 relating to Ron's personal services income (step 1);
- NewIT has entity maintenance deductions of \$8,000 (step 2);
- NewIT has investments that produce income. NewIT's assessable income, disregarding Ron's or anyone else's personal services income, is \$20,000 (step 3).

Because the step 4 amount is less than zero (-\$12,000), step 5 does not apply and, under step 6, the amount of the reduction is \$50,000. Therefore the amount included in Ron's assessable income is:

$$\$120,000 - \$50,000 = \$70,000$$

Example 2: Assume, as an alternative set of facts, that NewIT's assessable income under step 3 was only \$2,000.

The step 4 amount would have been \$6,000, and, under step 5, the amount of the reduction would have been \$56,000 (adding the amounts under steps 1 and 4). The amount included in Ron's assessable income would then have been:

$$\$120,000 - \$56,000 = \$64,000$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Section 86-25**

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Note: The personal services entity's deductions that do not relate to your personal services income and that are not entity maintenance deductions cannot reduce the amount included in your assessable income under section 86-15.

**86-25 Apportionment of entity maintenance deductions among several individuals**

If, in the income year:

- (a) the amount worked out under step 4 of the method statement in section 86-20 is greater than zero; and

Note: This happens if the entity has entity maintenance deductions that form some or all of the reduction under section 86-20.

- (b) the \*ordinary income or \*statutory income of the \*personal services entity includes another individual's \*personal services income (as well as your personal services income); and

- (c) the other individual's personal services income is included in the other individual's assessable income under section 86-15; the amount worked out under step 4 is taken to be:

$$\text{Original step 4 amount} \times \frac{\text{Your personal services income}}{\text{Total personal services income}}$$

where:

**original step 4 amount** is the amount that would be the amount worked out under step 4 if this section did not apply.

**total personal services income** is the sum of all the amounts of personal services income (whether your personal services income or someone else's) that are included in the personal services entity's ordinary income or statutory income for the income year.

**your personal services income** is the sum of all the amounts of your personal services income that are included in the personal services entity's ordinary income or statutory income for the income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Example: Continuing example 2 in section 86-20: Assume that Robyn, another computer consultant, joined NewIT, and NewIT's ordinary income from providing the services also includes Robyn's personal services income of \$168,000.

Because NewIT now receives the personal services income of someone else, Ron's step 4 amount is reduced as follows:

$$\$6,000 \times \frac{\$120,000}{\$288,000} = \$2,500$$

Under step 5 of the method statement in section 86-20, the amount of the reduction under that section is therefore \$52,500, and the amount included in Ron's assessable income is \$67,500.

### 86-27 Deduction for net personal services income loss

If your personal services deduction amount exceeds your unreduced personal services income, then you can deduct the excess amount. For this purpose:

- (a) your **personal services deduction amount** is the amount of deductions relating to your \*personal services income worked out under step 1 of the method statement in section 86-20, increased by the amount (if greater than zero) worked out under step 4 of the method statement; and
- (b) your **unreduced personal services income** is the personal services income that would have been included in your assessable income for the income year if there had not been any reduction under section 86-20.

### 86-30 Assessable income etc. of the personal services entity

\*Ordinary income or \*statutory income of the \*personal services entity is neither assessable income nor \*exempt income of the entity, to the extent that it is \*personal services income included in your assessable income under section 86-15.

Note: Subsection 118-20(4) prevents this income being treated as a capital gain.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 86-35

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**86-35 Later payments of, or entitlements to, personal services income to be disregarded for income tax purposes**

- (1) To the extent that a payment by the \*personal services entity, or by your \*associate, is a payment to you or any of your associates of:
- (a) \*personal services income included in your assessable income under section 86-15; or
  - (b) any other amount that is attributable to that income;
- the payment:
- (c) is neither assessable income nor \*exempt income of the entity receiving it; and
  - (d) is not an amount that the entity making it can deduct.

Note: Subsection 118-20(4) prevents this income being treated as a capital gain.

Note: Section 118-65 prevents this amount being treated as a capital loss.

Example: Continuing example 2 in section 86-20: Assume that NewIT had paid Jill, Ron's wife, an amount for work that is not the principal work of NewIT. The payment is made from money already included in Ron's assessable income under section 86-15.

The amount is neither assessable income nor exempt income of Jill, and NewIT cannot deduct the amount.

- (2) To the extent that you are entitled, or any of your \*associates are entitled, to a share of the net income of the \*personal services entity, or of any of your associates, and that income is:
- (a) \*personal services income included in your assessable income under section 86-15; or
  - (b) any other amount that is attributable to that income;
- that share is neither assessable income nor \*exempt income of the entity receiving it or entitled to receive it.

**86-40 Salary payments shortly after an income year**

- (1) If:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) before the end of 14 July in a particular income year, you receive, as salary or wages, \*personal services income of yours from the \*personal services entity; and
- (b) failure to make the payment before the end of 14 July would have resulted in an amount of income being included in your assessable income under section 86-15 for the preceding income year;

you are taken to have received the payment on 30 June of that preceding income year.

**Example:** Continuing example 2 in section 86-20: Assume that NewIT is a small withholder for PAYG withholding purposes, and its PAYG payment period covering April 2001 to June 2001 is the quarter ending on 30 June 2001. NewIT's income for that period (after taking into account any reductions under sections 86-20 and 86-25) includes \$20,000 that is Ron's personal services income, and NewIT pays this to Ron on 12 July 2001.

The \$20,000 that Ron receives is assessable income for the income year ended on 30 June 2001.

- (2) However, this section does not affect the time at which the \*personal services entity is treated as having paid the salary or wages.

**Note 1:** Therefore neither the timing of the entity's deduction for the payment, nor the timing of the obligation to withhold amounts under section 12-35 in Schedule 1 to the *Taxation Administration Act 1953*, is affected.

**Note 2:** However, these payments are treated as relating to the preceding income year for the purposes of the rules relating to payment summaries, PAYG credits and PAYG withholding non-compliance tax (see Subdivisions 16-C, 18-A and 18-D in Schedule 1 to the *Taxation Administration Act 1953*).

## **Subdivision 86-B—Entitlement to deductions**

### **Table of sections**

86-60	General rule for deduction entitlements of personal services entities
86-65	Entity maintenance deductions
86-70	Car expenses
86-75	Superannuation

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 86-60

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- 86-80 Salary or wages promptly paid
- 86-85 Deduction entitlements of personal services entities for amounts included in an individual's assessable income
- 86-87 Personal services entity cannot deduct net personal services income loss
- 86-90 Application of Divisions 28 and 900 to personal services entities

**86-60 General rule for deduction entitlements of personal services entities**

A \*personal services entity cannot deduct under this Act an amount to the extent that it relates to gaining or producing an individual's \*personal services income, unless:

- (a) the individual could have deducted the amount under this Act if the circumstances giving rise to the entity's entitlement to deduct the amount had applied instead to the individual; or

Note: In particular, Division 85 specifies limits on an individual's entitlements to deductions relating to the individual's personal services income.

- (b) the entity receives the individual's \*personal services income in the course of conducting a \*personal services business.

**86-65 Entity maintenance deductions**

- (1) Section 86-60 does not stop a \*personal services entity deducting an amount to the extent that it is an \*entity maintenance deduction.

Note: See section 86-25 for how entity maintenance deductions are offset against a personal services entity's income.

- (2) Each of these is an **entity maintenance deduction**:
  - (a) any fee or charge payable by the entity for opening, operating or closing an account with an \*ADI;
  - (b) any deduction under section 25-5 (about tax-related expenses);
  - (c) any loss or outgoing incurred in relation to preparation or lodgment of any document the entity is required to lodge under the *Corporations Act 2001*;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (d) any fee or charge payable by the entity to an \*Australian government agency for any licence, permission, approval, authorisation, registration or certification (however described) that is granted or given under an \*Australian law.
- (3) However, paragraph (2)(c) does not include any payment that the entity makes to an \*associate.

### **86-70 Car expenses**

#### *Cars used solely for business*

- (1) Section 86-60 does not stop a \*personal services entity deducting a \*car expense for a \*car of which there is no \*private use.

#### *Other cars*

- (2) Section 86-60 does not stop a \*personal services entity deducting:
- (a) a \*car expense; or
  - (b) an amount of tax payable under the *Fringe Benefits Tax Assessment Act 1986* for a \*car fringe benefit;
- for a \*car of which there is \*private use. However, there cannot be, at the same time, more than one car for which such deductions can arise in relation to gaining or producing the same individual's \*personal services income.
- (3) If there is more than one \*car to which subsection (2) could apply at the same time, the entity must choose the car to which subsection (2) applies at that time. The choice remains in effect until the entity ceases to \*hold that car.

Example: Continuing example 2 in section 86-20: Assume that NewIT provides 3 cars to Ron. Car 1 is used solely for business purposes and cars 2 and 3 are used for private purposes.

NewIT can deduct all the car expenses it incurs for car 1. It can also deduct all the car expenses it incurs for its choice of either car 2 or car 3, as well as the fringe benefits tax it pays for that car. However, it cannot deduct any car expenses or fringe benefits tax for the car that it does not choose.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Section 86-75**

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Note: If car expenses for a car are not deductible because of section 86-60, the car benefit being provided is an exempt benefit for the purposes of fringe benefits tax: see subsection 8(4) of the *Fringe Benefits Tax Assessment Act 1986*.

**86-75 Superannuation**

- (1) Section 86-60 does not stop a \*personal services entity deducting a contribution the entity makes to a fund or an \*RSA for the purpose of making provision for \*superannuation benefits payable for an individual whose \*personal services income is included in the entity's \*ordinary income or \*statutory income.

For deductions for superannuation contributions: see Subdivision AA of Division 3 of Part III of the *Income Tax Assessment Act 1936*.

- (2) However, if:
- (a) the individual performs less than 20% (by \*market value) of the entity's principal work; and
  - (b) the individual is an \*associate of another individual whose \*personal services income is included in the entity's \*ordinary income or \*statutory income;
- the entity's deduction cannot exceed the amount it would have to contribute, for the benefit of the individual, to a \*complying superannuation fund or an \*RSA in order to ensure that it did not have any \*individual superannuation guarantee shortfalls in respect of the individual for any of the \*quarters in the income year.
- (3) To work out the amount the entity would have to contribute for the purposes of subsection (2), the individual's salary or wages, for the purposes of the *Superannuation Guarantee (Administration) Act 1992*, are taken to be the amount that section 86-60 does not prevent the entity deducting for salary or wages it paid to the individual.

Note: Section 86-60 will apply the limitations under sections 85-10 and 85-20 on an individual's entitlement to deductions (but see paragraph 85-10(2)(e) on employment of associates).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **86-80 Salary or wages promptly paid**

Section 86-60 does not stop a \*personal services entity deducting an amount for salary or wages it pays to the individual referred to in that section before the end of the 14th day after the \*PAYG payment period during which the amount became \*ordinary income or \*statutory income of the entity.

### **86-85 Deduction entitlements of personal services entities for amounts included in an individual's assessable income**

The fact that a \*personal services entity:

- (a) incurs an amount in gaining or producing an individual's assessable income; or
- (b) uses a \*depreciating asset, or has it installed ready for use, for the \*purpose of producing assessable income of an individual;

does not stop the entity deducting the loss or outgoing, or deducting an amount for the decline in value of the asset, under this Act if:

- (c) the entity incurs the amount in gaining or producing, or uses or installs the depreciating asset for the purpose of producing, its \*ordinary income or \*statutory income; and
- (d) the income is included in the individual's assessable income under section 86-15.

### **86-87 Personal services entity cannot deduct net personal services income loss**

The total amount of the deductions to which a \*personal services entity is entitled for an income year is reduced by the amount of any deduction that an individual, whose \*personal services income is ordinary or statutory income of the entity for that income year, is entitled to under section 86-27.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 86-90

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**86-90 Application of Divisions 28 and 900 to personal services entities**

This Division does not have the effect of applying Division 28 (about car expenses) or Division 900 (about substantiation rules) to a \*personal services entity.

Note: Divisions 28 and 900 can still apply to a personal services entity that is a partnership: see subsections 28-10(2) and 900-5(2).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 87—Personal services businesses**

### **Table of Subdivisions**

#### **Guide to Division 87**

87-A General

87-B Personal services business determinations

### **Guide to Division 87**

#### **87-1 What this Division is about**

Divisions 85 and 86 do not apply to personal services income that is income from conducting a personal services business.

It is not intended that the Divisions apply to independent contractors.

A personal services business exists if there is a personal services business determination or if one or more of 4 tests for what is a personal services business are met.

Regardless of how much of your personal services income is paid from one source, you can self-assess against the results test to determine whether you are an independent contractor. The results test is based on the traditional tests for determining independent contractors and it is intended that it apply accordingly.

However, you cannot “self-assess” whether you meet any of the other 3 tests if 80% or more of your personal services income is from one source. In these cases, you need a personal services business determination in order to be treated as conducting a personal services business.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 2** Liability rules of general application

**Part 2-42** Personal services income

**Division 87** Personal services businesses

Section 87-5

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**87-5 Diagram showing the operation of this Division**

This diagram shows how this Division operates to ascertain whether personal services income is income from conducting a personal services business.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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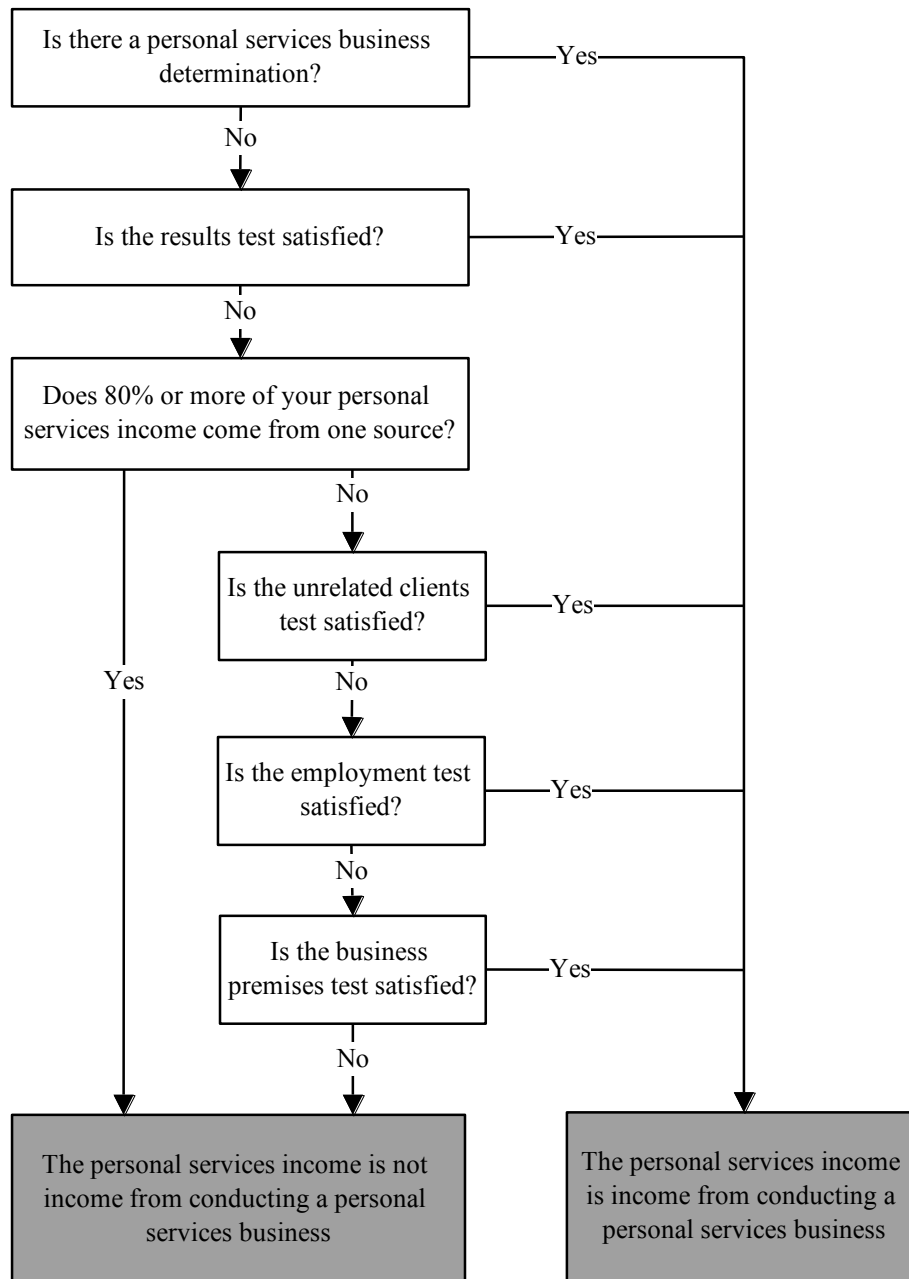
*Income Tax Assessment Act 1997*

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 87-10

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## Subdivision 87-A—General

### Table of sections

87-10	Object of this Division
87-15	What is a personal services business?
87-18	The results test for a personal services business
87-20	The unrelated clients test for a personal services business
87-25	The employment test for a personal services business
87-30	The business premises test for a personal services business
87-35	Personal services income from Australian government agencies
87-40	Application of this Division to certain agents

### 87-10 Object of this Division

The object of this Division is to define \*personal services businesses in a way that ensures that it covers genuine businesses but not situations that are merely arrangements for dealing with the \*personal services income of individuals.

### 87-15 What is a personal services business?

- (1) An individual or \*personal services entity conducts a *personal services business* if:
- (a) for an individual—a \*personal services business determination is in force relating to the individual's \*personal services income; or
  - (b) for a personal services entity—a personal services business determination is in force relating to an individual whose personal services income is included in the entity's \*ordinary income or \*statutory income; or
  - (c) in any case—the individual or entity meets at least one of the 4 \*personal services business tests in the income year for which the question whether the individual or entity is conducting a personal services business is in issue.

Note 1: For personal services business determinations, see Subdivision 87-B.

Note 2: Under subsection (3), the personal services business tests, apart from the results test under section 87-18, do not apply if 80% or more of

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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your personal services income is from one source (but they can still be used in deciding whether to make a personal services business determination).

- (2) The 4 *personal services business tests* are:
- (a) the results test under section 87-18; and
  - (b) the unrelated clients test under section 87-20; and
  - (c) the employment test under section 87-25; and
  - (d) the business premises test under section 87-30.
- (3) However, if 80% or more of an individual's \*personal services income (not including income referred to in subsection (4)) during an income year is income from the same entity (or one entity and its \*associates), and:
- (a) the individual's personal services income is not included in a \*personal services entity's \*ordinary income or \*statutory income during an income year, and the individual does not meet the results test under section 87-18 in that income year; or
  - (b) the individual's personal services income is included in a personal services entity's ordinary income or statutory income during an income year, and the entity does not, in relation to the individual, meet the results test under section 87-18 in that income year;
- the individual's personal services income is *not* taken to be from conducting a \*personal services business unless:
- (c) when the personal services income is gained or produced, a \*personal services business determination is in force relating to the individual's personal services income; and
  - (d) if the determination was made on the application of a personal services entity—the individual's personal services income is income from the entity conducting the personal services business.

Note: Sections 87-35 and 87-40 affect the operation of subsection (3) in relation to Australian government agencies and certain agents.

- (4) Subsection (3) does not apply to income:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 87-18

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- (a) that the individual receives as an employee; or
- (b) that the individual receives as an individual referred to in paragraph 12-45(1)(a), (b), (c), (d) or (e) (payments to office holders) in Schedule 1 to the *Taxation Administration Act 1953*; or
- (c) to the extent that it is a payment referred to in section 12-47 (payments to \*religious practitioners) in that Schedule.

**87-18 The results test for a personal services business**

- (1) An individual meets the results test in an income year if, in relation to at least 75% of the individual's \*personal services income (not including income referred to in subsection (2)) during the income year:
  - (a) the income is for producing a result; and
  - (b) the individual is required to supply the \*plant and equipment, or tools of trade, needed to perform the work from which the individual produces the result; and
  - (c) the individual is, or would be, liable for the cost of rectifying any defect in the work performed.
- (2) Paragraph (1)(a) does not apply to income:
  - (a) that the individual receives as an employee; or
  - (b) that the individual receives as an individual referred to in paragraph 12-45(1)(a), (b), (c), (d) or (e) (payments to office holders) in Schedule 1 to the *Taxation Administration Act 1953*; or
  - (c) to the extent that it is a payment referred to in section 12-47 (payments to \*religious practitioners) in that Schedule.
- (3) A \*personal services entity meets the results test in an income year if, in relation to at least 75% of the \*personal services income of one or more individuals that is included in the personal services entity's \*ordinary income or \*statutory income during the income year:
  - (a) the income is for producing a result; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the personal services entity is required to supply the \*plant and equipment, or tools of trade, needed to perform the work from which the personal services entity produces the result; and
  - (c) the personal services entity is, or would be, liable for the cost of rectifying any defect in the work performed.
- (4) For the purposes of paragraph (1)(a), (b) or (c) or (3)(a), (b) or (c), regard is to be had to whether it is the custom or practice, when work of the kind in question is performed by an entity other than an employee:
- (a) for the \*personal services income from the work to be for producing a result; and
  - (b) for the entity to be required to supply the \*plant and equipment, or tools of trade, needed to perform the work; and
  - (c) for the entity to be liable for the cost of rectifying any defect in the work performed;
- as the case requires.

#### **87-20 The unrelated clients test for a personal services business**

- (1) An individual or a \*personal services entity meets the unrelated clients test in an income year if:
- (a) during the year, the individual or personal services entity gains or produces income from providing services to 2 or more entities that are not \*associates of each other, and are not associates of the individual or of the personal services entity; and
  - (b) the services are provided as a direct result of the individual or personal services entity making offers or invitations (for example, by advertising), to the public at large or to a section of the public, to provide the services.

Note: Sections 87-35 and 87-40 affect the operation of paragraph (1)(a) in relation to Australian government agencies and certain agents.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 87-25

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- (2) The individual or \*personal services entity is *not* treated, for the purposes of paragraph (1)(b), as having made offers or invitations to provide services merely by being available to provide the services through an entity that conducts a \*business of arranging for persons to provide services directly for clients of the entity.

**87-25 The employment test for a personal services business**

- (1) An individual meets the employment test in an income year if:
- (a) the individual engages one or more entities (other than \*associates of the individual that are not individuals) to perform work; and
  - (b) that entity performs, or those entities together perform, at least 20% (by \*market value) of the individual's principal work for that year.
- (2) A \*personal services entity meets the employment test in an income year if:
- (a) the entity engages one or more other entities to perform work, other than:
    - (i) individuals whose \*personal services income is included in the entity's \*ordinary income or \*statutory income; or
    - (ii) \*associates of the entity that are not individuals; and
  - (b) that other entity performs, or those other entities together perform, at least 20% (by \*market value) of the entity's principal work for that year.
- (2A) If the \*personal services entity is a partnership, work that a partner performs is taken, for the purposes of subsection (2), to be work that the personal services entity engages another entity to perform.
- (3) An individual or a \*personal services entity also meets the employment test in an income year if, for at least half the income year, the individual or entity has one or more apprentices.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**87-30 The business premises test for a personal services business**

- (1) An individual or a \*personal services entity meets the business premises test in an income year if, at all times during the income year, the individual or entity maintains and uses business premises:
  - (a) at which the individual or entity mainly conducts activities from which \*personal services income is gained or produced; and
  - (b) of which the individual or entity has exclusive use; and
  - (c) that are physically separate from any premises that the individual or entity, or any \*associate of the individual or entity, uses for private purposes; and
  - (d) that are physically separate from the premises of the entity to which the individual or entity provides services and from the premises of any associate of the entity to which the individual or entity provides services.
- (2) The individual or entity need not maintain and use the same business premises throughout the income year.

**87-35 Personal services income from Australian government agencies**

- (1) \*Australian government agencies are not treated as \*associates of each other for the purposes of subsection 87-15(3) and paragraph 87-20(1)(a).

Example: You receive 60% of your personal services income from a Department of a State government and 40% of your personal services income from a corporation in which that State has a majority shareholding.

You are not treated as if 80% or more of your personal services income is income from the same entity and that entity's associates, and therefore you will not need a personal services business determination to satisfy subsection 87-15(3).

In addition, you satisfy the first limb (but not necessarily the second limb) of the unrelated clients test in subsection 87-20(1), because you receive your personal services income from 2 entities that are not treated as associates of each other.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Section 87-40**

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- (2) Each Agency within the meaning of the *Public Service Act 1999*:
- (a) is treated as a separate entity; and
  - (b) is not treated as an \*associate of any other such Agency, or of any \*Australian government agency;
- for the purposes of subsection 87-15(3) and paragraph 87-20(1)(a).

**Example:** You receive 70% of your personal services income from the Commonwealth Department of Treasury and 30% of your personal services income from the Australian Taxation Office (neither body has a legal identity separate from the Commonwealth Government).

You are not treated as if 80% or more of your personal services income is income from the same entity, or from the same entity and that entity's associates, and therefore you will not need a personal services business determination to satisfy subsection 87-15(3).

In addition, you satisfy the first limb (but not necessarily the second limb) of the unrelated clients test in subsection 87-20(1), because you receive your personal services income from 2 bodies that are treated as separate entities and that are not treated as associates of each other.

- (3) Each part of the government of a State or Territory, and each part of an authority of the State or Territory, that has, under a law of the State or Territory, a status corresponding to an Agency within the meaning of the *Public Service Act 1999*:
- (a) is treated as a separate entity; and
  - (b) is not treated as an \*associate of any other part of such a government or authority, or of any \*Australian government agency;
- for the purposes of subsection 87-15(3) and paragraph 87-20(1)(a).

**87-40 Application of this Division to certain agents**

*Object of this section*

- (1) The object of this section is to modify the operation of this Division for \*agents who bear entrepreneurial risk in the way they provide services.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



*Agent rules do not apply*

- (1A) The rules in section 960-105 (Certain entities treated as agents) do not apply to this section.

*Agents covered by this section*

- (2) Subsection 87-15(3) and section 87-20 apply, in the manner specified in this section, to an individual or \*personal services entity if:
- (a) the individual or personal services entity is an \*agent of another entity (the **principal**) but not the principal's employee; and
  - (b) the agent receives income from the principal that is for services that the agent provides to other entities (**customers**) on the principal's behalf; and
  - (c) at least 75% of that income is commissions, or fees, based on the agent's performance in providing services to the customers on the principal's behalf; and
  - (d) the agent actively seeks other entities to whom the agent could provide services on the principal's behalf; and
  - (e) the agent does not provide any services to the customers, on the principal's behalf, using premises:
    - (i) that the principal or an \*associate of the principal owns; or
    - (ii) in which the principal or an associate of the principal has a leasehold interest;unless the agent uses the premises under an arrangement entered into at \*arm's length.

*Whether personal services income is from one source*

- (3) If the \*agent is an individual, in applying subsection 87-15(3) to the \*personal services income of the agent during an income year, any part of the agent's personal services income from the principal that:
- (a) the agent gains or produces during the income year; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Section 87-40**

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(b) is for services that the agent provided to a customer on the principal's behalf in the income year or an earlier income year;

is treated as if it were personal services income from the customer, and not personal services income from the principal.

(4) If the \*agent is a \*personal services entity, in applying subsection 87-15(3) to an individual's \*personal services income that is included in the entity's \*ordinary income or \*statutory income during an income year, any part of the individual's personal services income from the principal that:

(a) the agent gains or produces during the income year; and

(b) is for services that the individual or the agent provided to a customer on the principal's behalf in the income year or an earlier income year;

is treated as if it were personal services income from the customer, and not personal services income from the principal.

*The unrelated clients test for a personal services business*

(5) In determining whether, during an income year, the \*agent meets the unrelated clients test under section 87-20, any services the agent provided in the income year or an earlier income year:

(a) for which the agent gains or produces, during the income year, personal services income from the principal; and

(b) that were provided to a customer on the principal's behalf;

are treated for the purposes of paragraph 87-20(1)(a) as if the agent, and not the principal, provided them to the customer.

**Subdivision 87-B—Personal services business determinations**

**Table of sections**

87-60	Personal services business determinations for individuals
87-65	Personal services business determinations for personal services entities
87-70	Applying etc. for personal services business determinations
87-75	When personal services business determinations have effect
87-80	Revoking personal services business determinations

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **87-60 Personal services business determinations for individuals**

### *Making etc. personal services business determinations*

- (1) The Commissioner may, by giving written notice to an individual:
  - (a) make a personal services business determination relating to the individual; or
  - (b) vary such a determination.
- (2) The Commissioner may, in the notice, specify:
  - (a) the day on which the determination or variation takes effect, or took effect;
  - (b) the period for which the determination has effect;
  - (c) conditions to which the determination is subject.

### *Matters about which the Commissioner must be satisfied*

- (3) The Commissioner must not make the determination unless satisfied that, in the income year during which the determination first has effect, or is taken to have first had effect, the conditions in one or more of subsections (3A), (3B), (5) and (6) are met.

### *First alternative—results, employment or business premises test met or reasonably expected to be met*

- (3A) The conditions in this subsection are that:
  - (a) the individual could reasonably be expected to meet, or met, the results test under section 87-18, the employment test under section 87-25, the business premises test under section 87-30 or more than one of those tests; and
  - (b) the individual's \*personal services income could reasonably be expected to be, or was, from the individual conducting activities that met one or more of those tests.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 87-60

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*Second alternative—unusual circumstances prevented the results, employment or business premises test from being met*

- (3B) The conditions in this subsection are that:
- (a) but for unusual circumstances applying to the individual in that year, the individual could reasonably have been expected to meet, or would have met, the results test under section 87-18, the employment test under section 87-25, the business premises test under section 87-30 or more than one of those tests; and
  - (b) the individual's \*personal services income could reasonably be expected to be, or was, from the individual conducting activities that met one or more of those tests.
- (4) For the purposes of paragraph (3B)(a) but without limiting the scope of that paragraph, unusual circumstances include providing services to an insufficient number of entities to meet the unrelated clients test under section 87-20 if:
- (a) the individual starts a \*business during the income year, and can reasonably be expected to meet the test in subsequent income years; or
  - (b) the individual provides services to only one entity during the income year, but met the test in one or more preceding income years and can reasonably be expected to meet the test in subsequent income years.

*Third alternative—unrelated clients test was met but 80% or more of income from same source because of unusual circumstances*

- (5) The conditions in this subsection are that:
- (a) the individual could reasonably be expected to meet, or met, the unrelated clients test under section 87-20; and
  - (b) because of unusual circumstances applying to the individual in the income year, 80% or more of the individual's \*personal services income (not including income mentioned in subsection 87-15(4)) could reasonably have been expected to be, or would have been, income from the same entity (or one entity and its \*associates); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) the individual's personal services income could reasonably be expected to be, or was, from the individual conducting activities that met the unrelated clients test under section 87-20.

*Fourth alternative—unrelated clients test not met because of unusual circumstances*

- (6) The conditions in this subsection are that:
  - (a) but for unusual circumstances applying to the individual in that year, the individual could reasonably have been expected to meet, or would have met, the unrelated clients test under section 87-20; and
  - (b) if 80% or more of the individual's \*personal services income (not including income mentioned in subsection 87-15(4)) could reasonably have been expected to be, or would have been, income from the same entity (or one entity and its \*associates)—that is the case only because of unusual circumstances applying to the individual in the income year; and
  - (c) the individual's personal services income could reasonably be expected to be, or was, from the individual conducting activities that met the unrelated clients test under section 87-20.

**87-65 Personal services business determinations for personal services entities**

*Making etc. personal services business determinations*

- (1) The Commissioner may, by giving written notice to a \*personal services entity whose \*ordinary income or \*statutory income includes some or all of an individual's \*personal services income:
  - (a) make a personal services business determination relating to the individual's personal services income included in the entity's ordinary income or statutory income; or
  - (b) vary such a determination.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 87-65

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- (2) The Commissioner may, in the notice, specify:
- (a) the day on which the determination or variation takes effect, or took effect;
  - (b) the period for which the determination has effect;
  - (c) conditions to which the determination is subject.

*Matters about which the Commissioner must be satisfied*

- (3) The Commissioner must not make the determination unless satisfied that, in the income year during which the determination first has effect, or is taken to have first had effect, the conditions in one or more of subsections (3A), (3B), (5) and (6) are met.

*First alternative—results, employment or business premises test met or reasonably expected to be met*

- (3A) The conditions in this subsection are that:
- (a) the entity could reasonably be expected to meet, or met, the results test under section 87-18, the employment test under section 87-25, the business premises test under section 87-30 or more than one of those tests; and
  - (b) the individual's \*personal services income included in the entity's \*ordinary income or \*statutory income could reasonably be expected to be, or was, from the entity conducting activities that met one or more of those tests.

*Second alternative—unusual circumstances prevented the results, employment or business premises test from being met*

- (3B) The conditions in this subsection are that:
- (a) but for unusual circumstances applying to the entity in that year, the entity could reasonably have been expected to meet, or would have met, the results test under section 87-18, the employment test under section 87-25, the business premises test under section 87-30 or more than one of those tests; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the individual's \*personal services income included in the entity's \*ordinary income or \*statutory income could reasonably be expected to be, or was, from the entity conducting activities that met one or more of those tests.
- (4) For the purposes of paragraph (3B)(a) but without limiting the scope of that paragraph, unusual circumstances include providing services to an insufficient number of entities to meet the unrelated clients test under section 87-20 if:
- (a) the \*personal services entity starts a \*business during the income year, and can reasonably be expected to meet that test in subsequent income years; or
  - (b) the personal services entity provides services to only one entity during the income year, but met the test in one or more preceding income years and can reasonably be expected to meet the test in subsequent income years.

*Third alternative—unrelated clients test was met but 80% or more of income from same source because of unusual circumstances*

- (5) The conditions in this subsection are that:
- (a) the entity could reasonably be expected to meet, or met, the unrelated clients test under section 87-20; and
  - (b) because of unusual circumstances applying to the entity in the income year, 80% or more of the individual's \*personal services income (not including income mentioned in subsection 87-15(4)) included in the entity's \*ordinary income or \*statutory income could reasonably have been expected to be, or would have been, income from the same entity (or one entity and its \*associates); and
  - (c) the individual's personal services income included in the entity's ordinary income or statutory income could reasonably be expected to be, or was, from the entity conducting activities that met the unrelated clients test under section 87-20.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Fourth alternative—unrelated clients test not met because of unusual circumstances*

- (6) The conditions in this subsection are that:
- (a) but for unusual circumstances applying to the entity in that year, the entity could reasonably have been expected to meet, or would have met, the unrelated clients test under section 87-20; and
  - (b) if 80% or more of the individual's \*personal services income (not including income mentioned in subsection 87-15(4)) included in the entity's \*ordinary income or \*statutory income could reasonably have been expected to be, or would have been, income from the same entity (or one entity and its \*associates)—that is the case only because of unusual circumstances applying to the entity in the income year; and
  - (c) the individual's personal services income included in the entity's ordinary income or statutory income could reasonably be expected to be, or was, from the entity conducting activities that met the unrelated clients test under section 87-20.

**87-70 Applying etc. for personal services business determinations**

- (1) An individual or a \*personal services entity may apply to the Commissioner, in the \*approved form:
  - (a) for a \*personal services business determination; or
  - (b) for a variation of a personal services business determination.
- (2) The Commissioner may request the applicant to give the Commissioner specified information, or a specified document, that the Commissioner needs to decide the application.
- (3) If the Commissioner has not decided the application within 60 days after it is made, the applicant may, at any time, give the Commissioner written notice that the applicant wishes to treat the application as having been refused.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (4) If the applicant gives notice under subsection (3), the Commissioner is taken, for the purposes of section 87-85, to have refused the application on the day on which the notice is given.
- (5) For the purposes of measuring the 60 days mentioned in subsection (3), disregard each period (if any):
  - (a) starting on the day when the Commissioner requests the applicant under subsection (2) to give the Commissioner specified information or a specified document; and
  - (b) ending at the end of the day the applicant gives the Commissioner the specified information or document.

### **87-75 When personal services business determinations have effect**

- (1) The determination, or a variation of the determination, has effect, or is taken to have had effect, on and from:
  - (a) the day specified in the notice as the day on which the determination or variation takes effect, or took effect; or
  - (b) if a day is not specified—the day on which the notice is given.
- (2) The determination ceases to have effect at the end of the earliest day on which one or more of these occurs:
  - (a) one or more conditions to which the determination is subject are not met;
  - (b) the Commissioner revokes the determination;
  - (c) the period for which the determination has effect comes to an end.

### **87-80 Revoking personal services business determinations**

The Commissioner must, by giving written notice to the individual or \*personal services entity on whose application a \*personal services business determination was made, revoke the determination if the Commissioner is no longer satisfied that there are grounds on which the determination could be made.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 87-85

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**87-85 Review of decisions**

A person who is dissatisfied with;

- (a) a decision of the Commissioner to make, vary or revoke a  
\*personal services business determination; or
- (b) the Commissioner's refusal of an application for a personal  
services business determination or for a variation of a  
personal services business determination;

may object against the decision in the manner set out in Part IVC  
of the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Chapter 3—Specialist liability rules**

### **Part 3-1—Capital gains and losses: general topics**

#### **Division 100—A Guide to capital gains and losses**

##### **General overview**

##### **100-1 What this Division is about**

This Division is a simplified outline of the capital gains and capital losses provisions, commonly referred to as capital gains tax (*CGT*). It will help you to understand your current liabilities, and to factor CGT into your on-going financial affairs.

##### **Table of sections**

- 100-5 Effect of this Division
- 100-10 Fundamentals of CGT
- 100-15 Overview of Steps 1 and 2

##### **Step 1—Have you made a capital gain or a capital loss?**

- 100-20 What events attract CGT?
- 100-25 What are CGT assets?
- 100-30 Does an exception or exemption apply?
- 100-33 Can there be a roll-over?

##### **Step 2—Work out the amount of the capital gain or loss**

- 100-35 What is a capital gain or loss?
- 100-40 What factors come into calculating a capital gain or loss?
- 100-45 How to calculate the capital gain or loss for most CGT events

##### **Step 3—Work out your net capital gain or loss for the income year**

- 100-50 How to work out your net capital gain or loss
- 100-55 How do you comply with CGT?

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 100** A Guide to capital gains and losses

Section 100-5

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**Keeping records for CGT purposes**

- 100-60 Why keep records?
- 100-65 What records?
- 100-70 How long you need to keep records

**100-5 Effect of this Division**

This Division is a \*Guide.

Note: In interpreting an operative provision, a Guide may be considered only for limited purposes: see section 950-150.

**100-10 Fundamentals of CGT**

- (1) CGT affects your income tax liability because your assessable income includes your net capital gain for the income year. Your net capital gain is the total of your capital gains for the income year, reduced by certain capital losses you have made.

See later in this Guide (section 100-50) for more detail.

- (2) When you prepare your income tax return, you need to check whether you have made any capital gains for the income year.

You also need to check whether you have made any capital losses. You cannot deduct a capital loss from your assessable income, but it will reduce your capital gain in the current income year or later income years.

- (3) You will also need to consider the impact of CGT when doing your financial planning. In particular, you will need adequate record-keeping to deal most effectively with any immediate or future CGT liability.

To give you a sense of the range of things affected by CGT, if you are involved with any of the following, you may have a CGT liability now or at some time in the future:

- leases
- inheritance
- marriage or relationship breakdown
- working from home

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- subdividing land
- goodwill
- contracts
- options
- a company liquidation
- leaving Australia
- shares
- a civil court case
- trusts
- bankruptcy
- incorporating a company

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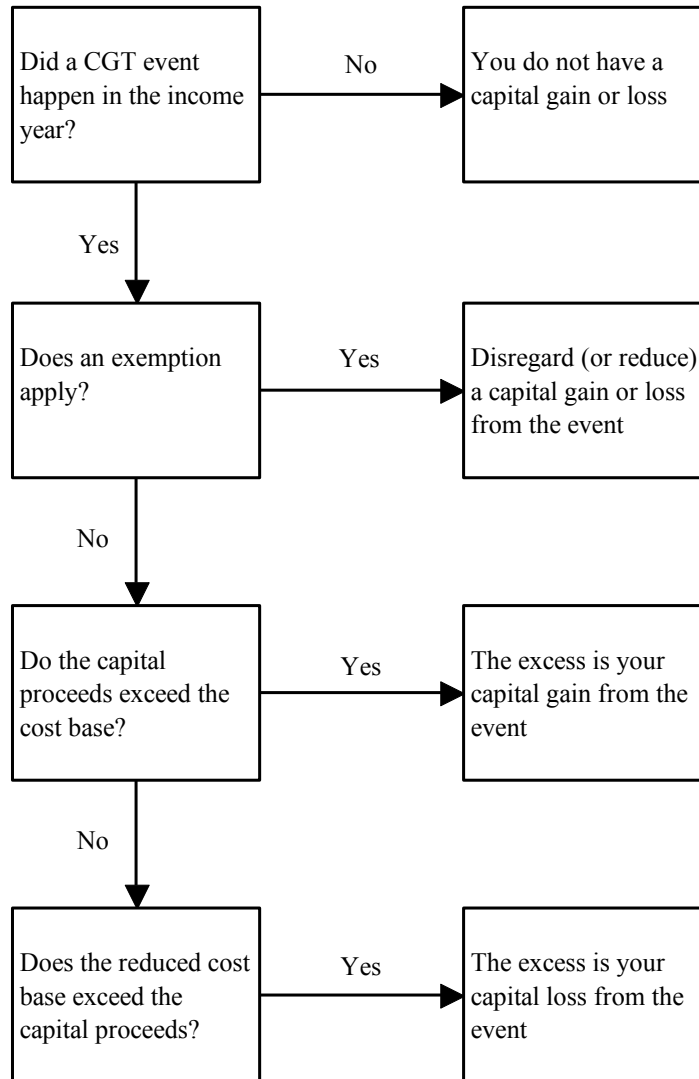
\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 100-15

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**100-15 Overview of Steps 1 and 2**



Note: Capital proceeds and cost base are not relevant for some CGT events, for example CGT event K7 or any of the CGT events created by Subdivision 104-L.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Step 1—Have you made a capital gain or a capital loss?

### 100-20 What events attract CGT?

- (1) You can make a capital gain or loss *only if* a CGT event happens.
- (2) There are a wide range of CGT events. Some happen often and affect many different taxpayers. Others are rare and affect only a few.

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#### Some examples of CGT events

Situation	Event	Which CGT event?
You own shares you acquired on or after 20 September 1985	You sell them	CGT event A1
You sell a business	You agree with the purchaser not to operate a similar business in the same area	CGT event D1
You are a lessor	You receive a payment for changing the lease	CGT event F5
You own shares in a company	The company makes a payment (not a dividend) to you as a shareholder	CGT event G1

A summary of all the CGT events is in section 104-5.

#### *Identifying the time of a CGT event*

- (3) The specific time when a CGT event happens is important for various reasons: in particular, for working out whether a capital gain or loss from the event affects your income tax for the current or another income year.

If a CGT event involves a contract, the time of the event will often be when the contract is *made*, not when it is completed.

The time of each CGT event is explained early in the relevant section in Division 104.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 100-25

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**100-25 What are CGT assets?**

- (1) Most CGT events involve a CGT asset. (For many, there is an *exception* if the CGT asset was acquired *before 20 September 1985*.) However, many CGT events are concerned directly with capital receipts and do *not* involve a CGT asset.

See the summary of the CGT events in section 104-5.

- (2) Some CGT assets are reasonably well-known:

- land and buildings, for example, a weekender;
- shares;
- units in a unit trust;
- collectables which cost over \$500, for example, jewellery or an artwork;
- personal use assets which cost over \$10,000, for example, a boat.

- (3) Other CGT assets are not so well-known. For example:

- your home;
- contractual rights;
- goodwill;
- foreign currency.

For a full explanation of what things are CGT assets: see Division 108.

**100-30 Does an exception or exemption apply?**

- (1) Once you identify a CGT event which applies to you, you need to know if there is an exception or exemption that would reduce the capital gain or loss or allow you to disregard it.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(2) There are 4 categories of exemptions:

1. exempt assets: for example, cars;
2. exempt or loss-denying transactions: for example, compensation for personal injury or your tenancy comes to an end;
3. anti-overlap provisions (that reduce your capital gain by the amount that is otherwise assessable);
4. small business relief.

Note: Most of the exceptions are in Division 104. You will find most of the possible exemptions in Division 118. The small business relief provisions are in Division 152.

*Some exemptions are limited*

(3) Take the family home for example. Generally, you are exempt from CGT when you make a capital gain on disposing of your main residence.

But this can change depending on how you came to own the house and what you have done with it. For example, if you rent it out, you may be liable to CGT when you sell it.

For the limits on the general exemption of your main residence:  
see Subdivision 118-B.

### **100-33 Can there be a roll-over?**

(1) Roll-overs allow you to defer or disregard a capital gain or loss from a CGT event. They apply in specific situations. Some require a choice (for example, where an asset is compulsorily acquired: see Subdivision 124-B) and some are automatic (for example, where an asset is transferred because of marriage or relationship breakdown: see Subdivision 126-A).

(2) There are 2 types of roll-over:

1. a *replacement-asset roll-over* allows you to defer a capital gain or loss from one CGT event until a later CGT event happens where a CGT asset is replaced with another one;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 100-35

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2. a *same-asset roll-over* allows you to disregard a capital gain or loss from a CGT event where the same CGT asset is involved.

Note: The replacement-asset roll-overs are listed in section 112-115, and the same-asset roll-overs are listed in section 112-150.

## Step 2—Work out the amount of the capital gain or loss

### 100-35 What is a capital gain or loss?

For most CGT events:

- You make a capital gain if you receive (or are entitled to receive) capital amounts from the CGT event which exceed your total costs associated with that event.
- You make a capital loss if your total costs associated with the CGT event exceed the capital amounts you receive (or are entitled to receive) from the event.

### 100-40 What factors come into calculating a capital gain or loss?

#### *Capital proceeds*

- (1) For most CGT events, the capital amounts you receive (or are entitled to receive) from the event are called the ***capital proceeds***.

To work out the capital proceeds: see Division 116.

#### *Cost base and reduced cost base*

- (2) For most CGT events, your total costs associated with the event are worked out in 2 different ways:
  - For the purpose of working out a capital *gain*, those costs are called the ***cost base*** of the CGT asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- For the purpose of working out a capital *loss*, those costs are called the **reduced cost base** of the asset.

One of the main differences is that the costs may be indexed for inflation occurring before 1 October 1999 in working out a capital *gain* for a CGT asset acquired at or before 11.45 am on 21 September 1999 (which reduces the size of the gain), but not in working out a capital *loss*.

To work out the cost base and reduced cost base: see Division 110.

### **100-45 How to calculate the capital gain or loss for most CGT events**

1. Work out your capital proceeds from the CGT event.
2. Work out the cost base for the CGT asset.
3. Subtract the cost base from the capital proceeds.
4. If the proceeds exceed the cost base, the difference is your capital *gain*.
5. If not, work out the reduced cost base for the asset.
6. If the reduced cost base exceeds the capital proceeds, the difference is your capital *loss*.
7. If the capital proceeds are less than the cost base but more than the reduced cost base, you have neither a capital *gain* nor a capital *loss*.

### **Step 3—Work out your net capital gain or loss for the income year**

#### **100-50 How to work out your net capital gain or loss**

1. Reduce your capital gains for the income year, in the order you choose, by your capital losses for the income year. (If the capital losses for the income year exceed the capital gains, the difference

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

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**Division 100** A Guide to capital gains and losses

**Section 100-55**

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is your net capital loss. You cannot deduct a net capital loss from your assessable income.)

2. Reduce any remaining capital gains, in the order you choose, by any unapplied net capital losses for previous income years.
3. Reduce any remaining discount capital gains by the discount percentage.

To find out what is a discount capital gain and the discount percentage:  
see Division 115.

4. If you carry on a small business, apply the small business concessions in further reduction of your capital gains (whether or not the gains are discount capital gains).

For the small business concessions:  
see Division 152.

5. Add up:
  - (a) any remaining capital gains that are not discount capital gains; and
  - (b) any remaining discount capital gains.

The total is your net capital gain.

For the rules on working out your *net* capital gain or loss:  
see Division 102.

**100-55 How do you comply with CGT?**

Declare any net capital gain as assessable income in your income tax return.

Defer any net capital loss to the next income year for which you have capital gains that exceed the capital losses for that income year.

**Keeping records for CGT purposes**

**100-60 Why keep records?**

1. To ensure you do not disadvantage yourself.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

2. To comply as easily as possible.
3. To plan for your CGT position in future income years.
4. The law requires you to: see Division 121.

### **100-65 What records?**

Keeping full records will make it easier for you to comply. For example, keep records of:

- receipts of purchase or transfer;
- interest on money you borrowed;
- costs of agents, accountants, legal, advertising etc.;
- insurance costs and land rates or taxes;
- any market valuations;
- costs of maintenance, repairs or modifications;
- brokerage on shares;
- legal costs.

### **100-70 How long you need to keep records**

The law requires you to keep records for 5 years after a CGT event has happened.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 102—Assessable income includes net capital gain

### Guide to Division 102

#### 102-1 What this Division is about

This Division tells you how to work out if you have made a net capital gain or a net capital loss for the income year. A net capital gain is included in your assessable income. However, you cannot deduct a net capital loss. (Amounts otherwise included in your assessable income do not form part of a net capital gain.)

#### 102-3 Concessions in working out your net capital gain

- (1) Concessional rules apply to working out the net capital gain of some entities (see subsection (2)) if:
  - (a) they have a capital gain (a *discount capital gain*) from a CGT asset acquired at least 12 months before the CGT event that caused the capital gain; and
  - (b) they have not chosen to include indexation in the cost base of the asset for working out the capital gain (if relevant).

Note 1: Division 115 explains what is a discount capital gain.

Note 2: Under Division 110, the entity can choose to include indexation in the cost base of a CGT asset acquired at or before 11.45 am on 21 September 1999.

- (2) Only these entities get the concession:
  - (a) individuals;
  - (b) complying superannuation entities;
  - (c) trusts;
  - (d) life insurance companies, in relation to discount capital gains for CGT events in respect of CGT assets that are complying superannuation assets.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: Shareholders in a listed investment company can also receive a concession equivalent to a discount capital gain: see Subdivision 115-D.

- (3) The concession is that the net capital gain includes only *part* of the amount of the discount capital gain left after applying capital losses and net capital losses from earlier income years.

See subsection 102-5(1).

## Table of sections

### Operative provisions

102-5	Assessable income includes net capital gain
102-10	How to work out your net capital loss
102-15	How to apply net capital losses
102-20	Ways you can make a capital gain or a capital loss
102-22	Amounts of capital gains and losses
102-23	CGT event still happens even if gain or loss disregarded
102-25	Order of application of CGT events
102-30	Exceptions and modifications

## Operative provisions

### 102-5 Assessable income includes net capital gain

- (1) Your assessable income includes your net capital gain (if any) for the income year. You work out your *net capital gain* in this way:

#### *Working out your net capital gain*

Step 1. Reduce the \*capital gains you made during the income year by the \*capital losses (if any) you made during the income year.

Note 1: You choose the order in which you reduce your capital gains. You have a net capital loss for the income year if your capital losses exceed your capital gains: see section 102-10.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 102-5

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Note 2: Some provisions of this Act (such as Divisions 104 and 118) permit or require you to disregard certain capital gains or losses when working out your net capital gain. Subdivision 152-B permits you, in some circumstances, to disregard a capital gain on an asset you held for at least 15 years.

Step 2. Apply any previously unapplied \*net capital losses from earlier income years to reduce the amounts (if any) remaining after the reduction of \*capital gains under step 1 (including any capital gains not reduced under that step because the \*capital losses were less than the total of your capital gains).

Note 1: Section 102-15 explains how to apply net capital losses.

Note 2: You choose the order in which you reduce the amounts.

Step 3. Reduce by the \*discount percentage each amount of a \*discount capital gain remaining after step 2 (if any).

Note: Only some entities can have discount capital gains, and only if they have capital gains from CGT assets acquired at least a year before making the gains. See Division 115.

Step 4. If any of your \*capital gains (whether or not they are \*discount capital gains) qualify for any of the small business concessions in Subdivisions 152-C, 152-D and 152-E, apply those concessions to each capital gain as provided for in those Subdivisions.

Note 1: The basic conditions for getting these concessions are in Subdivision 152-A.

Note 2: Subdivision 152-C does not apply to CGT events J2, J5 and J6. In addition, Subdivision 152-E does not apply to CGT events J5 and J6.

Step 5. Add up the amounts of \*capital gains (if any) remaining after step 4. The sum is your **net capital gain** for the income year.

Note: For exceptions and modifications to these rules: see section 102-30.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) However, if during the income year:
- (a) you became bankrupt; or
  - (b) you were released from debts under a law relating to bankruptcy;
- any \*net capital loss you made for an earlier income year must be disregarded in working out whether you made a \*net capital gain for the income year or a later one.
- (3) Subsection (2) applies even though your bankruptcy is annulled if:
- (a) the annulment happens under section 74 of the *Bankruptcy Act 1966*; and
  - (b) under the composition or scheme of arrangement concerned, you were, will be or may be released from debts from which you would have been released if instead you had been discharged from the bankruptcy.

### **102-10 How to work out your net capital loss**

- (1) You work out if you have a **net capital loss** for the income year in this way:

**Working out your net capital loss**

- Step 1. Add up the \*capital losses you made during the income year. Also add up the \*capital gains you made.
- Step 2. Subtract your \*capital gains from your \*capital losses.
- Step 3. If the Step 2 amount is *more than zero*, it is your **net capital loss** for the income year.

Note: For exceptions and modifications to these rules: see section 102-30.

- (2) You *cannot* deduct from your assessable income a \*net capital loss for any income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 102-15

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**102-15 How to apply net capital losses**

In working out if you have a \*net capital gain, your \*net capital losses are applied in the order in which you made them.

Note 1: A net capital loss can be applied only to the extent that it has not already been utilised: see subsection 960-20(1).

Note 2: For applying a net capital loss for the 1997-98 income year or an earlier income year, see section 102-15 of the *Income Tax (Transitional Provisions) Act 1997*.

**102-20 Ways you can make a capital gain or a capital loss**

You can make a \*capital gain or \*capital loss if and only if a \*CGT event happens. The gain or loss is made at the time of the event.

Note 1: The full list of CGT events is in section 104-5.

Note 2: The gain or loss may be affected by an exemption, or may be able to be rolled-over. For exemptions generally, see Division 118. For roll-overs, see Divisions 122, 123, 124 and 126.

Note 3: You may make a capital gain or capital loss as a result of a CGT event happening to another entity: see subsections 115-215(3), 170-275(1) and 170-280(3).

Note 4: You cannot make a capital loss from a CGT event that happens to your original interests during a trust restructuring period if you choose a roll-over under Subdivision 124-N.

Note 5: The capital loss may be affected if the CGT asset was owned by a member of a demerger group just before a demerger: see section 125-170.

Note 6: Under subsection 230-310(4) gains and losses are taken to arise from a CGT event in particular circumstances.

Note 7: This section does not apply in relation to the capital gain mentioned in paragraph 294-120(5)(b) of the *Income Tax (Transitional Provisions) Act 1997*.

**102-22 Amounts of capital gains and losses**

Most \*CGT events provide for calculating a \*capital gain or \*capital loss by comparing 2 different amounts. The amount of the gain or loss is the difference between those amounts.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **102-23 CGT event still happens even if gain or loss disregarded**

A \*CGT event still happens even if:

- (a) it does not result in a \*capital gain or \*capital loss; or
- (b) a capital gain or capital loss from the event is disregarded.

Example: Lindy sells a car. Section 118-5 says that any capital gain or loss from a CGT event happening to a car is disregarded. However, the sale is still an example of CGT event A1.

### **102-25 Order of application of CGT events**

- (1) Work out if a \*CGT event (except \*CGT events D1 and H2) happens to your situation. If more than one event can happen, the one you use is the one that is the most specific to your situation.
- (2) However, there are 3 exceptions: one for \*CGT event J2, one for CGT event K5 and one for CGT event K12.
- (2A) If the circumstances that gave rise to \*CGT event J2 constitute another CGT event, CGT event J2 applies in addition to the other event.

Example: CGT event J2 happens because a replacement asset for a small business roll-over under Subdivision 152-E becomes your trading stock (in circumstances where CGT event K4 happens). Both CGT events apply.

- (2B) \*CGT event K5 happens if CGT event A1, C2 or E8 happens. CGT event K5 applies in addition to the other event.

(2C) If:

- (a) \*CGT events happen for which you make \*capital gains or \*capital losses; and
- (b) the capital gains or losses are taken into account in working out a \*foreign hybrid net capital loss amount; and
- (c) the foreign hybrid net capital loss amount is itself taken into account in determining that \*CGT event K12 happens;

CGT event K12 applies in addition to the other CGT events.

- (3) If no \*CGT event (except \*CGT events D1 and H2) happens:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) work out if CGT event D1 happens and use that event if it does; and
- (b) if it does not, work out if CGT event H2 happens and use that event if it does.

Note: The full list of CGT events is in section 104-5.

**102-30 Exceptions and modifications**

Provisions of this Act are in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

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<b>Special rules affecting capital gains and capital losses</b>			
<b>Item</b>	<b>For this kind of entity:</b>	<b>There are these special rules:</b>	<b>See:</b>
1	All entities	You can subtract capital losses from collectables only from your capital gains from collectables.	section 108-10
2	All entities	Disregard capital losses you make from personal use assets.	section 108-20
2AA	Beneficiary of trust that makes a capital gain taken into account in working out the net income of the trust	The beneficiary is treated as having an extra capital gain corresponding to the beneficiary's share of the capital gain (taking into account adjustments in respect of the CGT discount and small business concessions).	Subdivision 115-C
3	All entities	If any of your commercial debts have been forgiven in the income year, your net capital losses (including net capital losses from collectables) may be reduced.	sections 245-130 and 245-135
4	A company	If it has a change of ownership or control during the income year, and has not satisfied the business continuity test, it works out its net capital gain and net capital loss in a special way.	Subdivision 165-CB

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Special rules affecting capital gains and capital losses**

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Item	For this kind of entity:	There are these special rules:	See:
5	A company	It cannot apply a net capital loss unless: <ul style="list-style-type: none"> <li>• the same people owned the company during the loss year, the income year and any intervening year; and</li> <li>• no person controlled the company's voting power at any time during the income year who did not also control it during the whole of the loss year and any intervening year;</li> </ul> or the company has satisfied the business continuity test.	Subdivision 165-CA
6	A company	If one or more of these things happen: <ul style="list-style-type: none"> <li>• a capital gain or loss is injected into it;</li> <li>• a tax benefit is obtained from its available net capital losses or current year capital losses;</li> <li>• a tax benefit is obtained because of its available capital gains;</li> </ul> the Commissioner can disallow its net capital losses or current year capital losses, and it may have to work out its net capital loss in a special way.	Division 175
7	A company	A company can transfer a surplus amount of its net capital loss to another company so that the other company can apply the amount in the income year of the transfer. (Both companies must be members of the same wholly-owned group.)	Subdivision 170-B
7A	The head company of a consolidated group or a MEC group	The head company of a consolidated group or a MEC group must apply the capital loss from CGT event L1 over at least 5 income years	section 104-500

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

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Section 102-30

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**Special rules affecting capital gains and capital losses**

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<b>Item</b>	<b>For this kind of entity:</b>	<b>There are these special rules:</b>	<b>See:</b>
8	A PDF	If it is a PDF at the end of an income year for which it has a net capital loss, it can apply the loss in a later income year only if it is a PDF throughout the last day of the later income year.	section 195-25
9	A PDF	If it becomes a PDF during an income year, it works out its net capital gain and net capital loss for the income year in a special way.	section 195-35
10	Body that has ceased to be an STB	Net capital losses made before cessation disregarded. Special rules apply in cessation year where net capital gain before cessation and net capital loss after cessation.	<b>section 24AX</b>
10A	All entities	Division 316 contains special rules affecting capital gains and capital losses connected with demutualisation of friendly society health or life insurers.	Division 316
11	A life insurance company	Division 320 contains special rules that apply to capital gains and capital losses	Division 320
12	A company	The capital gain or capital loss a company makes from a CGT event that happened to a share in a company that is a foreign resident may be reduced.	Subdivision 768-G
13	A PDF	Sections 102-5 and 102-10 do not apply to the calculation of net capital gains and losses. Capital gains and losses are instead allocated to separate classes of income.	<b>Subdivision C of Division 10E of Part III</b>
14	A CFC	In calculating the CFC's attributable income, pre-1 July 1990 capital losses are disregarded.	section 409

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 103—General rules**

### **Guide to Division 103**

#### **103-1 What this Division is about**

This Division sets out some general rules that apply to the provisions dealing with capital gains and capital losses.

#### **Table of sections**

##### **Operative provisions**

103-5	Giving property as part of a transaction
103-10	Entitlement to receive money or property
103-15	Requirement to pay money or give property
103-25	Choices
103-30	Reduction of cost base etc. by net input tax credits

#### **Operative provisions**

##### **103-5 Giving property as part of a transaction**

There are a number of provisions in this Part and Part 3-3 that say that a payment, cost or expenditure can include giving property.

To the extent that such a provision does say that a payment, cost or expenditure can include giving property, use the \*market value of the property in working out the amount of the payment, cost or expenditure.

##### **103-10 Entitlement to receive money or property**

- (1) This Part and Part 3-3 apply to you as if you had received money or other property if it has been applied for your benefit (including by discharging all or part of a debt you owe) or as you direct.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) Those Parts apply to you as if you are entitled to receive money or other property:
  - (a) if you are entitled to have it so applied; or
  - (b) if:
    - (i) you will not receive it until a later time; or
    - (ii) the money is payable by instalments.

**103-15 Requirement to pay money or give property**

This Part and Part 3-3 apply to you as if you are required to pay money or give other property even if:

- (a) you do not have to pay or give it until a later time; or
- (b) the money is payable by instalments.

**103-25 Choices**

- (1) A choice you can make under this Part or Part 3-3 must be made:
  - (a) by the day you lodge your \*income tax return for the income year in which the relevant \*CGT event happened; or
  - (b) within a further time allowed by the Commissioner.
- (2) The way you (and any other entity making the choice) prepare your \*income tax returns is sufficient evidence of the making of the choice.
- (3) However, there are some exceptions:
  - (aa) subsection 115-230(3) (relating to assessment of \*capital gains of resident testamentary trusts) requires a trustee to make a choice by the time specified in subsection 115-230(5); and
  - (b) subsections 152-315(4) and (5) (relating to the small business retirement exemption) require a choice to be made in writing.

Note: This section is modified in calculating the attributable income of a CFC: see section 421 of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **103-30 Reduction of cost base etc. by net input tax credits**

Reduce the \*cost base and \*reduced cost base of a \*CGT asset, and any other amount that could be involved in the calculation of an entity's \*capital gain or \*capital loss, by the amount of any \*net input tax credit of the entity in relation to that amount.

Example: The other amount could be expenditure in the case of some CGT events (see, for example, CGT event D1).

Note: Subsection 116-20(5) deals with the effect of net GST on supplies for the purposes of capital proceeds.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 104—CGT events**

### **Table of Subdivisions**

	Guide to Division 104
104-A	Disposals
104-B	Use and enjoyment before title passes
104-C	End of a CGT asset
104-D	Bringing into existence a CGT asset
104-E	Trusts
104-F	Leases
104-G	Shares
104-H	Special capital receipts
104-I	Australian residency ends
104-J	CGT events relating to roll-overs
104-K	Other CGT events
104-L	Consolidated groups and MEC groups

### **Guide to Division 104**

#### **104-1 What this Division is about**

This Division sets out all the CGT events for which you can make a capital gain or loss. It tells you how to work out if you have made a gain or loss from each event and the time of each event. It also contains exceptions for gains and losses for many events (such as the exception for CGT assets acquired before 20 September 1985) and some cost base adjustment rules.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## 104-5 Summary of the CGT events

<b>CGT events</b>			
<b>Event number and description</b>	<b>Time of event is:</b>	<b>Capital gain is:</b>	<b>Capital loss is:</b>
A1 Disposal of a CGT asset  <i>[See section 104-10]</i>	when disposal contract is entered into or, if none, when entity stops being asset's owner	capital proceeds from disposal <i>less</i> asset's cost base	asset's reduced cost base <i>less</i> capital proceeds
B1 Use and enjoyment before title passes  <i>[See section 104-15]</i>	when use of CGT asset passes	capital proceeds <i>less</i> asset's cost base	asset's reduced cost base <i>less</i> capital proceeds
C1 Loss or destruction of a CGT asset  <i>[See section 104-20]</i>	when compensation is first received or, if none, when loss discovered or destruction occurred	capital proceeds <i>less</i> asset's cost base	asset's reduced cost base <i>less</i> capital proceeds
C2 Cancellation, surrender and similar endings  <i>[See section 104-25]</i>	when contract ending asset is entered into or, if none, when asset ends	capital proceeds from ending <i>less</i> asset's cost base	asset's reduced cost base <i>less</i> capital proceeds
C3 End of option to acquire shares etc.  <i>[See section 104-30]</i>	when option ends	capital proceeds from granting option <i>less</i> expenditure in granting it	expenditure in granting option <i>less</i> capital proceeds

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 104-5

<b>CGT events</b>			
<b>Event number and description</b>	<b>Time of event is:</b>	<b>Capital gain is:</b>	<b>Capital loss is:</b>
D1 Creating contractual or other rights  <i>[See section 104-35]</i>	when contract is entered into or right is created	capital proceeds from creating right <i>less</i> incidental costs of creating it	incidental costs of creating right <i>less</i> capital proceeds
D2 Granting an option  <i>[See section 104-40]</i>	when option is granted	capital proceeds from grant <i>less</i> expenditure to grant it	expenditure to grant option <i>less</i> capital proceeds
D3 Granting a right to income from mining  <i>[See section 104-45]</i>	when contract is entered into or, if none, when right is granted	capital proceeds from grant of right <i>less</i> expenditure to grant it	expenditure to grant right <i>less</i> capital proceeds
D4 Entering into a conservation covenant  <i>[See section 104-47]</i>	when covenant is entered into	capital proceeds from covenant <i>less</i> cost base apportioned to the covenant	reduced cost base apportioned to the covenant <i>less</i> capital proceeds from covenant
E1 Creating a trust over a CGT asset  <i>[See section 104-55]</i>	when trust is created	capital proceeds from creating trust <i>less</i> asset's cost base	asset's reduced cost base <i>less</i> capital proceeds

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 104-5

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**CGT events**

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Event number and description	Time of event is:	Capital gain is:	Capital loss is:
E2 Transferring a CGT asset to a trust <i>[See section 104-60]</i>	when asset transferred	capital proceeds from transfer <i>less</i> asset's cost base	asset's reduced cost base <i>less</i> capital proceeds
E3 Converting a trust to a unit trust <i>[See section 104-65]</i>	when trust is converted	market value of asset at that time <i>less</i> its cost base	asset's reduced cost base <i>less</i> that market value
E4 Capital payment for trust interest  <i>[See section 104-70]</i>	when trustee makes payment	non-assessable part of the payment <i>less</i> cost base of the trust interest	<i>no capital loss</i>
E5 Beneficiary becoming entitled to a trust asset  <i>[See section 104-75]</i>	when beneficiary becomes absolutely entitled	for trustee—market value of CGT asset at that time <i>less</i> its cost base; for beneficiary—that market value <i>less</i> cost base of beneficiary's capital interest	for trustee—reduced cost base of CGT asset at that time <i>less</i> that market value; for beneficiary—reduced cost base of beneficiary's capital interest <i>less</i> that market value

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 104-5

<b>CGT events</b>			
<b>Event number and description</b>	<b>Time of event is:</b>	<b>Capital gain is:</b>	<b>Capital loss is:</b>
E6 Disposal to beneficiary to end income right	the time of the disposal	for trustee—market value of CGT asset at that time <i>less</i> its cost base; for beneficiary—that market value <i>less</i> cost base of beneficiary's right to income	for trustee—reduced cost base of CGT asset at that time <i>less</i> that market value; for beneficiary—reduced cost base of beneficiary's right to income <i>less</i> that market value
<i>[See section 104-80]</i>			

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

<b>CGT events</b>			
<b>Event number and description</b>	<b>Time of event is:</b>	<b>Capital gain is:</b>	<b>Capital loss is:</b>
E7 Disposal to beneficiary to end capital interest	the time of the disposal	for trustee—market value of CGT asset at that time <i>less</i> its cost base; for beneficiary—that market value <i>less</i> cost base of beneficiary’s capital interest	for trustee—reduced cost base of CGT asset at that time <i>less</i> that market value; for beneficiary—reduced cost base of beneficiary’s capital interest <i>less</i> that market value
<i>[See section 104-85]</i>			
E8 Disposal by beneficiary of capital interest	when disposal contract entered into or, if none, when beneficiary ceases to own CGT asset	capital proceeds <i>less</i> appropriate proportion of the trust’s net assets	appropriate proportion of the trust’s net assets <i>less</i> capital proceeds
<i>[See section 104-90]</i>			

*\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.*

Section 104-5

<b>CGT events</b>			
<b>Event number and description</b>	<b>Time of event is:</b>	<b>Capital gain is:</b>	<b>Capital loss is:</b>
E9 Creating a trust over future property  <i>[See section 104-105]</i>	when entity makes agreement	market value of the property (as if it existed when agreement made) <i>less</i> incidental costs in making agreement	incidental costs in making agreement <i>less</i> market value of the property (as if it existed when agreement made)
E10 Annual cost base reduction exceeds cost base of interest in AMIT  <i>[See section 104-107A]</i>	when reduction happens	excess of cost base reduction over cost base	<i>no capital loss</i>
F1 Granting a lease  <i>[See section 104-110]</i>	for grant of lease—when entity enters into lease contract or, if none, at start of lease; for lease renewal or extension—at start of renewal or extension	capital proceeds <i>less</i> expenditure on grant, renewal or extension	expenditure on grant, renewal or extension <i>less</i> capital proceeds

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 104-5

<b>CGT events</b>			
<b>Event number and description</b>	<b>Time of event is:</b>	<b>Capital gain is:</b>	<b>Capital loss is:</b>
F2 Granting a long term lease  [See section 104-115]	for grant of lease—when lessor grants lease; for lease renewal or extension—at start of renewal or extension	capital proceeds from grant, renewal or extension <i>less</i> cost base of leased property	reduced cost base of leased property <i>less</i> capital proceeds from grant, renewal or extension
F3 Lessor pays lessee to get lease changed  [See section 104-120]	when lease term is varied or waived	<i>no capital gain</i>	amount of expenditure to get lessee's agreement
F4 Lessee receives payment for changing lease  [See section 104-125]	when lease term is varied or waived	capital proceeds <i>less</i> cost base of lease	<i>no capital loss</i>
F5 Lessor receives payment for changing lease  [See section 104-130]	when lease term is varied or waived	capital proceeds <i>less</i> expenditure in relation to variation or waiver	expenditure in relation to variation or waiver <i>less</i> capital proceeds
G1 Capital payment for shares  [See section 104-135]	when company pays non-assessable amount	payment <i>less</i> cost base of shares	<i>no capital loss</i>
G3 Liquidator or administrator declares shares or financial instruments worthless  [See section 104-145]	when declaration was made	<i>no capital gain</i>	shares' or financial instruments' reduced cost base

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 104-5

<b>CGT events</b>			
<b>Event number and description</b>	<b>Time of event is:</b>	<b>Capital gain is:</b>	<b>Capital loss is:</b>
H1 Forfeiture of a deposit  <i>[See section 104-150]</i>	when deposit is forfeited	deposit <i>less</i> expenditure in connection with prospective sale	expenditure in connection with prospective sale <i>less</i> deposit
H2 Receipt for event relating to a CGT asset <i>[See section 104-155]</i>	when act, transaction or event occurred	capital proceeds <i>less</i> incidental costs	incidental costs <i>less</i> capital proceeds
I1 Individual or company stops being an Australian resident  <i>[See section 104-160]</i>	when individual or company stops being Australian resident	for each CGT asset the person owns, its market value <i>less</i> its cost base	for each CGT asset the person owns, its reduced cost base <i>less</i> its market value
I2 Trust stops being a resident trust  <i>[See section 104-170]</i>	when trust ceases to be resident trust for CGT purposes	for each CGT asset the trustee owns, its market value of asset <i>less</i> its cost base	for each CGT asset the trustee owns, its reduced cost base <i>less</i> its market value
J1 Company stops being member of wholly-owned group after roll-over <i>[See section 104-175]</i>	when the company stops	market value of asset at time of event <i>less</i> its cost base	reduced cost base of asset <i>less</i> that market value

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 104-5

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**CGT events**

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<b>Event number and description</b>	<b>Time of event is:</b>	<b>Capital gain is:</b>	<b>Capital loss is:</b>
J2 Change in relation to replacement asset or improved asset after a roll-over under Subdivision 152-E <i>[See section 104-185]</i>	when the change happens	the amount mentioned in subsection 104-185(5)	<i>no capital loss</i>
J4 Trust fails to cease to exist after a roll-over under Subdivision 124-N <i>[See section 104-195]</i>	when the failure happens	market value of asset less asset's cost base	reduced cost base of asset less asset's market value
J5 Failure to acquire replacement asset and to incur fourth element expenditure after a roll-over under Subdivision 152-E <i>[See section 104-197]</i>	at the end of the replacement asset period	the amount of the capital gain that you disregarded under Subdivision 152-E	<i>no capital loss</i>
J6 Cost of acquisition of replacement asset or amount of fourth element expenditure, or both, not sufficient to cover disregarded capital gain <i>[See section 104-198]</i>	at the end of the replacement asset period	the amount mentioned in subsection 104-198(3)	<i>no capital loss</i>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 104-5

<b>CGT events</b>			
<b>Event number and description</b>	<b>Time of event is:</b>	<b>Capital gain is:</b>	<b>Capital loss is:</b>
K1 As the result of an incoming international transfer of a Kyoto unit or an Australian carbon credit unit from your foreign account or your nominee's foreign account, you start to hold the unit as a registered emissions unit <i>[See section 104-205]</i>	when you start to hold the unit as a registered emissions unit	market value of unit <i>less</i> its cost base	reduced cost base of unit <i>less</i> its market value
K2 Bankrupt pays amount in relation to debt <i>[See section 104-210]</i>	when payment is made	<i>no capital gain</i>	so much of payment as relates to denied part of a net capital loss
K3 Asset passing to tax-advantaged entity <i>[See section 104-215]</i>	when individual dies	market value of asset at death <i>less</i> its cost base	reduced cost base of asset <i>less</i> that market value
K4 CGT asset starts being trading stock <i>[See section 104-220]</i>	when asset starts being trading stock	market value of asset <i>less</i> its cost base	reduced cost base of asset <i>less</i> its market value

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**CGT events**

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Event number and description	Time of event is:	Capital gain is:	Capital loss is:
K5 Special capital loss from collectable that has fallen in market value  <i>[See section 104-225]</i>	when CGT event A1, C2 or E8 happens to shares in the company, or an interest in the trust, that owns the collectable	<i>no capital gain</i>	market value of the shares or interest (as if the collectable had not fallen in market value) <i>less</i> the capital proceeds from CGT event A1, C2 or E8
K6 Pre-CGT shares or trust interest  <i>[See section 104-230]</i>	when another CGT event involving the shares or interest happens	capital proceeds from the shares or trust interest (so far as attributable to post-CGT assets owned by the company or trust) <i>less</i> the assets' cost bases	<i>no capital loss</i>
K7 Balancing adjustment occurs for a depreciating asset that you used for purposes other than taxable purposes <i>[See section 104-235]</i>	When balancing adjustment event occurs	Termination value less cost times fraction	Cost less termination value times fraction

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 104-5

<b>CGT events</b>			
<b>Event number and description</b>	<b>Time of event is:</b>	<b>Capital gain is:</b>	<b>Capital loss is:</b>
K8 Direct value shifts affecting your equity or loan interests in a company or trust <i>[See section 104-250 and Division 725]</i>	the decrease time for the interests	the gain worked out under section 725-365	<i>no capital loss</i>
K9 Entitlement to receive payment of a carried interest <i>[See section 104-255]</i>	when you become entitled to receive payment	capital proceeds from entitlement	<i>no capital loss</i>
K10 You make a forex realisation gain covered by item 1 of the table in subsection 775-70(1) <i>[See section 104-260]</i>	when the forex realisation event happens	the forex realisation gain	<i>no capital loss</i>
K11 You make a forex realisation loss covered by item 1 of the table in subsection 775-75(1) <i>[See section 104-265]</i>	when the forex realisation event happens	<i>no capital gain</i>	the forex realisation loss
K12 Foreign hybrid loss exposure adjustment <i>[See section 104-270]</i>	just before the end of the income year	<i>no capital gain</i>	the amount stated in subsection 104-270(3)
L1 Reduction under section 705-57 in tax cost setting amount of assets of entity becoming subsidiary member of consolidated group or MEC group <i>[See section 104-500]</i>	Just after entity becomes subsidiary member	<i>no capital gain</i>	amount of reduction

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 104-5

<b>CGT events</b>			
<b>Event number and description</b>	<b>Time of event is:</b>	<b>Capital gain is:</b>	<b>Capital loss is:</b>
L2 Amount remaining after step 3A etc. of joining allocable cost amount is negative <i>[See section 104-505]</i>	Just after entity becomes subsidiary member	amount remaining	<i>no capital loss</i>
L3 Tax cost setting amounts for retained cost base assets exceed joining allocable cost amount <i>[See section 104-510]</i>	Just after entity becomes subsidiary member	amount of excess	<i>no capital loss</i>
L4 No reset cost base assets against which to apply excess of net allocable cost amount on joining <i>[See section 104-515]</i>	Just after entity becomes subsidiary member	<i>no capital gain</i>	amount of excess
L5 Amount remaining after step 4 of leaving allocable cost amount is negative <i>[See section 104-520]</i>	When entity ceases to be subsidiary member	amount remaining	<i>no capital loss</i>
L6 Error in calculation of tax cost setting amount for joining entity's assets: CGT event L6 <i>[See section 104-525]</i>	start of the income year when the Commissioner becomes aware of the errors	the net overstated amount resulting from the errors, or a portion of that amount	the net understated amount resulting from the errors, or a portion of that amount

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 104-10

**CGT events**

Event number and description	Time of event is:	Capital gain is:	Capital loss is:
L8 Reduction in tax cost setting amount for reset cost base assets on joining cannot be allocated	Just after entity becomes subsidiary member	<i>no capital gain</i>	amount of reduction that cannot be allocated
<i>[See section 104-535]</i>			

Note: Subsection 230-310(4) (which deals with hedging financial arrangements) provides that in certain circumstances a CGT event is taken to have occurred in relation to a hedging financial arrangement at the same time as a CGT event actually occurs in relation to a hedged item covered by the arrangement.

**Subdivision 104-A—Disposals**

**104-10 Disposal of a CGT asset: CGT event A1**

- (1) **CGT event A1** happens if you \*dispose of a \*CGT asset.
- (2) You **dispose of** a \*CGT asset if a change of ownership occurs from you to another entity, whether because of some act or event or by operation of law. However, a change of ownership does not occur if you stop being the legal owner of the asset but continue to be its beneficial owner.

Note: A change in the trustee of a trust does not constitute a change in the entity that is the trustee of the trust (see subsection 960-100(2)). This means that CGT event A1 will not happen merely because of a change in the trustee.

- (3) The time of the event is:
  - (a) when you enter into the contract for the \*disposal; or
  - (b) if there is no contract—when the change of ownership occurs.

Example: In June 1999 you enter into a contract to sell land. The contract is settled in October 1999. You make a capital gain of \$50,000.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



The gain is made in the 1998-99 income year (the year you entered into the contract) and not the 1999-2000 income year (the year that settlement takes place).

Note 1: If the contract falls through before completion, this event does not happen because no change in ownership occurs.

Note 2: If the asset was compulsorily acquired from you: see subsection (6).

- (4) You make a **capital gain** if the \*capital proceeds from the disposal are *more* than the asset's \*cost base. You make a **capital loss** if those capital proceeds are *less* than the asset's \*reduced cost base.

*Exceptions*

- (5) A \*capital gain or \*capital loss you make is disregarded if:
- (a) you \*acquired the asset before 20 September 1985; or
  - (b) for a lease that you granted:
    - (i) it was granted before that day; or
    - (ii) if it has been renewed or extended—the start of the last renewal or extension occurred before that day.

Note 1: You can make a gain if you dispose of shares in a company, or an interest in a trust, that you acquired before that day: see CGT event K6.

Note 2: A capital gain or loss you make because you assign a right under or in relation to a general insurance policy you held with an HIIH company to the Commonwealth, the trustee of the HIIH Trust or a prescribed entity is also disregarded: see section 322-15.

Note 3: A capital gain or loss made by a demerging entity from CGT event A1 happening as a result of a demerger is also disregarded: see section 125-155.

Note 4: A capital gain or loss you make because of section 16AI of the *Banking Act 1959* is disregarded: see section 253-10 of this Act. Section 16AI of the *Banking Act 1959*:

- (a) reduces your right to be paid an amount by an ADI in connection with an account to the extent of your entitlement under Division 2AA of Part II of that Act to be paid an amount by APRA; and
- (b) provides that, to the extent of the reduction, the right becomes a right of APRA.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 104-15

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Note 5: A capital gain or loss you make because, under section 62ZZL of the *Insurance Act 1973*, you dispose of a CGT asset consisting of your rights against a general insurance company to APRA is disregarded: see section 322-30 of this Act.

*Compulsory acquisition*

- (6) If the asset was \*acquired from you by an entity under a power of compulsory acquisition conferred by an \*Australian law or a \*foreign law, the time of the event is the earliest of:
- (a) when you received compensation from the entity; or
  - (b) when the entity became the asset's owner; or
  - (c) when the entity entered it under that power; or
  - (d) when the entity took possession under that power.

Note: You may be able to choose a roll-over if an asset is compulsorily acquired: see Subdivision 124-B.

**Subdivision 104-B—Use and enjoyment before title passes**

**104-15 Use and enjoyment before title passes: CGT event B1**

- (1) **CGT event B1** happens if you enter into an agreement with another entity under which:
- (a) the right to the use and enjoyment of a \*CGT asset you own passes to the other entity; and
  - (b) title in the asset will or may pass to the other entity at or before the end of the agreement.

Note: Division 240 provides for the inclusion of amounts under hire purchase agreements in assessable income.

- (2) The time of the event is when the other entity first obtains the use and enjoyment of the asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (3) You make a **capital gain** if the \*capital proceeds from the agreement are *more* than the asset's \*cost base. You make a **capital loss** if those capital proceeds are *less* than the asset's \*reduced cost base.

*Exceptions*

- (4) A \*capital gain or \*capital loss you make is disregarded if:
- (a) title in the asset does not pass to the other entity at or before the end of the agreement; or
  - (b) you \*acquired the asset before 20 September 1985.

### Subdivision 104-C—End of a CGT asset

#### Table of sections

104-20	Loss or destruction of a CGT asset: CGT event C1
104-25	Cancellation, surrender and similar endings: CGT event C2
104-30	End of option to acquire shares etc.: CGT event C3

#### 104-20 Loss or destruction of a CGT asset: CGT event C1

- (1) **CGT event C1** happens if a \*CGT asset you own is lost or destroyed.

Note: This event can apply to part of a CGT asset: see section 108-5 (definition of **CGT asset**).

- (2) The time of the event is:
- (a) when you first receive compensation for the loss or destruction; or
  - (b) if you receive no compensation—when the loss is discovered or the destruction occurred.
- (3) You make a **capital gain** if the \*capital proceeds from the loss or destruction are *more* than the asset's \*cost base. You make a **capital loss** if those capital proceeds are *less* than the asset's \*reduced cost base.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 104-25

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*Exception*

- (4) A \*capital gain or \*capital loss you make is disregarded if you \*acquired the asset before 20 September 1985.

**104-25 Cancellation, surrender and similar endings: CGT event C2**

- (1) **CGT event C2** happens if your ownership of an intangible \*CGT asset ends by the asset:
- (a) being redeemed or cancelled; or
  - (b) being released, discharged or satisfied; or
  - (c) expiring; or
  - (d) being abandoned, surrendered or forfeited; or
  - (e) if the asset is an option—being exercised; or
  - (f) if the asset is a \*convertible interest—being converted.
- (2) The time of the event is:
- (a) when you enter into the contract that results in the asset ending; or
  - (b) if there is no contract—when the asset ends.
- (3) You make a **capital gain** if the \*capital proceeds from the ending are *more* than the asset's \*cost base. You make a **capital loss** if those capital proceeds are *less* than the asset's \*reduced cost base.

Note: The capital proceeds referred to in this subsection are reduced if the gain or loss was for shares and an amount was taken into account as a capital gain for the shares under former section 160ZL of the *Income Tax Assessment Act 1936* for the 1997-98 income year or an earlier income year: see section 104-25 of the *Income Tax (Transitional Provisions) Act 1997*.

- (4) A lease is taken to have expired even if it is extended or renewed.

*Exceptions*

- (5) A \*capital gain or \*capital loss you make is disregarded if:
- (a) you \*acquired the asset before 20 September 1985; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) for a lease that you granted:
- (i) it was granted before that day; or
  - (ii) if it has been renewed or extended—the start of the last renewal or extension occurred before that day.

Note 1: There are other exceptions if:

- your lease expires and you did not use it mainly to produce assessable income: see section 118-40; or
- you exercise rights to acquire shares or units: see section 130-40; or
- you acquire shares or units by converting a convertible interest: see section 130-60; or
- you exercise an option: see section 134-1.

Note 2: A company can agree to forgo any capital loss it makes as a result of forgiving a commercial debt owed to it by another company where the companies are under common ownership: see section 245-90.

Note 3: A capital gain or loss a company makes because shares in its 100% subsidiary are cancelled (an example of CGT event C2) on the liquidation of the subsidiary may be reduced if there was a roll-over for a CGT asset under Subdivision 126-B: see section 126-85.

Note 5: Cost base adjustments are made only under Subdivision 125-B if there is a roll-over under that Subdivision for CGT event C2 happening as a result of a demerger.

Note 6: A capital gain or loss made by a demerging entity from CGT event C2 happening as a result of a demerger is also disregarded: see section 125-155.

Note 7: A capital gain or loss you make from the meeting of your entitlement under Division 2AA (Financial claims scheme for account-holders with insolvent ADIs) of Part II of the *Banking Act 1959* or Part VC (Financial claims scheme for account-holders with insolvent general insurers) of the *Insurance Act 1973* is disregarded: see sections 253-10 and 322-30 of this Act.

### 104-30 End of option to acquire shares etc.: CGT event C3

- (1) **CGT event C3** happens if an option a company or a trustee of a unit trust granted to an entity to \*acquire a \*CGT asset that is:
- (a) \*shares in the company or units in the unit trust; or
  - (b) \*debentures of the company or unit trust;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 104-35

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ends in one of these ways:

- (c) it is not exercised by the latest time for its exercise;
  - (d) it is cancelled;
  - (e) it is released or abandoned.
- (2) The time of the event is when the option ends.
- (3) The company or trustee makes a *capital gain* if the \*capital proceeds from the grant of the option are *more* than the expenditure incurred in granting it. It makes a *capital loss* if those capital proceeds are *less*.
- (4) The expenditure can include giving property: see section 103-5. However, it does not include an amount you have received as \*recoupment of it and that is not included in your assessable income.

*Exception*

- (5) A \*capital gain or \*capital loss the company or trustee makes is disregarded if it granted the option before 20 September 1985.

Note: This subsection is modified for the purpose of calculating the attributable income of a CFC: see section 418 of the *Income Tax Assessment Act 1936*.

**Subdivision 104-D—Bringing into existence a CGT asset**

**Table of sections**

104-35	Creating contractual or other rights: CGT event D1
104-40	Granting an option: CGT event D2
104-45	Granting a right to income from mining: CGT event D3
104-47	Conservation covenants: CGT event D4

**104-35 Creating contractual or other rights: CGT event D1**

- (1) *CGT event D1* happens if you create a contractual right or other legal or equitable right in another entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Example: You enter into a contract with the purchaser of your business not to operate a similar business in the same town. The contract states that \$20,000 was paid for this.

You have created a contractual right in favour of the purchaser. If you breach the contract, the purchaser can enforce that right.

- (2) The time of the event is when you enter into the contract or create the other right.
- (3) You make a **capital gain** if the \*capital proceeds from creating the right are *more* than the \*incidental costs you incurred that relate to the event. You make a **capital loss** if those capital proceeds are *less*.

Example: To continue the example: If you paid your lawyer \$1,500 to draw up the contract, you make a capital gain of:

$$\$20,000 - \$1,500 = \$18,500$$

- (4) The costs can include giving property: see section 103-5. However, they do not include an amount you have received as \*recoupment of them and that is not included in your assessable income, or an amount to the extent that you have deducted or can deduct it.

#### *Exceptions*

- (5) **CGT event D1** does not happen if:
- (a) you created the right by borrowing money or obtaining credit from another entity; or
  - (b) the right requires you to do something that is another \*CGT event that happens to you; or
  - (c) a company issues or allots \*equity interests or \*non-equity shares in the company; or
  - (d) the trustee of a unit trust issues units in the trust; or
  - (e) a company grants an option to acquire equity interests, non-equity shares or \*debentures in the company; or
  - (f) the trustee of a unit trust grants an option to acquire units or debentures in the trust; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (g) you created the right by creating in another entity a right to receive an \*exploration benefit under a \*farm-in farm-out arrangement.

Example: You agree to sell land. You have created a contractual right in the buyer to enforce completion of the transaction. The sale results in you disposing of the land, an example of CGT event A1. This means that CGT event D1 does not happen.

**104-40 Granting an option: CGT event D2**

- (1) **CGT event D2** happens if you grant an option to an entity, or renew or extend an option you had granted.
- Note: Some options are not covered: see subsections (6) and (7).
- (2) The time of the event is when you grant, renew or extend the option.
- (3) You make a **capital gain** if the \*capital proceeds from the grant, renewal or extension of the option are *more* than the expenditure you incurred to grant, renew or extend it. You make a **capital loss** if those capital proceeds are *less*.
- (4) The expenditure can include giving property: see section 103-5. However, it does not include an amount you have received as \*recoupment of it and that is not included in your assessable income, or an amount to the extent that you have deducted or can deduct it.

*Exceptions*

- (5) A \*capital gain or \*capital loss you make from the grant, renewal or extension of the option is disregarded if the option is exercised.

Note 1: Section 134-1 sets out the consequences of an option being exercised.

Note 2: A capital gain or capital loss you made for the 1997-98 income year or an earlier income year under former Part IIIA of the *Income Tax Assessment Act 1936* is also disregarded where the option is exercised in the 1998-99 income year or a later one: see section 104-40 of the *Income Tax (Transitional Provisions) Act 1997*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (6) This section does not apply to an option granted, renewed or extended by a company or the trustee of a unit trust to \*acquire a \*CGT asset that is:
- (a) \*shares in the company or units in the unit trust; or
  - (b) debentures of the company or unit trust.

Note: Section 104-30 deals with this situation.

- (7) Nor does it apply to an option relating to a \*personal use asset or a \*collectable.

### **104-45 Granting a right to income from mining: CGT event D3**

- (1) **CGT event D3** happens if you own a \*prospecting entitlement or \*mining entitlement, or an interest in one, and you grant another entity a right to receive \*ordinary income or \*statutory income from operations permitted to be carried on by the entitlement.

Note: If this event applies, there is no disposal of the entitlement.

- (2) The time of the event is:
- (a) when you enter into the contract with the other entity; or
  - (b) if there is no contract—when you grant the right to receive \*ordinary income or \*statutory income.
- (3) You make a **capital gain** if the \*capital proceeds from the grant of the right are *more* than the expenditure you incurred in granting it. You make a **capital loss** if those capital proceeds are *less*.
- (4) The expenditure can include giving property: see section 103-5. However, it does not include an amount you have received as \*recoupment of it and that is not included in your assessable income, or an amount to the extent that you have deducted or can deduct it.

### **104-47 Conservation covenants: CGT event D4**

- (1) **CGT event D4** happens if you enter into a \*conservation covenant over land you own.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) The time of the event is when you enter into the covenant.
- (3) You make a \*capital gain if the \*capital proceeds from entering into the covenant are *more* than that part of the \*cost base of the land that is apportioned to the covenant. You make a \*capital loss if those capital proceeds are *less* than the part of the \*reduced cost base of the land that is apportioned to the covenant.

Note: The capital proceeds from entering into the covenant are modified if you do not receive anything for entering into the covenant: see section 116-105.

- (4) The part of the \*cost base of the land that is apportioned to the covenant is worked out in this way:

$$\text{*Cost base of land} \times \frac{\text{*Capital proceeds from entering into the covenant}}{\text{Those capital proceeds plus the *market value of the land just after you enter into the covenant}}$$

The part of the \*reduced cost base of the land that is apportioned to the covenant is worked out similarly.

- (5) The \*cost base and \*reduced cost base of the land are reduced by the part of the cost base or reduced cost base of the land that is apportioned to the covenant.

Example: Lisa receives \$10,000 for entering into a conservation covenant that covers 15% of the land she owns. Lisa uses the following figures in calculating the cost base of the land that is apportioned to the covenant:

The cost base of the entire land is \$200,000.

The market value of the entire land before entering into the covenant is \$300,000, and its market value after entering into the covenant is \$285,000.

Lisa calculates the cost base of the land that is apportioned to the covenant to be:

$$\$200,000 \times 10,000 \div \left[ 10,000 + 285,000 \right] = \$6,780$$

She reduces the cost base of the land by the part that is apportioned to the covenant:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

\$200,000 – \$6,780 = \$193,220

*Exceptions*

- (6) \*CGT event D4 does not happen if:
- (a) you did not receive any \*capital proceeds for entering into the covenant; and
  - (b) you cannot deduct an amount under Division 31 for entering into the covenant.

Note: In this case, CGT event D1 will apply.

- (7) A \*capital gain or \*capital loss you make is disregarded if you \*acquired the land before 20 September 1985.

### **Subdivision 104-E—Trusts**

#### **Table of sections**

104-55	Creating a trust over a CGT asset: CGT event E1
104-60	Transferring a CGT asset to a trust: CGT event E2
104-65	Converting a trust to a unit trust: CGT event E3
104-70	Capital payment for trust interest: CGT event E4
104-71	Adjustment of non-assessable part
104-72	Reducing your capital gain under CGT event E4 if you are a trustee
104-75	Beneficiary becoming entitled to a trust asset: CGT event E5
104-80	Disposal to beneficiary to end income right: CGT event E6
104-85	Disposal to beneficiary to end capital interest: CGT event E7
104-90	Disposal by beneficiary of capital interest: CGT event E8
104-95	Making a capital gain
104-100	Making a capital loss
104-105	Creating a trust over future property: CGT event E9
104-107A	AMIT—cost base reduction exceeds cost base: CGT event E10
104-107B	Annual cost base adjustment for member’s unit or interest in AMIT
104-107C	AMIT cost base net amount
104-107D	AMIT cost base reduction amount
104-107E	AMIT cost base increase amount
104-107F	Receipt of money etc. increasing AMIT cost base reduction amount not to be treated as income

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- 104-107G Effect of AMIT cost base net amount on cost of AMIT membership interest or unit that is a revenue asset—adjustment of cost of asset
- 104-107H Effect of AMIT cost base net amount on cost of AMIT membership interest or unit that is a revenue asset—amount included in assessable income

**104-55 Creating a trust over a CGT asset: CGT event E1**

- (1) **CGT event E1** happens if you create a trust over a \*CGT asset by declaration or settlement.

Note: A change in the trustee of a trust does not constitute a change in the entity that is the trustee of the trust (see subsection 960-100(2)). This means that CGT event E1 will not happen merely because of a change in the trustee.

- (2) The time of the event is when the trust over the asset is created.
- (3) You make a **capital gain** if the \*capital proceeds from the creation are *more* than the asset's \*cost base. You make a **capital loss** if those capital proceeds are *less* than the asset's \*reduced cost base.

*Cost base rule*

- (4) If you are the trustee of the trust and no beneficiary is absolutely entitled to the asset as against you (disregarding any legal disability), the first element of the asset's \*cost base and \*reduced cost base in your hands is its \*market value when the trust is created.

*Exceptions*

- (5) **CGT event E1** does not happen if you are the sole beneficiary of the trust and:
- (a) you are absolutely entitled to the asset as against the trustee (disregarding any legal disability); and
  - (b) the trust is not a unit trust.
- (6) A \*capital gain or \*capital loss you make is disregarded if you \*acquired the asset before 20 September 1985.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 104-60 Transferring a CGT asset to a trust: CGT event E2

- (1) **CGT event E2** happens if you transfer a \*CGT asset to an existing trust.

Note: A change in the trustee of a trust does not constitute a change in the entity that is the trustee of the trust (see subsection 960-100(2)). This means that CGT event E2 will not happen merely because of a change in the trustee.

- (2) The time of the event is when the asset is transferred.
- (3) You make a **capital gain** if the \*capital proceeds from the transfer are *more* than the asset's \*cost base. You make a **capital loss** if those capital proceeds are *less* than the asset's \*reduced cost base.
- (4) If you are the trustee of the trust and no beneficiary is absolutely entitled to the asset as against you (disregarding any legal disability), the first element of the asset's \*cost base and \*reduced cost base in your hands is its \*market value when the asset is transferred.

#### *Exceptions*

- (5) **CGT event E2** does not happen if you are the sole beneficiary of the trust and:
- (a) you are absolutely entitled to the asset as against the trustee (disregarding any legal disability); and
  - (b) the trust is not a unit trust.
- (6) A \*capital gain or \*capital loss you make is disregarded if you \*acquired the asset before 20 September 1985.

### 104-65 Converting a trust to a unit trust: CGT event E3

- (1) **CGT event E3** happens if:
- (a) a trust (that is not a unit trust) over a \*CGT asset is converted to a unit trust; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) just before the conversion, a beneficiary under the trust was absolutely entitled to the asset as against the trustee (disregarding any legal disability the beneficiary is under).
- (2) The time of the event is when the trust is converted.
- (3) The beneficiary makes a **capital gain** if the \*market value of the asset (when the trust is converted) is *more* than the asset's \*cost base. The beneficiary makes a **capital loss** if that market value is *less* than the asset's \*reduced cost base.

*Exception*

- (4) A \*capital gain or \*capital loss the beneficiary makes is disregarded if it \*acquired the asset before 20 September 1985.

**104-70 Capital payment for trust interest: CGT event E4**

- (1) **CGT event E4** happens if:
  - (a) the trustee of a trust makes a payment to you in respect of your unit or your interest in the trust (except for \*CGT event A1, C2, E1, E2, E6 or E7 happening in relation to it); and
  - (b) some or all of the payment (the **non-assessable part**) is not included in your assessable income.

To avoid doubt, in applying paragraph (b) to work out what part of the payment is included in your assessable income, disregard your share of the trust's net income that is subject to the rules in subsection 115-215(3).

Note 1: Subsections 104-71(1) (tax-exempted amounts), 104-71(3) (tax-free amounts) and 104-71(4) (CGT concession amounts) can affect the calculation of the non-assessable part.

Note 2: The non-assessable part includes amounts (tax-deferred amounts) associated with the small business 50% reduction, frozen indexation, building allowance and accounting differences in income.

Note 3: A payment made to you after you stop owning the unit or interest in the trust forms part of the capital proceeds for the CGT event that happened when you stopped owning it.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (1A) However, **CGT event E4** does not happen if the unit or interest mentioned in subsection (1) is a unit or interest in an \*AMIT.
- (2) The payment can include giving property (see section 103-5).
- (3) The time of the event is:
- (a) just before the end of the income year in which the trustee makes the payment; or
  - (b) if another \*CGT event (except CGT event E4) happens in relation to the unit or interest or part of it after the trustee makes the payment but before the end of that income year—just before the time of that other CGT event.
- (4) You make a **capital gain** if the sum of the amounts of the non-assessable parts of the payments made in the income year made by the trustee in respect of the unit or interest is *more* than its \*cost base.

Note: You cannot make a capital loss.

- (5) If you make a \*capital gain, the \*cost base and \*reduced cost base of the unit or interest are reduced to nil.

Note: A capital gain under former section 160ZM of the *Income Tax Assessment Act 1936* is also taken into account for the purposes of this subsection: see subsection 104-70(3) of the *Income Tax (Transitional Provisions) Act 1997*.

- (6) However, if that sum is not more than the \*cost base:
- (a) the cost base is reduced by that sum; and
  - (b) the \*reduced cost base is reduced by that sum (without the adjustment in subsection 104-71(3)).

Example: Mandy owns units in a unit trust that she bought on 1 July 1998 for \$10 each. During the 1999-2000 income year the trustee makes 4 non-assessable payments of \$0.50 per unit. If at the end of the income year Mandy's cost base for each unit (including indexation) would otherwise be \$10.10, the payments require that it be reduced by \$2, giving a new cost base of \$8.10. If Mandy sells the units (CGT event A1) in the 2000-01 year for more than their cost base at that time, she will make a capital gain equal to the difference.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 104-71

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Note: Cost base adjustments are made only under Subdivision 125-B if there is a roll-over under that Subdivision for CGT event E4 happening as a result of a demerger.

*Exceptions*

- (7) A \*capital gain you make from \*CGT event E4 is disregarded if you \*acquired the \*CGT asset that is the unit or interest before 20 September 1985.
- (8) **CGT event E4** does not happen to the extent that the payment is reasonably attributable to a \*LIC capital gain.
- (9) **CGT event E4** does not happen for a payment made to a foreign resident to the extent that the payment is reasonably attributable to \*ordinary income or \*statutory income from sources other than an \*Australian source. However, this exception does not apply if the trust is a \*public trading trust.

**104-71 Adjustment of non-assessable part**

- (1) In working out the non-assessable part referred to in section 104-70, disregard any part of the payment that is:
  - (a) \*non-assessable non-exempt income; or
  - (c) paid from an amount that has been assessed to the trustee; or
  - (d) paid from an amount that is \*personal services income included in your assessable income, or another entity's assessable income, under section 86-15; or
  - (da) a payment to which paragraph 118-37(1)(ba) applies (about compensation paid through a trust); or
  - (db) a payment to which subsection 118-300(1A) applies (about insurance and annuity payments paid through a trust); or
  - (e) repaid by you; or
  - (f) compensation you paid that can reasonably be regarded as a repayment of all or part of the payment; or
  - (g) an amount referred to in section 152-125 (which exempts a payment of a small business 15-year exemption amount) as an exempt amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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The payment can include giving property (see section 103-5).

- (2) However, the non-assessable part is not reduced by any part of the payment that you can deduct.
- (3) The amount of the non-assessable part referred to in section 104-70 is adjusted to exclude any part of it that is attributable to:
  - (a) an amount that is not included in the assessable income of an entity because of section 124ZM or 124ZN (which exempt income arising from \*shares in a \*PDF) of the *Income Tax Assessment Act 1936*; or
  - (aa) an amount that is not included in the assessable income of an entity because of section 51-52 or subsection 51-54(1) or (1A) of this Act; or
  - (b) \*capital proceeds from a \*CGT event that happens in relation to \*shares in a company that was a \*PDF when that event happened; or
  - (c) capital proceeds from a CGT event if:
    - (i) the CGT event relates to an \*eligible venture capital investment; and
    - (ii) the share of a partner in an ESVCLP in a \*capital gain or \*capital loss from the CGT event is disregarded under section 118-407; or
  - (d) that part of the capital proceeds from a CGT event, relating to an eligible venture capital investment, for which there is a partial exemption under section 118-408; or
  - (e) capital proceeds from a CGT event if a capital gain made from the event may be disregarded under subsection 360-50(4).
- (4) The amount of the non-assessable part referred to in section 104-70 for an entity shown in the table is adjusted to exclude the amount or amounts applicable to the entity under the table.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 104-71

<b>Adjustment of non-assessable part</b>		
<b>Item</b>	<b>Entity</b>	<b>Amount excluded</b>
1	Any entity	So much of the amount of a *discount capital gain excluded from the *net capital gain of the trust making the payment because of step 3 of the method statement in subsection 102-5(1) and that is reflected in the payment to the entity
2	Individual, company or trust that has a *capital loss or *net capital loss to reduce its *capital gain described in paragraph 115-215(3)(b) where the trust gain referred to in subsection 115-215(3) is reduced under Subdivision 152-C	1/2 of the amount of the capital loss or net capital loss
3	Individual or trust that has a *capital loss or *net capital loss to reduce its *capital gain described in paragraph 115-215(3)(c)	1/4 of the amount of the capital loss or net capital loss
4	Company that has a *capital loss or *net capital loss to reduce its *capital gain described in paragraph 115-215(3)(c) where: (a) that capital loss or net capital loss is more than 1/2 of the trust gain referred to in subsection 115-215(3); and (b) that trust gain is reduced by an amount (the reduction amount) under Subdivision 152-C	The excess of the reduction amount over the Subdivision 152-C reduction to the paragraph 115-215(3)(c) amount

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Adjustment of non-assessable part**

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Item	Entity	Amount excluded
5	*Complying superannuation entity that has a *capital loss or *net capital loss to reduce its *capital gain described in paragraph 115-215(3)(b) where: (a) that capital loss or net capital loss is more than 1/2 of the trust gain referred to in subsection 115-215(3); and (b) that trust gain is reduced under Subdivision 152-C	1/2 of the amount of the capital loss or net capital loss
6	*Complying superannuation entity that has a *capital loss or *net capital loss to reduce its *capital gain described in paragraph 115-215(3)(c) where: (a) that capital loss or net capital loss is more than 1/4 of the trust gain referred to in subsection 115-215(3); and (b) that trust gain is reduced by an amount (also the reduction amount) under Subdivision 152-C	The excess of the reduction amount over the Subdivision 152-C reduction to the paragraph 115-215(3)(c) amount
7	Any entity receiving the payment where the trust making the payment, or another trust that is part of the same *chain of trusts, has a *capital loss or *net capital loss to reduce its *capital gain described in subsection 115-215(3)	The proportion of the capital loss or net capital loss reflected in the payment

Example: Claude is paid \$100 by the trustee of a unit trust. The trustee advises that the amount comprises \$50 CGT discount, \$25 small business 50% reduction and \$25 net income from a capital gain made by the trust.

In applying the rules in Subdivision 115-C of the *Income Tax Assessment Act 1997*, Claude reduces his capital gain of \$100 by a \$20 net capital loss from an earlier year. He then reduces the remaining \$80 gain by \$40 (CGT discount) and \$20 (small business 50% reduction) leaving a net capital gain of \$20.

In applying the rules in CGT event E4, the \$100 payment is reduced by \$25 (being the amount assessed under section 97 of the *Income Tax*

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Section 104-72**

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*Assessment Act 1936*). It is further reduced by \$50 under item 1 of the table and \$5 under item 3. Claude's non-assessable part is \$20.

Effectively, CGT event E4 applies to the \$20 small business 50% reduction allowed to Claude in applying Subdivision 115-C of the *Income Tax Assessment Act 1997*.

- Note 1: Step 3 of the method statement in subsection 102-5(1) (see table item 1) reduces by 50% the trust's discount capital gains remaining after applying capital losses and earlier net capital losses. That 50% is excluded from the trust's net capital gain.
- Note 2: Subdivision 152-C (small business 50% reduction—see table items 2, 3, 4, 5, 6 and 7) reduces by 50% the trust's capital gains or discount capital gains remaining after applying step 3 of the method statement in subsection 102-5(1). That 50% is also excluded from the trust's net capital gain.
- Note 3: Paragraph 115-215(3)(b) or (c) (see table items 2, 3, 4, 5 and 6) treats a beneficiary as having an extra capital gain if an amount of the trust's net income that is included in the beneficiary's assessable income is attributable to trust gains that were reduced by step 3 of the method statement in subsection 102-5(1) and/or the small business 50% reduction.

- (5) A **chain of trusts** consists of 2 or more trusts where at least one of these conditions is satisfied for each of the trusts:
- (a) the trustee of the trust owns units or interests in another of the trusts; or
  - (b) the trustee of another of the trusts owns units or interests in the trust.
- (6) Item 7 of the table in subsection (4) does not apply if the entity making the payment is a \*managed investment trust.

**104-72 Reducing your capital gain under CGT event E4 if you are a trustee**

- (1) A \*capital gain you make under subsection 104-70(4) is reduced if:
- (a) you are the trustee of another trust that is a \*fixed trust and is not a \*complying superannuation entity; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) you are taken to have a \*capital gain under paragraph 115-215(3)(b) or (c) (your *notional gain*) in respect of a corresponding trust gain (the *trust gain*); and
  - (c) some or all (the *attributable amount*) of the total of the non-assessable parts referred to in subsection 104-70(4) is attributable to proceeds from the trust gain.
- (2) The \*capital gain is reduced (but not below 0) by the lesser of:
- (a) your notional gain; and
  - (b) the attributable amount.

### **104-75 Beneficiary becoming entitled to a trust asset: CGT event E5**

- (1) **CGT event E5** happens if a beneficiary becomes absolutely entitled to a \*CGT asset of a trust (except a unit trust or a trust to which Division 128 applies) as against the trustee (disregarding any legal disability the beneficiary is under).

Note: Division 128 deals with the effect of death.

- (2) The time of the event is when the beneficiary becomes absolutely entitled to the asset.

#### *Trustee makes a capital gain or loss*

- (3) The trustee makes a **capital gain** if the \*market value of the asset (at the time of the event) is *more* than its \*cost base. The trustee makes a **capital loss** if that market value is *less* than the asset's \*reduced cost base.

#### *Exception for trustee*

- (4) A \*capital gain or \*capital loss the trustee makes is disregarded if it \*acquired the asset before 20 September 1985.

Note: There is also an exception for employee share trusts: see section 130-80.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 104-80

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*Beneficiary makes a capital gain or loss*

- (5) The beneficiary makes a **capital gain** if the \*market value of the asset (at the time of the event) is *more* than the \*cost base of the beneficiary's interest in the trust capital to the extent it relates to the asset.

The beneficiary makes a **capital loss** if that market value is *less* than the \*reduced cost base of that beneficiary's interest in the trust capital to the extent it relates to the asset.

*Exceptions for beneficiary*

- (6) A \*capital gain or \*capital loss the beneficiary makes is disregarded if:
- (a) the beneficiary \*acquired the \*CGT asset that is the interest (except by way of an assignment from another entity) for no expenditure; or
  - (b) the beneficiary acquired it before 20 September 1985; or
  - (c) all or part of the capital gain or capital loss the trustee makes from the \*CGT event is disregarded under Subdivision 118-B (about main residence).

Expenditure can include giving property: see section 103-5.

Note 1: For provisions affecting the application of Subdivision 118-B to the trustee, see sections 118-215 to 118-230.

Note 2: There are also exceptions for employee share trusts: see sections 130-80 and 130-90.

**104-80 Disposal to beneficiary to end income right: CGT event E6**

- (1) **CGT event E6** happens if the trustee of a trust (except a unit trust or a trust to which Division 128 applies) \*disposes of a \*CGT asset of the trust to a beneficiary in satisfaction of the beneficiary's right, or part of it, to receive \*ordinary income or \*statutory income from the trust.

Note: Division 128 deals with the effect of death.

- (2) The time of the event is when the disposal occurs.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Trustee makes a capital gain or loss*

- (3) The trustee makes a **capital gain** if the \*market value of the asset (at the time of the disposal) is *more* than its \*cost base. It makes a **capital loss** if that market value is *less* than the asset's \*reduced cost base.

*Exception for trustee*

- (4) A \*capital gain or \*capital loss the trustee makes is disregarded if it \*acquired the asset before 20 September 1985.

*Beneficiary makes a capital gain or loss*

- (5) The beneficiary makes a **capital gain** if the \*market value of the asset (at the time of the disposal) is *more* than the \*cost base of the right, or the part of it. The beneficiary makes a **capital loss** if that market value is *less* than the \*reduced cost base of the right or part.

Note: If the beneficiary did not pay anything for the right, the market value substitution rule does not apply: see section 112-20.

*Exception for beneficiary*

- (6) A \*capital gain or \*capital loss the beneficiary makes is disregarded if it \*acquired the \*CGT asset that is the right before 20 September 1985.

**104-85 Disposal to beneficiary to end capital interest: CGT event E7**

- (1) **CGT event E7** happens if the trustee of a trust (except a unit trust or a trust to which Division 128 applies) \*disposes of a \*CGT asset of the trust to a beneficiary in satisfaction of the beneficiary's interest, or part of it, in the trust capital.

Note: Division 128 deals with the effect of death.

- (2) The time of the event is when the disposal occurs.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Trustee makes a capital gain or loss*

- (3) The trustee makes a **capital gain** if the \*market value of the asset (at the time of the disposal) is *more* than its \*cost base. It makes a **capital loss** if that market value is *less* than the asset's \*reduced cost base.

*Exception for trustee*

- (4) A \*capital gain or \*capital loss the trustee makes is disregarded if it \*acquired the asset before 20 September 1985.

*Beneficiary makes a capital gain or loss*

- (5) The beneficiary makes a **capital gain** if the \*market value of the asset (at the time of the disposal) is *more* than the \*cost base of the interest, or the part of it, being satisfied. The beneficiary makes a **capital loss** if that market value is *less* than the \*reduced cost base of that interest or part.

*Exceptions for beneficiary*

- (6) A \*capital gain or \*capital loss the beneficiary makes is disregarded if:
- (a) the beneficiary \*acquired the \*CGT asset that is the interest (except by way of an assignment from another entity) for no expenditure; or
  - (b) the beneficiary acquired it before 20 September 1985; or
  - (c) all or part of the capital gain or capital loss the trustee makes from the \*CGT event is disregarded under Subdivision 118-B (about main residence).

Expenditure can include giving property: see section 103-5.

Note 1: For provisions affecting the application of Subdivision 118-B to the trustee, see sections 118-215 to 118-230.

Note 2: There is also an exception for employee share trusts: see section 130-90.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 104-90 Disposal by beneficiary of capital interest: CGT event E8

- (1) **CGT event E8** happens if:
- (a) you are the beneficiary under a trust (except a unit trust or a trust to which Division 128 applies); and
  - (b) you did not give any money or property to \*acquire the \*CGT asset that is your interest in the trust capital and you did not acquire it by assignment; and
  - (c) you \*dispose of the interest, or part of it (but not to the trustee).

Note: Division 128 deals with the effect of death.

- (2) The time of the event is:
- (a) when you enter into the contract for the \*disposal; or
  - (b) if there is no contract—when you stop owning the interest or part.

Note 1: You work out if you have made a capital gain or capital loss under sections 104-95 and 104-100.

Note 2: There is a special indexation rule for this event: see section 114-10.

### 104-95 Making a capital gain

*You are the only beneficiary*

- (1) If you are the only beneficiary with an interest in the trust capital and you \*dispose of that interest, you work out if you have made a \*capital gain in this way:

*Working out your capital gain*

- Step 1. Work out the \*capital proceeds from the \*disposal.
- Step 2. Work out the \*net asset amount.
- Step 3. If the Step 1 amount is *greater*, you make a **capital gain** equal to the difference.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 104-95

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(2) The **net asset amount** is worked out in this way:

*Working out the net asset amount*

- Step 1. Work out the total of the \*cost bases (at the time of the disposal) of the \*CGT assets that the trustee \*acquired on or after 20 September 1985 and that formed part of the trust capital at that time.
- Step 2. Work out the total of the \*market values (at the time of the disposal) of the \*CGT assets that the trustee \*acquired before 20 September 1985 and that formed part of the trust capital at that time.
- Step 3. Work out the amount of money that formed part of the trust capital at the time of the disposal.
- Step 4. Add up the Step 1, 2 and 3 amounts.
- Step 5. Subtract from the Step 4 amount any liabilities of the trust at the time of the disposal.
- Step 6. The result is the **net asset amount**.

Example: You dispose of your interest in the trust capital for \$10,000 (the capital proceeds).

The total of the cost bases of the CGT assets that the trustee acquired on or after 20 September 1985 is \$6,000.

The total of the market values of the CGT assets that the trustee acquired before 20 September 1985 is \$2,500.

There is \$1,000 in the trust. The trust liabilities are \$500.

The net asset amount is:

$$\$6,000 + \$2,500 + \$1,000 - \$500 = \$9,000$$

You make a capital gain of:

$$\$10,000 - \$9,000 = \$1,000$$

(3) If you \*dispose of only *part* of that interest, any \*capital gain is worked out using the method statement in subsection (1), except that the Step 2 amount is replaced by:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

The net asset amount  $\times$  The part of the interest you are disposing of  
(expressed as a fraction)

Example: To vary the example in subsection (2), suppose you dispose of 50% of your interest for \$5,000 (the capital proceeds).

The Step 2 amount becomes:

$$\$9,000 \times 50\% = \$4,500$$

You make a capital gain of:

$$\$5,000 - \$4,500 = \$500$$

*There is more than one beneficiary*

- (4) If you are *not* the only beneficiary with an interest in the trust capital and you \*dispose of your interest, any \*capital gain is worked out using the method statement in subsection (1), except that the Step 2 amount is replaced by:

The net asset amount  $\times$  Your interest in the trust capital  
(expressed as a fraction)

Example: To vary the example in subsection (2), suppose you have a 20% interest in the trust capital and you dispose of it for \$4,000 (the capital proceeds).

The Step 2 amount becomes:

$$\$9,000 \times 20\% = \$1,800$$

You make a capital gain of:

$$\$4,000 - \$1,800 = \$2,200$$

- (5) If you are *not* the only beneficiary with an interest in the trust capital and you \*dispose of *part* of your interest, any \*capital gain is worked out using the method statement in subsection (1), except that the Step 2 amount is replaced by:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 104-100

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The net asset amount  $\times$  Your interest in the trust capital (expressed as a fraction)  $\times$  The part of the interest you are disposing of (expressed as a fraction)

Example: To vary the example in subsection (2), suppose you have a 50% interest in the trust capital. You dispose of 20% of it for \$1,000 (the capital proceeds).

The Step 2 amount becomes:

$$\$9,000 \times 50\% \times 20\% = \$900$$

You make a capital gain of:

$$\$1,000 - \$900 = \$100$$

*Exception*

- (6) A \*capital gain you make is disregarded if you \*acquired the \*CGT asset that is the interest in the trust capital before 20 September 1985.

Note: You can make a gain if you dispose of an interest in a trust that you acquired before that day: see CGT event K6.

**104-100 Making a capital loss**

*You are the only beneficiary*

- (1) If you are the only beneficiary with an interest in the trust capital and you \*dispose of that interest, you work out if you have made a \*capital loss in this way:

*Working out your capital loss*

- Step 1. Work out the \*capital proceeds from the \*disposal.  
Step 2. Work out the \*reduced net asset amount.  
Step 3. If the Step 1 amount is *less*, you make a **capital loss** equal to the difference.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) The **reduced net asset amount** is worked out in this way:

*Working out the reduced net asset amount*

- Step 1. Work out the total of the \*reduced cost bases (at the time of the disposal) of the \*CGT assets that the trustee \*acquired on or after 20 September 1985 and that formed part of the trust capital at that time.
- Step 2. Work out the total of the \*market values (at the time of the disposal) of the \*CGT assets that the trustee \*acquired before 20 September 1985 and that formed part of the trust capital at that time.
- Step 3. Work out the amount of money that formed part of the trust capital at the time of the disposal.
- Step 4. Add up the Step 1, 2 and 3 amounts.
- Step 5. Subtract from the Step 4 amount any liabilities of the trust at the time of the disposal.
- Step 6. The result is the **reduced net asset amount**.

- (3) If you \*dispose of only *part* of that interest, any \*capital loss is worked out using the method statement in subsection (1), except that the Step 2 amount is replaced by:

$$\text{The reduced net asset amount} \times \frac{\text{The part of the interest you are disposing of (expressed as a fraction)}}{1}$$

*There is more than one beneficiary*

- (4) If you are *not* the only beneficiary with an interest in the trust capital and you \*dispose of your interest, any \*capital loss is worked out using the method statement in subsection (1), except that the Step 2 amount is replaced by:

$$\text{The reduced net asset amount} \times \frac{\text{Your interest in the trust capital (expressed as a fraction)}}{1}$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (5) If you are *not* the only beneficiary with an interest in the trust capital and you *\*dispose of part* of your interest, any *\*capital loss* is worked out using the method statement in subsection (1), except that the Step 2 amount is replaced by:

$$\text{The reduced net asset amount} \times \frac{\text{Your interest in the trust capital}}{\text{(expressed as a fraction)}} \times \frac{\text{The part of the interest you are disposing of}}{\text{(expressed as a fraction)}}$$

*Exception*

- (6) A *\*capital loss* you make is disregarded if you *\*acquired the \*CGT asset* that is the interest in the trust capital before 20 September 1985.

### 104-105 Creating a trust over future property: CGT event E9

- (1) **CGT event E9** happens if:
- (a) you agree for consideration that when property comes into existence you will hold it on trust; and
  - (b) at the time of the agreement, no potential beneficiary under the trust has a beneficial interest in the rights created by the agreement.
- (2) The time of the event is when you made the agreement.
- (3) You make a **capital gain** if the *\*market value* the property would have had if it had existed when you made the agreement is *more* than any *\*incidental costs* you incurred that relate to the event. You make a **capital loss** if that market value is *less*.
- (4) The costs can include giving property: see section 103-5. However, they do not include an amount you have received as *\*recoupment* of them and that is not included in your assessable income, or an amount to the extent that you have deducted or can deduct it.

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*\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.*

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**104-107A AMIT—cost base reduction exceeds cost base: CGT event E10**

- (1) **CGT event E10** happens if:
- (a) you are a \*member of an \*AMIT in respect of an income year because you have a \*CGT asset that is your unit or your interest in the AMIT; and
  - (b) either:
    - (i) the \*cost base of that asset is reduced under subsection 104-107B(2) during the income year; or
    - (ii) the cost base of that asset is nil at the start of the income year; and
  - (c) the asset's \*AMIT cost base net amount for the income year is the excess mentioned in paragraph 104-107C(a); and
  - (d) the asset's AMIT cost base net amount for the income year exceeds the cost base of the asset.
- (2) The time of the event is:
- (a) if subparagraph (1)(b)(i) applies—the time at which the reduction occurs under section 104-107B; or
  - (b) if subparagraph (1)(b)(ii) applies—the time at which the \*cost base would have been reduced under subsection 104-107B(2) during the income year if the cost base had been greater than nil at the start of the income year.
- (3) You make a **capital gain** equal to:
- (a) if the \*cost base of the asset is nil—the excess mentioned in paragraph 104-107C(a); or
  - (b) if the cost base of the asset is not nil—the excess mentioned in paragraph (1)(d) of this section.

Note 1: If you make a capital gain, the cost base and reduced cost base of the CGT asset are reduced to nil (see paragraph 104-107B(2)(a)).

Note 2: You cannot make a capital loss.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Exceptions*

- (4) A \*capital gain you make from \*CGT event E10 is disregarded if you \*acquired the \*CGT asset that is the unit or interest before 20 September 1985.

**104-107B Annual cost base adjustment for member's unit or interest in AMIT**

- (1) This section applies if you are a \*member of an \*AMIT in respect of an income year because you have a \*CGT asset that is your unit or your interest in the AMIT.
- (2) If the \*CGT asset's \*AMIT cost base net amount for the income year is the excess mentioned in paragraph 104-107C(a):
- (a) in a case where that AMIT cost base net amount exceeds the \*cost base of the asset—reduce the cost base *and* \*reduced cost base of the asset to nil; or
  - (b) otherwise—reduce the cost base *and* reduced cost base of the asset by that AMIT cost base net amount.

Note: If that AMIT cost base net amount exceeds the cost base of the asset, CGT event E10 will happen (see section 104-107A).

- (3) If the \*CGT asset's \*AMIT cost base net amount for the income year is the shortfall mentioned in paragraph 104-107C(b), increase the \*cost base *and* \*reduced cost base of the asset by that AMIT cost base net amount.
- (4) The time of the reduction or increase is:
- (a) unless paragraph (b) applies—just before the end of the income year; or
  - (b) if a \*CGT event happens to the \*CGT asset at a time when you hold it before the end of the income year—just before the time of that CGT event.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **104-107C AMIT cost base net amount**

The \*CGT asset's *AMIT cost base net amount* for the income year is:

- (a) if the CGT asset's \*AMIT cost base reduction amount for the income year exceeds the CGT asset's \*AMIT cost base increase amount for the income year—the amount of the excess; or
- (b) if the CGT asset's AMIT cost base reduction amount for the income year falls short of the CGT asset's AMIT cost base increase amount for the income year—the amount of the shortfall.

### **104-107D AMIT cost base reduction amount**

(1) The \*CGT asset's *AMIT cost base reduction amount* for the income year is the total of:

- (a) money, and the \*market value of any property, if:
  - (i) you start to have a right to receive the money or property from the trustee of the \*AMIT in the income year; and
  - (ii) that right is indefeasible (disregarding section 276-55) or is reasonably likely not to be defeated; and
- (b) all amounts of \*tax offset that you have for the income year in respect of the AMIT because of the operation of section 276-80;

to the extent that the total is reasonably attributable to the CGT asset.

(2) If:

- (a) \*CGT event A1, C2, E1, E2, E6 or E7 happens to the \*CGT asset before the end of the income year; and
- (b) as a result, the time of the reduction or increase mentioned in subsection 104-107B(4) is just before the time of that CGT event;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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do not include in the CGT asset's **AMIT cost base reduction amount** for the income year any \*capital proceeds from that CGT event.

**104-107E AMIT cost base increase amount**

- (1) The \*CGT asset's **AMIT cost base increase amount** for the income year is the total of the 2 amounts set out in the following subsections.

*First amount—total of amounts not related to capital gains*

- (2) The first amount is the total of all of the following amounts included in your assessable income or \*non-assessable non-exempt income for the income year in respect of the \*AMIT, to the extent that they are reasonably attributable to the \*CGT asset:
- (a) amounts so included because of the operation of section 276-80;
  - (b) amounts so included otherwise than because of the operation of section 276-80 (as reduced in accordance with section 276-100).

- (3) For the purposes of subsection (2), disregard the \*AMIT's \*net capital gain (if any) for the income year.

*Second amount—total of amounts related to capital gains*

- (4) The second amount is the total of each \*determined member component of a character relating to \*capital gains that:
- (a) you have for the income year in respect of the \*AMIT; and
  - (b) is taken into account under section 276-80.

*Residence assumption*

- (5) For the purposes of working out amounts under subsections (2) and (4), assume that you are an Australian resident.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**104-107F Receipt of money etc. increasing AMIT cost base  
reduction amount not to be treated as income**

- (1) Subsections (2) and (3) apply if:
  - (a) you start to have a right to receive any money or any property from the trustee of an \*AMIT in an income year; and
  - (b) the right is indefeasible (disregarding section 276-55) or is reasonably likely not to be defeated; and
  - (c) the right is *not* remuneration or consideration for you providing finance, services, goods or property to the trustee of the AMIT or to another person; and
  - (d) the right is reasonably attributable to a \*CGT asset that is a \*membership interest in the AMIT; and
  - (e) the CGT asset is *neither* \*trading stock nor a \*Division 230 financial arrangement; and
  - (f) as a result of you starting to have the right, the CGT asset's \*AMIT cost base reduction amount for the income year is increased because of the operation of section 104-107D.
- (2) These provisions do not apply to you starting to have the right:
  - (a) sections 6-5 (about \*ordinary income), 8-1 (about amounts you can deduct), 15-15 and 25-40 (about profit-making undertakings or plans);
  - (b) sections 25A and 52 of the *Income Tax Assessment Act 1936* (about profit-making undertakings or schemes).
- (3) Section 6-10 (about \*statutory income) does not apply to you starting to have the right except so far as that section applies in relation to section 102-5 (about net capital gains).

**104-107G Effect of AMIT cost base net amount on cost of AMIT  
membership interest or unit that is a revenue asset—  
adjustment of cost of asset**

- (1) This section applies if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) you are a \*member of an \*AMIT in respect of an income year because you have a \*CGT asset that is your unit or your interest in the AMIT; and
  - (b) the CGT asset is a \*revenue asset; and
  - (c) the CGT asset is not a \*Division 230 financial arrangement.
- (2) Make the adjustments in subsection (3) for the purposes of working out an amount included in your assessable income (or working out an amount treated as a deduction) under any of these provisions:
- (a) sections 6-5 (about \*ordinary income), 8-1 (about amounts you can deduct), 15-15 and 25-40 (about profit-making undertakings or plans);
  - (b) sections 25A and 52 of the *Income Tax Assessment Act 1936* (about profit-making undertakings or schemes).
- (3) If the \*CGT asset's \*AMIT cost base net amount for the income year is the excess mentioned in paragraph 104-107C(a):
- (a) in a case where that AMIT cost base net amount exceeds the cost of the asset—reduce the cost of the asset to nil; or
  - (b) otherwise—reduce the cost of the asset by that AMIT cost base net amount.
- Note: If the AMIT cost base net amount exceeds the cost of the asset, see section 104-107H.
- (4) If the \*CGT asset's \*AMIT cost base net amount for the income year is the shortfall mentioned in paragraph 104-107C(b), increase the cost of the asset by that AMIT cost base net amount.
- (5) The time of the reduction or increase is:
- (a) unless paragraph (b) applies—just before the end of the income year; or
  - (b) if a \*CGT event happens to the \*CGT asset at a time when you hold it before the end of the income year—just before the time of that CGT event.
- (6) For the purposes of this section and section 104-107H, in working out the \*CGT asset's \*AMIT cost base net amount for the income

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

year, disregard any right that you start to have in the income year if:

- (a) the right is for you to receive any money or any property from the trustee of the \*AMIT; and
  - (b) the right is remuneration or consideration for you providing finance, services, goods or property to the trustee of the AMIT or to another person.
- (7) For the purposes of section 118-20, treat this section as being outside of this Part.

Note: Section 118-20 deals with reducing capital gains if an amount is otherwise assessable.

**104-107H Effect of AMIT cost base net amount on cost of AMIT membership interest or unit that is a revenue asset—amount included in assessable income**

- (1) Subsection (2) applies if:
- (a) paragraph 104-107G(3)(a) applies in respect of the \*CGT asset's \*AMIT cost base net amount for the income year; and
  - (b) that AMIT cost base net amount exceeds the cost of the \*CGT asset just before the time mentioned in subsection 104-107G(5).
- (2) Include in your assessable income for the income year in which that time occurs:
- (a) if the cost of the \*CGT asset was nil just before that time—the cost reduction amount; or
  - (b) otherwise—the excess mentioned in paragraph (1)(b).
- (3) Subsection (2) applies despite subsection 104-107F(3).
- (4) For the purposes of section 118-20, treat this section as being outside of this Part.

Note: Section 118-20 deals with reducing capital gains if an amount is otherwise assessable.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 104-110

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**Subdivision 104-F—Leases**

**Table of sections**

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104-115	Granting a long-term lease: CGT event F2
104-120	Lessor pays lessee to get lease changed: CGT event F3
104-125	Lessee receives payment for changing lease: CGT event F4
104-130	Lessor receives payment for changing lease: CGT event F5

**104-110 Granting a lease: CGT event F1**

- (1) **CGT event F1** happens if a lessor grants, renews or extends a lease.

Note 1: Other CGT events can apply to leases. An assignment of a lease is an example of CGT event A1.

Note 2: There are special rules that apply to some lease transactions: see Division 132.

- (2) The time of the event is:
- (a) for the grant of a lease:
    - (i) when the contract for the lease is entered into; or
    - (ii) if there is no contract—at the start of the lease; or
  - (b) for a renewal or extension—at the start of the renewal or extension.
- (3) The lessor makes a **capital gain** if the \*capital proceeds from the grant, renewal or extension are *more* than the expenditure it incurred on the grant, renewal or extension. It makes a **capital loss** if those capital proceeds are *less*.
- (4) The expenditure can include giving property: see section 103-5. However, it does not include an amount you have received as \*recoupment of it and that is not included in your assessable income, or an amount to the extent that you have deducted or can deduct it.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Exception*

- (5) The lessor can choose to apply section 104-115 to certain long term leases. If it does so, this section does not apply.

**104-115 Granting a long-term lease: CGT event F2**

- (1) **CGT event F2** happens if:
- (a) a lessor grants a lease over land (whether or not the lessor owns an estate in fee simple in the land), or renews or extends a lease over land; and
  - (b) the lease, renewal or extension is for at least 50 years and:
    - (i) at the time of the grant, renewal or extension, it was reasonable to expect that it would continue for at least 50 years; and
    - (ii) the terms of the lease, renewal or extension as they apply to the lessee are substantially the same as those under which the lessor owned the land or held a lease of the land; and
  - (c) the lessor chooses to apply this section instead of section 104-110.

Note: Section 103-25 tells you when the choice must be made.

- (2) The time of the event is when the lessor grants the lease, or at the start of the renewal or extension, as appropriate.
- (3) The lessor makes a **capital gain** if the \*capital proceeds from the event are *more* than the \*cost base of the lessor's interest in the land. The lessor makes a **capital loss** if those capital proceeds are *less* than the \*reduced cost base of that interest.

*Exceptions*

- (4) A \*capital gain or \*capital loss the lessor makes is disregarded if:
- (a) it \*acquired the \*CGT asset that is the land, or the lease to the lessor was granted, before 20 September 1985; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) the lease to the lessor has been renewed or extended and the last renewal or extension started before that day.

Note: For any later CGT event that happens to the land or the lessor's lease of it: see section 132-10.

**104-120 Lessor pays lessee to get lease changed: CGT event F3**

- (1) **CGT event F3** happens if a lessor incurs expenditure in getting the lessee's agreement to vary or waive a term of the lease. The lessor makes a **capital loss** equal to the amount of expenditure it incurred. (The expenditure can include giving property: see section 103-5.)
- (2) The time of the event is when the term is varied or waived.

*Exception*

- (3) However, this event does not apply to expenditure for a lease to which the lessor has chosen to apply section 104-115.

**104-125 Lessee receives payment for changing lease: CGT event F4**

- (1) **CGT event F4** happens if a lessee receives a payment from the lessor for agreeing to vary or waive a term of the lease.
- The payment can include giving property: see section 103-5.
- (2) The time of the event is when the term is varied or waived.
- (3) The lessee makes a **capital gain** if the \*capital proceeds from the event are *more* than the lease's \*cost base (at the time of the event). If the lessee makes a \*capital gain, the lease's cost base is also reduced to nil.

Note: The lessee cannot make a capital loss.

- (4) On the other hand, if those \*capital proceeds are *less*, the lease's \*cost base is reduced by that amount at the time of the event.

Example: On 1 January 1999 a lessee enters a lease. On 1 May 1999 the lessee agrees to waive a term. The lessor pays the lessee \$1,000 for this.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



If the lease's cost base at the time of the waiver is \$2,500, it is reduced from \$2,500 to \$1,500.

On 1 September 1999 the lessee agrees to waive another term. The lessor pays the lessee \$2,000 for this.

If the lease's cost base at the time of the waiver is \$1,500, the lessee makes a capital gain of \$500, and the cost base is reduced to nil.

*Exceptions*

- (5) A \*capital gain the lessee makes is disregarded if:
- (a) the lease was granted before 20 September 1985; or
  - (b) for a lease that has been renewed or extended—the start of the last renewal or extension occurred before that day.

**104-130 Lessor receives payment for changing lease: CGT event F5**

- (1) **CGT event F5** happens if a lessor receives a payment from the lessee for agreeing to vary or waive a term of the lease.

The payment can include giving property: see section 103-5.

- (2) The time of the event is when the term is varied or waived.
- (3) The lessor makes a **capital gain** if the \*capital proceeds from the event are *more* than the expenditure the lessor incurs in relation to the variation or waiver. The lessor makes a **capital loss** if those capital proceeds are *less*.

Example: You own a shopping centre. The lessee of a shop in the centre pays you \$10,000 for agreeing to change the terms of its lease. You incur expenses of \$1,000 for a solicitor and \$500 for a valuer. You make a capital gain of \$8,500.

- (4) The expenditure can include giving property: see section 103-5. However, it does not include an amount you have received as \*recoupment of it and that is not included in your assessable income.

*Exceptions*

- (5) A \*capital gain or \*capital loss the lessor makes is disregarded if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the lease was granted before 20 September 1985; or
- (b) for a lease that has been renewed or extended—the start of the last renewal or extension occurred before that day.

**Subdivision 104-G—Shares**

**Table of sections**

104-135	Capital payment for shares: CGT event G1
104-145	Liquidator or administrator declares shares or financial instruments worthless: CGT event G3

**104-135 Capital payment for shares: CGT event G1**

- (1) **CGT event G1** happens if:
- (a) a company makes a payment to you in respect of a \*share you own in the company (except for \*CGT event A1 or C2 happening in relation to the share); and
  - (b) some or all of the payment (the **non-assessable part**) is not a \*dividend, or an amount that is taken to be a dividend under section 47 of the *Income Tax Assessment Act 1936*; and
  - (c) the payment is not included in your assessable income.

The payment can include giving property: see section 103-5.

- (1A) In working out the non-assessable part, disregard any part of the payment that is:
- (aa) \*non-assessable non-exempt income; or
  - (a) repaid by you; or
  - (b) compensation you paid that can reasonably be regarded as a repayment of all or part of the payment; or
  - (c) an amount referred to in section 152-125 (which exempts a payment of a small business 15-year exemption amount) as an exempt amount.

The payment can include giving property: see section 103-5.

- (1B) However, the non-assessable part is not reduced by any part of the payment that you can deduct.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) The time of the event is when the company makes the payment.
- (3) You make a **capital gain** if the amount of the non-assessable part is *more* than the \*share's \*cost base. If you make a \*capital gain, the share's \*cost base and \*reduced cost base are reduced to nil.

Note 1: You cannot make a capital loss.

Note 2: A capital gain under former section 160ZL of the *Income Tax Assessment Act 1936* is also taken into account for the purposes of this subsection: see section 104-135 of the *Income Tax (Transitional Provisions) Act 1997*.

- (4) However, if the amount of the non-assessable part is not more than the \*share's \*cost base, that cost base and its \*reduced cost base are reduced by the amount of the non-assessable part.

Note: Cost base adjustments are made only under Subdivision 125-B if there is a roll-over under that Subdivision for CGT event G1 happening as a result of a demerger.

#### *Exceptions*

- (5) A \*capital gain you make is disregarded if you \*acquired the \*CGT asset that is the \*share before 20 September 1985.
- (6) You disregard a payment by a liquidator for the purposes of this section if the company ceases to exist within 18 months of the payment.
- Note: The payment will be part of your capital proceeds for CGT event C2 happening when the share ends.
- (7) You also disregard a payment that is \*personal services income included in your assessable income, or another entity's assessable income, under section 86-15.

### **104-145 Liquidator or administrator declares shares or financial instruments worthless: CGT event G3**

- (1) **CGT event G3** happens if you own \*shares in a company, or financial instruments issued by or created by or in relation to a company, and a liquidator or administrator of the company

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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declares in writing that the liquidator or administrator has reasonable grounds to believe (as at the time of the declaration) that:

- (a) for shares—there is no likelihood that shareholders in the company, or shareholders of the relevant class of shares, will receive any further distribution for their shares; or
  - (b) for financial instruments—the instruments, or a class of instruments that includes instruments of that kind, have no value or have only negligible value.
- (2) The time of the event is when the declaration was made.
- (3) Examples of financial instruments referred to in subsection (1) are:
- (a) \*debentures, bonds or promissory notes issued by the company; and
  - (b) loans to the company; and
  - (c) futures contracts, forward contracts or currency swap contracts relating to the company; and
  - (d) rights or options to acquire an asset referred to in a preceding paragraph of this subsection; and
  - (e) rights or options to acquire \*shares in the company.
- (4) You can choose to make a **capital loss** equal to the \*reduced cost base of your \*shares or financial instruments (as at the time of the declaration).
- (5) If you make the choice, the \*cost base and \*reduced cost base of the \*shares or financial instruments are reduced to nil just after the declaration was made.

Note: This is for the purpose of working out if you make a capital gain or loss from any later CGT event in relation to the shares or financial instruments.

*Exceptions*

- (6) You cannot choose to make a \*capital loss if:
- (a) you \*acquired the shares or financial instruments before 20 September 1985; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the shares or financial instruments were \*revenue assets at the time when the declaration was made.
- (7) You cannot choose to make a \*capital loss for a \*share, or a right to acquire a beneficial interest in a share, if:
  - (a) you acquired the beneficial interest (the **ESS interest**) in the share or right under an \*employee share scheme; and
  - (b) subsequent to an amount being included in your assessable income under Division 83A (about employee share schemes) in relation to the ESS interest, section 83A-310 (about forfeiture) applies in relation to ESS interest.

### **Subdivision 104-H—Special capital receipts**

#### **Table of sections**

104-150	Forfeiture of deposit: CGT event H1
104-155	Receipt for event relating to a CGT asset: CGT event H2

#### **104-150 Forfeiture of deposit: CGT event H1**

- (1) **CGT event H1** happens if a deposit paid to you is forfeited because a prospective sale or other transaction does not proceed.

The payment can include giving property: see section 103-5.

**Example:** You decide to sell land. Before entering into a contract of sale, the prospective purchaser pays you a 2 month holding deposit of \$1,000.

The negotiations fail and the deposit is forfeited.

- (1A) The amount of the deposit is reduced by any part of the deposit that is:
  - (a) repaid by you; or
  - (b) compensation you paid that can reasonably be regarded as a repayment of all or part of the deposit.The payment can include giving property: see section 103-5.
- (1B) However, the deposit is not reduced by any part of the payment that you can deduct.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) The time of the event is when the deposit is forfeited.
- (3) You make a **capital gain** if the deposit is *more* than the expenditure you incur in connection with the prospective sale or other transaction. You make a **capital loss** if the deposit is *less*.
- (4) The expenditure can include giving property: see section 103-5. However, it does not include an amount you have received as \*recoupment of it and that is not included in your assessable income.

Example: To continue the example: if you gave a lawyer wine worth \$400 in connection with the prospective sale, you make a capital gain of:

$$\$1,000 - \$400 = \$600$$

### 104-155 Receipt for event relating to a CGT asset: CGT event H2

- (1) **CGT event H2** happens if:
  - (a) an act, transaction or event occurs in relation to a \*CGT asset that you own; and
  - (b) the act, transaction or event does not result in an adjustment being made to the asset's \*cost base or \*reduced cost base.

Example: You own land on which you intend to construct a manufacturing facility. A business promotion organisation pays you \$50,000 as an inducement to start construction early.

No contractual rights or obligations are created by the arrangement.

The payment is made because of an event (the inducement to start construction early) in relation to your land.

Note: This event does not apply if any other CGT event applies: see section 102-25.

- (2) The time of the event is when the act, transaction or event occurs.
- (3) You make a **capital gain** if the \*capital proceeds because of the \*CGT event are *more* than the \*incidental costs you incurred that relate to the event. You make a **capital loss** if those capital proceeds are *less*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (4) The costs can include giving property: see section 103-5. However, they do not include an amount you have received as \*recoupment of them and that is not included in your assessable income.

*Exceptions*

- (5) **CGT event H2** does not happen if:
- (a) the act, transaction or event is the borrowing of money or the obtaining of credit from another entity; or
  - (b) the act, transaction or event requires you to do something that is another \*CGT event that happens to you; or
  - (c) a company issues or allots \*equity interests or \*non-equity shares in the company; or
  - (d) the trustee of a unit trust issues units in the trust; or
  - (e) a company grants an option to acquire equity interests, non-equity shares or \*debentures in the company; or
  - (ea) a company grants an option to dispose of \*shares in the company to the company; or
  - (f) the trustee of a unit trust grants an option to acquire units or debentures in the trust; or
  - (g) a company or a trust that is a member of a \*demerger group issues new \*ownership interests under a \*demerger.

Note: For demergers, see Division 125.

## **Subdivision 104-I—Australian residency ends**

### **Table of sections**

104-160	Individual or company stops being an Australian resident: CGT event I1
104-165	Exception for individuals
104-170	Trust stops being a resident trust: CGT event I2

### **104-160 Individual or company stops being an Australian resident: CGT event I1**

- (1) **CGT event I1** happens if you stop being an Australian resident.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) The time of the event is when you stop being one.
- (3) You need to work out if you have made a \*capital gain or a \*capital loss for each \*CGT asset that you owned just before the time of the event, except one that is \*taxable Australian property:
  - (a) covered by item 1 or 3 of the table in section 855-15; or
  - (b) covered by item 4 of that table because it is an option or right to \*acquire a \*CGT asset covered by item 1 or 3 of that table.
- (4) You make a **capital gain** if the \*market value of the asset (at the time of the event) is *more* than its \*cost base. You make a **capital loss** if that market value is *less* than the asset's \*reduced cost base.
- (4A) If the asset is an \*indirect Australian real property interest, or an option or right to acquire such an interest, this Part and Part 3-3 apply to the asset as if the first element of the \*cost base and \*reduced cost base of the asset (just after the time of the event) were its \*market value at the time of the event.
- (4B) Subsection (4A) does not apply if the \*capital gain or \*capital loss you make is disregarded under subsection (5) or (6), or subsection 104-165(2).

*Exceptions*

- (5) A \*capital gain or \*capital loss you make is disregarded if you \*acquired the asset before 20 September 1985.

**104-165 Exception for individuals**

*Choosing to disregard making a gain or loss*

- (2) If you are an individual, you can choose to disregard making a \*capital gain or a \*capital loss from all \*CGT assets covered by \*CGT event I1.
- (3) If you do so choose, each of those assets is taken to be \*taxable Australian property until the earlier of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (a) a \*CGT event happening in relation to the asset, if the CGT event involves you ceasing to own the asset;
- (b) you again becoming an Australian resident.

Note: If you are an individual who was in Australia on 6 April 2006, and you remain an Australian resident from that day until you stop being one, and you were an Australian resident for less than 5 years during the 10 years before you stopped being one, see section 104-166 of the *Income Tax (Transitional Provisions) Act 1997*.

### 104-170 Trust stops being a resident trust: CGT event I2

- (1) **CGT event I2** happens if a trust stops being a \*resident trust for CGT purposes.
- (2) The time of the event is when the trust stops being one.
- (3) The trustee needs to work out if it has made a \*capital gain or a \*capital loss for *each* \*CGT asset that it owned (in the capacity as trustee of the trust) just before the time of the event except one that is \*taxable Australian property:
  - (a) covered by item 1 or 3 of the table in section 855-15; or
  - (b) covered by item 4 of that table because it is an option or right to \*acquire a \*CGT asset covered by item 1 or 3 of that table.
- (4) The trustee makes a **capital gain** if the \*market value of the asset (at the time of the event) is *more* than the asset's \*cost base. The trustee makes a **capital loss** if that market value is *less* than the asset's \*reduced cost base.
- (4A) If the asset is an \*indirect Australian real property interest, or an option or right to acquire such an interest, this Part and Part 3-3 apply to the asset as if the first element of the \*cost base and \*reduced cost base of the asset (just after the time of the event) were its \*market value at the time of the event.
- (4B) Subsection (4A) does not apply if the \*capital gain or \*capital loss the trustee makes is disregarded under subsection (5).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Exception*

- (5) A \*capital gain or \*capital loss the trustee makes is disregarded if it \*acquired the asset before 20 September 1985.

**Subdivision 104-J—CGT events relating to roll-overs**

**Table of sections**

104-175	Company ceasing to be member of wholly-owned group after roll-over: CGT event J1
104-180	Sub-group break-up
104-182	Consolidated group break-up
104-185	Change in relation to replacement asset or improved asset after a roll-over under Subdivision 152-E: CGT event J2
104-190	<i>Replacement asset period</i>
104-195	Trust failing to cease to exist after roll-over under Subdivision 124-N: CGT event J4
104-197	Failure to acquire replacement asset and to incur fourth element expenditure after a roll-over under Subdivision 152-E: CGT event J5
104-198	Cost of acquisition of replacement asset or amount of fourth element expenditure, or both, not sufficient to cover disregarded capital gain: CGT event J6

**104-175 Company ceasing to be member of wholly-owned group after roll-over: CGT event J1**

- (1) **CGT event J1** happens if:
- (a) there is a roll-over under Subdivision 126-B for a \*CGT event (the **roll-over event**) that happens in relation to a \*CGT asset (the **roll-over asset**) involving 2 companies that are members of the same \*wholly-owned group; and
  - (b) the company (the **recipient company**) that owns the roll-over asset just after the roll-over stops being a 100% subsidiary of a company in the group in the circumstances set out in subsection (2) or (3); and
  - (c) at the time of the roll-over, the recipient company was a \*100% subsidiary of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) the other company involved in the roll-over event (the **originating company**); or
- (ii) another member of the same \*wholly-owned group.

Note: If the roll-over was under former section 160ZZO of the *Income Tax Assessment Act 1936*, CGT event J1 does not happen if there would not have been a deemed disposal and re-acquisition under that Act: see section 104-175 of the *Income Tax (Transitional Provisions) Act 1997*.

- (2) This condition applies if there has been only one roll-over within the \*wholly-owned group under Subdivision 126-B involving the roll-over asset.

The recipient company must stop, at a time (the **break-up time**) when it still owns the roll-over asset, being a \*100% subsidiary of a member of the group (the **ultimate holding company**) that is not a 100% subsidiary of any other member of the group at the time of the roll-over event.

- (3) This condition applies if the roll-over event was the last in a series of \*CGT events involving the roll-over asset and there was a roll-over within the \*wholly-owned group under Subdivision 126-B for all the events.

The recipient company must stop, at a time (also the **break-up time**) when it still owns the roll-over asset, being a \*100% subsidiary of another member of the group (also the **ultimate holding company**) that was not a 100% subsidiary of any other member of the group at the time of the first of the events.

- (4) The time of the event is the break-up time.
- (5) The recipient company makes a **capital gain** if the roll-over asset's \*market value (at the break-up time) is *more* than its \*cost base. It makes a **capital loss** if that market value is *less* than its \*reduced cost base.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Exceptions*

- (6) **CGT event J1** does not happen if the conditions in section 104-180 or 104-182 are satisfied.
- (7) A \*capital gain or \*capital loss the recipient company makes is disregarded if the roll-over asset is taken to have been \*acquired by it before 20 September 1985 under Subdivision 126-B (except where the roll-over asset has stopped being a \*pre-CGT asset, for example, because of Division 149).

Note: CGT event J1 does not happen to a demerged entity or a member of a demerger group if CGT event A1 or C2 happens to a demerging entity under a demerger: see section 125-160.

*Acquisition rule*

- (8) The recipient company is taken to have \*acquired the roll-over asset at the break-up time.

*Cost base adjustment*

- (9) The first element of the recipient company's \*cost base and \*reduced cost base of the roll-over asset (just after the break-up time) is its \*market value (at the break-up time).

**104-180 Sub-group break-up**

- (1) The condition in subsection (2) must have been satisfied at each time when there is a roll-over within the \*wholly-owned group under Subdivision 126-B for a \*CGT event happening in relation to the roll-over asset.
- (2) The originating company and the recipient company must have been members of a group of 2 or more companies (the **sub-group**) within the \*wholly-owned group (excluding the ultimate holding company) for which one of these is satisfied:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) if the sub-group consists of 2 companies, either the recipient company is a 100% subsidiary of the other company (the **holding company**), or the other company is a 100% subsidiary of the recipient company (also the **holding company**);
  - (b) if the sub-group consists of 3 or more companies:
    - (i) the recipient company is a 100% subsidiary of one of those other companies (also the **holding company**) and so are the other companies (except the holding company) in the sub-group; or
    - (ii) each of the companies in the sub-group (except the recipient company) is a 100% subsidiary of the recipient company (also the **holding company**).
- (3) If the roll-over event was the last in a series of \*CGT events involving the roll-over asset and there was a roll-over within the \*wholly-owned group under Subdivision 126-B for all the events, each company that was the originating company or the recipient company for the purposes of that Subdivision for one of those roll-overs must have been members of the sub-group at the time of each of the roll-overs.
- (4) The conditions in subsection (5) or (6) must be satisfied just after the break-up time.
- (5) If the recipient company was the holding company of the sub-group, none of its \*shares can be owned by:
  - (a) the ultimate holding company; or
  - (b) a company that is a \*100% subsidiary of the ultimate holding company just after the break-up time.
- (6) If the recipient company was not the holding company of the sub-group, no \*shares in it or in the holding company can be owned by:
  - (a) the ultimate holding company; or
  - (b) a company that is a \*100% subsidiary of the ultimate holding company just after the break-up time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**104-182 Consolidated group break-up**

\*CGT event J1 does not happen if the recipient company ceases to be a \*subsidiary member of a \*consolidated group at the break-up time (whether or not it becomes a subsidiary member of another consolidated group at that time).

**104-185 Change in relation to replacement asset or improved asset after a roll-over under Subdivision 152-E: CGT event J2**

- (1) **CGT event J2** happens if you choose a small business roll-over under Subdivision 152-E for a \*CGT event that happens in relation to a \*CGT asset in an income year and:
- (a) you \*acquire a replacement asset (the **replacement asset**), or you incur \*fourth element expenditure in relation to a CGT asset (also the **replacement asset**), or you do both, by the end of the \*replacement asset period; and
  - (b) the replacement asset is your \*active asset at the end of the replacement asset period; and
  - (c) if the replacement asset is a \*share in a company or an interest in a trust, at the end of the replacement asset period:
    - (i) either you, or an entity \*connected with you, is a \*CGT concession stakeholder in the company or trust; or
    - (ii) CGT concession stakeholders in the company or trust have a \*small business participation percentage in you of at least 90%; and
  - (d) a change of a kind specified in subsection (2) or (3) happens after the end of the replacement asset period.

Note 1: The replacement asset period may be modified or extended, see section 104-190.

Note 2: There is an exception: see subsection (8).

Note 3: There may be 2 or more replacement assets.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note 4: CGT event J2 can also happen in relation to a capital gain you rolled-over under Division 17A of former Part IIIA of the *Income Tax Assessment Act 1936* or Division 123 of the *Income Tax Assessment Act 1997* if the status of the replacement asset changes: see section 104-185 of the *Income Tax (Transitional Provisions) Act 1997*.

- (2) For any replacement asset that satisfied paragraph (1)(b) and, if applicable, paragraph (1)(c), the change is:
- (a) the asset stops being your \*active asset; or
  - (b) the asset becomes your \*trading stock; or
  - (d) you start to use the asset solely to produce your \*exempt income or \*non-assessable non-exempt income.
- (3) In addition, for a \*share in a company or an interest in a trust, the change is:
- (a) \*CGT event G3 or I1 happens in relation to it; or
  - (b) paragraph (1)(c) stops being satisfied.

Note: The full list of CGT events is in section 104-5.

- (4) The time of the event is when the change happens.
- (5) You make a **capital gain** equal to:
- (a) if there is only one replacement asset that satisfied paragraph (1)(b) and, if applicable, paragraph (1)(c)—the amount of the capital gain that you disregarded under Subdivision 152-E (the **152-E amount**); or
  - (b) if there are 2 or more replacement assets that satisfied paragraph (1)(b) and, if applicable, paragraph (1)(c) and a change of a kind specified in subsection (2) or (3) occurs for all of them—the 152-E amount; or
  - (c) if there are 2 or more replacement assets that satisfied paragraph (1)(b) and, if applicable, paragraph (1)(c) and such a change occurs for one or more but not all of them—so much (if any) of the 152-E amount as exceeds the sum of the following:
    - (i) the first element of the \*cost base of each of those replacement assets \*acquired;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) the \*incidental costs you incurred to acquire each of those replacement assets (which can include giving property, see section 103-5);
  - (iii) the amount of \*fourth element expenditure incurred in relation to each of those replacement assets;  
in relation to which such a change did not occur.
- (6) If \*CGT event J6 has happened in relation to the small business roll-over under Subdivision 152-E, subsection (5) applies to the 152-E amount reduced by the amount of the capital gain under that event.
- (7) If \*CGT event J2 happens again in a later income year in relation to the small business roll-over under Subdivision 152-E, subsection (5) applies to any remaining part of the 152-E amount reduced by the amount of the capital gain under the earlier event.
- (8) **CGT event J2** does not happen because of paragraph (2)(a) for a \*share in a company or an interest in a trust if the share or interest ceased to be an \*active asset only because of changes in the \*market values of assets that were owned by the company or trust when you \*acquired the share or interest or incurred the \*fourth element expenditure.
- (9) You incur **fourth element expenditure** in relation to a \*CGT asset if you incur capital expenditure that is included, under subsection 110-25(5), in the fourth element of the \*cost base of the asset.

**104-190 Replacement asset period**

- (1A) If you choose a small business roll-over under Subdivision 152-E for a \*CGT event that happens in relation to a \*CGT asset in an income year, the **replacement asset period** is the period:
- (a) starting one year before the last CGT event in the income year for which you obtain the roll-over; and
  - (b) ending at the later of:
    - (i) 2 years after that last CGT event; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (ii) if the first-mentioned CGT event happened because you \*disposed of the CGT asset—6 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.
- (1) The **replacement asset period** is modified if your \*capital proceeds for the \*CGT event are increased under subsection 116-45(2) or 116-60(3) after the end of that period. Instead, you have until 12 months after you receive those additional proceeds to \*acquire a replacement asset, or incur \*fourth element expenditure in relation to a \*CGT asset, or do both.
- Note: Section 116-45 applies if you do not receive your capital proceeds despite having taken all reasonable steps to get them, and section 116-60 applies if your capital proceeds are misappropriated by your employee or agent.
- (2) The Commissioner may extend the **replacement asset period**, or that period as modified by subsection (1).

#### **104-195 Trust failing to cease to exist after roll-over under Subdivision 124-N: CGT event J4**

- (1) **CGT event J4** happens if:
- (a) there is a roll-over under Subdivision 124-N for a trust \*disposing of a \*CGT asset to a company under a trust restructure; and
  - (b) the trust fails to cease to exist:
    - (i) within 6 months after the start of the \*trust restructuring period; or
    - (ii) if that is not possible because of circumstances outside the control of the trustee—as soon as practicable after the end of that 6 month period; and
  - (c) the company owns the asset when the failure happens.

Example: Circumstances would be outside the control of the trustee if the trustee is involved in litigation concerning the trust and cannot wind up the trust until the litigation is finished.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) **CGT event J4** also happens if:
- (a) there is a roll-over under Subdivision 124-N for an entity (the **shareholding entity**) receiving a \*share in a company in exchange for a unit or interest in a trust under a trust restructure; and
  - (b) the trust fails to cease to exist:
    - (i) within 6 months after the start of the \*trust restructuring period; or
    - (ii) if that is not possible because of circumstances outside the control of the trustee—as soon as practicable after the end of that 6 month period; and
  - (c) the shareholding entity owns the share when the failure happens.
- (3) The time of the event is when the failure to cease to exist happens.
- (4) The company makes a **capital gain** if the \*CGT asset's \*market value at the time the company \*acquired the asset is more than its \*cost base at that time. The company makes a **capital loss** if that market value is less than the asset's \*reduced cost base at that time.
- (5) This Part and Part 3-3 apply to the company from just after the time of the event as if the first element of the \*cost base and \*reduced cost base of the asset were its \*market value at the time the company \*acquired the asset.
- (6) The shareholding entity makes a **capital gain** if the \*share's \*market value at the time the entity \*acquired the share is more than its \*cost base at that time. The shareholding entity makes a **capital loss** if that market value is less than the share's \*reduced cost base at that time.
- (7) This Part and Part 3-3 apply to the shareholding entity from just after the time of the event as if the first element of the \*cost base and \*reduced cost base of the \*share were its \*market value at the time the entity \*acquired the share.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Exception*

- (8) This section does not apply to a \*CGT asset acquired under a trust restructure that happened before the day on which the *Taxation Laws Amendment Act (No. 4) 2002* received the Royal Assent.

**104-197 Failure to acquire replacement asset and to incur fourth element expenditure after a roll-over under Subdivision 152-E: CGT event J5**

- (1) **CGT event J5** happens if you choose a small business roll-over under Subdivision 152-E for a \*CGT event that happens in relation to a \*CGT asset in an income year and, by the end of the \*replacement asset period:
- (a) you have not \*acquired a replacement asset (the **replacement asset**), and have not incurred \*fourth element expenditure in relation to a CGT asset (also the **replacement asset**); or
  - (b) the replacement asset does not satisfy the conditions set out in subsection (2).

Note: You do not have to satisfy the basic conditions in Subdivision 152-A for the gain in relation to CGT event J5 (see subsection 152-305(4)).

- (2) The conditions are:
- (a) the replacement asset must be your \*active asset; and
  - (b) if the replacement asset is a \*share in a company or an interest in a trust:
    - (i) you, or an entity \*connected with you, must be a \*CGT concession stakeholder in the company or trust; or
    - (ii) CGT concession stakeholders in the company or trust must have a \*small business participation percentage in you of at least 90%.

Example: Joseph owns 50% of the shares in Company A and Company B. He is therefore a CGT concession stakeholder in the companies: see section 152-60. The companies are connected with Joseph (see section 328-125) because he controls both of them.

Company A owns land which it leases to Joseph for use in a business. It sells the land at a profit and buys shares in Company B.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Subsection (2) is satisfied for the shares because Joseph is connected with Company A and is a CGT concession stakeholder in Company B.

- (3) The time of the event is at the end of the \*replacement asset period.
- (4) You make a **capital gain** equal to the amount of the \*capital gain that you disregarded under Subdivision 152-E.
- (5) The \*replacement asset period may be modified or extended as mentioned in section 104-190.

**104-198 Cost of acquisition of replacement asset or amount of fourth element expenditure, or both, not sufficient to cover disregarded capital gain: CGT event J6**

- (1) **CGT event J6** happens if you choose a small business roll-over under Subdivision 152-E for a \*CGT event that happens in relation to a \*CGT asset in an income year and:
  - (a) by the end of the \*replacement asset period, you have done either or both of the following:
    - (i) \*acquired a replacement asset (the **replacement asset**);
    - (ii) incurred \*fourth element expenditure in relation to a CGT asset (also the **replacement asset**); and
  - (b) at the end of the replacement asset period, the replacement asset is your \*active asset; and
  - (c) if the replacement asset is a \*share in a company or an interest in a trust, at the end of the replacement asset period:
    - (i) you, or an entity \*connected with you, are a \*CGT concession stakeholder in the company or trust; or
    - (ii) CGT concession stakeholders in the company or trust have a \*small business participation percentage in you of at least 90%; and
  - (d) the total (the **amount incurred**) of the following, in relation to each replacement asset that satisfied paragraph (b) and, if applicable, paragraph (c), is less than the amount of the capital gain that you disregarded:
    - (i) the first element of the \*cost base;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) the \*incidental costs you incurred (which can include giving property, see section 103-5);
- (iii) the amount of fourth element expenditure incurred.

Note: You do not have to satisfy the basic conditions in Subdivision 152-A for the gain in relation to CGT event J6 (see subsection 152-305(4)).

- (2) The time of the event is at the end of the \*replacement asset period.
- (3) You make a **capital gain** equal to the difference between:
  - (a) the amount of the \*capital gain that you disregarded under Subdivision 152-E; and
  - (b) the amount incurred.
- (4) The \*replacement asset period may be modified or extended as mentioned in section 104-190.

### **Subdivision 104-K—Other CGT events**

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**104-205 Incoming international transfer of emissions unit: CGT event K1**

- (1) *CGT event K1* happens if:
- (a) any of the following conditions is satisfied:
    - (iii) a \*Kyoto unit is transferred from your foreign account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) to your Registry account (within the meaning of that Act) or your nominee's Registry account (within the meaning of that Act);
    - (iv) a Kyoto unit is transferred from your nominee's foreign account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) to your Registry account (within the meaning of that Act) or your nominee's Registry account (within the meaning of that Act);
    - (v) an \*Australian carbon credit unit is transferred from your foreign account (within the meaning of the *Carbon Credits (Carbon Farming Initiative) Act 2011*) to your Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) or your nominee's Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*);
    - (vi) an \*Australian carbon credit unit is transferred from your nominee's foreign account (within the meaning of the *Carbon Credits (Carbon Farming Initiative) Act 2011*) to your Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*) or your nominee's Registry account (within the meaning of the *Australian National Registry of Emissions Units Act 2011*); and
  - (b) as a result of the transfer, you start to \*hold the unit as a \*registered emissions unit; and
  - (c) just before the transfer, the unit was neither your \*trading stock nor your \*revenue asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) The time of the event is when you start to \*hold the unit as a \*registered emissions unit.
- (3) You make a **capital gain** if the unit's \*market value (just before you started to \*hold the unit as a \*registered emissions unit) is *more* than its \*cost base. You make a **capital loss** if that market value is *less* than its \*reduced cost base.

### **104-210 Bankrupt pays amount in relation to debt: CGT event K2**

- (1) **CGT event K2** happens if:
  - (a) you made a \*net capital loss for an income year that, because of subsection 102-5(2), cannot be applied in working out whether you made a \*net capital gain for the income year or a later one; and
  - (b) you make a payment in an income year (the **payment year**) in respect of a debt that was taken into account in working out the amount of that net capital loss; and
  - (c) ignoring subsection 102-5(2), some part of the net capital loss (the **denied part**) would have been applied (if you had made sufficient \*capital gains) in working out whether you had made a \*net capital gain for the payment year.The payment can include giving property: see section 103-5.
- (2) The time of the event is when you make the payment.
- (3) You make a **capital loss** equal to the smallest of:
  - (a) the amount you paid; or
  - (b) that part of it that was taken into account in working out the denied part; or
  - (c) the denied part less the sum of \*capital losses you made as a result of previous payments you made in respect of the debt that was taken into account in working out the denied part.
- (4) In calculating that **capital loss**, disregard any amount you have received as \*recoupment of the payment and that is not included in your assessable income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**104-215 Asset passing to tax-advantaged entity: CGT event K3**

- (1) **CGT event K3** happens if you die and a \*CGT asset you owned just before dying \*passes to a beneficiary in your estate who (when the asset passes):
  - (a) is an \*exempt entity; or
  - (b) is the trustee of a \*complying superannuation entity; or
  - (c) is a foreign resident.
- (2) If the asset passes to a beneficiary who is a foreign resident, **CGT event K3** happens only if:
  - (a) you were an Australian resident just before dying; and
  - (b) the asset (in the hands of the beneficiary) is not \*taxable Australian property.
- (3) The time of the event is just before you die.
- (4) A **capital gain** is made if the \*market value of the asset on the day you died is *more* than the asset's \*cost base. A **capital loss** is made if that market value is *less* than the asset's \*reduced cost base.

Note: The trustee of the estate must include in the date of death return any net capital gain for the income year when you died.

*Exception*

- (5) A \*capital gain or \*capital loss is disregarded if you \*acquired the asset before 20 September 1985.

Note: There is also an exception for certain philanthropic testamentary gifts: see section 118-60.

**104-220 CGT asset starts being trading stock: CGT event K4**

- (1) **CGT event K4** happens if:
  - (a) you start holding as \*trading stock a \*CGT asset you already own but do not hold as trading stock; and
  - (b) you elect under paragraph 70-30(1)(a) to be treated as having sold the asset for its \*market value.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note 1: Paragraph 70-30(1)(a) allows you to elect the cost of the asset, or its market value, just before it became trading stock.

Note 2: There is an exemption if you elect its cost: see section 118-25.

- (2) The time of the event is when you start.
- (3) You make a **capital gain** if the asset's \*market value (just before it became \*trading stock) is *more* than its \*cost base. You make a **capital loss** if that market value is *less* than its \*reduced cost base.

*Exception*

- (4) A \*capital gain or \*capital loss you make is disregarded if you \*acquired the asset before 20 September 1985.

### **104-225 Special collectable losses: CGT event K5**

- (1) **CGT event K5** happens if the requirements in subsections (2), (3) and (4) are satisfied.
- (2) There is a fall in the \*market value of a \*collectable of a company or trust.
- (3) \*CGT event A1, C2 or E8 happens to:
  - (a) \*shares you own in the company (or in a company that is a member of the same \*wholly-owned group); or
  - (b) an interest you have in the trust;and there is no roll-over for that CGT event.
- (4) As a result of the \*capital proceeds from that event being replaced under section 116-80:
  - (a) you make a \*capital gain that you would not otherwise have made; or
  - (b) you do not make the \*capital loss you would otherwise have made; or
  - (c) you make a capital loss that is less than you would otherwise have made.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: The capital proceeds from that event are replaced with the market value of the shares or the interest in the trust as if the fall in the market value of collectables and personal use assets had not occurred: see section 116-80.

(5) The time of CGT event K5 is the time of \*CGT event A1, C2 or E8.

(6) You make a *capital loss* from a \*collectable equal to:

- the \*market value of the \*shares or the interest in the trust (worked out as at the time of \*CGT event A1, C2 or E8 as if the fall in market value of the collectable had not occurred);

less:

- the actual \*capital proceeds from CGT event A1, C2 or E8.

Example: You own 50% of the shares in a company. You bought them in 1999 for \$60,000. The company owns a painting worth \$100,000 and another asset worth \$20,000. The painting falls in value to \$50,000.

In 1999 you sell your shares for \$35,000 (the actual capital proceeds). You would otherwise make a capital loss of \$25,000.

However, the actual capital proceeds are replaced with \$60,000 (the market value of the shares if the painting had not fallen in value). You do not make a capital loss from selling the shares.

You do make a collectable loss equal to:

$$\$60,000 - \$35,000 = \$25,000$$

Note: You can subtract capital losses from collectables only from your capital gains from collectables: see section 108-10.

**104-230 Pre-CGT shares or trust interest: CGT event K6**

(1) *CGT event K6* happens if:

- (a) you own \*shares in a company or an interest in a trust you \*acquired *before* 20 September 1985; and
- (b) \*CGT event A1, C2, E1, E2, E3, E5, E6, E7, E8, J1 or K3 happens in relation to the shares or interest; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) there is no roll-over for the other CGT event; and
  - (d) the applicable requirement in subsection (2) is satisfied.
- (2) Just before the other event happened:
- (a) the \*market value of property of the company or trust (that is not its \*trading stock) that was \*acquired on or after 20 September 1985; or
  - (b) the market value of interests the company or trust owned through interposed companies or trusts in property (except trading stock) that was \*acquired on or after 20 September 1985;
- must be at least 75% of the \*net value of the company or trust.
- (5) The time of CGT event K6 is when the other event happens.
- (6) You make a \*capital gain equal to that part of the \*capital proceeds from the \*share or interest that is reasonably attributable to the amount by which the \*market value of the property referred to in subsection (2) is *more* than the sum of the \*cost bases of that property.
- Note: You cannot make a capital loss.
- (7) This section applies to property that a company that is a foreign resident \*acquired after 15 August 1989 from another company as if it were acquired before 20 September 1985 if:
- (a) the other company acquired it before 20 September 1985; and
  - (b) the companies are members of the same \*wholly-owned group; and
  - (c) the property is not \*taxable Australian property.
- (8) In working out the \*net value of a company or trust for the purposes of subsection (2), disregard:
- (a) the discharge or release of any liabilities; or
  - (b) the \*market value of any \*CGT assets acquired;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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if the discharge or release, or the \*acquisition, was done for a purpose that included ensuring that the requirement in subsection (2) would not be satisfied in a particular situation.

*Exceptions*

- (9) **CGT event K6** does not happen if:
- (a) for a company referred to in subsection (2)—some of its \*shares were listed for quotation in the official list of a stock exchange in Australia or a foreign country at the time of the other event and at all times in the period of 5 years before the time of the other event; or
  - (b) for a trust referred to in subsection (2) that is a unit trust—some of its units were so listed, or were ordinarily available to the public for subscription or purchase, at the time of the other event and at all times in that period.

(9A) Paragraph (9)(a) applies to a case where:

- (a) the company referred to in subsection (2) is a \*demerged entity; and
- (b) \*shares in the demerged entity do not satisfy the test referred to in that paragraph; and
- (c) the demerger happened not more than 5 years before the other CGT event happened;

as if shares in the demerged entity were listed for quotation in the official list of a stock exchange in Australia or a foreign country at all times when some of the shares in the \*head entity of the \*demerger group were so listed.

**Example:** Louise owns shares in a company which has been listed for 3 years. The company is the head entity of a demerger group. As part of a demerger, she receives new interests in a demerged entity. The demerged entity then lists in its own right.

Since the head entity was listed for only 3 years, the demerged entity must remain listed for 2 years before Louise's new interests become eligible for the exception from CGT event K6.

(9B) Paragraph (9)(b) applies to a case where:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) the trust referred to in subsection (2) is a \*demerged entity and a unit trust; and
- (b) units in the demerged entity do not satisfy the test referred to in that paragraph; and
- (c) the demerger happened not more than 5 years before the other CGT event happened;

as if units in the demerged entity were listed for quotation in the official list of a stock exchange in Australia or a foreign country, or were ordinarily available to the public for subscription or purchase, at all times when some of the units in the \*head entity of the \*demerger group were so listed or available.

- (10) A \*capital gain is disregarded for a \*share in a company or an interest in a trust to the extent that, had you \*acquired it on or after 20 September 1985, you could have chosen a roll-over for the other \*CGT event under Subdivision 124-M (scrip for scrip roll-over).

Example: Bill owns a unit in a trust that he acquired before 20 September 1985. He exchanges the unit for a unit in another trust worth \$60 and \$40 cash. He makes a capital gain of \$50 because of CGT event K6.

Had the unit been acquired after 20 September 1985, Bill would have been entitled to a partial roll-over of the capital gain under Subdivision 124-M to the extent that his capital proceeds constituted a replacement unit.

Bill can therefore disregard  $\frac{60}{100}$  of the \$50 gain (\$30). The cost base of Bill's replacement unit is reduced by this amount. Bill must include the remaining \$20 of the CGT event K6 gain in the calculation of his net capital gain or loss for the year.

Note: A capital gain or loss made by a demerging entity from CGT event K6 happening as a result of a demerger is also disregarded: see section 125-155.

### **104-235 Balancing adjustment events for depreciating assets and certain assets used for R&D: CGT event K7**

- (1) **CGT event K7** happens if:
  - (a) a \*balancing adjustment event occurs for a \*depreciating asset you \*held; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) at some time when you held the asset, you used it, or had it \*installed ready for use, for:
  - (i) a purpose other than a \*taxable purpose; or
  - (ii) the purpose to which paragraphs 40-27(2)(a) and (b) relate (about second-hand assets in residential property).
  
- (1A) However, subsection (1) does not apply if:
  - (a) you are an \*R&D entity and you could deduct an amount under section 40-25 for the \*depreciating asset if the following assumptions were made:
    - (i) despite paragraph 40-30(1)(c) and subsection 40-30(2), all intangible assets were excluded from the definition of *depreciating asset* in section 40-30;
    - (ii) subsection 40-45(2) did not, except in the case of buildings, prevent Division 40 from applying to capital works to which Division 43 applies, or to which Division 43 would apply but for expenditure being incurred, or capital works being started, before a particular day;
    - (iii) you satisfied any relevant requirement for deductibility under Division 40; or
  - (b) there is roll-over relief for the \*balancing adjustment event under section 40-340 of this Act; or
  - (c) the asset is one for which you or another entity has deducted or can deduct amounts under Subdivision 40-F or 40-G.
  
- (1AA) Without limiting subsection (1A), if the asset is a vessel for which:
  - (a) you have a \*shipping exempt income certificate; or
  - (b) you have at any time had such a certificate;subsection (1) does not apply in relation to the asset to the extent that you are using, or at any time have used, it to produce income that is exempt under section 51-100.
  
- (1B) **CGT event K7** also happens if:
  - (a) you are an \*R&D entity; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) a \*balancing adjustment event occurs for a \*depreciating asset you \*held; and
- (c) when you held the asset, you could deduct an amount under section 40-25 for the asset if the assumptions set out in paragraph (1A)(a) were made; and
- (d) at some time when you held the asset:
  - (i) you used it other than for a taxable purpose or for the purpose of conducting \*R&D activities for which you were registered under section 27A of the *Industry Research and Development Act 1986*; or
  - (ii) you had it installed ready for use other than for a taxable purpose.

Note: For subparagraph (d)(i), disregard any use of the asset for the purpose of carrying on research and development activities (within the meaning of former section 73B of the *Income Tax Assessment Act 1936*): see section 104-235 of the *Income Tax (Transitional Provisions) Act 1997*.

- (2) The time of \*CGT event K7 is when the \*balancing adjustment event occurs.
- (3) Any \*capital gain or \*capital loss is worked out:
  - (a) under section 104-240; or
  - (b) under section 104-245 if the \*depreciating asset was allocated to a low-value pool.
- (4) A \*capital gain or \*capital loss you make is disregarded if:
  - (a) the \*depreciating asset covered by subsection (1) or (1B) is a \*pre-CGT asset; or
  - (b) you can deduct an amount for the asset under Division 328 (about small business entities) for the income year in which the \*balancing adjustment event occurred.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**104-240 Working out capital gain or loss for CGT event K7: general case**

- (1) You make a **capital gain** if the \*termination value of the \*depreciating asset covered by subsection 104-235(1) or (1B) is more than its \*cost. The amount of the \*capital gain is:

$$\left[ \text{* Termination value} - \text{*Cost} \right] \times \frac{\text{Sum of reductions}}{\text{Total decline}}$$

where:

**sum of reductions** is the sum of:

- (a) if the \*depreciating asset is covered by subsection 104-235(1)—the reductions in your deductions for the asset under sections 40-25 and 40-27; or
- (b) if the depreciating asset is covered by subsection 104-235(1B)—the reductions that would have been required under section 40-25 on the assumption that using the asset for a \*taxable purpose included using it for the purpose of conducting \*R&D activities for which you were registered under section 27A of the *Industry Research and Development Act 1986*.

**total decline** is the decline in value of the \*depreciating asset since you started to \*hold it.

Note 1: This subsection applies in a modified way if you used the asset for the purpose of carrying on research and development activities (within the meaning of former section 73B of the *Income Tax Assessment Act 1936*); see section 104-235 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 2: The CGT concepts of cost base and capital proceeds are not relevant for this event.

- (2) You make a **capital loss** if the \*cost of the \*depreciating asset covered by subsection 104-235(1) or (1B) is more than its \*termination value. The amount of the \*capital loss is:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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$$\left[ \text{*Cost} - \text{* Termination value} \right] \times \frac{\text{Sum of reductions}}{\text{Total decline}}$$

where:

**sum of reductions** and **total decline** have the same meanings as in subsection (1).

- (3) In applying subsection (1) or (2), reduce the \*termination value of the \*depreciating asset by so much of an amount misappropriated by your employee or \*agent (whether by theft, embezzlement, larceny or otherwise) as represents an amount applicable to you under:
  - (a) item 8 of the table in subsection 40-300(2); or
  - (b) item 1, 3, 4 or 6 of the table in subsection 40-305(1);in relation to the \*balancing adjustment event.
- (4) If you later receive an amount as \*recoupment of all or part of the amount misappropriated, the amount applicable under subsection (3) is increased by the amount received.
- (5) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purposes of giving effect to this section for an income year if:
  - (a) you discover the misappropriation, or you receive an amount as \*recoupment of all or part of the amount misappropriated, after you lodged your \*income tax return for the income year; and
  - (b) the amendment is made at any time during the period of 4 years starting immediately after you discover the misappropriation or receive the amount.

### **104-245 Working out capital gain or loss for CGT event K7: pooled assets**

- (1) You make a **capital gain** if the \*depreciating asset's \*termination value is more than its \*cost. The amount of the \*capital gain is:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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$$\left[ \text{*Termination value} - \text{*Cost} \right] \times \left[ 1 - \text{Taxable use fraction} \right]$$

where:

**taxable use fraction** is the taxable use percentage (expressed as a fraction) that you estimated for the asset when you allocated it to the pool.

Note: The CGT concepts of cost base and capital proceeds are not relevant for this event.

- (2) You make a **capital loss** if the \*depreciating asset's \*cost is more than its \*termination value. The amount of the \*capital loss is:

$$\left[ \text{*Cost} - \text{*Termination value} \right] \times \left[ 1 - \text{Taxable use fraction} \right]$$

where:

**taxable use fraction** has the same meaning as in subsection (1).

- (3) In applying subsection (1) or (2), reduce the \*termination value of the \*depreciating asset by so much of an amount misappropriated by your employee or \*agent (whether by theft, embezzlement, larceny or otherwise) as represents an amount applicable to you under:
- (a) item 8 of the table in subsection 40-300(2); or
  - (b) item 1, 3, 4 or 6 of the table in subsection 40-305(1);
- in relation to the \*balancing adjustment event.
- (4) If you later receive an amount as \*recoupment of all or part of the amount misappropriated, the amount applicable under subsection (3) is increased by the amount received.
- (5) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purposes of giving effect to this section for an income year if:
- (a) you discover the misappropriation, or you receive an amount as \*recoupment of all or part of the amount misappropriated,

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

after you lodged your \*income tax return for the income year;  
and

- (b) the amendment is made at any time during the period of 4 years starting immediately after you discover the misappropriation or receive the amount.

### 104-250 Direct value shifts: CGT event K8

- (1) **CGT event K8** happens if there is a \*taxing event generating a gain for a \*down interest under section 725-245.

Note: That section sets out some of the CGT consequences of a direct value shift for affected owners of down interests. See also the rest of Division 725.

- (2) The time of the event is the \*decrease time for the \*down interest.
- (3) You make a **capital gain** equal to the gain generated for the taxing event.
- Note: You cannot make a capital loss.
- (4) If, because of the same \*direct value shift, there are 2 or more \*taxing events generating a gain that are covered by subsection (1), **CGT event K8** happens for each of those taxing events, and you make a separate **capital gain** for each.

#### *Exceptions*

- (5) A \*capital gain is disregarded if the \*down interest is a \*pre-CGT asset.

### 104-255 Carried interests: CGT event K9

- (1) **CGT event K9** happens if you become entitled to receive a \*payment of a \*carried interest of a \*general partner in a \*VCLP, an \*ESVCLP or an \*AFOF or a \*limited partner in a \*VCMP.
- (2) The time of the event is the time you become entitled to receive the \*payment.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) You make a **capital gain** equal to the \*capital proceeds from the \*CGT event.

Note: You cannot make a capital loss.

*Meaning of carried interest*

- (4) The **carried interest** of a \*general partner in a \*VCLP, an \*ESVCLP or an \*AFOF is the partner's entitlement to a distribution from the VCLP, ESVCLP or AFOF, to the extent that the distribution is contingent upon the attainment of profits for the \*limited partners in the VCLP, ESVCLP or AFOF.
- (5) The **carried interest** of a \*limited partner in a \*VCMP is the partner's entitlement to a distribution from the VCMP, to the extent that the distribution is contingent upon the attainment of profits for the \*limited partners in the VCLP, ESVCLP or AFOF in which the VCMP is a \*general partner.
- (6) The **carried interest** does not include:
- (a) any part of the partner's entitlement to that distribution that is attributable to a fee (by whatever name called) for the management of the \*VCLP, \*ESVCLP, \*AFOF or \*VCMP; or
  - (b) any part of the partner's entitlement to that distribution that is attributable to the partner's \*equity interest in the VCLP, ESVCLP, AFOF or VCMP.

*Meaning of payment of carried interest*

- (7) **Payment**, of a \*carried interest, includes:
- (a) a payment that is attributable to the carried interest; or
  - (b) the giving of property in satisfaction of the carried interest: see section 103-5; or
  - (c) the giving of property in satisfaction of an entitlement that is attributable to the carried interest: see section 103-5.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **104-260 Certain short-term forex realisation gains: CGT event K10**

- (1) **CGT event K10** happens if:
  - (a) you make a \*forex realisation gain as a result of forex realisation event 2; and
  - (b) item 1 of the table in subsection 775-70(1) applies.
- (2) The time of the event is when the forex realisation event happens.
- (3) You make a **capital gain** equal to the \*forex realisation gain.

Note: You cannot make a capital loss under CGT event K10. However, if you make a forex realisation loss covered by item 1 of the table in subsection 775-75(1), you will make a capital loss under CGT event K11 (see section 104-265).

### **104-265 Certain short-term forex realisation losses: CGT event K11**

- (1) **CGT event K11** happens if:
  - (a) you make a \*forex realisation loss as a result of forex realisation event 2; and
  - (b) item 1 of the table in subsection 775-75(1) applies.
- (2) The time of the event is when the forex realisation event happens.
- (3) You make a **capital loss** equal to the \*forex realisation loss.

Note: You cannot make a capital gain under CGT event K11. However, if you make a forex realisation gain covered by item 1 of the table in subsection 775-70(1), you will make a capital gain under CGT event K10 (see section 104-260).

### **104-270 Foreign hybrids: CGT event K12**

- (1) **CGT event K12** happens if, in accordance with paragraph 830-50(2)(b) or (3)(b), you make a \*capital loss under this section for an income year.
- (2) The time of the event is just before the end of the income year.
- (3) You make a **capital loss** equal to the amount applicable under paragraph 830-50(2)(b) or (3)(b).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 104-500

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## Subdivision 104-L—Consolidated groups and MEC groups

### Table of sections

104-500	Loss of pre-CGT status of membership interests in entity becoming subsidiary member: CGT event L1
104-505	Where pre-formation intra-group roll-over reduction results in negative allocable cost amount: CGT event L2
104-510	Where tax cost setting amounts for retained cost base assets exceeds joining allocable cost amount: CGT event L3
104-515	Where no reset cost base assets and excess of net allocable cost amount on joining: CGT event L4
104-520	Where amount remaining after step 4 of leaving allocable cost amount is negative: CGT event L5
104-525	Error in calculation of tax cost setting amount for joining entity's assets: CGT event L6
104-535	Where reduction in tax cost setting amounts for reset cost base assets cannot be allocated: CGT event L8

### 104-500 Loss of pre-CGT status of membership interests in entity becoming subsidiary member: CGT event L1

- (1) **CGT event L1** happens if, under section 705-57 (including in its application in accordance with Subdivisions 705-B to 705-E), there is a reduction in the \*tax cost setting amount of assets of an entity that becomes a \*subsidiary member of a \*consolidated group or a \*MEC group.
- (2) The time of the event is just after the entity becomes a \*subsidiary member of the group.
- (3) For the head company core purposes mentioned in subsection 701-1(2), the \*head company makes a **capital loss** equal to the reduction.
- (4) The amount of the capital loss that can be applied to reduce the head company's \*capital gains for the first income year ending after the entity becomes a \*subsidiary member of the group (the **first income year**) cannot exceed  $\frac{1}{5}$  of the \*capital loss.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (5) The amount of the \*net capital loss from the first income year, to the extent the amount is attributable to the \*capital loss (the extent being the *event L1 attributable loss*), that can be applied to reduce the head company's \*capital gains for a later income year cannot exceed the amount worked out for the year using the following table:

<b>Limit on applying event L1 attributable loss</b>		
<b>Item</b>	<b>For this income year:</b>	<b>The amount of the event L1 attributable loss that can be applied cannot exceed:</b>
1	For the second income year ending after the entity became a *subsidiary member	The difference between: (a) 2/5 of the *capital loss; and (b) the amount of the capital loss that was applied in accordance with subsection (4) for the first income year.
2	For the third income year ending after the entity became a *subsidiary member	The difference between: (a) 3/5 of the *capital loss; and (b) the sum of the amount mentioned in paragraph (b) of item 1 and the amount of the event L1 attributable loss that was applied to reduce the entity's *capital gains for the next income year after the first income year.
3	For the fourth income year ending after the entity became a *subsidiary member	The difference between: (a) 4/5 of the *capital loss; and (b) the sum of the amount mentioned in paragraph (b) of item 1 and the amounts of the event L1 attributable loss that were applied to reduce the entity's *capital gains for earlier income years ending after the first income year.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 104-505

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**Limit on applying event L1 attributable loss**

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Item	For this income year:	The amount of the event L1 attributable loss that can be applied cannot exceed:
4	For the fifth income year ending after the entity became a *subsidiary member, or for any later income year	The difference between: (a) the *capital loss; and (b) the sum of the amount mentioned in paragraph (b) of item 1 and the amounts of the event L1 attributable loss that were applied to reduce the entity's *capital gains for earlier income years ending after the first income year.

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**104-505 Where pre-formation intra-group roll-over reduction results in negative allocable cost amount: CGT event L2**

- (1) **CGT event L2** happens if:
  - (a) an entity becomes a \*subsidiary member of a \*consolidated group or a \*MEC group; and
  - (b) in working out the group's \*allocable cost amount for the entity, the amount remaining after applying step 3A of the table in section 705-60 is negative.
- (2) The time of the event is just after the entity becomes a \*subsidiary member of the group.
- (3) For the head company core purposes mentioned in subsection 701-1(2), the \*head company makes a *capital gain* equal to the amount remaining.

**104-510 Where tax cost setting amounts for retained cost base assets exceeds joining allocable cost amount: CGT event L3**

- (1) **CGT event L3** happens if:
  - (a) an entity becomes a \*subsidiary member of a \*consolidated group or a \*MEC group; and
  - (b) the sum of the \*tax cost setting amounts for all \*retained cost base assets that are taken into account under

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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paragraph 705-35(1)(b) in working out the tax cost setting amount of each reset cost base asset of the entity exceeds the group's \*allocable cost amount for the entity.

- (2) The time of the event is just after the entity becomes a \*subsidiary member of the group.
- (3) For the head company core purposes mentioned in subsection 701-1(2), the \*head company makes a *capital gain* equal to the excess.

#### **104-515 Where no reset cost base assets and excess of net allocable cost amount on joining: CGT event L4**

- (1) *CGT event L4* happens if:
  - (a) an entity becomes a \*subsidiary member of a \*consolidated group or a \*MEC group; and
  - (b) in working out the \*tax cost setting amount for assets of the entity in accordance with section 705-35 (including in its application in accordance with Subdivisions 705-B to 705-D), there is an amount that results after applying paragraphs 705-35(1)(b) and (c) (including in their application in accordance with those Subdivisions); and  
Note: Section 705-35 is about the tax cost setting amount for reset cost base assets.
  - (c) it is not possible to allocate, in accordance with the latter paragraph, the amount that results because there are no reset cost base assets of the kind mentioned in that paragraph.
- (2) The time of the event is just after the entity becomes a \*subsidiary member of the group.
- (3) For the head company core purposes mentioned in subsection 701-1(2), the \*head company makes a *capital loss* equal to the amount that results.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 104-520

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**104-520 Where amount remaining after step 4 of leaving allocable cost amount is negative: CGT event L5**

- (1) **CGT event L5** happens if:
  - (a) an entity ceases to be a \*subsidiary member of a \*consolidated group or a \*MEC group; and
  - (b) in working out the group's \*allocable cost amount for the entity, the amount remaining after applying step 4 of the table in section 711-20 is negative.
- (2) The time of the event is when the entity ceases to be a \*subsidiary member of the group.
- (3) For the head company core purposes mentioned in subsection 701-1(2), the \*head company makes a **capital gain** equal to the amount remaining.

Note: The amount remaining may be reduced under section 707-415.

**104-525 Error in calculation of tax cost setting amount for joining entity's assets: CGT event L6**

- (1) **CGT event L6** happens if:
  - (a) you are the \*head company of a \*consolidated group or a \*MEC group; and
  - (b) the conditions in section 705-315 (about errors in tax cost setting amounts) are satisfied for a \*subsidiary member of the group; and
  - (c) you have a \*net overstated amount or a \*net understated amount for the subsidiary member.
- (2) The time of the event is the start of the income year in which the Commissioner becomes aware of the errors.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(3) You work out whether you have a *net overstated amount* or *net understated amount* using this table:

<b>Meaning of <i>net overstated amount</i> and <i>net understated amount</i></b>		
<b>Item</b>	<b>In this situation:</b>	<b>There is this result:</b>
1	There are one or more overstated amounts under section 705-315 for the *subsidiary member but no understated amount under that section for the subsidiary member	There is a <i>net overstated amount</i> . It is the overstated amount, or the sum of the overstated amounts.
2	There are one or more understated amounts under section 705-315 for the *subsidiary member but no overstated amount under that section for the subsidiary member	There is a <i>net understated amount</i> . It is the understated amount, or the sum of the understated amounts.
3	There are both one or more overstated amounts and one or more understated amounts under section 705-315 for the *subsidiary member and the sum of the overstated amounts exceeds the sum of the understated amounts	There is a <i>net overstated amount</i> . It is the difference between those sums
4	There are both one or more overstated amounts and one or more understated amounts under section 705-315 for the *subsidiary member and the sum of the overstated amounts is less than the sum of the understated amounts	There is a <i>net understated amount</i> . It is the difference between those sums

(4) If the time when the Commissioner becomes aware of the errors is within the period within which the Commissioner may amend all of the assessments necessary to correct the errors, then, for the head company core purposes mentioned in subsection 701-1(2):

- (a) if you have a \*net overstated amount—you make a *capital gain* equal to that amount; or
- (b) if you have a \*net understated amount—you make a *capital loss* equal to that amount.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 104-535

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- (5) If the time when the Commissioner becomes aware of the errors is not within that period, then, for the head company core purposes mentioned in subsection 701-1(2):
- (a) if you have a \*net overstated amount—you make a **capital gain** of the amount worked out under subsection (6); or
  - (b) if you have a \*net understated amount—you make a **capital loss** of the amount worked out under subsection (6).
- (6) The amount of the \*capital gain or \*capital loss is worked out as follows:

$$\text{Stated amount} \times \frac{\text{Current asset setting amount}}{\text{Original asset setting amount}}$$

where:

**current asset setting amount** means the \*tax cost setting amount for all assets referred to in subsection 705-315(2) as reset cost base assets that the \*head company of the \*consolidated group or the \*MEC group held continuously from the time when the \*subsidiary member joined the group until the start of the head company's income year that is the earliest income year for which the Commissioner could amend the head company's assessment to correct any of the errors.

**original asset setting amount** means the \*tax cost setting amount for all assets referred to in subsection 705-315(2) as reset cost base assets that the \*subsidiary member held at the time it joined the group.

**stated amount** means the \*net overstated amount or the \*net understated amount, as the case requires.

**104-535 Where reduction in tax cost setting amounts for reset cost base assets cannot be allocated: CGT event L8**

- (1) **CGT event L8** happens if:
- (a) an entity becomes a \*subsidiary member of a \*consolidated group or a \*MEC group; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) the \*tax cost setting amount for a reset cost base asset of the entity is reduced under subsection 705-40(1) (including in its application in accordance with Subdivisions 705-B to 705-D); and
  - (c) some or all (the *unallocated amount*) of the reduction cannot be allocated as mentioned in subsection 705-40(2).
- (2) The time of the event is just after the entity becomes a \*subsidiary member of the group.
  - (3) For the head company core purposes mentioned in subsection 701-1(2), the \*head company makes a *capital loss* equal to the unallocated amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 106—Entity making the gain or loss**

### **Table of Subdivisions**

	Guide to Division 106
106-A	Partnerships
106-B	Bankruptcy and liquidation
106-C	Absolutely entitled beneficiaries
106-D	Securities, charges and encumbrances

### **Guide to Division 106**

#### **106-1 What this Division is about**

This Division sets out the cases where a capital gain or loss is made by someone other than the entity to which a CGT event happens.

The entities affected are:

- partnerships (Subdivision 106-A);
- bankruptcy trustees and company liquidators (Subdivision 106-B);
- trustees where there is an absolutely entitled beneficiary (Subdivision 106-C);
- security holders (Subdivision 106-D).

### **Subdivision 106-A—Partnerships**

#### **106-5 Partnerships**

- (1) Any \*capital gain or \*capital loss from a \*CGT event happening in relation to a partnership or one of its \*CGT assets is made by the partners individually.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Each partner's gain or loss is calculated by reference to the partnership agreement, or partnership law if there is no agreement.

Example 1: A partnership creates contractual rights in another entity (CGT event D1). Each partner's capital gain or loss is calculated by allocating an appropriate share of the capital proceeds from the event and the incidental costs that relate to the event (according to the partnership agreement, or partnership law if there is no agreement).

Example 2: Helen and Clare set up a business in partnership. Helen contributes a block of land to the partnership capital. Their partnership agreement recognises that Helen has a 75% interest in the land and Clare 25%. The agreement is silent as to their interests in other assets and profit sharing.

When the land is sold, Helen's capital gain or loss will be determined on the basis of her 75% interest. For other partnership assets, Helen's gain or loss will be determined on the basis of her 50% interest (under the relevant Partnership Act).

- (2) Each partner has a separate \*cost base and \*reduced cost base for the partner's interest in each \*CGT asset of the partnership.
- (3) If a partner leaves a partnership, a remaining partner \*acquires a separate \*CGT asset to the extent that the remaining partner acquires a share of the departing partner's interest in a partnership asset.

Note: The remaining partners would not be affected if the departing partner sells its interests to an entity that was not a partner.

Example: (Indexation is ignored for the purpose of this example).

John, Wil and Patricia form a partnership (in equal shares).

John contributes a building (which is a pre-20 September 1985 asset) having a market value of \$200,000. Wil and Patricia contribute \$200,000 each in cash.

The partnership buys another asset for \$400,000.

John is taken to have disposed of  $\frac{2}{3}$  of his interest in the building ( $\frac{1}{3}$  to Wil and  $\frac{1}{3}$  to Patricia). His remaining  $\frac{1}{3}$  share in the building remains a pre-CGT asset. The  $\frac{1}{3}$  shares that Wil and Patricia acquire are post-CGT assets.

Wil retires from the partnership when the partnership assets have a market value of \$1,200,000 (\$500,000 for the building and \$700,000

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Section 106-5**

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for the other asset). John and Patricia pay Wil \$400,000 for his interest in the partnership.

Wil has a capital gain of \$100,000 on the building and \$100,000 on the other asset. John and Patricia each acquire an additional  $\frac{1}{6}$  interest in the partnership assets. These additional interests are separate assets and post-CGT assets.

- (4) If a new partner is admitted to a partnership:
- (a) the new partner \*acquires a share (according to the partnership agreement, or partnership law if there is no agreement) of each partnership asset; and
  - (b) the existing partners are treated as having \*disposed of part of their interest in each partnership asset to the extent that the new partner has acquired it.

Example: (Indexation is ignored for the purpose of this example).

Lyn and Barry form a partnership, each contributing \$15,000 to its capital. The partnership buys land for \$30,000.

The land increases in value to \$300,000.

Andrew is admitted as an equal partner, paying Lyn and Barry \$50,000 each to acquire a  $\frac{1}{3}$  share in the land. His cost base is \$100,000.

Lyn and Barry have each disposed of  $\frac{1}{3}$  of their interest in the land. Each has a cost base for that interest of \$5,000, and capital proceeds of \$50,000, leaving them with a capital gain of \$45,000 each on Andrew's admission to the partnership.

The land is sold for its market value.

Andrew has no capital gain on the land.

Lyn and Barry have disposed of their remaining  $\frac{2}{3}$  original interest in the land for capital proceeds of \$100,000, leaving each of them with a capital gain of:

$$\$100,000 - \left( \$15,000 - \$5,000 \right) = \$90,000$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



## Subdivision 106-B—Bankruptcy and liquidation

### Table of sections

106-30	Effect of bankruptcy
106-35	Effect of liquidation

### 106-30 Effect of bankruptcy

- (1) For the purposes of this Part and Part 3-3 (about capital gains and losses) and Subdivision 328-C (What is a small business entity), the vesting of the individual's \*CGT assets in the trustee under the *Bankruptcy Act 1966* or under a similar foreign law is ignored.
- (2) This Part, Part 3-3 and Subdivision 328-C apply to an act done in relation to a \*CGT asset of an individual in these circumstances as if the act had been done by the individual (instead of by the trustee etc.):
  - (a) as a result of the bankruptcy of the individual by the Official Trustee in Bankruptcy or a registered trustee, or the holder of a similar office under a \*foreign law;
  - (b) by a trustee under a personal insolvency agreement made under Part X of the *Bankruptcy Act 1966*, or under a similar instrument under a foreign law;
  - (c) by a trustee as a result of an arrangement with creditors under that Act or a foreign law.

Example: A CGT asset of an individual vests in a trustee because of the bankruptcy of the individual. No CGT event happens as a result of the vesting.

The trustee later sells the CGT asset. Any capital gain or loss is made by the individual, not the trustee.

### 106-35 Effect of liquidation

- (1) For the purposes of this Part and Part 3-3 (about capital gains and losses) and Subdivision 328-C (What is a small business entity), the vesting of a company's \*CGT assets in a liquidator, or the holder of a similar office under a \*foreign law, is ignored.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 106** Entity making the gain or loss

Section 106-50

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- (2) This Part, Part 3-3 and Subdivision 328-C apply to an act done by a liquidator of a company, or the holder of a similar office under a \*foreign law, as if the act had been done by the company (instead of by the liquidator etc.).

Example: Ben, a liquidator of a company, sells a CGT asset of the company. Any capital gain or loss is made by the company, not by Ben.

**Subdivision 106-C—Absolutely entitled beneficiaries**

**Table of sections**

106-50 Absolutely entitled beneficiaries

**106-50 Absolutely entitled beneficiaries**

- (1) For the purposes of this Part and Part 3-3 (about capital gains and losses) and Subdivision 328-C (What is a small business entity), from just after the time you become absolutely entitled to a \*CGT asset as against the trustee of a trust (disregarding any legal disability), the asset is treated as being your asset (instead of being an asset of the trust).
- (2) This Part, Part 3-3 and Subdivision 328-C apply, from just after the time you become absolutely entitled to a \*CGT asset as against the trustee of a trust (disregarding any legal disability), to an act done in relation to the asset by the trustee as if the act had been done by you (instead of by the trustee).

Example: An individual becomes absolutely entitled to a CGT asset of a trust. The trustee later sells the asset. Any capital gain or loss from the sale is made by the individual, not the trustee.

**Subdivision 106-D—Securities, charges and encumbrances**

**Table of sections**

106-60 Securities, charges and encumbrances

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **106-60 Securities, charges and encumbrances**

- (1) For the purposes of this Part and Part 3-3 (about capital gains and losses) and Subdivision 328-C (What is a small business entity):
- (a) the vesting of a \*CGT asset in an entity is ignored, if:
    - (i) the vesting is for the purpose of enforcing, giving effect to or maintaining a security, charge or encumbrance over the asset; and
    - (ii) the security, charge or encumbrance remains over the asset just after the vesting; and
  - (b) a CGT asset is treated as vesting in an entity at the time a security, charge or encumbrance ceases to be over the asset, if:
    - (i) the entity holds the asset just after that time because the asset vested in the entity at an earlier time; and
    - (ii) that earlier vesting was ignored under paragraph (a) because it was for the purpose of enforcing, giving effect to or maintaining the security, charge or encumbrance.
- (2) This Part, Part 3-3 and Subdivision 328-C apply to an act done by an entity (or an \*agent of the entity) in relation to a \*CGT asset for the purpose of enforcing, giving effect to or maintaining a security, charge or encumbrance over the asset as if the act had been done by the entity that provided the security (instead of by the first-mentioned entity or its agent).

Example: A CGT asset of a borrower vests in a lender as security for a loan. No CGT event happens as a result of the vesting.

If the borrower fails to make payments on the loan and the lender sells the CGT asset under the security arrangement, any capital gain or loss is made by the borrower, not the lender.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 108—CGT assets

### Table of Subdivisions

	Guide to Division 108
108-A	What a CGT asset is
108-B	Collectables
108-C	Personal use assets
108-D	Separate CGT assets

### Guide to Division 108

#### 108-1 What this Division is about

This Division defines the various categories of assets that are relevant to working out your capital gains and losses. They are CGT assets, collectables and personal use assets.

It also tells you how capital losses from collectables and personal use assets are relevant to working out your net capital gain or loss.

It also sets out when land, buildings and capital improvements are taken to be separate CGT assets.

#### Subdivision 108-A—What a CGT asset is

##### Table of sections

108-5	CGT assets
108-7	Interest in CGT assets as joint tenants

#### 108-5 CGT assets

- (1) A **CGT asset** is:
- any kind of property; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) a legal or equitable right that is not property.
- (2) To avoid doubt, these are *CGT assets*:
- (a) part of, or an interest in, an asset referred to in subsection (1);
  - (b) goodwill or an interest in it;
  - (c) an interest in an asset of a partnership;
  - (d) an interest in a partnership that is not covered by paragraph (c).

Note 1: Examples of CGT assets are:

- land and buildings;
- shares in a company and units in a unit trust;
- options;
- debts owed to you;
- a right to enforce a contractual obligation;
- foreign currency.

Note 2: An asset is not a CGT asset if the asset was last acquired before 26 June 1992 and was not an asset for the purposes of former Part IIIA of the *Income Tax Assessment Act 1936*: see section 108-5 of the *Income Tax (Transitional Provisions) Act 1997*.

### 108-7 Interest in CGT assets as joint tenants

Individuals who own a \*CGT asset as joint tenants are treated as if they each owned a separate CGT asset constituted by an equal interest in the asset and as if each of them held that interest as a tenant in common.

Note: Section 128-50 contains rules that apply when a joint tenant dies.

### Subdivision 108-B—Collectables

#### Table of sections

108-10	Losses from collectables to be offset only against gains from collectables
108-15	Sets of collectables
108-17	Cost base of a collectable

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 108-10

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**108-10 Losses from collectables to be offset only against gains from collectables**

- (1) In working out your \*net capital gain or \*net capital loss for the income year, \*capital losses from \*collectables can be used only to reduce \*capital gains from collectables.

Note: You choose the order in which you reduce your capital gains from collectables by your capital losses from collectables.

Example: Your capital gains from collectables total \$200 and your capital losses from collectables total \$400. You have other capital gains of \$500. You have a net capital gain of \$500 and a net capital loss from collectables of \$200.

The losses from collectables cannot be used to reduce the \$500 capital gain.

- (2) A *collectable* is:

- (a) \*artwork, jewellery, an antique, or a coin or medallion; or
- (b) a rare folio, manuscript or book; or
- (c) a postage stamp or first day cover;

that is used or kept mainly for your (or your \*associate's) personal use or enjoyment.

- (3) These are also *collectables*:

- (a) an interest in any of the things covered by subsection (2); or
- (b) a debt that arises from any of those things; or
- (c) an option or right to \*acquire any of those things.

Note: Collectables acquired for \$500 or less are exempt. However, you get an exemption for an interest in one only if the market value of all the interests combined is \$500 or less: see Subdivision 118-A.

- (4) If some or all of a \*capital loss from a \*collectable cannot be applied in an income year, the unapplied amount can be applied in the next income year for which your \*capital gains from \*collectables exceed your \*capital losses (if any) from collectables.

Example: You have a capital gain from a collectable for the income year of \$200 and a capital loss from another collectable of \$600.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Your capital loss from one collectable reduces your capital gain from the other to zero. You cannot apply the remaining \$400 of the capital loss in this income year, but you can apply it in a later income year.

- (5) If you have 2 or more unapplied \*net capital losses from \*collectables, you must apply them in the order you made them.

### 108-15 Sets of collectables

- (1) This section sets out what happens if:
- (a) you own \*collectables that are a set; and
  - (b) they would ordinarily be \*disposed of as a set; and
  - (c) you dispose of them in one or more transactions for the purpose of trying to obtain the exemption in section 118-10.

Example: You buy a set of 3 books for \$900. You apportion the \$900 among each book: see section 112-30. If the books are of equal value, you have acquired each one for \$300.

If you dispose of each book individually, you would ordinarily obtain the exemption in section 118-10, because you acquired each one for less than \$500.

- (2) The set of \*collectables is taken to be a single \*collectable and each of your \*disposals is a disposal of part of that collectable.

Example: To continue the example, the 3 books are taken to be a single collectable. You will not obtain the exemption in section 118-10, because you acquired the set for more than \$500.

You work out if you make a capital gain or loss from a disposal of part of an asset by comparing the capital proceeds from it with the cost base or reduced cost base (as appropriate) of the disposed part.

Note 1: Section 112-30 tells you how to apportion the cost base and reduced cost base of a CGT asset on a disposal of part of an asset.

Note 2: This section does not apply to a collectable you last acquired before 16 December 1995: see section 108-15 of the *Income Tax (Transitional Provisions) Act 1997*.

### 108-17 Cost base of a collectable

In working out the \*cost base of a \*collectable, disregard the third element (about costs of ownership).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 108-20

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**Subdivision 108-C—Personal use assets**

**Table of sections**

108-20	Losses from personal use assets must be disregarded
108-25	Sets of personal use assets
108-30	Cost base of a personal use asset

**108-20 Losses from personal use assets must be disregarded**

- (1) In working out your \*net capital gain or \*net capital loss for the income year, any \*capital loss you make from a \*personal use asset is disregarded.
- (2) A *personal use asset* is:
  - (a) a \*CGT asset (except a \*collectable) that is used or kept mainly for your (or your \*associate's) personal use or enjoyment; or
  - (b) an option or right to \*acquire a \*CGT asset of that kind; or
  - (c) a debt arising from a \*CGT event in which the \*CGT asset the subject of the event was one covered by paragraph (a); or
  - (d) a debt arising other than:
    - (i) in the course of gaining or producing your assessable income; or
    - (ii) from your carrying on a \*business.

Note 1: There is an exemption for a personal use asset you acquire for \$10,000 or less: see section 118-10.

Note 2: A debt arising from a CGT event involving a CGT asset kept mainly for your personal use and enjoyment is a personal use asset to prevent any loss arising from the debt being a normal capital loss.

- (3) A *personal use asset* does *not* include land, a \*stratum unit or a building or structure that is taken to be a separate \*CGT asset because of Subdivision 108-D.

**108-25 Sets of personal use assets**

- (1) This section sets out what happens if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) you own \*personal use assets that are a set; and
  - (b) they would ordinarily be \*disposed of as a set; and
  - (c) you dispose of them in one or more transactions for the purpose of trying to obtain the exemption in section 118-10.
- (2) The set of \*personal use assets is taken to be a single \*personal use asset and each of your \*disposals is a disposal of part of that asset.

### **108-30 Cost base of a personal use asset**

In working out the \*cost base of a \*personal use asset, disregard the third element (about the costs of ownership).

### **Subdivision 108-D—Separate CGT assets**

#### **Guide to Subdivision 108-D**

#### **108-50 What this Subdivision is about**

For CGT purposes, there are:

- exceptions to the common law principle that what is attached to the land is part of the land; and
- special rules about buildings and adjacent land; and
- rules about when a capital improvement to a CGT asset is treated as a separate CGT asset.

Note: In addition to the circumstances set out in this Subdivision, separate asset treatment can apply under section 124-595 (about a roll-over for a Crown lease) and section 124-725 (about a roll-over for a prospecting or mining entitlement).

### **Table of sections**

#### **Operative provisions**

108-55 When is a building a separate asset from land?

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 108-55

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- 108-60 Depreciating asset that is part of a building is a separate asset
- 108-65 Land adjacent to land acquired before 20 September 1985
- 108-70 When is a capital improvement a separate asset?
- 108-75 Capital improvements to CGT assets for which a roll-over may be available
- 108-80 Deciding if capital improvements are related to each other
- 108-85 Meaning of improvement threshold

## Operative provisions

### 108-55 When is a building a separate asset from land?

- (1) A building or structure on land that you *\*acquired on or after* 20 September 1985 is taken to be a separate *\*CGT* asset from the land if one of these balancing adjustment provisions applies to the building or structure (whether or not there is a balancing adjustment):

- (a) Subdivision 40-D; or
- (b) section 355-315 or 355-525 (about R&D).

Example: You construct a timber mill building on land you own. The building is subject to a balancing adjustment on its disposal, loss or destruction. It is taken to be a separate CGT asset from the land.

- (2) A building or structure that is constructed on land that you *\*acquired before* 20 September 1985 is taken to be a separate *\*CGT* asset from the land if:

- (a) you entered into a contract for the construction on or after that day; or
- (b) if there is no contract—the construction started on or after that day.

Example: You bought a block of land with a building on it on 10 August 1984. On 1 December 1999 you construct another building on the land. The other building is taken to be a separate CGT asset from the land.

### 108-60 Depreciating asset that is part of a building is a separate asset

A *\*depreciating* asset that is part of a building or structure is taken to be a separate *\*CGT* asset from the building or structure.

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*\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.*

Example: You own a factory from which you carry on a business. You install rest rooms for your employees. The plumbing fixtures and fittings are depreciating assets. These are taken to be a separate CGT asset from the factory.

### **108-65 Land adjacent to land acquired before 20 September 1985**

Land that you \*acquire on or after 20 September 1985 that is adjacent to land (the *original land*) you acquired before that day is taken to be a separate \*CGT asset from the original land if it and the original land are amalgamated into one title.

Example: On 1 April 1984 you bought a block of land. On 1 June 1999 you bought another block of land adjacent to the first block. You amalgamate the titles to the 2 blocks into 1 title.

The second block is treated as a separate CGT asset. You can make a capital gain or loss from it if you sell the whole area of land.

### **108-70 When is a capital improvement a separate asset?**

#### *Improvements to land*

- (1) A capital improvement to land is taken to be a separate \*CGT asset from the land if one of the balancing adjustment provisions set out in subsection 108-55(1) applies to the improvement (whether or not there is a balancing adjustment).

Example: You own land that you use for pastoral operations. You build some fences that are destroyed by fire. The fences are depreciating assets and are subject to a balancing adjustment on their destruction under Division 40. The fences are taken to be a separate CGT asset from the land.

#### *Unrelated improvements to pre-CGT assets*

- (2) A capital improvement to a \*CGT asset (the *original asset*) that you \*acquired *before* 20 September 1985 (that is not related to any other capital improvement to the asset) is taken to be a separate \*CGT asset if its \*cost base (assuming it were a separate CGT asset) when a CGT event happens (except one that happens because of your death) in relation to the original asset is:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 108-70

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- (a) more than the \*improvement threshold for the income year in which the event happened; and
- (b) more than 5% of the \*capital proceeds from the event.

Example: In 1983 you bought a boat. In 1999 you install a new mast (a capital improvement) for \$30,000. Later, you sell the boat for \$150,000.

If the cost base of the improvement in the sale year is \$41,000 and the improvement threshold for that year is \$96,000, the improvement will not be treated as a separate asset.

Note 1: Section 108-80 sets out the factors for deciding whether capital improvements are related to each other.

Note 2: If the improvement is a separate asset, the capital proceeds from the event must be apportioned between the original asset and the improvement: see section 116-40.

*Related improvements to pre-CGT assets*

- (3) Capital improvements to a \*CGT asset (the **original asset**) that you \*acquired *before* 20 September 1985 that are related to each other are taken to be a separate \*CGT asset if the total of their \*cost bases (assuming each one were a separate CGT asset) when a \*CGT event happens in relation to the original asset is:

- (a) more than the \*improvement threshold for the income year in which the event happened; and
- (b) more than 5% of the \*capital proceeds from the event.

Note: If the improvements are a separate asset, the capital proceeds from the event must be apportioned between the original asset and the improvements: see section 116-40.

*Some improvements not relevant*

- (4) This section does not apply to a capital improvement:
  - (a) that took place under a contract that you entered into before 20 September 1985; or
  - (b) if there is no contract—that started or occurred before that day.
- (5) Subsections (2) and (3) do not apply if the capital improvement is made to:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) a \*Crown lease; or
- (b) a \*prospecting entitlement or \*mining entitlement; or
- (c) a \*statutory licence; or
- (d) a \*depreciating asset to which Subdivision 124-K applies.

Note: Section 108-75 deals with this situation.

- (6) This section does not apply to a capital improvement consisting of repairs to or restoration of a \*CGT asset \*acquired before 20 September 1985 in circumstances where there is a roll-over under Subdivision 124-B.

### **108-75 Capital improvements to CGT assets for which a roll-over may be available**

- (1) This section is relevant only if a \*CGT event happens in relation to a \*CGT asset that is:
  - (a) a \*Crown lease; or
  - (b) a \*prospecting entitlement or \*mining entitlement; or
  - (c) a \*statutory licence; or
  - (d) a \*depreciating asset to which Subdivision 124-K applies.

You must have \*acquired it before 20 September 1985.

Note: Division 124 treats you as having acquired a CGT asset before that day in some situations.

- (2) There are possible consequences if there has been one or more capital improvements to:
  - (a) the \*CGT asset the subject of the \*CGT event; or
  - (b) any \*CGT assets of the same kind that were in existence before the CGT asset and came to an end where a roll-over was obtained under a provision set out in this table:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 108-75

<b>Roll-over provisions</b>		
<b>Item</b>	<b>For this CGT asset:</b>	<b>Roll-over is obtained under this provision:</b>
1	A *Crown lease	Subdivision 124-J
2	A prospecting or mining entitlement	Subdivision 124-L
3	A *statutory licence	Subdivision 124-C or former Subdivision 124-O
4	A *depreciating asset	Subdivision 124-K

Note: Roll-overs under former sections 160ZWA, 160ZZF, 160ZZPE and 160ZWC of the *Income Tax Assessment Act 1936* are also relevant: see section 108-75 of the *Income Tax (Transitional Provisions) Act 1997*.

Example: In 1984 you acquired a commercial fishing licence. In 1986 you paid \$62,000 to get an extra right (a capital improvement) attached to the licence.

In June 1999 the licence expired and you got a new licence. You obtained a roll-over for the old licence expiring. In April 2000 you sold the new fishing licence for \$200,000.

- (3) Any capital improvement that is not related to another capital improvement is taken to be a separate \*CGT asset if its \*cost base (assuming it were a separate CGT asset) when the \*CGT event happens is:
- (a) more than the \*improvement threshold for the income year in which the event happened; and
  - (b) more than 5% of the \*capital proceeds from the event.

Example: To continue the example, suppose the cost base of the right is \$101,000 and the improvement threshold for the 1999-2000 income year is \$96,000.

Since the cost base of the right is more than the improvement threshold and more than 5% of the capital proceeds, the right is taken to be a separate CGT asset.

Note 1: Section 108-80 sets out the factors for deciding whether capital improvements are related to each other.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note 2: If the improvement is a separate asset, the capital proceeds from the event must be apportioned between the asset and the improvement: see section 116-40.

- (4) Any capital improvements that are related to each other are taken to be a separate \*CGT asset if the total of their \*cost bases (assuming each one were a separate CGT asset) when the \*CGT event happens is:
- (a) more than the \*improvement threshold for the income year in which the event happened; and
  - (b) more than 5% of the \*capital proceeds from the event.

Note: If the improvements are a separate asset, the capital proceeds from the event must be apportioned between the asset and the improvements: see section 116-40.

- (5) This section does not apply to any capital improvement:
- (a) that took place under a contract that you entered into before 20 September 1985; or
  - (b) if there is no contract—that started or occurred before that day.

### **108-80 Deciding if capital improvements are related to each other**

In deciding whether capital improvements are related to each other, the factors to be considered include:

- (a) the nature of the \*CGT asset to which the improvements are made; and
- (b) the nature, location, size, value, quality, composition and utility of each improvement; and
- (c) whether an improvement depends in a physical, economic, commercial or practical sense on another improvement; and
- (d) whether the improvements are part of an overall project; and
- (e) whether the improvements are of the same kind; and
- (f) whether the improvements are made within a reasonable period of time of each other.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 108-85

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**108-85 Meaning of improvement threshold**

- (1) The *improvement threshold* for the 1997-98 income year is \$89,992.
- (2) The \*improvement threshold is indexed annually.  
Note: Subdivision 960-M shows you how to index amounts.
- (3) The Commissioner must publish before the beginning of each \*financial year the \*improvement threshold for that year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 109—Acquisition of CGT assets

### Table of Subdivisions

	Guide to Division 109
109-A	Operative rules
109-B	Signposts to other acquisition rules

### Guide to Division 109

#### 109-1 What this Division is about

This Division sets out the ways in which you can *acquire* a CGT asset and the time of acquisition.

The time of acquisition is important for indexation, and for the exemption of assets acquired *before* 20 September 1985.

Generally, you *acquire* a CGT asset when you become its owner. You can also *acquire* a CGT asset:

- as a result of a CGT event happening: see section 109-5; or
- in other circumstances: see section 109-10.

This Division also directs you to special acquisition rules in other Divisions.

### Subdivision 109-A—Operative rules

#### Table of sections

109-5	General acquisition rules
109-10	When you <i>acquire</i> a CGT asset without a CGT event

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 109-5

**109-5 General acquisition rules**

- (1) In general, you **acquire** a \*CGT asset when you become its owner. In this case, the time when you \*acquire the asset is when you become its owner.
- (2) This table sets out specific rules for the circumstances in which, and the time at which, you **acquire** a \*CGT asset as a result of a \*CGT event happening.

Note: The full list of CGT events is in section 104-5.

<b>Acquisition rules (CGT events)</b>		
<b>Event Number</b>	<b>In these circumstances:</b>	<b>You acquire the asset at this time:</b>
A1 (case 1)	An entity *disposes of a CGT asset to you (except where you compulsorily acquire it)	when the disposal contract is entered into or, if none, when the entity stops being the asset's owner
A1 (case 2)	You compulsorily acquire a *CGT asset from another entity	the earliest of: (a) when you paid compensation to the entity; or (b) when you became the asset's owner; or (c) when you entered the asset under the power of compulsory acquisition; or (d) when you took possession of it under that power
B1	You enter into an agreement to obtain the use and enjoyment of a *CGT asset	when you first obtain the use and enjoyment of the asset (unless title does not pass to you at or before the end of the agreement)
D1	An entity creates contractual or other rights in you	when the contract is entered into or the right created
D2	An entity grants an option to you	when the option is granted

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Acquisition rules (CGT events)**

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Event Number	In these circumstances:	You acquire the asset at this time:
D3	An entity grants you a right to receive *ordinary income from mining	when the contract is entered into or, if none, when the right is granted
D4	You enter into a *conservation covenant as a covenantee	when the covenant is entered into
E1	An entity creates a trust over a *CGT asset and you are the trustee	when the trust is created
E2	An entity transfers a *CGT asset to a trust and you are the trustee	when the asset is transferred
E3	A trust over a *CGT asset is converted to a unit trust and you are the trustee	when the trust is converted
E5	You as beneficiary under a trust become absolutely entitled to a *CGT asset of the trust as against the trustee (disregarding any legal disability)	when you become absolutely entitled
E6	Trustee *disposes of a *CGT asset of the trust to you to satisfy a right you had to receive *ordinary income from the trust	when the *disposal occurs
E7	Trustee *disposes of a *CGT asset of the trust to you to satisfy your interest, or part of it, in trust capital	when the *disposal occurs
E8	Beneficiary under a trust *disposes of its interest, or part of it, in trust capital to you	when disposal contract is entered into or, if none, when beneficiary stops being interest's owner
E9	An entity creates a trust over future property and you are the trustee	when the entity makes the agreement to create the trust

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 109-10

**Acquisition rules (CGT events)**

Event Number	In these circumstances:	You acquire the asset at this time:
F1	A lessor grants a lease to you, or renews or extends a lease	for grant of lease—when the contract is entered into or, if none, at the start of lease; for lease renewal or extension—at the start of renewal or extension
F2	A lessor grants a lease to you, or renews or extends a lease, and term is at least 50 years	for grant of lease—when lessor grants the lease; for lease renewal or extension—at the start of renewal or extension
K3	An individual dies and a *CGT asset of the individual *passes to you (as a tax advantaged entity)	when the individual dies
K6	A *CGT event happens to *shares or an interest in a trust you own	when the other CGT event happens

Note 1: For CGT events E1, E2 and E3, if the circumstances specified in the second column of the table happened to an asset before 12 January 1994, there may be no acquisition: see section 109-5 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 2: The acquisition rule for CGT event E9 in the table does not apply to you as trustee if the agreement to create the trust was made before 12 noon on 12 January 1994: see section 109-5 of the *Income Tax (Transitional Provisions) Act 1997*.

**109-10 When you *acquire* a CGT asset without a CGT event**

This table sets out some specific rules for the circumstances in which, and the time at which, you *acquire* a \*CGT asset otherwise than as a result of a \*CGT event happening.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Acquisition rules (no CGT event)**

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Item	In these circumstances	You acquire the asset at this time:
1	You (or your *agent) construct or create a *CGT asset, and you own it when the construction is finished or the asset is created	when the construction, or work that resulted in the creation, started
2	A company issues or allots *equity interests or *non-equity shares in the company to you	when contract is entered into or, if none, when equity interests or non-equity shares issued or allotted
3	A trustee of a unit trust issues units in the trust to you	when contract is entered into or, if none, when units issued

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**Subdivision 109-B—Signposts to other acquisition rules**

**Table of sections**

109-50	Effect of this Subdivision
109-55	Other acquisition rules
109-60	Acquisition rules outside this Part and Part 3-3

**109-50 Effect of this Subdivision**

This Subdivision is a \*Guide.

**109-55 Other acquisition rules**

This table sets out other acquisition rules in this Part and Part 3-3. Some of the rules have effect only for limited purposes.

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**Other acquisition rules**

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Item	In these circumstances	You acquire the asset at this time:	See:
1	A CGT asset devolves to you as legal personal representative of a deceased individual	when the individual died	section 128-15

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 109-55

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**Other acquisition rules**

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<b>Item</b>	<b>In these circumstances</b>	<b>You acquire the asset at this time:</b>	<b>See:</b>
2	A CGT asset passes to you as beneficiary in the estate of a deceased individual	when the individual died	sections 128-15 and 128-25
3	A surviving joint tenant acquires deceased joint tenant's interest in a CGT asset	when the deceased died	section 128-50
4	You get only a partial exemption under Subdivision 118-B for a CGT event happening to a CGT asset that is a dwelling, but you would have got a full exemption if the CGT event had happened just before the first time the dwelling was used for that purpose	at that time	section 118-192
5	The trustee of a deceased estate acquires a dwelling under the deceased's will for you to occupy, and you obtain an interest in it	when the trustee acquired it	section 118-210
6	You obtain a replacement-asset roll-over for replacing an asset you acquired <i>before</i> 20 September 1985	<i>before</i> 20 September 1985	Divisions 122 and 124

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Other acquisition rules**

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Item	In these circumstances	You acquire the asset at this time:	See:
7	You obtain a replacement-asset roll-over for a Crown lease, or a prospecting or mining entitlement that is renewed or replaced and part of the new entitlement relates to a part of the old one that you acquired <i>before 20 September 1985</i>	<i>before 20 September 1985</i> (for that part of the new entitlement that relates to the pre-CGT part of the old one)	sections 124-595 and 124-725
8	You obtain a same-asset roll-over for a CGT asset the transferor acquired <i>before 20 September 1985</i>	<i>before 20 September 1985</i>	Subdivision 124-N and Divisions 122 and 126
8A	There is a same-asset roll-over for a CGT event that happens to a CGT asset (acquired <i>on or after 20 September 1985</i> ) because the trust deed of a fund is changed and you are the fund that owns the asset after the CGT event	at the time of the CGT event	Subdivision 126-C
8B	There is a same-asset roll-over for a CGT event that happens to a CGT asset	when the entity that owned the asset before the roll-over acquired it	section 115-30
8C	You obtain a replacement-asset roll-over (other than a roll-over covered by section 115-34) for replacing a CGT asset	when you acquired the original asset involved in the roll-over	section 115-30

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 109-55

**Other acquisition rules**

<b>Item</b>	<b>In these circumstances</b>	<b>You acquire the asset at this time:</b>	<b>See:</b>
8D	A CGT asset devolves to you as legal personal representative of a deceased individual	when the deceased acquired the asset (unless it was a pre-CGT asset just before his or her death)	section 115-30
8E	A CGT asset passes to you as beneficiary in the estate of a deceased individual	when the deceased acquired the asset (unless it was a pre-CGT asset just before his or her death)	section 115-30
8F	A surviving joint tenant acquires a deceased joint tenant's interest in a CGT asset	when the deceased acquired the interest	section 115-30
8G	You hold a membership interest in the receiving trust involved in a roll-over under Subdivision 126-G	when you acquired the corresponding membership interest in the transferring trust involved in the roll-over	section 115-30
9	A company or trustee of a unit trust issues you with bonus equities and no amount is included in your assessable income	if the original equities are post-CGT assets, or are pre-CGT assets and fully paid—when you acquired the original equities; or if the original equities are pre-CGT assets and you had to pay an amount for the bonus equities—when the liability to pay arose	section 130-20

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



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**Other acquisition rules**

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<b>Item</b>	<b>In these circumstances</b>	<b>You acquire the asset at this time:</b>	<b>See:</b>
10	You own shares in a company or units in a unit trust and you exercise rights to acquire new equities in the company or trust	for the rights if you acquired them from the company or trustee—when you acquired the original equities; or for the new equities—when you exercise the rights	section 130-40
11	You acquire shares in a company or units in a unit trust by converting a convertible interest	when the conversion of the convertible interest happened	section 130-60
11A	You acquire shares in a company in exchange for the disposal of an exchangeable interest, and the disposal of the exchangeable interest was to: (a) the issuer of the exchangeable interest; or (b) a connected entity of the issuer of the exchangeable interest	when the disposal of the exchangeable interest happened	section 130-105
11B	You acquire shares in a company in exchange for the redemption of an exchangeable interest	when the redemption of the exchangeable interest happened	section 130-105

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 109-55

**Other acquisition rules**

<b>Item</b>	<b>In these circumstances</b>	<b>You acquire the asset at this time:</b>	<b>See:</b>
13	You (as a lessee of land) acquire the reversionary interest of the lessor and there is no roll-over for the acquisition	if term of lease was for 99 years or more—when the lease was granted or assigned to you; or if term of lease less than 99 years—when the reversionary interest acquired	section 132-15
14	You acquired a CGT asset before 20 September 1985, and there has since been a change in the majority underlying interests in the asset	at the time of the change	Division 149
15	You become an Australian resident (but not a temporary resident) and you owned a CGT asset that you acquired on or after 20 September 1985 and that was not *taxable Australian property	when you become an Australian resident (but not a temporary resident)	section 855-45
15A	You are a temporary resident, you then cease to be a temporary resident (but remain, at that time, an Australian resident) and you owned a CGT asset that you acquired on or after 20 September 1985 and that was not *taxable Australian property	when you cease to be a temporary resident	section 768-955

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Other acquisition rules**

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Item	In these circumstances	You acquire the asset at this time:	See:
16	A trust of which you are trustee becomes a resident trust for CGT purposes and you owned a CGT asset that you acquired on or after 20 September 1985 and that was not *taxable Australian property	when the trust becomes a resident trust for CGT purposes	section 855-50
17	There is a roll-over under Subdivision 126-B for a CGT event and you are the company owning the roll-over asset just after the roll-over and you stop being a 100% subsidiary of another company in the wholly-owned group	when you stop	section 104-175

Note: Section 115-34 sets out other acquisition rules for certain cases involving replacement-asset roll-overs covered by that section.

**109-60 Acquisition rules outside this Part and Part 3-3**

This table sets out other acquisition rules outside this Part and Part 3-3.

Provisions of the *Income Tax Assessment Act 1936* are **in bold**.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 109-60

<b>Other acquisition rules</b>			
<b>Item</b>	<b>In these circumstances:</b>	<b>The asset is acquired at this time:</b>	<b>See:</b>
1	CGT event happens to Cocos (Keeling) Islands asset	30 June 1991	subsection 102-25(1) of the <i>Income Tax (Transitional Provisions) Act 1997</i>
2	Lender acquires a replacement security	before 20 September 1985	<b>subsection 26BC(6A)</b>
3	Trust ceases to be a resident trust for CGT purposes and there is an attributable taxpayer	when it ceases	<b>section 102AAZBA</b>
4	CGT event happens to CGT asset in connection with the demutualisation of an insurance company except a friendly society health or life insurer	on the demutualisation resolution day	<b>section 121AS</b>
5	CGT event happens to assets of NSW State Bank	at the first taxing time	<b>section 121EN</b>
6	You own shares in a company that stops being a PDF	just after it stops	<b>section 124ZR</b>
8	A CGT asset of a CFC (that it owned on its commencing day)	on the CFC's commencing day	<b>section 411</b>
9	A CGT asset is owned by a tax exempt entity and it becomes taxable	at the transition time	<b>section 57-25 in Schedule 2D</b>

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Other acquisition rules**

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Item	In these circumstances:	The asset is acquired at this time:	See:
10	CGT event happens to CGT asset in connection with the demutualisation of a mutual entity other than an insurance company, health insurer and friendly society health or life insurer	on the demutualisation resolution day	<b>Division 326 in Schedule 2H</b>
11	You stop holding an item as trading stock	when you stop	paragraph 70-110(1)(b)
11A	You acquire an *ESS interest and Subdivision 83A-C (about employee share schemes) applies to the interest	at the *ESS deferred taxing point for the interest	section 83A-125
12	CGT event happens to 30 June 1988 asset of a complying superannuation entity	30 June 1988	section 295-90
13	You are issued with a share or right under a demutualisation of a health insurer except a friendly society health or life insurer	the time the share or right is issued	sections 315-80, 315-210 and 315-260

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 109-60

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**Other acquisition rules**

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<b>Item</b>	<b>In these circumstances:</b>	<b>The asset is acquired at this time:</b>	<b>See:</b>
14	You are transferred a share or right by a lost policy holders trust under a demutualisation of a health insurer except a friendly society health or life insurer	the time the share or right is issued	sections 315-145, 315-210 and 315-260
14A	You are issued with a share, or a right to acquire shares, under a demutualisation of a friendly society health or life insurer	the time the share or right is issued	section 316-105
14B	You are transferred a share, or right to acquire shares, by a lost policy holders trust under a demutualisation of a friendly society health or life insurer	the time the share or right is issued to the trustee	section 316-170
15	A CGT asset is transferred to or from a life insurance company's complying superannuation asset pool	at the time of the transfer	Division 320
16	A CGT asset is transferred to or from the segregated exempt assets of a life insurance company	at the time of the transfer	Division 320

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Other acquisition rules**

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<b>Item</b>	<b>In these circumstances:</b>	<b>The asset is acquired at this time:</b>	<b>See:</b>
17	Entity becomes a subsidiary member of a consolidated group	at the time it becomes a subsidiary member	701-5
18	Entity ceases to be a subsidiary member of a consolidated group	at the time it ceases	701-40

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 110—Cost base and reduced cost base**

### **Table of Subdivisions**

	Guide to Division 110
110-A	Cost base
110-B	Reduced cost base

### **Guide to Division 110**

#### **110-1 What this Division is about**

This Division tells you how to work out the cost base and reduced cost base of a CGT asset. You need to know these to work out if you make a capital gain or loss from most CGT events.

### **Table of sections**

110-5	Modifications to general rules
110-10	Rules about cost base not relevant for some CGT events

#### **110-5 Modifications to general rules**

After you have read the general rules, you need to know if there are any modifications to them. Division 112 lists each situation that may result in a modification and tells you where you can find the detailed provisions for each situation.

#### **110-10 Rules about cost base not relevant for some CGT events**

This table sets out each CGT event for which you do not need to know what the cost base or reduced cost base of a CGT asset is to work out if you make a capital gain or loss. The section describing the event tells you what amount is relevant instead.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



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**Rules about cost base not relevant for some CGT events**

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Event number	Description of event:	See section:
C3	End of option to acquire shares etc.	104-30
D1	Creating contractual or other rights	104-35
D2	Granting an option	104-40
D3	Granting a right to income from mining	104-45
E9	Creating a trust over future property	104-105
F1	Granting a lease	104-110
F3	Lessor pays lessee to get lease changed	104-120
F5	Lessor receives payment for changing lease	104-130
H1	Forfeiture of deposit	104-150
H2	Receipt for event relating to a CGT asset	104-155
J5	Failure to acquire replacement asset and to incur fourth element expenditure after a roll-over	104-197
J6	Cost of acquisition of replacement asset or amount of fourth element expenditure, or both, not sufficient to cover disregarded capital gain	104-198
K2	Bankrupt pays amount in relation to debt	104-210
K7	Balancing adjustment event happens to depreciating asset	104-235
K9	Carried interests	104-255
K10	You make a forex realisation gain covered by item 1 of the table in subsection 775-70(1)	104-260
K11	You make a forex realisation loss covered by item 1 of the table in subsection 775-75(1)	104-265
K12	Foreign hybrid loss exposure adjustment	104-270
L1	Reduction under section 705-57 in tax cost setting amount of assets of entity becoming subsidiary member of consolidated group or MEC group	104-500

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 110-10

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**Rules about cost base not relevant for some CGT events**

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Event number	Description of event:	See section:
L2	Amount remaining after step 3A etc. of joining allocable cost amount is negative	104-505
L3	Tax cost setting amounts for retained cost base assets exceed joining allocable cost amount	104-510
L4	No reset cost base assets against which to apply excess of net allocable cost amount on joining	104-515
L5	Amount remaining after step 4 of leaving allocable cost amount is negative	104-520
L6	Errors in tax cost setting amounts for entity joining consolidated group or MEC group	104-525
L8	Reduction in tax cost setting amount for reset cost base assets on joining cannot be allocated	104-535

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**Subdivision 110-A—Cost base**

**Table of sections**

110-25	General rules about <i>cost base</i>
110-35	Incidental costs
110-36	Indexation

**What does *not* form part of the cost base**

110-37	Expenditure forming part of cost base or element
110-38	Exclusions
110-40	Assets acquired <i>before</i> 7.30 pm on 13 May 1997
110-43	Partnership interests acquired <i>before</i> 7.30 pm on 13 May 1997
110-45	Assets acquired <i>after</i> 7.30 pm on 13 May 1997
110-50	Partnership interests acquired <i>after</i> 7.30 pm on 13 May 1997
110-53	Exceptions to application of sections 110-45 and 110-50
110-54	Debt deductions disallowed by thin capitalisation rules

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## 110-25 General rules about *cost base*

- (1) The *cost base* of a \*CGT asset consists of 5 elements.

Note 1: You need to keep records of each element: see Division 121.

Note 2: The cost base is reduced by net input tax credits: see section 103-30.

Note 3: An amount that makes up all or part of an element of the cost base of an asset may be determined under section 230-505, if the amount is provided for acquiring a thing, and you start or cease to have a Division 230 financial arrangement as consideration for the acquisition of the thing.

### *5 elements of the cost base*

- (2) The first element is the total of:

- (a) the money you paid, or are required to pay, in respect of \*acquiring it; and
- (b) the \*market value of any other property you gave, or are required to give, in respect of acquiring it (worked out as at the time of the acquisition).

Note 1: There are special rules for working out when you are required to pay money or give other property: see section 103-15.

Note 2: This element is replaced with another amount in many situations: see Division 112.

- (3) The second element is the \*incidental costs you incurred. These costs can include giving property: see section 103-5.

Note: There is one situation to do with options in which the incidental costs relating to the CGT event are modified: see section 112-85.

- (4) The third element is the costs of owning the \*CGT asset you incurred (but only if you \*acquired the asset after 20 August 1991). These costs include:

- (a) interest on money you borrowed to acquire the asset; and
- (b) costs of maintaining, repairing or insuring it; and
- (c) rates or land tax, if the asset is land; and
- (d) interest on money you borrowed to refinance the money you borrowed to acquire the asset; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (e) interest on money you borrowed to finance the capital expenditure you incurred to increase the asset's value.

These costs can include giving property: see section 103-5.

Note: This element does not apply to personal use assets or collectables: see sections 108-17 and 108-30.

- (5) The fourth element is capital expenditure you incurred:
  - (a) the purpose or the expected effect of which is to increase or preserve the asset's value; or
  - (b) that relates to installing or moving the asset.

The expenditure can include giving property: see section 103-5.

Note: There are 3 situations involving leases in which this element is modified: see section 112-80.

- (5A) Subsection (5) does not apply to capital expenditure incurred in relation to goodwill.

- (6) The fifth element is capital expenditure that you incurred to establish, preserve or defend your title to the asset, or a right over the asset. (The expenditure can include giving property: see section 103-5.)

*Assume a CGT event for purposes of working out cost base at a particular time*

- (12) If:
  - (a) it is necessary to work out the \*cost base at a particular time; and
  - (b) a \*CGT event does not happen in relation to the asset at or just after that time;

assume, for the purpose only of working out the cost base at the particular time, that such an event does happen in relation to the asset at or just after that time.

Note 1: For example, in order to apply subsection 110-37(1), it is necessary for there to be a CGT event.

Note 2: The assumption that a CGT event happens does not have any consequence beyond that stated. For example, it does *not* mean that

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

the asset is afterwards to be treated as having been acquired at the particular time with a first element of cost base equal to all of its former cost base elements.

### 110-35 Incidental costs

- (1) There are a number of *incidental costs* you may have incurred. Except for the *ninth*, they are costs you may have incurred:
  - (a) to \*acquire a \*CGT asset; or
  - (b) that relate to a \*CGT event.
- (2) The *first* is remuneration for the services of a surveyor, valuer, auctioneer, accountant, broker, \*agent, consultant or legal adviser. However, remuneration for professional advice about the operation of this Act is not included unless it is provided by a \*recognised tax adviser.

Note: Expenditure for professional advice about taxation incurred before 1 July 1989 does *not* form part of the cost base of a CGT asset: see section 110-35 of the *Income Tax (Transitional Provisions) Act 1997*.
- (3) The *second* is costs of transfer.
- (4) The *third* is stamp duty or other similar duty.
- (5) The *fourth* is:
  - (a) if you \*acquired a \*CGT asset—costs of advertising or marketing to find a seller; or
  - (b) if a \*CGT event happened—costs of advertising or marketing to find a buyer.
- (6) The *fifth* is costs relating to the making of any valuation or apportionment for the purposes of this Part or Part 3-3.
- (7) The *sixth* is search fees relating to a \*CGT asset.
- (8) The *seventh* is the cost of a conveyancing kit (or a similar cost).
- (9) The *eighth* is borrowing expenses (such as loan application fees and mortgage discharge fees).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (10) The *ninth* is expenditure that:
- (a) is incurred by the \*head company of a \*consolidated group or \*MEC group to an entity that is not a \*member of the group; and
  - (b) reasonably relates to a \*CGT asset \*held by the head company; and
  - (c) is incurred because of a transaction that is between members of the group.

Example: Land is transferred by one company to another company. The companies are members of a consolidated group. Stamp duty is payable as a result of the transaction.

The transaction has no taxation consequences because of its intra-group nature.

The stamp duty is included in the cost base and reduced cost base of the land.

Note: Intra-group assets are not held by the head company because of the operation of subsection 701-1(1) (the single entity rule). An example of an intra-group asset is a debt owed by a member of the consolidated group to another member of the group.

- (11) The *tenth* is termination or other similar fees incurred as a direct result of your ownership of a \*CGT asset ending.

**110-36 Indexation**

- (1) The *cost base* of a \*CGT asset \*acquired at or before 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999 also includes indexation of the elements of the cost base (except the third element) if the requirements of Division 114 are met.
- (2) However, for the purposes of working out the \*capital gain of an entity mentioned in an item of the table from a \*CGT event happening after 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999, the *cost base* includes indexation only if the entity mentioned in the item chooses that the cost base includes indexation.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Choice of indexation**

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<b>Item</b>	<b>For the purposes of working out the capital gain of this entity:</b>	<b>The cost base includes indexation only if this entity chooses so:</b>
1	An individual	The individual
2	A *complying superannuation entity	The trustee of the complying superannuation entity
3	A trust	The trustee of the trust
4	A listed investment company	The company

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Note 1: Section 103-25 specifies when you must make the choice and provides that the way you prepare your income tax return is evidence of your choice.

Note 2: For each CGT asset whose cost base you need to work out, you may either choose to index the expenditure included in the asset's cost base or not make that choice. If you do not choose to index the expenditure, your net capital gain includes only part of your capital gain on the CGT asset as worked out on the basis of the cost base not including indexation and reduced by your capital losses.

- (3) Also, for the purpose of working out the \*capital gain of a \*life insurance company from a \*CGT event happening after 30 June 2000 in respect of a \*CGT asset that is a \*complying superannuation asset, the **cost base** includes indexation only if the life insurance company chooses that the cost base includes indexation.

Note: Section 110-25 of the *Income Tax (Transitional Provisions) Act 1997* provides that, in working out the capital gain from a CGT event after 11.45 am on 21 September 1999 and before 1 July 2000 in respect of an asset of a life insurance company or registered organisation, the cost base includes indexation only if the company or organisation chooses it.

## **What does *not* form part of the cost base**

### **110-37 Expenditure forming part of cost base or element**

- (1) If a later provision of this Subdivision says that:
- (a) certain expenditure does not form part of the \*cost base of a \*CGT asset; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 110-38

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(b) the cost base is reduced by certain expenditure;  
the expenditure is initially included in the cost base, which is then reduced by the amount of the expenditure just before a \*CGT event happens in relation to the asset.

Note: This has the effect of recognising in the cost base any indexed component relating to the expenditure.

(2) On the other hand, if such a provision says that:

(a) certain expenditure does not form part of one or more *elements* of the \*cost base of a \*CGT asset; or

(b) one or more *elements* of the cost base are reduced by certain expenditure;

the expenditure is never included in the relevant elements of the cost base.

Note: This has the effect of *not* recognising to any extent this expenditure in the cost base.

### 110-38 Exclusions

(1) Expenditure does *not* form part of any element of the **cost base** to the extent that section 26-54 prevents it being deducted (even if some other provision also prevents it being deducted).

Note: Section 26-54 prevents deductions for expenditure related to certain offences.

(2) Expenditure does *not* form part of any element of the **cost base** to the extent that it is a \*bribe to a foreign public official or a \*bribe to a public official.

(3) Expenditure does *not* form part of any element of the **cost base** to the extent that it is in respect of providing \*entertainment.

(4) Expenditure does *not* form part of any element of the **cost base** to the extent that section 26-5 prevents it being deducted (even if some other provision also prevents it being deducted).

Note: Section 26-5 denies deductions for penalties.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (4A) Expenditure does *not* form part of any element of the **cost base** to the extent that section 26-31 prevents it being deducted.

Note: Section 26-31 denies deductions for travel related to the use of residential premises as residential accommodation.

- (5) Expenditure does *not* form part of any element of the **cost base** to the extent that section 26-47 prevents it being deducted.

Note: Section 26-47 denies deductions for the excess of boat expenditure over boat income.

- (6) Expenditure does *not* form part of any element of the **cost base** to the extent that section 26-22 prevents it being deducted.

Note: Section 26-22 denies deductions for political contributions and gifts.

- (7) Expenditure does *not* form any part of any element of the **cost base** to the extent that section 26-97 prevents it being deducted (even if some other provision also prevents it being deducted).

Note: Section 26-97 denies deductions for National Disability Insurance Scheme expenditure.

- (8) Expenditure does not form part of any element of the **cost base** to the extent that section 26-100 prevents it being deducted.

Note: Section 26-100 denies deductions for certain expenditure on water infrastructure improvements.

- (9) Expenditure does not form part of any element of the **cost base** to the extent that a provision of Division 832 (about hybrid mismatch rules) prevents it being deducted.

#### **110-40 Assets acquired before 7.30 pm on 13 May 1997**

- (1) This section prevents some expenditure from forming part of one or more elements of the \*cost base of a \*CGT asset \*acquired at or before 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 1997. (The expenditure mentioned in this section can include giving property: see section 103-5.)

Note: For the cost base of a partnership interest you acquire at or before that time, see section 110-43.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 110-43

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- (2) Expenditure does *not* form part of the second or third element of the **cost base** to the extent that you have deducted or can deduct it.
- (3) Expenditure does *not* form part of any element of the **cost base** to the extent of any amount you have received as \*recoupment of it, except so far as the amount is included in your assessable income.
- (4) Subsection (2) does not apply in relation to amounts that you have deducted or can deduct under Division 243.

**110-43 Partnership interests acquired *before* 7.30 pm on 13 May 1997**

- (1) This section prevents some expenditure from forming part of one or more elements of the \*cost base of your interest in a \*CGT asset of a partnership if you \*acquired the interest at or before 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 1997. (The expenditure mentioned in this section can include giving property: see section 103-5.)
- (2) Expenditure does *not* form part of the second or third element of the **cost base** to the extent that you, or a partnership in which you are or were a partner, have deducted or can deduct it.
- (3) Expenditure does *not* form part of any element of the **cost base** to the extent of any amount that you, or a partnership in which you are or were a partner, have received as \*recoupment of the expenditure, except so far as the amount is included in your assessable income or the partnership's assessable income.
- (4) Subsection (2) does not apply in relation to amounts that you have deducted or can deduct under Division 243.

**110-45 Assets acquired *after* 7.30 pm on 13 May 1997**

- (1) This section prevents some expenditure from forming part of the \*cost base, or of an element of the cost base, of a \*CGT asset \*acquired after 7.30 pm, by legal time in the Australian Capital

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Territory, on 13 May 1997. (The expenditure mentioned in this section can include giving property: see section 103-5.)

For the cost base of interests in partnership assets acquired after that time, see section 110-50.

For exceptions to the application of this section, see section 110-53.

- (1A) This section also applies to expenditure incurred after 30 June 1999 on land or a building if:
- (a) the land or building was \*acquired at or before the time mentioned in subsection (1); and
  - (b) the expenditure forms part of the fourth element of the \*cost base of the land or building.

*Deductible expenditure excluded from second and third elements*

- (1B) Expenditure does *not* form part of the second or third element of the **cost base** to the extent that you have deducted or can deduct it.

*Other deductible expenditure*

- (2) Expenditure (except expenditure excluded by subsection (1B)) does *not* form part of the **cost base** to the extent that you have deducted or can deduct it for an income year, except so far as:
- (a) the deduction has been reversed by an amount being included in your assessable income for an income year by a provision of this Act (outside this Part and Part 3-3 and Division 243); or
- Note: Division 20 contains some of the provisions that reverse deductions. Section 20-5 lists some others.
- (ab) the deduction is under Division 243; or
  - (b) the deduction would have been so reversed apart from a provision listed in the table (relief from including a balancing charge in your assessable income).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Provisions for relief from including a balancing charge in your assessable income**

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Item	Provision	Subject matter
1	section 40-340	Roll-over relief for *depreciating asset
2	section 40-365	Involuntary disposal of *depreciating asset

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*Recouped expenditure*

- (3) Expenditure does *not* form part of any element of the **cost base** to the extent of any amount you have received as \*recoupment of it, except so far as the amount is included in your assessable income.

*Capital expenditure by previous owner that you can deduct after acquisition*

- (4) The **cost base** is reduced to the extent that you have deducted or can deduct for an income year capital expenditure incurred by another entity in respect of the \*CGT asset. (This rule does not apply so far as the deduction is covered by paragraph (2)(a) or (b).)

Example: Under Division 43 you can deduct expenditure incurred by a previous owner of capital works you own.

*Landcare and water facility expenditure giving rise to a tax offset*

- (5) Expenditure does *not* form part of the **cost base** to the extent that you choose a \*tax offset for it under the former section 388-55 (about the landcare and water facility tax offset) instead of deducting it.

*Heritage conservation expenditure giving rise to a tax offset*

- (6) Expenditure does *not* form part of the **cost base** to the extent that:  
(a) it is eligible heritage conservation expenditure (as determined under former section 159UO of the *Income Tax Assessment Act 1936*); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) you could have deducted it for an income year under any of these Divisions (about capital works):
- (i) Division 43 of this Act;
  - (ii) former Division 10C or 10D of Part III of that Act;
- but for the exclusions in paragraph 43-70(2)(h) of this Act and former subsections 124ZB(4) and 124ZG(5) of that Act.

Note: Because eligible heritage conservation expenditure is the subject of a tax offset, it is also not deductible.

### **110-50 Partnership interests acquired *after* 7.30 pm on 13 May 1997**

- (1) This section prevents some expenditure from forming part of the \*cost base, or of an element of the cost base, of your interest in a \*CGT asset of a partnership if you \*acquired the interest after 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 1997. (The expenditure mentioned in this section can include giving property: see section 103-5.)

For exceptions to the application of this section, see section 110-53.

- (1A) This section also applies to expenditure incurred after 30 June 1999 on land or a building if:
- (a) the land or building was \*acquired at or before the time mentioned in subsection (1); and
  - (b) the expenditure forms part of the fourth element of the \*cost base of the land or building.

#### *Deductible expenditure excluded from second and third elements*

- (1B) Expenditure does *not* form part of the second or third element of the **cost base** to the extent that you, or a partnership in which you are or were a partner, have deducted or can deduct it.

#### *Other deductible expenditure*

- (2) Expenditure (except expenditure excluded by subsection (1B)) does *not* form part of the **cost base** to the extent that you, or a partnership in which you are or were a partner, have deducted or can deduct it for an income year, except so far as:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the deduction has been reversed by an amount being included in your assessable income for an income year, or in the assessable income of a partnership in which you are or were a partner, by a provision of this Act (outside this Part and Part 3-3 and Division 243); or

Note: Division 20 contains some of the provisions that reverse deductions. Section 20-5 lists some others.

- (ab) the deduction is under Division 243; or
- (b) the deduction would have been so reversed apart from a provision listed in the table in subsection 110-45(2) (relief from including a balancing charge in your assessable income).

*Recouped expenditure*

- (3) Expenditure does *not* form part of any element of the **cost base** to the extent of any amount that you, or a partnership in which you are or were a partner, have received as \*recoupment of it, except so far as the amount is included in your assessable income or the partnership's assessable income.

*Capital expenditure by previous owner of the asset*

- (4) The **cost base** is reduced to the extent that you, or a partnership in which you are or were a partner, have deducted or can deduct for an income year capital expenditure incurred by another entity in respect of the \*CGT asset. (This rule does not apply so far as the deduction is covered by paragraph (2)(a) or (b).)

Example: Under Division 43 an entity can deduct expenditure incurred by a previous owner of capital works that the entity owns.

*Landcare and water facility expenditure giving rise to a tax offset*

- (5) Expenditure does *not* form part of the **cost base** to the extent that you choose a \*tax offset for it under the former section 388-55 (about the landcare and water facility tax offset) instead of deducting it.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Heritage conservation expenditure giving rise to a tax offset*

- (6) Expenditure does *not* form part of the **cost base** to the extent that:
- (a) it is eligible heritage conservation expenditure (as determined under former section 159UO of the *Income Tax Assessment Act 1936*); and
  - (b) you, or a partnership in which you are or were a partner, could have deducted it for an income year under any of these Divisions (about capital works):
    - (i) Division 43 of this Act;
    - (ii) former Division 10C or 10D of Part III of that Act;but for the exclusions in paragraph 43-70(2)(h) of this Act and former subsections 124ZB(4) and 124ZG(5) of that Act.

Note: Because eligible heritage conservation expenditure is the subject of a tax offset, it is also not deductible.

**110-53 Exceptions to application of sections 110-45 and 110-50**

- (1) Subsection 110-45(2), (4), (5) or (6) or 110-50(2), (4), (5) or (6) does not prevent expenditure from forming part of the **cost base** to the extent that the deduction mentioned in that subsection could reasonably be regarded as arising before 7.30 pm, by legal time in the Australian Capital Territory, on 13 May 1997, or as relating to a period before that time.
- (2) Subsections 110-45(5) and (6) and 110-50(5) and (6) do not apply to expenditure incurred before the day on which the Bill that became the *Taxation Laws Amendment Act (No. 1) 1999* was introduced into the House of Representatives.

**110-54 Debt deductions disallowed by thin capitalisation rules**

Expenditure does *not* form part of the third element of the **cost base** to the extent that Division 820 (Thin capitalisation rules) prevented or prevents you, or a partnership in which you are or were a partner, from deducting it.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Subdivision 110-B—Reduced cost base

### Table of sections

110-55	General rules about <i>reduced cost base</i>
110-60	Reduced cost base for partnership assets

### 110-55 General rules about *reduced cost base*

- (1) The ***reduced cost base*** of a \*CGT asset consists of 5 elements. It does *not* include indexation of those elements.

Note: The reduced cost base is reduced by net input tax credits: see section 103-30.

#### *5 elements of the reduced cost base*

- (2) All of the elements (except the third one) of the ***reduced cost base*** of a \*CGT asset are the same as those for the \*cost base.
- (3) The third element is:
- (a) any amounts worked out under whichever of the following subparagraphs applies:
    - (i) if Division 58 does not apply to the asset—any amount included in your assessable income for any income year because of a balancing adjustment for the asset;
    - (ii) if Division 58 applies to the asset and an amount has been included in your assessable income for an income year because of a balancing adjustment for the asset—any part of that amount that was attributable to amounts you have deducted or can deduct for the decline in value of the asset; and
  - (b) any amount that would have been so included apart from any of these (which provide relief from including a balancing charge in your assessable income):
    - (i) section 40-365; or
    - (ii) any of these former sections—section 42-285, 42-290 or 42-293; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (iii) former subsection 59(2A) or (2D) of the *Income Tax Assessment Act 1936*.

*What does not form part of the reduced cost base*

- (4) The **reduced cost base** does not include an amount to the extent that you have deducted or can deduct it (including because of a balancing adjustment) or could have deducted apart from paragraph 43-70(2)(h).
- Note: That paragraph excludes from deductibility under Division 43 expenditure that qualifies for the heritage conservation rebate.
- (5) The **reduced cost base** does not include an amount that you could have deducted for a \*CGT asset had you used it wholly for the \*purpose of producing assessable income.
- (6) Expenditure does *not* form part of the **reduced cost base** to the extent of any amounts you have received as \*recoupment of it. However, this rule does not apply to the extent that the amounts are included in your assessable income.
- (6A) Expenditure does *not* form part of the **reduced cost base** to the extent that you chose a \*tax offset for it under the former section 388-55 (about the landcare and water facility tax offset) instead of deducting it.
- (7) If your \*CGT asset is a \*share in a company, its **reduced cost base** is reduced by the amount calculated under subsection (8) if:
- (aa) you are a \*corporate tax entity; and
    - (a) the company makes a distribution to you under an \*arrangement; and
    - (b) an amount (the **attributable amount**) representing the distribution or part of it is reasonably attributable to profits \*derived by the company before you c<sup>c</sup>acquired the share; and
    - (c) you are entitled to a \*tax offset under Division 207 on the part of the distribution that is a \*dividend (the **dividend amount**); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 110-55

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- (d) you were a \*controller (for CGT purposes) of the company, or an \*associate of such a controller, when the arrangement was made or carried out.
- (8) The amount of the reduction is:
- $$\text{Attributable amount} \times \frac{\text{Amount of *tax offset}}{\text{Dividend amount} \times \text{*Corporate tax rate}}$$
- (9) The **reduced cost base** is to be reduced by any amount that you have deducted or can deduct, or could have deducted except for Subdivision 170-D, as a result of a \*CGT event that happens in relation to a \*CGT asset. However, do not make a reduction for an amount that relates to a cost that could never have formed part of the reduced cost base or is excluded from the reduced cost base as a result of another provision of this section.
- (9A) Expenditure does *not* form part of the **reduced cost base** to the extent that section 26-54 prevents it being deducted (even if some other provision also prevents it being deducted).
- Note: Section 26-54 prevents deductions for expenditure related to certain offences.
- (9B) Expenditure does *not* form part of the **reduced cost base** to the extent that it is a \*bribe to a foreign public official or a \*bribe to a public official.
- (9C) Expenditure does *not* form part of the **reduced cost base** to the extent that it is in respect of providing \*entertainment.
- (9D) Expenditure does *not* form part of the **reduced cost base** to the extent that section 26-5 prevents it being deducted (even if some other provision also prevents it being deducted).
- Note: Section 26-5 denies deductions for penalties.
- (9E) Expenditure does *not* form part of the **reduced cost base** to the extent that section 26-47 prevents it being deducted.
- Note: Section 26-47 denies deductions for the excess of boat expenditure over boat income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(9F) Expenditure does *not* form part of the **reduced cost base** to the extent that section 26-22 prevents it being deducted.

Note: Section 26-22 denies deductions for political contributions and gifts.

(9G) Expenditure does not form part of the **reduced cost base** to the extent that section 26-100 prevents it being deducted.

Note: Section 26-100 denies deductions for certain expenditure on water infrastructure improvements.

(9H) Expenditure does *not* form any part of any element of the **reduced cost base** to the extent that section 26-97 prevents it being deducted (even if some other provision also prevents it being deducted).

Note: Section 26-97 denies deductions for National Disability Insurance Scheme expenditure.

(9J) Expenditure does *not* form part of the **reduced cost base** to the extent that section 26-31 prevents it being deducted.

Note: Section 26-31 denies deductions for travel related to the use of residential premises as residential accommodation.

(9K) Expenditure does not form part of the **reduced cost base** to the extent that a provision of Division 832 (about hybrid mismatch rules) prevents it being deducted.

*Assume a CGT event for purposes of working out reduced cost base at a particular time*

(10) If:

- (a) it is necessary to work out the \*reduced cost base at a particular time; and
- (b) a \*CGT event does not happen in relation to the asset at or just after that time;

assume, for the purpose only of working out the reduced cost base at the particular time, that such an event does happen in relation to the asset at or just after that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 110-60

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**110-60 Reduced cost base for partnership assets**

- (1) The third element of an entity's **reduced cost base** for its interest in a \*CGT asset of a partnership is the entity's share of:
  - (a) any amounts worked out under whichever of the following subparagraphs applies:
    - (i) if Division 58 does not apply to the asset—any amount included in the assessable income of the partnership for any income year because of a balancing adjustment for the asset;
    - (ii) if Division 58 applies to the asset and an amount has been included in the assessable income of the partnership for an income year because of a balancing adjustment for the asset—any part of that amount that was attributable to amounts that the partnership has deducted or can deduct for depreciation of the asset; and
  - (b) any amount that would have been so included apart from any of these (which provide relief from including a balancing charge in your assessable income):
    - (i) section 40-365; or
    - (ii) any of these former sections—section 42-285, 42-290 or 42-293; or
    - (iii) former subsection 59(2A) or (2D) of the *Income Tax Assessment Act 1936*;calculated according to the entity's share in the partnership net income or net loss.
- (2) Expenditure does *not* form part of an entity's **reduced cost base** for its interest in a \*CGT asset of a partnership to the extent that a partnership in which the entity is or was a partner has deducted or can deduct it (including because of a balancing adjustment), or could have deducted it apart from paragraph 43-70(2)(h).
- (3) Expenditure does *not* form part of an entity's **reduced cost base** for its interest in a \*CGT asset of a partnership to the extent that a partnership in which the entity is or was a partner could have

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

deducted an amount for the asset if it had used it wholly for the  
\*purpose of producing assessable income.

- (4) Expenditure does not form part of an entity's **reduced cost base** for its interest in a \*CGT asset of a partnership to the extent of any amounts that a partnership in which the entity is or was a partner has received as \*recoupment of it and that are not included in the assessable income of the partnership.
- (4A) Expenditure does *not* form part of an entity's **reduced cost base** for its interest in a \*CGT asset of a partnership to the extent that the entity chose a \*tax offset for the expenditure under the former section 388-55 (about the landcare and water facility tax offset) instead of deducting it.
- (7) The **reduced cost base** of an entity's interest in a \*CGT asset of a partnership is to be reduced by the entity's share of any amount that the partnership has deducted or can deduct, or could have deducted except for Subdivision 170-D, as a result of a \*CGT event that happens in relation to the asset. However, a reduction is not to be made for an amount that relates to a cost that could never have formed part of the reduced cost base or is excluded from the reduced cost base as a result of another provision of this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 112—Modifications to cost base and reduced cost base

### Table of Subdivisions

	Guide to Division 112
112-A	General modifications
112-B	Finding tables for special rules
112-C	Replacement-asset roll-overs
112-D	Same-asset roll-overs

### Guide to Division 112

#### 112-1 What this Division is about

This Division tells you the situations that may modify the general rules about the cost base and reduced cost base of a CGT asset.

#### 112-5 Discussion of modifications

- (1) Modifications can occur from the time you acquired the CGT asset to when a CGT event happens in relation to it.  
Note: You should keep records of the modifications: see Division 121.
- (2) Most modifications replace the first element (what you paid for a CGT asset) of the cost base and reduced cost base of the asset.
- (3) Subdivision 112-A contains operative provisions setting out the general situations that may result in a modification to the general rules.
- (4) Subdivision 112-B (which is a guide) has a number of tables (each one covering a specialist topic) that tell you each situation that *may* result in a modification to the general rules.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (5) Subdivision 112-C (which is a guide) explains what a *replacement-asset* roll-over is and how it can modify the cost base or reduced cost base.
- (6) Subdivision 112-D (which is a guide) explains what a *same-asset* roll-over is and how it can modify the cost base or reduced cost base.
- (7) Section 230-505 provides special rules for working out the amount of consideration for an asset if the asset is a \*Division 230 financial arrangement or a Division 230 financial arrangement is involved in that consideration.

## **Subdivision 112-A—General modifications**

### **Table of sections**

112-15	General rule for replacement modifications
112-20	Market value substitution rule
112-25	Split, changed or merged assets
112-30	Apportionment rules
112-35	Assumption of liability rule
112-36	Acquisitions of assets involving look-through earnout rights
112-37	Put options

### **112-15 General rule for replacement modifications**

If a cost base modification replaces an element of the \*cost base of a \*CGT asset with an amount, this Part and Part 3-3 apply to you as if you had paid that amount.

Example: An individual pays \$10,000 to acquire an option. The individual dies and the option devolves to his legal personal representative, who exercises the option.

Section 134-1 applies to the legal personal representative as if the representative had paid \$10,000 for the option.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 112-20

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**112-20 Market value substitution rule**

- (1) The first element of your \*cost base and \*reduced cost base of a \*CGT asset you \*acquire from another entity is its \*market value (at the time of acquisition) if:
- (a) you did not incur expenditure to acquire it, except where your acquisition of the asset resulted from:
    - (i) \*CGT event D1 happening; or
    - (ii) another entity doing something that did not constitute a CGT event happening; or
  - (b) some or all of the expenditure you incurred to acquire it cannot be valued; or
  - (c) you did not deal at \*arm's length with the other entity in connection with the acquisition.

The expenditure can include giving property: see section 103-5.

- (2) Despite paragraph (1)(c), if:
- (a) you did not deal at \*arm's length with the other entity; and
  - (b) your \*acquisition of the \*CGT asset resulted from another entity doing something that did not constitute a CGT event happening;

the \*market value is substituted only if what you paid to acquire the CGT asset was more than its market value (at the time of acquisition).

The payment can include giving property: see section 103-5.

- (3) There are some situations in which the rule in subsection (1) does not apply. They include the situations set out in this table:

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<b>Exceptions to the market value substitution rule</b>		
<b>Item</b>	<b>You *acquired this CGT asset:</b>	<b>...in this situation:</b>
1	A right to receive *ordinary income or *statutory income from a trust (except a unit trust or a trust that arises because of someone's death)	(a) you did not pay or give anything for the right; and (b) you did not acquire the right by way of an assignment from another entity

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Exceptions to the market value substitution rule**

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Item	You *acquired this CGT asset:	...in this situation:
2	A decoration awarded for valour or brave conduct	you did not pay or give anything for it
3	A contractual or other legal or equitable right resulting from *CGT event D1 happening	you did not pay or give anything for it
4	Rights to *acquire: (a) *shares, or options to acquire *shares, in a company; or (b) units, or options to acquire units, in a unit trust; in a situation covered by Subdivision 130-B	you did not pay or give anything for the rights
5	A *share in a company or a right to *acquire a share or *debenture in a company	it was issued or allotted to you by the company and you did not pay or give anything for it
6	A unit in a unit trust or a right to *acquire a unit or debenture in a unit trust	it was issued to you by the trustee of the unit trust and you did not pay or give anything for it
7	A right to *dispose of a *share in a company	it was issued to you by the company and was exercised by you or by another entity who became the owner of the right

Note 1: Disregard subsections (2) and (3) for shares or units that you acquired before 16 August 1989: see section 112-20 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 2: This section does not apply to ESS interests acquired under employee share schemes: see subsection 130-80(4).

## 112-25 Split, changed or merged assets

### *Split or changed assets*

(1) This section sets out what happens if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 112-25

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- (a) a \*CGT asset (the *original asset*) is split into 2 or more assets (the *new assets*); or
  - (b) a \*CGT asset (also the *original asset*) changes in whole or in part into an asset (also the *new asset*) of a different nature; and you are the beneficial owner of the original asset and each new asset.
- Example: You subdivide a block of land into 3 separate blocks. Each of those blocks is a *new asset*.
- (2) The splitting or change is not a \*CGT event.
  - (3) You work out the \*cost base and \*reduced cost base of each new asset as follows:

*Method statement*

- Step 1. Work out each element of the \*cost base and \*reduced cost base of the original asset at the time of the event referred to in subsection (1).
- Step 2. Apportion in a reasonable way each element to each new asset. The result is each corresponding element of the new asset's \*cost base and \*reduced cost base.

*Merged assets*

- (4) If 2 or more \*CGT assets (the *original assets*) are merged into a single asset (the *new asset*) and you are the beneficial owner of the original assets and the new asset:
  - (a) the merger is not a \*CGT event; and
  - (b) each element of the \*cost base and \*reduced cost base of the new asset (at the time of the merging) is the sum of the corresponding elements of each original asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## 112-30 Apportionment rules

### *Apportionment on acquisition of an asset*

- (1) If you \*acquire a \*CGT asset because of a transaction and only part of the expenditure you incurred under the transaction relates to the acquisition of the asset, the first element of your \*cost base and \*reduced cost base of the asset is that part of the expenditure that is reasonably attributable to the acquisition of the asset.

The expenditure can include giving property: see section 103-5.

### *Apportionment of expenditure in other elements*

- (1A) If you incur expenditure and only part of it relates to another element of the \*cost base or \*reduced cost base of a \*CGT asset, that element includes that part of the expenditure that is reasonably attributable to that element.

### *Apportionment for CGT asset that was part of another asset*

- (2) The \*cost base and \*reduced cost base of a \*CGT asset is apportioned if a \*CGT event happens to some part of the asset, but not to the remainder of it.

Note: The full list of CGT events is in section 104-5.

- (3) The \*cost base for the \*CGT asset representing the part to which the \*CGT event happened is worked out using the formula:

$$\text{Cost base of the asset} \times \frac{\text{Capital proceeds for the CGT event happening to the part}}{\text{Those capital proceeds plus the market value of the remainder of the asset}}$$

The \*reduced cost base is worked out similarly.

- (4) The remainder of the \*cost base and \*reduced cost base of the asset is attributed to the part that remains.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Example: You acquire a truck for \$24,000 and sell its motor for \$9,000. Suppose the market value of the remainder of the truck is \$16,000.

Under subsection (3), the cost base of the motor is:

$$\$24,000 \times \frac{\$9,000}{\$9,000 + \$16,000} = \$8,640$$

Under subsection (4), the cost base of the remainder of the truck is:

$$\$24,000 - \$8,640 = \$15,360$$

- (5) However, an amount forming part of the \*cost base or \*reduced cost base of the asset is not apportioned if, on the facts, that amount is wholly attributable to the part to which the \*CGT event happened or to the remaining part.

#### 112-35 Assumption of liability rule

If you \*acquire a \*CGT asset from another entity that is subject to a liability, the first element of your \*cost base and \*reduced cost base of the asset includes the amount of the liability you assume.

Example: You acquire a block of land for \$150,000. You pay \$50,000 and assume a liability for an outstanding mortgage of \$100,000. The first element of your cost base and reduced cost base is \$150,000.

Note: The first element of cost base is dealt with in subsection 110-25(2). The first element of reduced cost base is the same: see subsection 110-55(2).

#### 112-36 Acquisitions of assets involving look-through earnout rights

##### *Consequences for cost base and reduced cost base*

- (1) If you \*acquire a \*CGT asset because an entity \*disposes of the CGT asset to you, and that disposal causes \*CGT event A1 (the **first CGT event**) to happen:
- (a) neither the \*cost base nor the \*reduced cost base of the CGT asset includes the value of any \*look-through earnout right relating to the CGT asset and the acquisition; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) include in the first element of the CGT asset's cost base and reduced cost base any \*financial benefit that you provide under such a look-through earnout right; and
- (c) reduce the first element of the CGT asset's cost base and reduced cost base by an amount equal to the amount of any financial benefit that you receive under such a look-through earnout right.

*Remaking choices affected by the look-through earnout right*

- (2) Despite section 103-25, you may remake any choice you made under this Part or Part 3-3 for a later \*CGT event involving the \*CGT asset if:
  - (a) after the later CGT event, you provide or receive a \*financial benefit under such a \*look-through earnout right; and
  - (b) you remake the choice at or before the time you are required to lodge your \*income tax return for the income year in which the financial benefit is provided or received.

*Amending assessments affected by the look-through earnout right*

- (3) The Commissioner may amend an assessment of a \*tax-related liability if:
  - (a) an entity provides or receives a \*financial benefit under such a \*look-through earnout right; and
  - (b) the amount of the tax-related liability:
    - (i) depends on that entity's taxable income for an income year in which a \*CGT event, involving the \*CGT asset, happens after the first CGT event but before the financial benefit is provided or received; or
    - (ii) is otherwise affected by that right's character as a look-through earnout right; and
  - (c) the Commissioner makes the amendment before the end of the 4-year period starting at the end of the income year in which the last possible financial benefit becomes or could become due under the look-through earnout right.

The tax-related liability need not be a liability of that entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: Subparagraph (b)(ii) covers changes to the amount of that tax-related liability that happen directly or indirectly because of subsection (1) or (2).

- (4) If at a particular time a right is taken never to have been a \*look-through earnout right because of subsection 118-565(2), the Commissioner may amend an assessment of a \*tax-related liability for up to 4 years after that time if:
- (a) an entity provides or receives a \*financial benefit under the right; and
  - (b) the amount of the tax-related liability:
    - (i) depends on that entity's taxable income for an income year in which a \*CGT event, involving the \*CGT asset, happens after the first CGT event but before the financial benefit is provided or received; or
    - (ii) was otherwise affected by that right's character as a look-through earnout right before subsection 118-565(2) applied.

The tax-related liability need not be a liability of that entity.

Note: Subsection 118-565(2) restricts look-through earnout rights to rights to financial benefits over a period not exceeding 5 years from the end of the income year in which the first CGT event happens.

- (5) If, after providing or receiving a \*financial benefit under a right referred to in subsection (3) or (4):
- (a) you are dissatisfied with an assessment referred to in that subsection; and
  - (b) the Commissioner notifies you that the Commissioner has decided under that subsection not to amend your assessment;
- you may object against the assessment, to the extent that it does not take account of that right's character (as a \*look-through earnout right or not such a right), in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### **112-37 Put options**

The first element of the \*cost base and \*reduced cost base of a right to \*dispose of a \*share in a company that you \*acquire as a result of \*CGT event D2 happening to the company is the sum of:

- (a) the amount that is included in your assessable income as ordinary income as a result of your acquisition of the right; and
- (b) the amount (if any) that you paid to acquire the right.

### **Subdivision 112-B—Finding tables for special rules**

#### **Table of sections**

112-40	Effect of this Subdivision
112-45	CGT events
112-46	Annual cost base adjustment for member's unit or interest in AMIT
112-48	Gifts acquired by associates
112-50	Main residence
112-53	Scrip for scrip roll-over
112-53AA	Statutory licences
112-53AB	Change of incorporation
112-53A	MDO roll-over
112-53B	Exchange of stapled ownership interests for units in a unit trust
112-53C	Water entitlement roll-overs
112-54	Demergers
112-54A	Transfer of assets between certain trusts
112-55	Effect of you dying
112-60	Bonus shares or units
112-65	Rights
112-70	Convertible interests
112-77	Exchangeable interests
112-78	Exploration investments
112-80	Leases
112-85	Options
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112-90	An asset stops being a pre-CGT asset
112-92	Demutualisation of certain entities

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Chapter 3 Specialist liability rules

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- 112-95 Transfer of tax losses and net capital losses within wholly-owned groups of companies
- 112-97 Modifications outside this Part and Part 3-3

#### 112-40 Effect of this Subdivision

- (1) This Subdivision is a \*Guide.

Note: In interpreting an operative provision, a Guide may be considered only for limited purposes: see section 950-150.

- (2) It sets out which element of the cost base or reduced cost base of a CGT asset is affected by various situations.

#### 112-45 CGT events

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CGT events			
Event number	In this situation:	Element affected:	See section:
D4	A conservation covenant is entered into over land	The total cost base and reduced cost base	104-47
E1	A trust is created over a CGT asset	First element of cost base and reduced cost base	104-55
E2	A CGT asset is transferred to a trust	First element of cost base and reduced cost base	104-60
E4	A trustee makes a capital payment to you in relation to units or an interest in the trust	The total cost base and reduced cost base	104-70
F4	A lessee receives payment for changing lease	The total cost base	104-125
G1	A company makes a capital payment to you in relation to your shares	The total cost base and reduced cost base	104-135

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**CGT events**

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Event number	In this situation:	Element affected:	See section:
G3	A liquidator or administrator declares shares or financial instruments to be worthless	The total cost base and reduced cost base	104-145
K8	Direct value shifts affecting your equity or loan interests in a company or trust	The total cost base and reduced cost base	Subdivision 725-D
J4	Trust fails to cease to exist after a roll-over under Subdivision 124-N	First element of cost base and reduced cost base	104-195

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**112-46 Annual cost base adjustment for member's unit or interest in AMIT**

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**Annual cost base adjustment for member's unit or interest in AMIT**

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Item	In this situation:	Element affected:	See section:
1	Annual cost base adjustment for member's unit or interest in AMIT	The total cost base and reduced cost base	104-107B

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**112-48 Gifts acquired by associates**

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**Gifts acquired by associates**

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Item	In this situation:	Element affected:	See section:
1	A gift of property is covered by subsection 118-60(1) or (2) and the property is later *acquired by an associate for less than market value	First element of cost base and reduced cost base	118-60

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 112** Modifications to cost base and reduced cost base

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**112-50 Main residence**

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<b>Main residence</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	A dwelling that is your main residence begins to be used for the first time for the purpose of producing assessable income	The total cost base and reduced cost base	118-192

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**112-53 Scrip for scrip roll-over**

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<b>Scrip for scrip roll-over</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	Interest is acquired by an entity where there is a roll-over under Subdivision 124-M and there is a significant or common stakeholder under an arrangement	First element of cost base and reduced cost base	124-782
2	Equity or debt is acquired by a member of a wholly-owned group under that arrangement from another member of the group	First element of cost base and reduced cost base	124-784
2A	Interest is acquired by an entity where there is a roll-over under Subdivision 124-M and the arrangement is taken to be a restructure	First element of cost base and reduced cost base	124-784B
3	You exchange an interest you acquired before 20 September 1985 for an interest in another entity	The total cost base and reduced cost base	124-800

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 112-53AA Statutory licences

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#### New statutory licence

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<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	New statutory licences	First element of cost base and reduced cost base	124-150, 124-155 and 124-160

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### 112-53AB Change of incorporation

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#### Change of incorporation

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<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	Shares in company that has changed its incorporation or has ownership not significantly different from that of a former body incorporated under another law	First element of cost base and reduced cost base	124-530

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### 112-53A MDO roll-over

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#### MDO roll-over

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<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	Exchange of an interest in an MDO for an interest in another MDO	First element of cost base and reduced cost base	124-985

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 112-53B

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**112-53B Exchange of stapled ownership interests for units in a unit trust**

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<b>Exchange of stapled ownership interests for units in a unit trust</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	Exchange of stapled ownership interests	First element of cost base and reduced cost base	124-1055 and 124-1060

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**112-53C Water entitlement roll-overs**

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<b>Roll-over for water entitlements</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	You replace one or more water entitlements with one or more new water entitlements	First element of cost base and reduced cost base	124-1120 and 124-1130
2	You have a reduction in one or more water entitlements that you own	First element of cost base and reduced cost base	124-1145 and 124-1150
3	A CGT event happens to an asset you own as a result of the replacement of water entitlements	First element of cost base and reduced cost base	124-1165

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**112-54 Demergers**

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<b>Demergers</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	There is a roll-over under Subdivision 125-B after a demerger	First element of cost base and reduced cost base of new interests and remaining original interests	125-80

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 112-54A

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**Demergers**

<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
2	There is a CGT event under a demerger but no roll-over under Subdivision 125-B	First element of cost base and reduced cost base of new interests and remaining original interests	125-85
3	There is a cost base adjustment under Subdivision 125-B but no CGT event under a demerger	First element of cost base and reduced cost base of new interests and remaining original interests	125-90

**112-54A Transfer of assets between certain trusts**

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**Transfer of assets between certain trusts**

<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See sections:</b>
1	There is a roll-over under Subdivision 126-G relating to the transfer of a CGT asset between certain trusts	First element of cost base and reduced cost base of the CGT asset	126-240
2	There is a roll-over under Subdivision 126-G relating to the transfer of a CGT asset between certain trusts	Cost base and reduced cost base of membership interests in each trust	126-245 and 126-250

**112-55 Effect of you dying**

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**Effect of an individual dying**

<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	CGT asset devolves to the legal personal representative	First element of cost base and reduced cost base	128-15
2	CGT asset passes to a beneficiary	First element of cost base and reduced cost base	128-15

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 112-60

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**Effect of an individual dying**

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<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
3	CGT asset passes to a trustee of a complying superannuation entity	First element of cost base and reduced cost base	128-25
4	Surviving joint tenant acquires deceased joint tenant's interest in CGT asset	First element of cost base and reduced cost base	128-50

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**112-60 Bonus shares or units**

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**Bonus shares or units**

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<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	A company issues you with bonus shares	First element of cost base and reduced cost base	130-20
2	A unit trust issues you with bonus units	First element of cost base and reduced cost base	130-20

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**112-65 Rights**

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**Exercise of rights**

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<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	You exercise rights to acquire shares, or options to acquire shares, in a company	First element of cost base and reduced cost base	130-40
2	You exercise rights to acquire units, or options to acquire units, in a unit trust	First element of cost base and reduced cost base	130-40

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## 112-70 Convertible interests

<b>Convertible interests</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	You acquire shares, or units in a unit trust, by converting a convertible interest	First element of cost base and reduced cost base	130-60

## 112-77 Exchangeable interests

<b>Exchangeable interests</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	You acquire shares in a company in exchange for the disposal of an exchangeable interest, and the disposal of the exchangeable interest was to: (a) the issuer of the exchangeable interest; or (b) a connected entity of the issuer of the exchangeable interest	First element of cost base and reduced cost base	130-105
2	You acquire shares in a company in exchange for the redemption of an exchangeable interest	First element of cost base and reduced cost base	130-105

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 112-78

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**112-78 Exploration investments**

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<b>Exploration investments</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	An exploration investment in the form of a share is disposed of	The total reduced cost base	130-110

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**112-80 Leases**

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<b>Leases</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	A lessee incurs expenditure in obtaining the lessor's agreement to vary or waive a term of the lease	Fourth element of cost base and reduced cost base	132-1
2	A lessor pays an amount to the lessee for improvements made by the lessee to the property	Fourth element of cost base and reduced cost base	132-5
3	A lessor of a long-term lease incurs expenditure in obtaining the lessee's agreement to vary or waive a term of the lease or to forfeit or surrender the lease	Fourth element of cost base and reduced cost base	132-10
4	A lessee of land acquires the reversionary interest of the lessor	First element of cost base and reduced cost base	132-15

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## 112-85 Options

<b>Exercise of options</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	Grantee of option acquires the CGT asset the subject of the option	First element of cost base and reduced cost base	134-1
2	Grantor of option acquires the CGT asset the subject of the option	For the grantor—the first element of cost base and reduced cost base; For the grantee—the second element of cost base and reduced cost base	134-1

## 112-87 Residency

<b>Residency</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	An individual or company becomes an Australian resident (but not a temporary resident)	First element of cost base and reduced cost base	855-45
1A	A temporary resident ceases to be a temporary resident (but remains, at that time, an Australian resident)	First element of cost base and reduced cost base	768-955
2	A trust becomes a resident trust for CGT purposes	First element of cost base and reduced cost base	855-50

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 112-90

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**112-90 An asset stops being a pre-CGT asset**

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<b>An asset stops being a pre-CGT asset</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	An asset of a non-public entity stops being a pre-CGT asset	The total cost base and reduced cost base	149-35
2	An asset of a public entity stops being a pre-CGT asset	The total cost base and reduced cost base	149-75

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**112-92 Demutualisation of certain entities**

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<b>Demutualisation of certain entities</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	Just before the mutual entity known in New Zealand as Tower Corporation ceased to be a mutual entity, you had membership rights in that entity	The total cost base and reduced cost base	118-550

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**112-95 Transfer of tax losses and net capital losses within wholly-owned groups of companies**

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<b>Transfer of tax losses and net capital losses within wholly-owned groups of companies</b>			
<b>Item</b>	<b>In this situation:</b>	<b>Element affected:</b>	<b>See section:</b>
1	An amount of a tax loss is transferred and a company has a direct or indirect equity interest in the loss company	The total cost base and reduced cost base	170-210

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Transfer of tax losses and net capital losses within wholly-owned groups of companies**

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Item	In this situation:	Element affected:	See section:
2	An amount of a tax loss is transferred and a company has a direct or indirect debt interest in the loss company	The reduced cost base	170-210
3	An amount of a tax loss is transferred and a company has a direct or indirect equity or debt interest in the income company	The total cost base and reduced cost base	170-215
4	An amount of a net capital loss is transferred and a company has a direct or indirect equity interest in the loss company	The total cost base and reduced cost base	170-220
5	An amount of a net capital loss is transferred and a company has a direct or indirect debt interest in the loss company	The reduced cost base	170-220
6	An amount of a net capital loss is transferred and a company has a direct or indirect equity or debt interest in the gain company	The total cost base and reduced cost base	170-225

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**112-97 Modifications outside this Part and Part 3-3**

This table sets out other cost base modifications outside this Part and Part 3-3.

Provisions of the *Income Tax Assessment Act 1936* are **in bold**.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 112-97

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**Modifications outside this Part and Part 3-3**

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<b>Item</b>	<b>In this situation</b>	<b>Element affected:</b>	<b>See:</b>
1A	You receive, under a *farm-in farm-out arrangement, an *exploration benefit or an entitlement to an exploration benefit	First element of cost base and reduced cost base	Section 40-1120
1	You stop holding an item as trading stock	First element of cost base and reduced cost base	Paragraph 70-110(1)(b)
2	CGT event happens to Cocos (Keeling) Islands asset	First element of cost base and reduced cost base	subsection 102-25(1) of the <i>Income Tax (Transitional Provisions) Act 1997</i>
2A	Lender acquires a replacement security	First element of cost base and reduced cost base	<b>subsection 26BC(6B)</b>
3	CGT event happens by the borrower disposing of the borrowed security to a third party	First element of cost base and reduced cost base	<b>paragraph 26BC(9)(a)</b>
4	CGT event happens to replacement security and compensatory payment was incurred by the borrower	Second element of cost base and reduced cost base	<b>subsection 26BC(9A)</b>
5	CGT event happens to CGT asset in connection with the demutualisation of an insurance company except a friendly society health or life insurer	First element of cost base and reduced cost base	<b>section 121AS</b>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Modifications outside this Part and Part 3-3**

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Item	In this situation	Element affected:	See:
5A	CGT event happens to CGT asset in connection with the demutualisation of a mutual entity other than an insurance company, health insurer and friendly society health or life insurer	First element of cost base and reduced cost base	<b>Division 326 in Schedule 2H</b>
6	CGT event happens to assets of NSW State Bank	First element of cost base and reduced cost base	<b>section 121EN</b>
7	Trust ceases to be a resident trust for CGT purposes and there is an attributable taxpayer	The total cost base and reduced cost base	<b>section 102AAZBA</b>
8	You own shares in a company that stops being a PDF	First element of cost base and reduced cost base	<b>section 124ZR</b>
10	CGT event happens to CGT asset used in gold mining	First element of cost base and reduced cost base	section 112-100 of the <i>Income Tax (Transitional Provisions) Act 1997</i>
12	Shares in a holding company are cancelled	The total cost base and reduced cost base	<b>section 159GZZZH</b>
12B	Entity has interest in loss company immediately before alteration time	The total reduced cost base	sections 165-115ZA and 165-115ZB
13	CGT event happens to 30 June 1988 asset of a complying superannuation entity	First element of cost base and reduced cost base	section 295-85 of the <i>Income Tax (Transitional Provisions) Act 1997</i>
14	CGT event happens to CGT asset of a complying superannuation entity	First element of cost base and reduced cost base	section 295-100 of the <i>Income Tax (Transitional Provisions) Act 1997</i>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Item</b>	<b>In this situation</b>	<b>Element affected:</b>	<b>See:</b>
15	A CGT asset of a CFC is taken into account in calculating its attributable income	First element of cost base and reduced cost base	<b>section 412</b>
16	A CGT asset of a CFC is taken into account in calculating its attributable income	First element of cost base and reduced cost base	<b>subsection 413(2)</b>
17	A CGT asset of a CFC is taken into account in calculating its attributable income	First element of cost base and reduced cost base	<b>subsection 413(3)</b>
18	A CGT asset of a CFC is taken into account in calculating its attributable income	First element of cost base and reduced cost base	<b>section 414</b>
18A	You cease to hold a registered emissions unit as the result of an outgoing international transfer of a Kyoto unit	First element of cost base and reduced cost base	Section 420-35
19	A commercial debt is forgiven	The total cost base and reduced cost base of certain CGT assets of the debtor	sections 245-175 to 245-190
20	A tax exempt entity becomes taxable	First element of cost base and reduced cost base	<b>section 57-25 in Schedule 2D</b>
20A	An entity becomes or ceases to be a foreign hybrid	The total cost base and reduced cost base	Sections 830-80 and 830-85
21	A CGT asset is transferred to or from a life insurance company's complying superannuation asset pool	First element of cost base and reduced cost base	subsection 320-200(2)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Modifications outside this Part and Part 3-3**

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Item	In this situation	Element affected:	See:
22	A CGT asset is transferred to or from the segregated exempt assets of a life insurance company	First element of cost base and reduced cost base	subsection 320-255(2)
22A	A CGT event happens in relation to forestry interest in a forestry managed investment scheme for a subsequent participant	The total cost base and reduced cost base	Subsection 394-30(9)
22B	You start or cease to have a *Division 230 financial arrangement as consideration for the acquisition of a thing	All elements of cost base and reduced cost base	section 230-505
23	The arrangement period for the tax preferred use of an asset ends	The total cost base and reduced cost base	subsection 250-285(3)
24	An entity becomes a subsidiary member of a consolidated group	The total cost base and reduced cost base for the head company of the subsidiary's assets	Section 701-10
24A	An entity ceases to be a subsidiary member of a consolidated group	The total cost base and reduced cost base for the head company of membership interests in the subsidiary	Section 701-15
24B	An entity ceases to be a subsidiary member of a consolidated group	The total cost base and reduced cost base for the head company of liabilities owed by the subsidiary	Section 701-20
24C	An entity ceases to be a subsidiary member of a consolidated group and an asset becomes an asset of	The total cost base and reduced cost base for the entity of a liability owed to the entity	Section 701-45

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

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<b>Modifications outside this Part and Part 3-3</b>			
<b>Item</b>	<b>In this situation</b>	<b>Element affected:</b>	<b>See:</b>
	the entity because the single entity rule ceases to apply		
24D	2 or more entities cease to be subsidiary members of a consolidated group	The total cost base and reduced cost base of the membership interests that one subsidiary member holds in another	Section 701-50
24E	Determining an asset's tax cost setting amount	The total cost base and reduced cost base of the asset	Section 701-55
24F	Eligible tier-1 company ceases to be a subsidiary member of a MEC group or a CGT event happens to a pooled interest in the company	The total cost base and reduced cost base	Section 719-565

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Modifications outside this Part and Part 3-3**

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Item	In this situation	Element affected:	See:
25	You make a forex realisation gain as a result of forex realisation event 4, and: <ul style="list-style-type: none"> <li>(a) you incurred the obligation to pay foreign currency:                             <ul style="list-style-type: none"> <li>(i) in return for the acquisition of a CGT asset; or</li> <li>(ii) as the second, third, fourth or fifth element of the cost base of a CGT asset; and</li> </ul> </li> <li>(b) the foreign currency became due for payment within 12 months after the time when:                             <ul style="list-style-type: none"> <li>(i) in the case of the acquisition of a CGT asset—you acquired the CGT asset; or</li> <li>(ii) in the case of the second, third, fourth or fifth element of the cost base of a CGT asset—you incurred the relevant expenditure</li> </ul> </li> </ul>	total cost base and reduced cost base	section 775-70

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Part 3-1** Capital gains and losses: general topics

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Section 112-97

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**Modifications outside this Part and Part 3-3**

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<b>Item</b>	<b>In this situation</b>	<b>Element affected:</b>	<b>See:</b>
26	<p>You make a forex realisation loss as a result of forex realisation event 4, and:</p> <p>(a) you incurred the obligation to pay foreign currency:</p> <p>(i) in return for the acquisition of a CGT asset; or</p> <p>(ii) as the second, third, fourth or fifth element of the cost base of a CGT asset; and</p> <p>(b) the foreign currency became due for payment within 12 months after the time when:</p> <p>(i) in the case of the acquisition of a CGT asset—you acquired the CGT asset; or</p> <p>(ii) in the case of the second, third, fourth or fifth element of the cost base of a CGT asset—you incurred the relevant expenditure</p>	total cost base and reduced cost base	section 775-75

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Modifications outside this Part and Part 3-3**

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<b>Item</b>	<b>In this situation</b>	<b>Element affected:</b>	<b>See:</b>
27	You acquire foreign currency as a result of forex realisation event 2	first element of cost base and reduced cost base	section 775-125
28	On 10 May 2005, a foreign resident holds certain membership interests	first element of *cost base and *reduced cost base	subsection 855-25(3)
29	You are issued with an asset under a demutualisation of a health insurer except a friendly society health or life insurer	First element of cost base and reduced cost base	sections 315-80, 315-210 and 315-260
30	You are transferred an asset by a lost policy holders trust under a demutualisation of a health insurer except a friendly society health or life insurer	First element of cost base and reduced cost base	sections 315-145, 315-210 and 315-260
30A	A CGT event occurs under a demutualisation of a friendly society health or life insurer and the capital proceeds from the event include money	All elements of cost base	section 316-60
30B	You are issued with an asset under a demutualisation of a friendly society health or life insurer	First element of cost base and reduced cost base	section 316-105
30C	A CGT event happens to an interest in a lost policy holders trust and the capital proceeds from the event include money	All elements of cost base	section 316-165

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Modifications outside this Part and Part 3-3</b>			
<b>Item</b>	<b>In this situation</b>	<b>Element affected:</b>	<b>See:</b>
30D	You are transferred a share, or right to acquire shares, by a lost policy holders trust under a demutualisation of a friendly society health or life insurer	The total cost base and reduced cost base	section 316-170
31	An entitlement arises under Division 2AA of Part II of the <i>Banking Act 1959</i> in connection with an account-holder's account with an ADI	The total cost base, and reduced cost base, of the entitlement and of the remainder (if any) of the right to be paid by the ADI in connection with the account	Section 253-15
32	You acquire an *ESS interest and Subdivision 83A-B or 83A-C (about employee share schemes) applies to the interest	First element of cost base and reduced cost base	sections 83A-30 and 83A-125
33	An entity chooses a roll-over under Subdivision 310-D and the entity chooses section 310-55 to apply to assets	First element of cost base and reduced cost base	section 310-55
34	An entity chooses a roll-over under Subdivision 310-D, but the entity does not choose section 310-55 to apply to assets	First element of cost base and reduced cost base	section 310-60

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Modifications outside this Part and Part 3-3**

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<b>Item</b>	<b>In this situation</b>	<b>Element affected:</b>	<b>See:</b>
35	A CGT asset is held by a company that has ownership not significantly different from that of a former body that held the asset and was incorporated under another law	First element of cost base and reduced cost base	Section 620-25
37	The issuing of a share gives rise to an entitlement to a tax offset under Subdivision 360-A	First element of cost base and reduced cost base	Sections 360-50, 360-55, 360-60 and 360-65

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### **Subdivision 112-C—Replacement-asset roll-overs**

#### **Table of sections**

112-100	Effect of this Subdivision
112-105	What is a replacement-asset roll-over?
112-110	How is the cost base of the replacement asset modified?
112-115	Table of replacement-asset roll-overs

#### **112-100 Effect of this Subdivision**

This Subdivision is a \*Guide.

Note: In interpreting an operative provision, a Guide may be considered only for limited purposes: see section 950-150.

#### **112-105 What is a replacement-asset roll-over?**

- (1) A **replacement-asset roll-over** allows you to defer the making of a capital gain or a capital loss from one CGT event until a later CGT event happens.
- (2) It involves your ownership of one CGT asset (the **original asset**) ending and you acquiring another one (the **replacement asset**).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 112-110

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- (3) All replacement-asset roll-overs are set out in the table in section 112-115.

**112-110 How is the cost base of the replacement asset modified?**

If you acquired the original asset on or after 20 September 1985:

- (a) the first element of the replacement asset's cost base is replaced by the original asset's cost base at the time you acquired the replacement asset; and
- (b) the first element of the replacement asset's reduced cost base is replaced by the original asset's reduced cost base at the time you acquired the replacement asset.

Note 1: Some replacement-asset roll-overs involve other rules that affect the cost base or reduced cost base of the replacement asset.

Note 2: If you acquired the original asset before 20 September 1985, you are taken to have acquired the replacement asset before that day: see Subdivision 124-A.

Note 3: The reduced cost base may be further modified if the replacement asset roll-over happens after a demerger: see section 125-170.

**112-115 Table of replacement-asset roll-overs**

This table sets out all the replacement-asset roll-overs and tells you where you can find more detail about each one.

Provisions of this Act are in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

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<b>Replacement-asset roll-overs</b>		
<b>Item</b>	<b>For the rules about this roll-over:</b>	<b>See:</b>
1	Disposal or creation of assets by individual or trustee to a wholly-owned company	sections 122-40 to 122-65
2	Disposal or creation of assets by partners to a wholly-owned company	sections 122-150 to 122-195
4	Asset compulsorily acquired, lost or destroyed	Subdivision 124-B
5	New statutory licences	Subdivision 124-C

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 112-115

<b>Replacement-asset roll-overs</b>		
<b>Item</b>	<b>For the rules about this roll-over:</b>	<b>See:</b>
6	Strata title conversion	Subdivision 124-D
7	Exchange of shares in the same company or units in the same unit trust	Subdivision 124-E
8	Exchange of rights or options to acquire shares in a company or units in a unit trust	Subdivision 124-F
11	Change of incorporation	Subdivision 124-I
12	Crown leases	Subdivision 124-J
13	Depreciating assets	Subdivision 124-K
14	Prospecting and mining entitlements	Subdivision 124-L
14A	Scrip for scrip	Subdivision 124-M
14B	Exchange of interests in a trust as a result of a trust restructure	Subdivision 124-N
14BB	Exchange of an interest in an MDO for an interest in another MDO	Subdivision 124-P
14BC	Exchange of stapled ownership interests	Subdivision 124-Q
14BD	Water entitlements	Subdivision 124-R
14C	Demergers	Division 125
14D	Exchange of shares in one company for shares in an interposed company	Division 615
14E	Exchange of units in a unit trust for shares in a company	Division 615
15	Disposal of a security under a securities lending arrangement	<b>section 26BC</b>

### Subdivision 112-D—Same-asset roll-overs

#### Table of sections

112-135	Effect of this Subdivision
112-140	What is a same-asset roll-over?
112-145	How is the cost base of the asset modified?
112-150	Table of same-asset roll-overs

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 112-135

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**112-135 Effect of this Subdivision**

This Subdivision is a \*Guide.

Note: In interpreting an operative provision, a Guide may be considered only for limited purposes: see section 950-150.

**112-140 What is a same-asset roll-over?**

A *same-asset roll-over* allows one entity (the *transferor*) to disregard a capital gain or loss it makes from disposing of a CGT asset to, or creating a CGT asset in, another entity (the *transferee*). Any gain or loss is deferred until another CGT event happens in relation to the asset (in the hands of the transferee).

All same-asset roll-overs are set out in the table in section 112-150.

**112-145 How is the cost base of the asset modified?**

If the transferor acquired the asset on or after 20 September 1985:

- (a) the first element of the asset's cost base (in the hands of the transferee) is replaced by the asset's cost base at the time the transferee acquired it; and
- (b) the first element of the asset's reduced cost base (in the hands of the transferee) is replaced by the asset's reduced cost base at the time the transferee acquired it.

Note 1: If the transferor acquired the asset before 20 September 1985, the transferee is taken to have acquired it before that day: see Subdivision 126-A.

Note 2: The reduced cost base may be further modified if the same asset roll-over happens after a demerger: see section 125-170.

**112-150 Table of same-asset roll-overs**

This table sets out all the same-asset roll-overs and tells you where you can find more detail about each one.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Same-asset roll-overs</b>		
<b>Item</b>	<b>For the rules about this roll-over:</b>	<b>See:</b>
1	Transfer of a CGT asset from one spouse to the other because of a marriage or relationship breakdown	Subdivision 126-A
2	Transfer of a CGT asset from a company or trust to a spouse because of a marriage or relationship breakdown	Subdivision 126-A
3	Transfer of a CGT asset to a wholly-owned company	sections 122-70 and 122-75
4	Transfer of a CGT asset of a partnership to a wholly-owned company	Sections 122-200 and 122-205
4A	Transfer of a CGT asset of a trust to a company under a trust restructure	Subdivision 124-N
5	Transfer of a CGT asset between certain related companies	Subdivision 126-B
6	CGT event happens because a trust deed of a complying approved deposit fund, a complying superannuation fund or a fund that accepts worker entitlement contributions is changed	Subdivision 126-C
7	Transfer of a CGT asset from a small superannuation fund to another complying superannuation fund because of a marriage or relationship breakdown	Subdivision 126-D
8	Beneficiary becomes absolutely entitled to a share following a roll-over under Subdivision 124-M	Subdivision 126-E
10	Transfer of a CGT asset between certain trusts	Subdivision 126-G
11	Corporations covered by Subdivision 124-I	sections 620-10, 620-15, 620-20 and 620-25

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 114-1

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## Division 114—Indexation of cost base

### Table of sections

114-1	Indexing elements of cost base
114-5	When indexation relevant
114-10	Requirement for 12 months ownership
114-15	Cost base modifications
114-20	When expenditure is incurred for roll-overs

### 114-1 Indexing elements of cost base

In working out the \*cost base of a \*CGT asset \*acquired at or before 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999, index expenditure incurred at or before that time in each element. (The expenditure can include giving property: see section 103-5).

Note 1: Subdivision 960-M shows you how to index amounts. The indexation does not take account of inflation after 30 September 1999.

Note 2: You have to work out the cost base of a CGT asset if a CGT event happens in relation to it or if there is a cost base modification.

Note 3: You cannot index expenditure in the third element (costs of ownership): see subsection 960-275(4).

Note 4: Indexation is not relevant to expenditure incurred after 11.45 am on 21 September 1999 or any expenditure relating to a CGT asset acquired after that time.

Example: Peter purchases a building as an investment on 1 January 1994 for \$250,000. This amount forms the first element of his cost base.

He sold the building on 1 February 1996.

The index number for the quarter in which he sold the building (the March quarter 1996) is 119.0. The index number for the quarter in which he purchased the building (the March quarter 1994) is 110.4.

Applying section 960-275, work out the indexation factor as follows:

$$\frac{119.0}{110.4} = 1.078$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

The indexed first element of Peter's cost base is:

$$\$250,000 \times 1.078 = \$269,500$$

### 114-5 When indexation relevant

- (1) Indexation is only relevant if the \*cost base of a \*CGT asset is relevant to a \*CGT event.

Note 1: The table in section 110-10 sets out the CGT events for which cost base is not relevant.

Note 2: Indexation is not relevant to the reduced cost base of a CGT asset.

*Indexation for some entities only if indexation chosen*

- (2) Indexation is *not* relevant to the \*capital gain of an entity mentioned in an item of the table from a \*CGT event happening after 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999, unless the relevant entity mentioned in that item has chosen that the \*cost base include indexation:

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**Entities for which indexation is not relevant unless chosen**

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Item	Indexation is not relevant to the capital gain of this entity:	Unless this entity has chosen that the cost base include indexation:
1	An individual	The individual
2	A *complying superannuation entity	The trustee of the complying superannuation entity
3	A trust	The trustee of the trust
4	A listed investment company	The company

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- (3) Indexation is *not* relevant to the \*capital gain of a \*life insurance company from a \*CGT event happening after 30 June 2000 in respect of a \*CGT asset that is a \*complying superannuation asset unless the company has chosen that the \*cost base include indexation.

Note: Section 114-5 of the *Income Tax (Transitional Provisions) Act 1997* provides that indexation is not relevant to the capital gain of a life insurance company or registered organisation from a CGT event after

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 114-10

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11.45 am on 21 September 1999 and before 1 July 2000 unless the company or organisation chooses it.

**114-10 Requirement for 12 months ownership**

- (1) You only index expenditure in the \*cost base of a \*CGT asset for a \*CGT event happening in relation to the asset if you, or the entity whose cost base is being worked out, had \*acquired the asset at or before 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999 and at least 12 months before the time of that \*CGT event.

Note: Generally, expenditure is indexed from when it is incurred: see subsection 960-275(2). The exception is when there is an acquisition that did not result from a CGT event. The first element in this case is indexed from when the expenditure was paid: see subsection 960-275(3).

- (2) There are 5 exceptions:

- one for \*CGT event E8: see subsection (3); and
- one for roll-overs: see subsections (4) and (5); and
- one for deceased estates: see subsection (6); and
- one for a surviving joint tenant: see subsection (7); and
- one for \*CGT event J1: see subsection (8).

*CGT event E8*

- (3) For \*CGT event E8, the beneficiary indexes the \*cost bases of the \*CGT assets of the trust only if the beneficiary \*acquired the \*CGT asset that is the interest in the trust capital at least 12 months before \*disposing of it.

It does not matter (for indexation from the beneficiary's point of view) how long the trustee owned any of the assets of the trust.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Same asset roll-overs*

- (4) The 12 month rule is satisfied for both the entity that owned a \*CGT asset before a \*same-asset roll-over and the entity that owned it after the roll-over if the sum of their periods of ownership of the asset (and the sum of the periods of ownership of the asset of other entities involved in an unbroken series of roll-overs) is at least 12 months.

*Replacement asset roll-overs*

- (5) The 12 month rule is satisfied for an entity obtaining a \*replacement-asset roll-over for a \*CGT event happening in relation to a \*CGT asset if the period of the entity's ownership of the original asset (and of other assets for an unbroken series of replacement-asset roll-overs) and of the replacement asset are together at least 12 months.

Example: Company A transfers a CGT asset to Company B (which is a member of the same wholly-owned group and a foreign resident) 5 months after acquiring it. There is a roll-over for the transfer under Subdivision 126-B.

Company B sells the asset 8 months after the transfer.

Company A indexes expenditure in its cost base up to the transfer. That cost base becomes the first element of Company B's cost base. Company B indexes its cost base from the transfer to the sale.

*Deceased estates*

- (6) If a \*CGT asset you owned just before dying devolves to your \*legal personal representative or \*passes to a beneficiary in your estate, the 12 month rule applies to the legal personal representative or the beneficiary as if that entity had \*acquired the asset when you acquired it.

*Surviving joint tenant*

- (7) If individuals own a \*CGT asset as joint tenants and one of them dies, the 12 month rule applies to the surviving joint tenant as if the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 114-15

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surviving joint tenant had \*acquired the deceased's interest in the asset when the deceased acquired it.

Note: The surviving joint tenant is taken to have acquired the deceased's interest in the asset: see section 128-50.

*CGT event J1*

- (8) If \*CGT event J1 happens, the company that owns the roll-over asset ignores (for indexation purposes) the acquisition rule in subsection 104-175(8).

**114-15 Cost base modifications**

- (1) There are a number of modifications to the \*cost base of \*CGT assets (see sections 112-20 and 112-35 and Subdivisions 112-B, 112-C and 112-D). These affect the way indexation works.
- (2) If a cost base modification replaces an element of the \*cost base of a \*CGT asset with an amount, or includes an amount in such an element, you index the element or the amount as if expenditure equal to the amount had been incurred in the \*quarter in which the modification occurred.

Example: A trust is declared over a CGT asset (an example of CGT event E1). The first element of the cost base in the hands of the trustee is its market value. The trustee indexes that market value from the quarter in which the trust was declared.

- (3) A different rule applies if a cost base modification reduces the *total* \*cost base of a \*CGT asset.

*Method statement*

- Step 1. Work out the \*cost base (all elements) of the asset as at the \*quarter in which the modification occurred.
- Step 2. Subtract the amount of the reduction.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Step 3.** The Step 2 amount forms a new first element of your \*cost base, and is later indexed as if you had incurred expenditure equal to that amount in the \*quarter in which the modification occurred.

**Example:** Margaret receives a capital payment of \$1,000 for shares (an example of CGT event G1). The first element of her cost base is \$10,250 (indexed to the quarter in which the payment was made) and the second element (similarly indexed) is \$210. Add those amounts (\$10,460) and subtract the \$1,000. Her new first element of the cost base is \$9,460. There are no other elements at that time.

- (4) Despite subsection (2), there are different rules for the exercise of an option or the conversion of a \*convertible interest.

*Exercise of options*

- (5) The amount you paid for the option, and the amount you paid to exercise it, are indexed from the \*quarter in which the liabilities to pay the amounts were incurred.

**Example:** On 1 April 1997, Robyn grants Andrew an option to buy land she owns. The option fee is \$10,000, and the option is to buy the land on 30 June 1998 for \$100,000.

Andrew exercises the option and acquires the land on 30 June 1998. To work out whether there is a capital gain when Andrew disposes of the land, indexation is available if the land is disposed of 12 months or more after its acquisition.

The \$10,000 option fee can be indexed from 1 April 1997 (when the liability to pay it was incurred). The \$100,000 exercise price can be indexed from 30 June 1998 (when the liability to pay the price was incurred).

*Convertible interests*

- (6) If you \*acquire \*shares in a company or units in a unit trust by converting a \*convertible interest, the amount paid for the convertible interest, and the amount paid to convert it, are indexed from the \*quarter in which the liabilities to pay the amounts were incurred.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 114-20

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Note: If shares or units are acquired as a result of the exercise of the option or the conversion of the convertible interest, and an amount is paid to the company or trust on the shares or units after the day of acquisition, that amount is indexed from the time it is paid: see subsection 960-275(3).

**114-20 When expenditure is incurred for roll-overs**

If there is a roll-over for a \*CGT event happening in relation to a \*CGT asset and the first element of the \*cost base of the asset is the whole of the cost base of:

- (a) for a \*replacement-asset roll-over, the original asset; or
- (b) for a \*same-asset roll-over, the CGT asset;

you index that element as if expenditure equal to the amount in that element had been incurred in the \*quarter in which the CGT event happened.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 115—Discount capital gains and trusts' net capital gains**

### **Table of Subdivisions**

	Guide to Division 115
115-A	Discount capital gains
115-B	Discount percentage
115-C	Rules about trusts with net capital gains
115-D	Tax relief for shareholders in listed investment companies

### **Guide to Division 115**

#### **115-1 What this Division is about**

A discount capital gain remaining after the application of any capital losses and net capital losses from previous income years is reduced by the discount percentage when working out your net capital gain.

A capital gain from a CGT asset is a discount capital gain only if the entity making the gain acquired the asset at least a year before the CGT event causing the gain and no choice has been made to include indexation in the cost base of the asset.

Special rules apply to the net income of trusts with net capital gains, to ensure that the appropriate discount percentage is applied and to let beneficiaries apply their capital losses against their share of the trust's capital gains.

Special rules apply to certain capital gains made by listed investment companies to enable shareholders receiving dividends that include these gains to obtain benefits similar to those conferred by the CGT discount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Subdivision 115-A—Discount capital gains

### Table of sections

#### What is a discount capital gain?

- 115-5 What is a *discount capital gain*?
- 115-10 Who can make a discount capital gain?
- 115-15 Discount capital gain must be made after 21 September 1999
- 115-20 Discount capital gain must not have indexed cost base
- 115-25 Discount capital gain must be on asset acquired at least 12 months before
- 115-30 Special rules about time of acquisition
- 115-32 Special rule about time of acquisition for certain replacement-asset roll-overs
- 115-34 Further special rule about time of acquisition for certain replacement-asset roll-overs

#### What are not discount capital gains?

- 115-40 Capital gain resulting from agreement made within a year of acquisition
- 115-45 Capital gain from equity in an entity with newly acquired assets
- 115-50 Discount capital gain from equity in certain entities
- 115-55 Capital gains involving money received from demutualisation of friendly society health or life insurer

### What is a discount capital gain?

#### 115-5 What is a *discount capital gain*?

A *discount capital gain* is a \*capital gain that meets the requirements of sections 115-10, 115-15, 115-20 and 115-25.

Note: Sections 115-40, 115-45 and 775-70 identify capital gains that are *not* discount capital gains, despite this section.

#### 115-10 Who can make a discount capital gain?

To be a \*discount capital gain, the \*capital gain must be made by:

- (a) an individual; or
- (b) a \*complying superannuation entity; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) a trust; or
- (d) a \*life insurance company in relation to a \*discount capital gain from a \*CGT event in respect of a \*CGT asset that is a \*complying superannuation asset.

### **115-15 Discount capital gain must be made after 21 September 1999**

To be a \*discount capital gain, the \*capital gain must result from a \*CGT event happening after 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999.

### **115-20 Discount capital gain must not have indexed cost base**

- (1) To be a \*discount capital gain, the \*capital gain must have been worked out:
  - (a) using a \*cost base that has been calculated without reference to indexation at any time; or
  - (b) for a capital gain that arose under \*CGT event K7—using the \*cost of the \*depreciating asset concerned.

Note: A listed investment company must also calculate capital gains without reference to indexation in order to allow its shareholders to access the concessions in Subdivision 115-D.

- (2) For the purposes of working out whether the \*capital gain is a \*discount capital gain and the amount of that gain, the \*cost base taken into account in working out the capital gain may be recalculated without reference to indexation if the cost base had an element including indexation because of another provision of this Act. This subsection has effect despite that other provision.

Note: This lets a capital gain of an entity (the *gain entity*) on a CGT asset be a discount capital gain even if:

- (a) another provision of this Act (such as a provision for a same-asset roll-over or Division 128) set the gain entity's cost base for the asset by reference to the cost base for the asset when it was owned by another entity (the *earlier owner*), and the earlier owner's cost base for the asset included indexation; or
- (b) another provision of this Act (such as a provision for a replacement-asset roll-over) set the cost base of the asset by

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 115-25

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reference to the cost base of the original asset involved in the roll-over, and the original asset's cost base included indexation.

Example: In 1995 Elizabeth acquired land from her ex-husband under an order made by a court under the *Family Law Act 1975*. Former section 160ZZM of the *Income Tax Assessment Act 1936* treated her as having paid \$56,000 for the land, equal to her ex-husband's *indexed* cost base for it. His cost base for the land then was \$40,000.

In 2000, she sold the land for capital proceeds of \$150,000.

Her discount capital gain on the land is \$110,000 (equal to the capital proceeds less the cost base for the land without indexation).

- (3) This section does not apply to a \*capital gain worked out under subsection 104-255(3) (about carried interests).

**115-25 Discount capital gain must be on asset acquired at least 12 months before**

- (1) To be a \*discount capital gain, the \*capital gain must result from a \*CGT event happening to a \*CGT asset that was \*acquired by the entity making the capital gain at least 12 months before the CGT event.

Note 1: Even if the capital gain results from a CGT event happening at least a year after the CGT asset was acquired, the gain may not be a discount capital gain, depending on the cause of the CGT event (see section 115-40) and the nature of the asset (see sections 115-45 and 115-50).

Note 2: Section 115-30 or 115-34 may affect the time when the entity is treated as having acquired the CGT asset.

- (2) To avoid doubt, subsection (1) applies to the \*CGT asset shown in the table for a \*CGT event listed in the table.

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**CGT assets to which subsection (1) applies**

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Item	CGT event	CGT asset to which subsection (1) applies
1A	D4	the land over which the *conservation covenant is entered into
1	E8	the interest or part interest in the trust capital

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**CGT assets to which subsection (1) applies**

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Item	CGT event	CGT asset to which subsection (1) applies
2	K6	the *share or interest *acquired before 20 September 1985

- (2A) If the \*capital gain results from a \*CGT event K9 happening:
- (a) subsection (1) does not apply; and
  - (b) to be a \*discount capital gain, the \*carried interest to which the CGT event relates must arise under a partnership agreement entered into at least 12 months before the CGT event.
- (3) A \*capital gain from one of these \*CGT events is *not* a **discount capital gain** (despite section 115-5):
- (a) \*CGT event D1;
  - (b) \*CGT event D2;
  - (c) \*CGT event D3;
  - (d) \*CGT event E9;
  - (e) \*CGT event F1;
  - (f) \*CGT event F2;
  - (g) \*CGT event F5;
  - (h) \*CGT event H2;
  - (ha) \*CGT event J2;
  - (hb) \*CGT event J5;
  - (hc) \*CGT event J6;
  - (i) \*CGT event K10.

Note: Capital gains from the CGT events mentioned in paragraphs (3)(a) to (f) are not discount capital gains because the CGT asset involved in the CGT event comes into existence at the time of the event, so it is impossible to meet the requirement in this section that the asset have been acquired at least 12 months before the event.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 115-30

**115-30 Special rules about time of acquisition**

*Entity is treated as acquiring some CGT assets early*

- (1) Sections 115-25, 115-40, 115-45, 115-105, 115-110 and 115-115 (the **affected sections**) apply as if an entity (the **acquirer**) had acquired a \*CGT asset described in an item of the table at the time mentioned in the item:

**When the acquirer is treated as having acquired a CGT asset**

<b>Item</b>	<b>The affected sections apply as if the acquirer had acquired this CGT asset:</b>	<b>At this time:</b>
1	A *CGT asset the acquirer *acquired in circumstances giving rise to a *same-asset roll-over	(a) when the entity that owned the CGT asset before the roll-over *acquired it; or (b) if the asset has been involved in an unbroken series of roll-overs—when the entity that owned it before the first roll-over in the series *acquired it
2	A *CGT asset that the acquirer *acquired as a replacement asset for a *replacement-asset roll-over (other than a roll-over covered by paragraph 115-34(1)(c))	(a) when the acquirer acquired the original asset involved in the roll-over; or (b) if the acquirer acquired the replacement asset for a roll-over that was the last in an unbroken series of replacement-asset roll-overs (other than roll-overs covered by paragraph 115-34(1)(c))—when the acquirer acquired the original asset involved in the first roll-over in the series

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**When the acquirer is treated as having acquired a CGT asset**

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Item	The affected sections apply as if the acquirer had acquired this CGT asset:	At this time:
3	A *CGT asset the acquirer *acquired as the *legal personal representative of a deceased individual, except one that was a *pre-CGT asset of the deceased immediately before his or her death	When the deceased *acquired the asset
4	A *CGT asset that *passed to the acquirer as the beneficiary of a deceased individual's estate, except one that was a *pre-CGT asset of the deceased immediately before his or her death	When the deceased *acquired the asset
5	A *CGT asset that: (a) the acquirer *acquired as the *legal personal representative of a deceased individual; and (b) was a *pre-CGT asset of the deceased immediately before his or her death	When the deceased died
6	A *CGT asset that: (a) *passed to the acquirer as the beneficiary of a deceased individual's estate; and (b) was a *pre-CGT asset of the deceased immediately before his or her death	When the deceased died
7	The interest (or share of an interest) the acquirer is taken under section 128-50 to have *acquired in another *CGT asset that the acquirer and another individual held as joint tenants immediately before he or she died	When the deceased *acquired his or her interest in the other CGT asset

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 115** Discount capital gains and trusts' net capital gains

Section 115-30

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**When the acquirer is treated as having acquired a CGT asset**

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<b>Item</b>	<b>The affected sections apply as if the acquirer had acquired this CGT asset:</b>	<b>At this time:</b>
9	A *CGT asset that: (a) is a *membership interest in the receiving trust involved in a roll-over under Subdivision 126-G; and (b) is held by the acquirer just after the transfer time for the roll-over	(a) when the acquirer *acquired the corresponding membership interest (or membership interests) in the transferring trust involved in the roll-over; or (b) if the roll-over asset for the roll-over has been involved in an unbroken series of roll-overs under Subdivision 126-G—when the acquirer acquired the corresponding membership interest (or membership interests) in the transferring trust involved in the first roll-over in the series
9A	A *share the acquirer *acquires by exercising an *ESS interest if: (a) section 83A-33 (about start ups) reduces the amount to be included in the acquirer's assessable income in relation to the ESS interest; and (b) exercising the ESS interest causes Subdivision 130-B or Division 134 to apply	When the acquirer *acquired the *ESS interest

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**When the acquirer is treated as having acquired a CGT asset**

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Item	The affected sections apply as if the acquirer had acquired this CGT asset:	At this time:
10	A *CGT asset that the acquirer *acquired as a received asset for a roll-over under Subdivision 310-D	(a) when the transferring entity for the roll-over acquired the corresponding original asset for the roll-over; or  (b) if that original asset (or any asset corresponding to it) has been involved in an unbroken series of roll-overs—when the entity that owned the applicable asset before the first roll-over in the series acquired it

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Note: Under section 128-50, the acquirer is taken to acquire the interest of a deceased individual in a CGT asset the acquirer and the deceased held as joint tenants immediately before the deceased's death (or an equal share of that interest if there are other surviving joint tenants).

- (1A) For the purposes of sections 115-105, 115-110 and 115-115, item 2 of the table in subsection (1) applies in relation to all \*replacement-asset roll-overs, including those covered by paragraph 115-34(1)(c).

*CGT event E8*

- (2) For the purposes of applying sections 115-25 and 115-40 in relation to \*CGT event E8 and the \*CGT asset consisting of a beneficiary's interest in trust capital, it does not matter how long the trustee owned any of the assets of the trust.

Note: Section 115-45 limits the effect of this subsection in some cases.

*Relationship with Subdivision 109-A and Division 128*

- (3) This section has effect despite Subdivision 109-A and Division 128 (which contain rules about the time when you \*acquire a \*CGT asset).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 115-32

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**115-32 Special rule about time of acquisition for certain replacement-asset roll-overs**

- (1) This section applies if:
- (a) a \*CGT event happens to:
    - (i) your \*share in a company; or
    - (ii) your \*trust voting interest, unit or other fixed interest in a trust; and
  - (b) you \*acquired the share or interest as a replacement asset for a \*replacement-asset roll-over (other than a roll-over covered by paragraph 115-34(1)(c)); and
  - (c) at the time of the CGT event, the company or trust:
    - (i) owns a \*membership interest in an entity (the *original entity*); and
    - (ii) has owned that membership interest for less than 12 months; and
  - (d) that membership interest is the original asset for the roll-over.

Note: This section does not affect the time when you are treated as having acquired the replacement asset. That time is worked out under item 2 of the table in subsection 115-30(1).

*Application of tests about the assets of the company or trust*

- (2) Subsection 115-45(4) applies as if the company or trust had \*acquired the original asset at least 12 months before the \*CGT event, if the condition in that subsection would not be met were it to be applied to the original entity and the CGT event.
- (3) Subsection 115-45(6) applies as if the company or trust had \*acquired the original asset at least 12 months before the \*CGT event, if the condition in subsection 115-45(5) would not be met were it to be applied to the original entity and the CGT event.

**115-34 Further special rule about time of acquisition for certain replacement-asset roll-overs**

- (1) This section applies if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) a \*CGT event happens to your \*share in a company; and
- (b) at the time of the CGT event, you had owned the share for less than 12 months; and
- (c) you \*acquired the share as a replacement asset for:
  - (i) a \*replacement-asset roll-over under Subdivision 122-A (disposal of assets by individuals or trustees to a wholly-owned company) for which you \*disposed of a \*CGT asset, or all the assets of a \*business, to the company; or
  - (ii) a replacement-asset roll-over under Subdivision 122-B (disposal of assets by partners to a wholly-owned company) for which you disposed of your interests in a CGT asset, or your interests in all the assets of a business, to the company; or
  - (iii) a replacement-asset roll-over under Subdivision 124-N (disposal of assets by trusts to a company) for which a trust of which you were a beneficiary disposed of all of its CGT assets to the company.

*Application of tests about when you acquired the share*

- (2) Sections 115-25 and 115-40 apply as if you had \*acquired the \*share at least 12 months before the \*CGT event.

*Application of tests about the company's assets*

- (3) For each asset mentioned in subparagraph (1)(c)(i), subsections 115-45(4) and (6) apply as if the company had \*acquired that asset when you acquired it.
- (4) For each asset mentioned in subparagraph (1)(c)(ii), subsections 115-45(4) and (6) apply as if the company had \*acquired that asset when you acquired your interests in it.
- (5) For each asset mentioned in subparagraph (1)(c)(iii), subsections 115-45(4) and (6) apply as if the company had \*acquired that asset when the trust acquired it.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Relationship with Subdivision 109-A*

- (6) This section has effect despite Subdivision 109-A (which contains rules about the time of acquisition of CGT assets).

**What are not discount capital gains?**

**115-40 Capital gain resulting from agreement made within a year of acquisition**

Your \*capital gain on a \*CGT asset from a \*CGT event is *not* a **discount capital gain** (despite section 115-5) if the CGT event occurred under an agreement you made within 12 months of \*acquiring the CGT asset.

Note: Section 115-30 or 115-34 may affect the time when you are treated as having acquired the CGT asset.

**115-45 Capital gain from equity in an entity with newly acquired assets**

*Purpose of this section*

- (1) The purpose of this section is to deny you a \*discount capital gain on your \*share in a company or interest in a trust if you would *not* have had \*discount capital gains on the majority of \*CGT assets (by cost and by value) underlying the share or interest if:
- (a) you had owned them for the time the company or trust did; and
  - (b) \*CGT events had happened to them when the CGT event happened to your share or interest.

*When a capital gain is not a discount capital gain*

- (2) Your \*capital gain from a \*CGT event happening to:
- (a) your \*share in a company; or
  - (b) your \*trust voting interest, unit or other fixed interest in a trust;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

is *not* a **discount capital gain** if the 3 conditions in subsections (3), (4) and (5) are met. This section has effect despite section 115-5 and subsection 115-30(2).

Note: This section does not prevent a capital gain from being a discount capital gain if there are at least 300 members or beneficiaries of the company or trust and control of the company or trust is not and cannot be concentrated (see section 115-50).

*You had at least 10% of the equity in the entity before the event*

- (3) The first condition is that, just before the \*CGT event, you and your \*associates beneficially owned:
- (a) at least 10% by value of the \*shares in the company (except shares that carried a right only to participate in a distribution of profits or capital to a limited extent); or
  - (b) at least 10% of the \*trust voting interests, issued units or other fixed interests (as appropriate) in the trust.

*Cost bases of new assets are more than 50% of all cost bases of entity's assets*

- (4) The second condition is that the total of the \*cost bases of \*CGT assets that the company or trust owned at the time of the \*CGT event and had \*acquired *less* than 12 months before then is *more* than half of the total of the \*cost bases of the \*CGT assets the company or trust owned at the time of the event.

Note: Sections 115-30 and 115-32, or section 115-34, may affect the time when the company or trust is treated as having acquired a CGT asset.

*Net capital gain on entity's new assets would be more than 50% of net capital gain on all the entity's assets*

- (5) The third condition is that the amount worked out under subsection (6) is *more* than half of the amount worked out under subsection (7).
- (6) Work out the amount that would be the \*net capital gain of the company or trust for the income year if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 115-50

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- (a) just before the \*CGT event, the company or trust had \*disposed of all of the \*CGT assets that it owned then and had \*acquired less than 12 months before the \*CGT event; and
- (b) it had received the \*market value of those assets for the disposal; and
- (c) the company or trust did not have any \*capital gains or \*capital losses from \*CGT events other than the disposal; and
- (d) the company or trust did not have a \*net capital loss for an earlier income year.

Note: Sections 115-30 and 115-32, or section 115-34, may affect the time when the company or trust is treated as having acquired a CGT asset.

- (7) Work out the amount that would be the \*net capital gain of the company or trust for the income year if:
  - (a) just before the \*CGT event, the company or trust had \*disposed of all of the \*CGT assets that it owned then; and
  - (b) it had received the \*market value of those assets for the disposal; and
  - (c) all of the \*capital gains and \*capital losses from those assets were taken into account in working out the net capital gain, despite any rules providing that one or more of those capital gains or losses are not to be taken into account in working out the net capital gain; and
  - (d) the company or trust did not have any \*capital gains or \*capital losses from \*CGT events other than the disposal; and
  - (e) the company or trust did not have a \*net capital loss for an earlier income year.

**115-50 Discount capital gain from equity in certain entities**

*Capital gain from share in company with 300 members*

- (1) Section 115-45 does not prevent a \*capital gain from a \*CGT event happening to a \*share in a company with at least 300 \*members

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

from being a \*discount capital gain, unless subsection (3) or (6) applies in relation to the company.

*Capital gain from interest in fixed trust with 300 beneficiaries*

- (2) Section 115-45 does not prevent a \*capital gain from a \*CGT event happening to an interest in a trust from being a \*discount capital gain if:
- (a) entities have \*fixed entitlements to all of the income and capital of the trust; and
  - (b) the trust has at least 300 beneficiaries; and
  - (c) neither subsection (4) nor subsection (6) applies in relation to the trust.

*No discount capital gain if ownership is concentrated*

- (3) Section 115-45 may prevent a \*capital gain from a \*share in a company from being a \*discount capital gain if an individual owns, or up to 20 individuals own between them, directly or indirectly (through one or more interposed entities) and for their own benefit, \*shares in the company:
- (a) carrying \*fixed entitlements to:
    - (i) at least 75% of the company's income; or
    - (ii) at least 75% of the company's capital; or
  - (b) carrying at least 75% of the voting rights in the company.
- (4) Section 115-45 may prevent a \*capital gain from an interest in a trust from being a \*discount capital gain if an individual owns, or up to 20 individuals own between them, directly or indirectly (through one or more interposed entities) and for their own benefit, interests in the trust:
- (a) carrying \*fixed entitlements to:
    - (i) at least 75% of the trust's income; or
    - (ii) at least 75% of the trust's capital; or
  - (b) if beneficiaries of the trust have a right to vote in respect of activities of the trust—carrying at least 75% of those voting rights.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (5) Subsections (3) and (4) operate as if all of these were a single individual:
- (a) an individual, whether or not the individual holds \*shares in the company or interests in the trust (as appropriate);
  - (b) the individual's \*associates;
  - (c) for any \*shares or interests in respect of which other individuals are nominees of the individual or of the individual's associates—those other individuals.

*No discount capital gain if rights can be varied to concentrate ownership*

- (6) Section 115-45 may prevent a \*capital gain from a \*share in a company, or from an interest in a trust, from being a \*discount capital gain if, because of anything listed in subsection (7), it is reasonable to conclude that the rights attaching to any of the \*shares in the company or interests in the trust (as appropriate) *can be varied* or abrogated in such a way that subsection (3) or (4) would be satisfied.
- (7) These are the things:
- (a) any provision in the constituent document of the company or trust, or in any contract, agreement or instrument:
    - (i) authorising the variation or abrogation of rights attaching to any of the \*shares in the company or interests in the trust (as appropriate); or
    - (ii) relating to the conversion, cancellation, extinguishment or redemption of any of those shares or interests;
  - (b) any contract, \*arrangement, option or instrument under which a person has power to acquire any of those shares or interests;
  - (c) any power, authority or discretion in a person in relation to the rights attaching to any of those shares or interests.
- (8) It does not matter for the purposes of subsection (6) whether or not the rights attaching to any of the \*shares or interests *are varied* or abrogated in the way described in that subsection.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



### **115-55 Capital gains involving money received from demutualisation of friendly society health or life insurer**

Your \*capital gain from a \*CGT event is *not* a **discount capital gain** if it is affected by section 316-60 or 316-165.

Note: Those sections affect capital gains involving the receipt of money as a result of the demutualisation of a friendly society health or life insurer.

### **Subdivision 115-B—Discount percentage**

#### **Table of sections**

115-100	What is the <i>discount percentage</i> for a discount capital gain
115-105	Foreign or temporary residents—individuals with direct gains
115-110	Foreign or temporary residents—individuals with trust gains
115-115	Foreign or temporary residents—percentage for individuals
115-120	Foreign or temporary residents—trusts with certain gains
115-125	Investors disposing of property used for affordable housing

### **115-100 What is the *discount percentage* for a discount capital gain**

The *discount percentage* for an amount of a \*discount capital gain is:

- (a) 50% if the gain is made:
  - (i) by an individual and neither section 115-105 nor 115-110 (about foreign or temporary residents) applies to the gain; or
  - (ii) by a trust (other than a trust that is a \*complying superannuation entity) and section 115-120 (about foreign or temporary residents) does not apply to the gain; or
- (b) 33<sup>1</sup>/<sub>3</sub>% if the gain is made:
  - (i) by a complying superannuation entity; or
  - (ii) by a \*life insurance company from a \*CGT asset that is a \*complying superannuation asset; or
- (c) the percentage resulting from section 115-115 if section 115-105 or 115-110 applies to the gain; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 115-105

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- (d) the percentage resulting from section 115-120 if that section applies to the gain; or
- (e) the percentage resulting from section 115-125 if that section applies to the gain.

**115-105 Foreign or temporary residents—individuals with direct gains**

*Object*

- (1) The object of this section (with section 115-115) is to adjust the discount percentage so as to deny you a discount to the extent that you accrued a \*capital gain while a foreign resident or \*temporary resident.

*When this section applies*

- (2) This section applies to a \*discount capital gain if:
  - (a) you are an individual; and
  - (b) you \*acquire a \*CGT asset; and
  - (c) you make the discount capital gain from a \*CGT event happening in relation to the CGT asset; and
  - (d) the period (the *discount testing period*):
    - (i) starting on the day you acquired the CGT asset; and
    - (ii) ending on the day the CGT event happens; ends after 8 May 2012; and
  - (e) you were a foreign resident or \*temporary resident during some or all of so much of that period as is after 8 May 2012.

Note: Section 115-30 has special rules about when assets are acquired.

*Changed residency status*

- (3) For the purposes of this section and section 115-115, if:
  - (a) another individual owned the \*CGT asset on a particular day before the discount testing period ends; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) on that day, that individual was one of the following (that individual's **residency status**):
    - (i) an Australian resident (but not a \*temporary resident);
    - (ii) a temporary resident;
    - (iii) a foreign resident; and
  - (c) section 115-30 treats you as having \*acquired the CGT asset when that individual, or an earlier owner of the CGT asset, acquired it;
- you are treated as having the same residency status on that day as that individual had on that day.

### **115-110 Foreign or temporary residents—individuals with trust gains**

#### *Object*

- (1) The object of this section (with section 115-115) is to adjust the discount percentage so as to deny you a discount for a \*capital gain you make because of section 115-215 to the extent that the gain was accrued while you were a foreign resident or \*temporary resident.

#### *When this section applies*

- (2) This section applies to a \*discount capital gain if:
  - (a) you are an individual and a beneficiary of a trust (**your trust**); and
  - (b) because of section 115-215, Division 102 applies to you as if you had made the discount capital gain on a particular day (**your gain day**) for a \*capital gain (the **relevant trust gain**) of the trust estate; and
  - (c) the period (the **discount testing period**) worked out from the following table ends after 8 May 2012; and
  - (d) you were a foreign resident or \*temporary resident during some or all of so much of that period as is after 8 May 2012.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Chapter 3** Specialist liability rules

**Part 3-1** Capital gains and losses: general topics

**Division 115** Discount capital gains and trusts' net capital gains

Section 115-110

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**Working out the *discount testing period***

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<b>Item</b>	<b>Column 1</b> <b>If this is the case:</b>	<b>Column 2</b> <b>the <i>discount testing period</i> is:</b>
1	your trust is a *fixed trust	the period: (a) starting on the most recent day (before your gain day) that you became a beneficiary of your trust; and (b) ending on your gain day.
2	your trust is not a *fixed trust and the relevant trust gain: (a) is made because a *CGT event happened in relation to a *CGT asset *acquired by the trustee of your trust; or (b) is referable (either directly or indirectly through one or more interposed trusts that are not fixed trusts) to a *capital gain made by the trustee of another trust that is not a fixed trust because a CGT event happened in relation to a CGT asset acquired by that trustee	the period: (a) starting on the day of that acquisition; and (b) ending on your gain day.
3	your trust is not a *fixed trust and the relevant trust gain is referable (either directly or indirectly through one or more interposed trusts that are not fixed trusts) to a *capital gain made by a fixed trust	the period: (a) starting on the most recent day (before your gain day) that the trust whose capital gain is directly referable to the capital gain made by the fixed trust became a beneficiary of the fixed trust; and (b) ending on your gain day.

Note: Section 115-30 has special rules about when assets (including membership interests in trusts) are acquired.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Changed residency status*

- (3) For the purposes of this section and section 115-115, if:
- (a) your trust is a \*fixed trust and another individual owned your \*membership interest in your trust on a particular day before the discount testing period ends; and
  - (b) on that day, that individual was one of the following (that individual's **residency status**):
    - (i) an Australian resident (but not a \*temporary resident);
    - (ii) a temporary resident;
    - (iii) a foreign resident; and
  - (c) section 115-30 treats you as having \*acquired your membership interest in your trust when that individual, or an earlier owner of that membership interest, acquired it;
- you are treated as having the same residency status on that day as that individual had on that day.

**115-115 Foreign or temporary residents—percentage for individuals**

- (1) This section applies if section 115-105 or 115-110 applies to a \*discount capital gain.

*Periods starting after 8 May 2012*

- (2) If the discount testing period starts after 8 May 2012, the following (expressed as a percentage) is the percentage resulting from this section:

$$\frac{\text{Number of days during discount testing period that you were an Australian resident (but not a *temporary resident)}}{2 \times \text{Number of days in discount testing period}}$$

Note 1: The percentage will be 0% if you were a foreign resident or temporary resident during all of the discount testing period.

Note 2: Subsection 115-105(3) or 115-110(3) may change your residency status for this formula.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Periods starting earlier—Australian residents*

- (3) If:
- (a) the discount testing period starts on or before 8 May 2012; and
  - (b) you were an Australian resident (but not a \*temporary resident) on 8 May 2012;
- the following (expressed as a percentage) is the percentage resulting from this section:

$$\frac{\text{Number of days in discount testing period} - \text{Number of apportionable days that you were a foreign resident or *temporary resident}}{2 \times \text{Number of days in discount testing period}}$$

where:

**apportionable day** means a day, after 8 May 2012, during the discount testing period.

Note: Subsection 115-105(3) or 115-110(3) may change your residency status for this formula.

*Periods starting earlier—other residents may choose market value*

- (4) The percentage resulting from this section is worked out from the following table if:
- (a) the discount testing period starts on or before 8 May 2012; and
  - (b) you were a foreign resident or \*temporary resident on 8 May 2012; and
  - (c) the most recent \*acquisition (before the \*CGT event) of the \*CGT asset happened on or before 8 May 2012; and
  - (d) the CGT asset's \*market value on 8 May 2012 exceeds the amount that was its \*cost base at the end of that day; and
  - (e) you choose for this subsection to apply.

Note 1: The CGT event and CGT asset are those expressly or impliedly referred to in section 115-105 or 115-110.

Note 2: Section 115-30 has special rules about when assets are acquired.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Percentage using market value**

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Item	Column 1 If the excess from paragraph (d):	Column 2 then, the percentage is:
1	is equal to or greater than the amount of the *discount capital gain	50%.
2	falls short of the amount of the *discount capital gain	worked out under subsection (5).

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- (5) For the purposes of table item 2 in subsection (4), the following (expressed as a percentage) is the percentage resulting from this section:

$$\frac{\text{Excess} + \left( \frac{\text{Shortfall} \times \text{Number of apportionable days that you were an eligible resident}}{\text{Number of apportionable days}} \right)}{2 \times \text{Amount of the *discount capital gain}}$$

where:

**apportionable day** means a day, after 8 May 2012, during the discount testing period.

**eligible resident** means an Australian resident who is not a \*temporary resident.

**excess** means the excess from paragraph (4)(d).

**shortfall** means the amount that the excess falls short of the amount of the \*discount capital gain.

Note: Subsection 115-105(3) or 115-110(3) may change your residency status for this formula.

*Periods starting earlier—other residents not choosing market value*

- (6) If:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the discount testing period starts on or before 8 May 2012; and
- (b) you were a foreign resident or \*temporary resident on 8 May 2012; and
- (c) subsection (4) does not apply;

the following (expressed as a percentage) is the percentage resulting from this section:

$$\frac{\text{Number of apportionable days that you were an Australian resident (but not a *temporary resident)}}{2 \times \text{Number of days in discount testing period}}$$

where:

***apportionable day*** means a day, after 8 May 2012, during the discount testing period.

Note 1: The percentage will be 0% if you were a foreign resident or temporary resident on each of the apportionable days.

Note 2: Subsection 115-105(3) or 115-110(3) may change your residency status for this formula.

**115-120 Foreign or temporary residents—trusts with certain gains**

- (1) The object of this section is to adjust the discount percentage so as to deny a trustee a discount for a \*capital gain for which the trustee is liable:
  - (a) to be assessed; and
  - (b) to pay tax;under section 98 of the *Income Tax Assessment Act 1936* in relation to the trust estate in respect of a beneficiary to the extent that the beneficiary was a foreign resident or \*temporary resident.
- (2) This section applies to a \*discount capital gain of a trust estate if:
  - (a) you are the trustee of that trust; and
  - (b) section 115-220 applies to you in relation to the discount capital gain and a beneficiary of the trust who is an individual.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (3) The percentage resulting from this section is the same as the \*discount percentage for the corresponding \*discount capital gain the beneficiary would have made for the purposes of Division 102 had section 115-215 applied to the beneficiary.

### **115-125 Investors disposing of property used for affordable housing**

#### *Object*

- (1) The object of this section is to increase the discount percentage to the extent that the \*discount capital gain relates to a \*dwelling used to \*provide affordable housing.

#### *When this section applies*

- (2) This section applies to a \*discount capital gain if:
- (a) you are an individual; and
  - (b) either:
    - (i) you make the discount capital gain from a \*CGT event happening in relation to a \*CGT asset that is your \*ownership interest in a \*dwelling; or
    - (ii) because of section 115-215, Division 102 applies to you as if you had made the discount capital gain for a \*capital gain of a trust covered by subsection (3); and
  - (c) where subparagraph (b)(ii) applies—the trust's capital gain was made directly, or indirectly through one or more entities that are all covered by subsection (3), from a CGT event happening in relation to a CGT asset that is an ownership interest in a dwelling; and
  - (d) the dwelling was used to \*provide affordable housing on at least 1095 days:
    - (i) before the CGT event; and
    - (ii) during your, or the relevant trustee's or partner's, \*ownership period of that dwelling; and
    - (iii) on or after 1 January 2018.

The days mentioned in paragraph (d) need not be consecutive.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: 1095 days is the same as 3 years.

- (3) This subsection covers the following:
- (a) a trust, other than a \*superannuation fund or a public unit trust (within the meaning of section 102P of the *Income Tax Assessment Act 1936*);
  - (b) a \*managed investment trust;
  - (c) a partnership.

*Discount percentage*

- (4) The percentage resulting from this section is the sum of:
- (a) the \*discount percentage that would apply to the \*discount capital gain apart from this section; and
  - (b) the result (expressed as a percentage) of subsection (5).

- (5) Work out the following:

$$\frac{\text{*Discount percentage that would apply to the *discount capital gain apart from this section}}{5} \times \frac{\text{Affordable housing days}}{\text{Total ownership days}}$$

where:

***affordable housing days*** means the number of days during that \*ownership period (see paragraph (2)(d)) of the \*dwelling, and on or after 1 January 2018, on which:

- (a) the dwelling was used to \*provide affordable housing; and
- (b) you were neither a foreign resident nor a \*temporary resident.

***total ownership days*** means the number of days during that \*ownership period (see paragraph (2)(d)) of the \*dwelling, less the number of days after 8 May 2012 during that ownership period that you were a foreign resident or a \*temporary resident.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Subdivision 115-C—Rules about trusts with net capital gains

### Guide to Subdivision 115-C

#### 115-200 What this Division is about

This Subdivision sets out rules for dealing with the net income of a trust that has a net capital gain. The rules treat parts of the net income attributable to the trust's net capital gain as capital gains made by the beneficiary entitled to those parts. This lets the beneficiary reduce those parts by any capital losses and unapplied net capital losses it has.

If the trust's capital gain was reduced by either the general 50% discount in step 3 of the method statement in subsection 102-5(1) or by the small business 50% reduction in Subdivision 152-C (but not both), then the gain is doubled. The beneficiary can then apply its capital losses to the gain before applying the appropriate discount percentage (if any) or the small business 50% reduction.

If the trust's capital gain was reduced by both the general 50% discount and the small business 50% reduction, then the gain is multiplied by 4. The beneficiary can then apply its capital losses to the gain before applying the appropriate discount percentage (if any) and the small business 50% reduction.

Division 6E of Part III of the *Income Tax Assessment Act 1936* will exclude amounts from the beneficiary's assessable income if necessary to prevent it from being taxed twice on the same parts of the trust's net income.

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##### Operative provisions

- 115-210 When this Subdivision applies
- 115-215 Assessing presently entitled beneficiaries

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- 115-220 Assessing trustees under section 98 of the *Income Tax Assessment Act 1936*
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- 115-225 Attributable gain
- 115-227 *Share* of a capital gain
- 115-228 *Specifically entitled* to an amount of a capital gain
- 115-230 Choice for resident trustee to be specifically entitled to capital gain

**Operative provisions**

**115-210 When this Subdivision applies**

- (1) This Subdivision applies if a trust estate has a \*net capital gain for an income year that is taken into account in working out the trust estate's net income (as defined in section 95 of the *Income Tax Assessment Act 1936*) for the income year.
- (2) If the trust estate has a beneficiary that is a \*complying superannuation entity that is a trust, this Subdivision applies in relation to the complying superannuation entity as a beneficiary but not as a trust estate. This Subdivision does not apply otherwise to a \*complying superannuation entity that is a trust.

**115-215 Assessing presently entitled beneficiaries**

*Purpose*

- (1) The purpose of this section is to ensure that appropriate amounts of the trust estate's net income attributable to the trust estate's \*capital gains are treated as a beneficiary's capital gains when assessing the beneficiary, so:
  - (a) the beneficiary can apply \*capital losses against gains; and
  - (b) the beneficiary can apply the appropriate \*discount percentage (if any) to gains.

*Extra capital gains*

- (3) If you are a beneficiary of the trust estate, for each \*capital gain of the trust estate, Division 102 applies to you as if you had:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) if the capital gain was not reduced under either step 3 of the method statement in subsection 102-5(1) (discount capital gains) or Subdivision 152-C (small business 50% reduction)—a capital gain equal to the amount mentioned in subsection 115-225(1); and
- (b) if the capital gain was reduced under either step 3 of the method statement or Subdivision 152-C but not both (even if it was further reduced by the other small business concessions)—a capital gain equal to twice the amount mentioned in subsection 115-225(1); and
- (c) if the capital gain was reduced under both step 3 of the method statement and Subdivision 152-C (even if it was further reduced by the other small business concessions)—a capital gain equal to 4 times the amount mentioned in subsection 115-225(1).

Note: This subsection does not affect the amount (if any) included in your assessable income under Division 6 of Part III of the *Income Tax Assessment Act 1936* because of the capital gain of the trust estate. However, Division 6E of that Part may have the effect of reducing the amount included in your assessable income under Division 6 of that Part by an amount related to the capital gain you have under this subsection.

- (4) For each \*capital gain of yours mentioned in paragraph (3)(b) or (c):
  - (a) if the relevant trust gain was reduced under step 3 of the method statement in subsection 102-5(1)—Division 102 also applies to you as if your capital gain were a \*discount capital gain, if you are the kind of entity that can have a discount capital gain; and
  - (b) if the relevant trust gain was reduced under Subdivision 152-C—the capital gain remaining after you apply step 3 of the method statement is reduced by 50%.

Note: This ensures that your share of the trust estate's net capital gain is taxed as if it were a capital gain you made (assuming you made the same choices about cost bases including indexation as the trustee).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 115-220

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- (4A) To avoid doubt, subsection (3) treats you as having a \*capital gain for the purposes of Division 102, despite section 102-20.

*Section 118-20 does not reduce extra capital gains*

- (5) To avoid doubt, section 118-20 does not reduce a \*capital gain that subsection (3) treats you as having for the purpose of applying Division 102.

**115-220 Assessing trustees under section 98 of the *Income Tax Assessment Act 1936***

- (1) This section applies if:
- (a) you are the trustee of the trust estate; and
  - (b) on the assumption that there is a share of the income of the trust to which a beneficiary of the trust is presently entitled, you would be liable to be assessed (and pay tax) under section 98 of the *Income Tax Assessment Act 1936* in relation to the trust estate in respect of the beneficiary.
- (2) For each \*capital gain of the trust estate, increase the amount (the **assessable amount**) in respect of which you are actually liable to be assessed (and pay tax) under section 98 of the *Income Tax Assessment Act 1936* in relation to the trust estate in respect of the beneficiary by:
- (a) unless paragraph (b) applies—the amount mentioned in subsection 115-225(1) in relation to the beneficiary; or
  - (b) if the liability is under paragraph 98(3)(b) or subsection 98(4), and the capital gain was reduced under step 3 of the method statement in subsection 102-5(1) (discount capital gains)—twice the amount mentioned in subsection 115-225(1) in relation to the beneficiary.
- (3) To avoid doubt, increase the assessable amount under subsection (2) even if the assessable amount is nil.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**115-222 Assessing trustees under section 99 or 99A of the *Income Tax Assessment Act 1936***

- (1) Subsection (2) applies if:
  - (a) you are the trustee of the trust estate; and
  - (b) section 99A of the *Income Tax Assessment Act 1936* does not apply in relation to the trust estate in relation to the relevant income year.
- (2) For each \*capital gain of the trust estate, increase the amount (the **assessable amount**) in respect of which you are liable to be assessed (and pay tax) under section 99 of the *Income Tax Assessment Act 1936* in relation to the trust estate by the amount mentioned in subsection 115-225(1).
- (3) Subsection (4) applies if:
  - (a) you are the trustee of the trust estate; and
  - (b) subsection (2) does not apply.
- (4) For each \*capital gain of the trust estate, increase the amount (the **assessable amount**) in respect of which you are liable to be assessed (and pay tax) under section 99A of the *Income Tax Assessment Act 1936* in relation to the trust estate by:
  - (a) if the capital gain was not reduced under either step 3 of the method statement in subsection 102-5(1) (discount capital gains) or Subdivision 152-C (small business 50% reduction)—the amount mentioned in subsection 115-225(1); and
  - (b) if the capital gain was reduced under either step 3 of the method statement or Subdivision 152-C but not both (even if it was further reduced by the other small business concessions)—twice the amount mentioned in subsection 115-225(1); and
  - (c) if the capital gain was reduced under both step 3 of the method statement and Subdivision 152-C (even if it was further reduced by the other small business concessions)—4 times the amount mentioned in subsection 115-225(1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 115-225

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- (5) To avoid doubt, increase the assessable amount under subsection (2) or (4) even if the assessable amount is nil.

**115-225 Attributable gain**

- (1) The amount is the product of:
- (a) the amount of the \*capital gain remaining after applying steps 1 to 4 of the method statement in subsection 102-5(1); and
  - (b) your \*share of the capital gain (see section 115-227), divided by the amount of the capital gain.
- (2) Subsection (3) applies if the net income of the trust estate (disregarding the amount of any \*franking credits) for the relevant income year falls short of the sum of:
- (a) the \*net capital gain (if any) of the trust estate for the income year; and
  - (b) the total of all \*franked distributions (if any) included in the assessable income of the trust estate for the income year (to the extent that an amount of the franked distributions remained after reducing them by deductions that were directly relevant to them).
- (3) For the purposes of subsection (1), replace paragraph (a) of that subsection with the following paragraph:
- (a) the product of:
    - (i) the amount of the \*capital gain remaining after applying steps 1 to 4 of the method statement in subsection 102-5(1); and
    - (ii) the \*net income of the trust estate for that income year (disregarding the amount of any \*franking credits), divided by the sum mentioned in subsection (2); and

**115-227 Share of a capital gain**

An entity that is a beneficiary or the trustee of a trust estate has a *share* of a \*capital gain that is the sum of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (a) the amount of the capital gain to which the entity is \*specifically entitled; and
- (b) if there is an amount of the capital gain to which no beneficiary of the trust estate is specifically entitled, and to which the trustee is not specifically entitled—that amount multiplied by the entity's \*adjusted Division 6 percentage of the income of the trust estate for the relevant income year.

**115-228 *Specifically entitled to an amount of a capital gain***

- (1) A beneficiary of a trust estate is *specifically entitled* to an amount of a \*capital gain made by the trust estate in an income year equal to the amount calculated under the following formula:

$$\text{*Capital gain} \times \frac{\text{Share of net financial benefit}}{\text{Net financial benefit}}$$

where:

***net financial benefit*** means an amount equal to the \*financial benefit that is referable to the \*capital gain (after any application by the trustee of losses, to the extent that the application is consistent with the application of capital losses against the capital gain in accordance with the method statement in subsection 102-5(1)).

***share of net financial benefit*** means an amount equal to the \*financial benefit that, in accordance with the terms of the trust:

- (a) the beneficiary has received, or can be reasonably expected to receive; and
- (b) is referable to the \*capital gain (after application by the trustee of any losses, to the extent that the application is consistent with the application of capital losses against the capital gain in accordance with the method statement in subsection 102-5(1)); and
- (c) is recorded, in its character as referable to the capital gain, in the accounts or records of the trust no later than 2 months after the end of the income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Section 115-230**

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Note: A trustee of a trust estate that makes a choice under section 115-230 is taken to be specifically entitled to a capital gain.

- (2) To avoid doubt, for the purposes of subsection (1), something is done in accordance with the terms of the trust if it is done in accordance with:
- (a) the exercise of a power conferred by the terms of the trust; or
  - (b) the terms of the trust deed (if any), and the terms applicable to the trust because of the operation of legislation, the common law or the rules of equity.
- (3) For the purposes of this section, in calculating the amount of the \*capital gain, disregard sections 112-20 and 116-30 (Market value substitution rule) to the extent that those sections have the effect of increasing the amount of the capital gain.

**115-230 Choice for resident trustee to be specifically entitled to capital gain**

*Purpose*

- (1) The purpose of this section is to allow a trustee of a resident trust to make a choice that has the effect that the trustee will be assessed on a \*capital gain of the trust if no trust property representing the capital gain has been paid to or applied for the benefit of a beneficiary of the trust.

*Trusts for which choice can be made*

- (2) A trustee can only make a choice under this section in relation to a trust estate that is, in the income year in respect of which the choice is made, a resident trust estate (within the meaning of Division 6 of Part III of the *Income Tax Assessment Act 1936*).

*Circumstances in which choice can be made*

- (3) If:
- (a) a \*capital gain is taken into account in working out the \*net capital gain of a trust for an income year; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) trust property representing all or part of that capital gain has not been paid to or applied for the benefit of a beneficiary of the trust by the end of 2 months after the end of the income year;

the trustee may, no later than the deadline in subsection (5), make a choice that subsection (4) applies in respect of the capital gain.

*Consequences if trustee makes choice*

- (4) These are the consequences if the trustee makes a choice that this subsection applies in respect of a \*capital gain:
- (a) sections 115-215 and 115-220 do not apply in relation to the capital gain;
  - (b) for the purposes of this Act, the trustee is taken to be \*specifically entitled to all of the capital gain.

*Deadline for making choice*

- (5) The deadline for the purposes of subsection (3) is:
- (a) the day 2 months after the last day of the income year; or
  - (b) a later day allowed by the Commissioner.

Note: This deadline is an exception to the general rule about choices in section 103-25.

## **Subdivision 115-D—Tax relief for shareholders in listed investment companies**

### **Guide to Subdivision 115-D**

#### **115-275 What this Subdivision is about**

This Subdivision allows shareholders of certain listed companies to obtain benefits similar to those conferred by discount capital gains.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 115-280

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The benefits accrue where dividends paid by those companies represent capital gains that would be discount capital gains had they been made by an individual, a trust or a complying superannuation entity.

**Table of sections**

**Operative provisions**

- 115-280 Deduction for certain dividends
- 115-285 Meaning of *LIC capital gain*
- 115-290 Meaning of *listed investment company*
- 115-295 Maintaining records

**Operative provisions**

**115-280 Deduction for certain dividends**

- (1) You can deduct an amount for a \*dividend paid to you by a company (the *payment company*) if:
  - (a) you are:
    - (i) an individual, a \*complying superannuation entity, a trust or a partnership; or
    - (ii) a \*life insurance company where the dividend is in respect of \*shares that are \*complying superannuation assets; and
  - (b) when the dividend is paid, either you are an Australian resident or you are an individual who is a foreign resident and carries on business in Australia at or through your permanent establishment in Australia, being a permanent establishment within the meaning of:
    - (i) a double tax agreement (as defined in Part X of the *Income Tax Assessment Act 1936*) that relates to a foreign country and affects the individual; or
    - (ii) subsection 6(1) of that Act, if there is no such agreement; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ba) if, when the dividend is paid, you are an individual who is a foreign resident and has in Australia such a permanent establishment—the dividend is attributable to the permanent establishment; and
- (c) all or some part of the dividend is reasonably attributable to a \*LIC capital gain made by a \*listed investment company; and
- (d) in a case where the LIC capital gain was made by a company other than the payment company—the payment company was a listed investment company when it received a dividend part of which is attributable to the LIC capital gain.

Note: The concession is available for LIC capital gains made directly by a listed investment company, and for LIC capital gains that company receives as a dividend through one or more other listed investment companies.

- (2) The amount you can deduct is:
  - (a) 50% of your share of the amount (the **attributable part**) worked out under subsection (3) if you are an individual, a trust (except a trust that is a \*complying superannuation entity) or a partnership; or
  - (b) 33<sup>1</sup>/<sub>3</sub>% of your share of the attributable part if you are a complying superannuation entity or a \*life insurance company.

Note 1: The listed investment company will advise you of your share of the attributable part.

Note 2: If a shareholder in a listed investment company is a trust or partnership, a beneficiary of the trust or a partner in the partnership has no share of the attributable part.

- (3) The attributable part is worked out using this formula:

$$\text{After tax gain} + \left[ \frac{\text{After tax gain} \times \begin{matrix} \text{*Corporate tax rate} \\ \text{(at the time of the *CGT event)} \end{matrix}}{1 - \text{*Corporate tax rate (at that time)}} \right]$$

where:

**after tax gain** is the after tax \*LIC capital gain.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Chapter 3 Specialist liability rules

### Part 3-1 Capital gains and losses: general topics

#### Division 115 Discount capital gains and trusts' net capital gains

#### Section 115-280

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Example: A listed investment company (which is not a base rate entity) disposes of a CGT asset for \$30,000. The asset had a cost base of \$10,000. The capital gain is therefore \$20,000. The company applies a capital loss of \$10,000 against the gain. Its net capital gain is \$10,000.

The net capital gain is subject to tax at 30%. The after tax gain is therefore \$7,000.

The company pays a fully franked dividend to Daryl, one of its shareholders. It advises Daryl that his share of the attributable part of the dividend is:

$$\$7 + \left[ \left( \$7 \times 0.3 \right) \div \left( 1 - 0.3 \right) \right] = \$10$$

Daryl, being an individual, can deduct 50% of \$10, which is \$5.

- (4) An amount is included in your assessable income if:
- (a) a deduction is allowed under subsection (1) to a trust or a partnership; and
  - (b) you are a beneficiary of the trust or a partner in the partnership and you are not an individual; and
  - (c) the income of the trust or partnership is reduced by an amount because of that deduction; and
  - (d) a part of the deduction (the **reduction amount**) is reflected in your share of the net income of the trust or partnership.
- (5) The amount included is:
- (a) the reduction amount if you are a company, a trust (except a trust that is a \*complying superannuation entity) or a partnership; or
  - (b) one-third of the reduction amount if you are a complying superannuation entity or a \*life insurance company.

Example: The Burnett Partnership received a dividend from a listed investment company. The dividend statement advised that the dividend included a \$100 attributable part. The partnership deducted \$50 under this section in calculating its net income.

The partnership has 2 equal partners, Amy Burnett and Burnett Consulting Pty Ltd.

Burnett Consulting's assessable income includes its share of the net income of the partnership plus \$25 (being that part of the \$50

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

deduction allowed to the partnership that is reflected in the company's share of the partnership net income).

Subsections (4) and (5) do not apply to Amy because she is an individual.

### **115-285 Meaning of *LIC capital gain***

- (1) A *LIC capital gain* is a \*capital gain:
- (a) from a \*CGT event that happens on or after 1 July 2001; and
  - (b) that is made by a company that is a \*listed investment company from a \*CGT asset that is an investment to which paragraph 115-290(1)(c) applies; and
  - (c) that meets the requirements of sections 115-20 and 115-25; and
  - (d) that is not a capital gain that could not be a \*discount capital gain had it been made by an individual because of section 115-40 or 115-45; and
  - (e) that is included in the \*net capital gain of the company; and
  - (f) that is reflected in the taxable income of the company for the income year in which the company had the net capital gain.

Note 1: The listed investment company must be able to demonstrate that at least some part of the LIC capital gain, whether made by the company itself or by another listed investment company, remains after claiming deductions and losses against that income for the income year.

Note 2: Section 115-30 may affect the date of acquisition of a CGT asset for the purposes of sections 115-25, 115-40 and 115-45.

- (2) However, a \*capital gain made by a company is not a *LIC capital gain* if the company:
- (a) became a \*listed investment company after 1 July 2001; and
  - (b) \*acquired the \*CGT asset concerned before the day on which it became a listed investment company.
- (3) In applying subsection (2), a \*CGT asset is treated as if it had been \*acquired by the company *before* it became a \*listed investment company if the asset would otherwise be treated as being acquired *after* that time because of one of these provisions:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 115-290

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- (a) section 70-110 (about trading stock);
- (b) Subdivision 124-E or 124-F (replacement asset roll-overs for exchange of \*shares, units, rights or options);
- (ba) Subdivision 124-Q (exchange of stapled ownership interests);
- (c) Subdivision 126-B (same-asset roll-over for transfers within certain wholly-owned groups).

**115-290 Meaning of *listed investment company***

- (1) A *listed investment company* is a company:
  - (a) that is an Australian resident; and
  - (b) \*shares in which are listed for quotation on the official list of ASX Limited or of a body corporate that is approved as a stock exchange under section 769 of the *Corporations Act 2001*; and
  - (c) at least 90% of the \*market value of whose \*CGT assets consists of investments permitted by subsection (4).
- (2) A company is also a *listed investment company* if:
  - (a) it is a 100% subsidiary of a company that is a \*listed investment company because of subsection (1); and
  - (b) the subsidiary would be a listed investment company because of subsection (1) if it were able to comply with paragraph (1)(b).
- (3) This Subdivision applies to a company that does not comply with paragraph (1)(c) as if it did comply if the failure:
  - (a) was of a temporary nature only; and
  - (b) was caused by circumstances outside its control.
- (4) The permitted investments are:
  - (a) \*shares, units, options, rights or similar interests to the extent permitted by subsections (5), (6), (7) and (8); or
  - (b) financial instruments (such as loans, debts, debentures, bonds, promissory notes, futures contracts, forward contracts, currency swap contracts and a right or option in respect of a share, security, loan or contract); or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (c) an asset whose main use by the company in the course of carrying on its \*business is to \*derive interest, an annuity, rent, royalties or foreign exchange gains unless:
    - (i) the asset is an intangible asset and has been substantially developed, altered or improved by the company so that its \*market value has been substantially enhanced; or
    - (ii) its main use for deriving rent was only temporary; or
  - (d) goodwill.
- (5) The company can own a \*100% subsidiary if the subsidiary is a listed investment company because of subsection (2).
  - (6) The company can own (directly or indirectly) any percentage of another \*listed investment company that is not the company's \*100% subsidiary.
  - (7) Otherwise, the company cannot own (directly or indirectly) more than 10% of another company or trust.
  - (8) In working out whether a company indirectly owns any part of another company or trust:
    - (a) disregard any ownership it has indirectly through a \*listed public company or a \*publicly traded unit trust; and
    - (b) if the company owns not more than 50% of another \*listed investment company—disregard any ownership it has indirectly through the other company.

### **115-295 Maintaining records**

A \*listed investment company must maintain records showing the balance of its \*LIC capital gains available for distribution.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 116—Capital proceeds**

### **Guide to Division 116**

#### **116-1 What this Division is about**

This Division tells you how to work out what the capital proceeds from a CGT event are. You need to know this to work out if you made a capital gain or loss from the event.

#### **Table of sections**

- 116-5 General rules
- 116-10 Modifications to general rules

##### **General rules**

- 116-20 General rules about *capital proceeds*

##### **Modifications to general rules**

- 116-25 Table of modifications to the general rules
- 116-30 Market value substitution rule: modification 1
- 116-35 Companies and trusts that are not widely held
- 116-40 Apportionment rule: modification 2
- 116-45 Non-receipt rule: modification 3
- 116-50 Repaid rule: modification 4
- 116-55 Assumption of liability rule: modification 5
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##### **Special rules**

- 116-65 Disposal etc. of a CGT asset the subject of an option
- 116-70 Option requiring both acquisition and disposal etc.
- 116-75 Special rule for CGT event happening to a lease
- 116-80 Special rule if CGT asset is shares or an interest in a trust
- 116-85 Section 47A of 1936 Act applying to rolled-over asset
- 116-95 Company changes residence from an unlisted country
- 116-100 Gifts of property

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- 116-105 Conservation covenants
- 116-110 Roll-overs for merging superannuation funds
- 116-115 Farm-in farm-out arrangements
- 116-120 Disposals of assets involving look-through earnout rights

### 116-5 General rules

Section 116-20 sets out the general rules about capital proceeds. They are relevant to each CGT event that is listed in the table in section 116-25.

### 116-10 Modifications to general rules

- (1) There are 6 modifications to the general rules that may be relevant. The table in section 116-25 lists which ones *may* be relevant to each CGT event listed in the table.

#### *Explanation of modifications*

- (2) The first is a market value substitution rule. It is relevant if:
  - you receive no capital proceeds from a CGT event; or
  - some or all of the capital proceeds cannot be valued; or
  - you did not deal at arm's length with another entity in connection with the event.
- (3) The second is an apportionment rule. It is relevant if a payment you receive in connection with a transaction relates in part only to a CGT event.

Example: You sell 3 CGT assets for a total of \$100,000. The \$100,000 needs to be apportioned between the 3 assets.
- (4) The third is a non-receipt rule. It is relevant if you do not receive, or are not likely to receive, some or all of the capital proceeds from a CGT event.
- (5) The fourth is a repaid rule. It is relevant if you are required to repay some or all of the capital proceeds from a CGT event.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 116-20

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- (6) The fifth is relevant only if another entity assumes a liability in connection with a CGT event.
- (7) The sixth relates to misappropriation by an employee or agent. It is relevant if your employee or agent misappropriates all or part of the capital proceeds from a CGT event.

Note 1: Also, these provisions of the *Income Tax Assessment Act 1936* modify capital proceeds:

- (a) section 23B (undistributed FIF attribution income on disposal of an interest in a FIF);
- (b) sections 159GZZZF and 159GZZZG (cancellation of shares in a holding company);
- (c) sections 159GZZZQ and 159GZZZS (buy-backs of shares);
- (d) sections 401, 422, 423 and 461 (CFCs).

Note 2: Section 230-505 of this Act (Division 230 financial arrangement as consideration for provision or acquisition of a thing) also modifies capital proceeds.

## General rules

### 116-20 General rules about *capital proceeds*

- (1) The *capital proceeds* from a \*CGT event are the total of:
  - (a) the money you have received, or are entitled to receive, in respect of the event happening; and
  - (b) the \*market value of any other property you have received, or are entitled to receive, in respect of the event happening (worked out as at the time of the event).

Note 1: The timing rules for each event are in Division 104.

Note 2: In some situations you are treated as having received money or other property, or being entitled to receive it: see section 103-10.

Note 3: If you dispose of shares in a buy-back, the capital proceeds are worked out under Division 16K of the *Income Tax Assessment Act 1936*.

- (2) This table sets out what the *capital proceeds* from \*CGT events F1, F2, H2 and K9 are:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**General rules about capital proceeds**

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Event number	Description of event:	<i>The capital proceeds are:</i>
F1	Granting, renewing or extending a lease	Any premium paid or payable to you for the grant, renewal or extension
F2	Granting, renewing or extending a long-term lease	The greatest of: (a) the *market value of the estate in fee simple or head lease (worked out when you grant, renew or extend the lease); and (b) what would have been that market value if you had not granted, renewed or extended the lease; and (c) any premium paid or payable to you for the grant, renewal or extension
H2	Receipt for event relating to a CGT asset	The money or other consideration you received, or are entitled to receive, because of the act, transaction or event
K9	Entitlement to receive payment of a *carried interest	The amount of the payment, to the extent that it is a payment of the *carried interest

- (3) In working out the \*market value of the property the subject of the grant, renewal or extension of a long-term lease:
- (a) include the market value of any building, part of a building, structure or improvement that is treated as a separate \*CGT asset from the property; and
  - (b) disregard any \*depreciating assets for whose decline in value the lessor has deducted or can deduct an amount under this Act.

Note: Subdivision 108-D sets out when a building, structure or improvement is treated as a separate CGT asset.

- (4) In working out the amount of any premium paid or payable to the lessor for the grant, renewal or extension of a long-term lease, disregard any part of it that is attributable to a \*depreciating asset of that kind.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 116-25

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The payment of any premium can include giving property: see section 103-5.

- (5) In working out the proceeds of a \*CGT event that is a \*supply, disregard the amount of your \*net GST (if any) on the supply.

## **Modifications to general rules**

### **116-25 Table of modifications to the general rules**

There are 6 modifications to the general rules that *may* be relevant to a \*CGT event. This table tells you:

- each \*CGT event for which the general rules about \*capital proceeds are relevant; and
- the modifications that can apply to that event; and
- any special rules that apply to that event.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Capital proceeds modifications**

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Event number	Description of event:	Only these modifications can apply:	Special rules:
A1	Disposal of a CGT asset	1, 2, 3, 4, 5, 6	If the *disposal is because another entity exercises an option: see section 116-65 If the disposal is of *shares or an interest in a trust: see section 116-80 If the disposal is a gift for which a section 30-212 valuation is obtained: see section 116-100 If a roll-over under Subdivision 310-D applies: see section 116-110 If the disposal is a disposal of part of an interest in a *mining, quarrying or prospecting right under a *farm-in farm-out arrangement: see section 116-115 If the disposal involves a *look-through earnout right: see section 116-120
B1	Use and enjoyment before title passes	1, 2, 3, 4, 5, 6	None
C1	Loss or destruction of a CGT asset	2, 3, 4, 6	None
C2	Cancellation, surrender and similar endings	1, 2, 3, 4, 6	See sections 116-75, 116-80, 116-110 and 116-115
C3	End of option to acquire shares etc.	2, 3, 4, 6	None

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules  
**Part 3-1** Capital gains and losses: general topics  
**Division 116** Capital proceeds

Section 116-25

<b>Capital proceeds modifications</b>			
<b>Event number</b>	<b>Description of event:</b>	<b>Only these modifications can apply:</b>	<b>Special rules:</b>
D1	Creating contractual or other rights	1, 2, 3, 4, 6	None
D2	Granting an option	1, 2, 3, 4, 6	See section 116-70
D3	Granting a right to income from mining	1, 2, 3, 4, 6	None
D4	Entering into a conservation covenant	2, 3, 4, 5, 6	116-105
E1	Creating a trust over a CGT asset	1, 2, 3, 4, 5, 6	None
E2	Transferring a CGT asset to a trust	1, 2, 3, 4, 5, 6	If a roll-over under Subdivision 310-D applies: see section 116-110
E8	Disposal by beneficiary of capital interest	1, 2, 3, 4, 5, 6	See section 116-80
F1	Granting a lease	2, 3, 4, 6	None
F2	Granting a long-term lease	2, 3, 4, 6	None
F4	Lessee receives payment for changing lease	2, 3, 4, 6	None
F5	Lessor receives payment for changing lease	2, 3, 4, 6	None
H2	Receipt for event relating to a CGT asset	2, 3, 4, 6	None
K6	Pre-CGT shares or trust interest	1, 2, 3, 4, 5, 6	None
K9	Entitlement to receive payment of a *carried interest	2, 3, 4, 6	None

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



### **116-30 Market value substitution rule: modification 1**

#### *No capital proceeds*

- (1) If you received no \*capital proceeds from a \*CGT event, you are taken to have received the \*market value of the \*CGT asset that is the subject of the event. (The market value is worked out as at the time of the event.)

Example: You give a CGT asset to another entity. You are taken to have received the market value of the CGT asset.

#### *There are capital proceeds*

- (2) The \*capital proceeds from a \*CGT event are replaced with the \*market value of the \*CGT asset that is the subject of the event if:
- (a) some or all of those proceeds cannot be valued; or
  - (b) those capital proceeds are more or less than the market value of the asset and:
    - (i) you and the entity that \*acquired the asset from you did *not* deal with each other at \*arm's length in connection with the event; or
    - (ii) the CGT event is CGT event C2 (about cancellation, surrender and similar endings).
- (The market value is worked out as at the time of the event.)
- (2A) Subsection (2) does not apply if there is a partial roll-over for the \*CGT event because of section 124-150.
- (2B) Subsection (2) does not apply to a situation that would otherwise be covered by paragraph (2)(b) if the \*CGT event is \*CGT event C2 (about cancellation, surrender and similar endings) and the \*CGT asset that is the subject of the event is:
- (a) a \*share in a company that has at least 300 \*members and is not a company that is covered by section 116-35; or
  - (b) a unit in a unit trust that has at least 300 unit holders and is not a trust that is covered by section 116-35.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 116-30

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Note: So, for one of these assets, the capital proceeds for the cancellation will be what you actually received.

- (2C) Subsection (2) does not apply if:
- (a) you are a \*complying superannuation fund, a \*complying approved deposit fund or a \*pooled superannuation trust; and
  - (b) the \*capital proceeds from the \*CGT event exceed the \*market value of the \*CGT asset; and
  - (c) assuming the capital proceeds were your \*statutory income, the proceeds would be \*non-arm's length income.

*Market value for CGT events C2 and D1*

- (3) Subsection (1) does not apply to:
- (a) these examples of \*CGT event C2:
    - (i) the expiry of a \*CGT asset you own;
    - (ii) the cancellation of your \*statutory licence; or
  - (b) \*CGT event D1 (about creating contractual or other rights).
- (3A) If you need to work out the \*market value of a \*CGT asset that is the subject of \*CGT event C2, work it out as if the event had not occurred and was never proposed to occur.

Example: A company cancels shares you own in it. You work out the market value of the shares by disregarding the cancellation.

*CGT assets the subject of certain events*

- (4) To avoid doubt, the \*CGT asset that is the subject of a \*CGT event specified in this table is the asset so specified.

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**\*CGT assets the subject of certain events**

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**For this**

**\*CGT event:      This asset is the subject of the event:**

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D1                      the right you created

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D2                      the option you granted

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D3                      the right you granted

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**\*CGT assets the subject of certain events**

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**For this**

**\*CGT event: This asset is the subject of the event:**

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E8 your interest or part interest in the trust capital

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K6 the \*share or interest you \*acquired before 20 September 1985

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*Carried interests*

- (5) This section does not apply to \*CGT event A1 or C2 to the extent that the CGT event is constituted by ceasing to own:
- (a) the \*carried interest of a \*general partner in a \*VCLP, an \*ESVCLP or an \*AFOF or a \*limited partner in a \*VCMP; or
  - (b) an entitlement to receive a payment of such a carried interest.

Note: This section does not apply to ESS interests acquired under employee share schemes: see subsection 130-80(4).

## **116-35 Companies and trusts that are not widely held**

*Coverage*

- (1) A company is covered by this section if subsection (3) or (5) applies to the company.
- (2) A unit trust is covered by this section if subsection (4) or (5) applies to the trust.

*Concentrated ownership*

- (3) This subsection applies to a company if an individual owns, or up to 20 individuals own between them, directly or indirectly (through one or more interposed entities) and for their own benefit, \*shares in the company:
  - (a) carrying \*fixed entitlements to at least 75% of the company's income or at least 75% of the company's capital; or
  - (b) carrying at least 75% of the voting power in the company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 116-35

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- (4) This subsection applies to a trust if an individual owns, or up to 20 individuals own between them, directly or indirectly (through one or more interposed entities) and for their own benefit, units in the trust:
- (a) carrying \*fixed entitlements to at least 75% of the trust's income or at least 75% of the trust's capital; or
  - (b) if unit holders of the trust have a right to vote in respect of activities of the trust—carrying at least 75% of the voting power in the trust.

*Possible variation of rights*

- (5) This subsection applies to a company or trust if, because of:
- (a) any provision in the entity's constituent document, or in any contract, agreement or instrument:
    - (i) authorising the variation or abrogation of rights attaching to any of the \*shares or units in the entity; or
    - (ii) relating to the conversion, cancellation, extinguishment or redemption of any of those shares or units; or
  - (b) any contract, \*arrangement, option or instrument under which a person has power to acquire any of those shares or units; or
  - (c) any power, authority or discretion in a person in relation to the rights attaching to any of those shares or units;

it is reasonable to conclude that the rights attaching to any of those shares or units are capable of being varied or abrogated in such a way (even if they are not in fact varied or abrogated in that way) that, directly or indirectly, subsection (3) or (4) would apply to the entity.

*Single individual*

- (6) For the purposes of subsections (3) and (4), all of the following are taken to be a single individual:
- (a) an individual, whether or not the individual holds \*shares or units in the entity concerned;
  - (b) the individual's \*associates;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) for any shares or units in respect of which other individuals are nominees of the individual or of the individual's associates—those other individuals.

### **116-40 Apportionment rule: modification 2**

- (1) If you receive a payment in connection with a transaction that relates to more than one \*CGT event, the *capital proceeds* from each event are so much of the payment as is reasonably attributable to that event.

Example: You sell a block of land and a boat for a total of \$100,000. This transaction involves 2 CGT events.

The \$100,000 must be divided among the 2 events. The capital proceeds from the disposal of the land are so much of the \$100,000 as is reasonably attributable to it. The rest relates to the boat.

- (2) If you receive a payment in connection with a transaction that relates to one \*CGT event and something else, the *capital proceeds* from the event are so much of the payment as is reasonably attributable to the event.

Example: You are an architect. You receive \$70,000 for selling a block of land and giving advice to the new owner. This transaction involves one CGT event: the disposal of the land.

The capital proceeds from the disposal of the land is so much of the \$70,000 as is reasonably attributable to that disposal.

- (3) The payment can include giving property: see section 103-5.

### **116-45 Non-receipt rule: modification 3**

- (1) The \*capital proceeds from a \*CGT event are reduced if:
- you are not likely to receive some or all (the *unpaid amount*) of those proceeds; and
  - this is not because of anything you (or your \*associate) have done or omitted to do; and
  - you took all reasonable steps to get the unpaid amount paid.

The capital proceeds are reduced by the unpaid amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: This rule exists because the general rules treat you as having received an amount when you are entitled to receive it.

Example You sell a painting to another entity for \$5,000 (the capital proceeds). You agree to accept monthly instalments of \$100.  
You receive \$2,000, but then the other entity stops making payments. It becomes clear that you are not likely to receive the remaining \$3,000. The capital proceeds are reduced to \$2,000.

- (2) There is a further consequence if:
- (a) those proceeds are reduced by the unpaid amount; but
  - (b) you later receive a part of that amount.

Those proceeds are increased by that part.

- (3) This Part and Part 3-3 apply to the debt owed to you (the unpaid amount) as if it were not a \*CGT asset.

**116-50 Repaid rule: modification 4**

- (1) The \*capital proceeds from a \*CGT event are reduced by:
- (a) any part of them that you repay; or
  - (b) any compensation you pay that can reasonably be regarded as a repayment of part of them.

However, the capital proceeds are not reduced by any part of the payment that you can deduct.

Example: You sell a block of land for \$50,000 (the capital proceeds). The purchaser later finds out that you misrepresented a term in the contract. The purchaser sues you and the court orders you to pay \$10,000 in damages to the purchaser.

The capital proceeds are reduced by \$10,000.

- (2) The payment can include giving property: see section 103-5.

**116-55 Assumption of liability rule: modification 5**

The \*capital proceeds from a \*CGT event are increased if another entity \*acquires the \*CGT asset (the subject of the event) subject to a liability by way of security over the asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

They are increased by the amount of the liability the other entity assumes.

Example: You sell land for \$150,000. You receive \$50,000 (the capital proceeds) and the buyer becomes responsible for a \$100,000 liability under an outstanding mortgage. The capital proceeds are increased by \$100,000 to \$150,000.

### **116-60 Misappropriation rule: modification 6**

- (1) The \*capital proceeds from a \*CGT event are reduced if your employee or \*agent misappropriates (whether by theft, embezzlement, larceny or otherwise) all or part of those proceeds.

Note: This rule exists because the general rules treat you as having received an amount when you are entitled to receive it.

- (2) The \*capital proceeds are reduced by the amount misappropriated.
- (3) There is a further consequence if:
- (a) those proceeds are reduced by the amount misappropriated; and
  - (b) you later receive an amount as \*recoupment of all or part of the amount misappropriated.

Those proceeds are increased by the amount received.

- (4) This Part and Part 3-3 apply to the debt owed to you (the amount misappropriated) as if it were not a \*CGT asset.
- (5) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purposes of giving effect to this section for an income year if:
- (a) you discover the misappropriation, or you receive an amount as \*recoupment of all or part of the amount misappropriated, after you lodged your \*income tax return for the income year; and
  - (b) the amendment is made at any time during the period of 4 years starting immediately after you discover the misappropriation or receive the amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 116-65

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## Special rules

### 116-65 Disposal etc. of a CGT asset the subject of an option

- (1) This section applies if:
  - (a) you granted, renewed or extended an option to create (including grant or issue) or \*dispose of a \*CGT asset; and
  - (b) another entity exercises the option; and
  - (c) because of the exercise of the option, you create (including grant or issue) or dispose of the CGT asset.
- (2) The \*capital proceeds from the creation (including grant or issue) or disposal include any payment you received for granting, renewing or extending the option.
- (3) The payment can include giving property: see section 103-5.

### 116-70 Option requiring both acquisition and disposal etc.

- (1) This section applies if:
  - (a) you granted, renewed or extended an option; and
  - (b) the option requires you both to \*acquire, and to create (including grant or issue) or \*dispose of, a \*CGT asset.
- (2) The option is treated as 2 separate options and half of the \*capital proceeds from the grant, renewal or extension is attributed to each option.

### 116-75 Special rule for CGT event happening to a lease

The \*capital proceeds from the expiry, surrender or forfeiture of a lease include any payment (because of the lease ending) by the lessor to the lessee for expenditure of a capital nature incurred by the lessee in making improvements to the leased property.

The payment or expenditure can include giving property: see section 103-5.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



### **116-80 Special rule if CGT asset is shares or an interest in a trust**

- (1) This section sets out what happens if:
- (a) there is a fall in the \*market value of a \*personal use asset (other than a car, motor cycle or similar vehicle) or a \*collectable of a company or trust; and
  - (b) \*CGT event A1, C2 or E8 happens to:
    - (i) \*shares you own in the company (or in a company that is a member of the same \*wholly-owned group); or
    - (ii) an interest you have in the trust.

Note: The full list of CGT events is in section 104-5.

- (2) The \*capital proceeds from the event are replaced with the \*market value of the \*shares, or the interest in the trust.

The market value is worked out as at the time of the event as if the fall in market value of the \*personal use asset or \*collectable had *not* occurred.

Note: You may also make a collectable loss: see CGT event K5.

### **116-85 Section 47A of 1936 Act applying to rolled-over asset**

- (1) You reduce the \*capital proceeds from a \*CGT event that happens in relation to a \*CGT asset you have if the conditions in this table are satisfied.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 116-95

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**Conditions for reduction**

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**Item Condition**

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- |   |   |
|---|---|
| 1 | You must have *acquired the asset from a company or *CFC  |
| 2 | Either:<br>(a) the company obtained a roll-over for the *CGT event that resulted in your *acquisition of the asset; or<br>(b) the *CFC obtained a roll-over for that event in applying Division 7 of Part X of the <i>Income Tax Assessment Act 1936</i> for the purpose of working out the *attributable income of a company in relation to any entity except a roll-over under Subdivision 124-J (about Crown leases), 124-K (about depreciating assets) or 124-L (about prospecting and mining entitlements) |
| 3 | The company or *CFC is taken, under section 47A of the <i>Income Tax Assessment Act 1936</i> , to have paid you a dividend in relation to that event and some or all of the dividend is included in your assessable income under section 44 of that Act   |
- 

Note: For roll-overs: see Divisions 122, 124 and 126.

- (2) The reduction is the lesser of:
- (a) the amount of the dividend; and
  - (b) the amount of any \*capital gain that, apart from the roll-over, the company or \*CFC would have made from the \*CGT event if its \*capital proceeds from the event had been the asset's \*market value (at the time of the event).

Note: This section is disregarded in calculating the attributable income of a CFC: see section 410 of the *Income Tax Assessment Act 1936*.

### 116-95 Company changes residence from an unlisted country

- (1) This section sets out what happens if:
- (a) a \*CFC ceases at a time (the **residency change time**) to be a resident of an \*unlisted country and becomes a resident of a \*listed country; and
  - (aa) subsection 457(3) of the *Income Tax Assessment Act 1936* does not apply to the change of residence; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) because of the change in its residency status, an amount is included in an entity's assessable income under section 457 of the *Income Tax Assessment Act 1936* (including because of paragraph 58(1)(d) of the *Taxation Laws Amendment (Foreign Income) Act 1990*); and
  - (c) a \*CGT event happens in relation to a \*CGT asset (the **CFC asset**) that is \*taxable Australian property and that the CFC owned since the residency change time.
- (2) If the conditions in subsection (3) are satisfied, the \*capital proceeds from the \*CGT event are reduced by the amount worked out under subsection (4). If the conditions in subsection (5) are satisfied, those capital proceeds are increased by the amount worked out under subsection (6).

*Reduction of capital proceeds*

- (3) If all the \*CFC's assets were \*disposed of at the residency change time for their \*market values in the circumstances mentioned in subparagraph 457(2)(a)(ii) of the *Income Tax Assessment Act 1936*:
- (a) \*distributable profits of the CFC of a particular amount (the **distributable profit amount**) would be created, or its distributable profits would be increased by an amount (also the **distributable profit amount**); and
  - (b) the CFC would have made a profit (the **CFC asset profit**) on the disposal of the CFC asset.
- (4) The \*capital proceeds are reduced by:

$$\text{Distributable profit amount} \times \frac{\text{CFC asset profit}}{\text{Total asset profits}}$$

where:

**total asset profits** is the sum of the profits that the CFC would have made if all its assets were \*disposed of at the residency change time for their \*market values (ignoring disposals that would not result in a profit).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 116-100

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*Increase in capital proceeds*

- (5) If all the \*CFC's assets were \*disposed of at the residency change time for their \*market values in the circumstances mentioned in subparagraph 457(2)(a)(ii) of the *Income Tax Assessment Act 1936*:
- (a) the \*distributable profits of the CFC would be reduced by an amount (the **distributable profit reduction amount**); and
  - (b) the CFC would have made a loss (the **CFC asset loss**) on the disposal of the CFC asset.
- (6) The \*capital proceeds are increased by:

$$\text{Distributable profit reduction amount} \times \frac{\text{CFC asset loss}}{\text{Total asset losses}}$$

where:

**total asset losses** is the sum of the losses that the CFC would have made if all its assets were \*disposed of at the residency change time for their \*market values (ignoring disposals that would not result in a loss).

Note: This section is disregarded in calculating the attributable income of a CFC: see section 410 of the *Income Tax Assessment Act 1936*.

**116-100 Gifts of property**

- (1) If CGT event A1 is the giving of a gift of property by you for which a valuation under section 30-212 is obtained, you may choose that the \*capital proceeds from the event are replaced with the value of the property as determined under the valuation.
- (2) You can only make this choice if the valuation was made no more than 90 days before or after the CGT event.

**116-105 Conservation covenants**

If \*CGT event D4 happens because you enter into a \*conservation covenant over land you own and you can deduct an amount under

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division 31 because you enter into the covenant, the \*capital proceeds from the event are the amount you can deduct.

Note: To get a deduction under Division 31, you must not receive money, property or other material benefit for entering into the covenant.

### **116-110 Roll-overs for merging superannuation funds**

If a roll-over is chosen under Subdivision 310-D in relation to \*CGT event A1, C2 or E2, the \*capital proceeds of the transferring entity (within the meaning of that Division) from the event are the amount worked out under subsection 310-55(1) or 310-60(3).

### **116-115 Farm-in farm-out arrangements**

(1) If:

- (a) \*CGT event A1 is the \*disposal of part of your interest in a \*mining, quarrying or prospecting right; and
- (b) the part is disposed of under a \*farm-in farm-out arrangement; and
- (c) you have received an \*exploration benefit in respect of the event happening;

in working out the \*capital proceeds for the CGT event, treat as zero the \*market value of the exploration benefit.

(2) If:

- (a) \*CGT event C2 arises as a result of an \*exploration benefit being provided to you; and
- (b) the exploration benefit is provided under a \*farm-in farm-out arrangement;

in working out the \*capital proceeds for the CGT event, treat as zero the \*market value of the exploration benefit.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**116-120 Disposals of assets involving look-through earnout rights**

*Consequences for capital proceeds*

- (1) If \*CGT event A1 happens because you \*dispose of a \*CGT asset, your \*capital proceeds from the disposal:
  - (a) do not include the value of any \*look-through earnout right relating to the CGT asset and the disposal; and
  - (b) are increased by any \*financial benefit that you receive under such a look-through earnout right; and
  - (c) are reduced by any financial benefit that you provide under such a look-through earnout right.

*Remaking choices affected by the look-through earnout right*

- (2) Despite section 103-25, you may remake any choice you made under this Part or Part 3-3 in relation to the \*CGT event if:
  - (a) you provide or receive a \*financial benefit under such a \*look-through earnout right; and
  - (b) you remake the choice at or before the time you are required to lodge your \*income tax return for the income year in which the financial benefit is provided or received.

*Amending assessments affected by the look-through earnout right*

- (3) The Commissioner may amend an assessment of a \*tax-related liability if:
  - (a) an entity provides or receives a \*financial benefit under such a \*look-through earnout right; and
  - (b) the amount of the tax-related liability:
    - (i) depends on that entity's taxable income for the income year in which the \*CGT event happens; or
    - (ii) is otherwise affected by that right's character as a look-through earnout right; and
  - (c) the Commissioner makes the amendment before the end of the 4-year period starting at the end of the income year in

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

which the last possible financial benefit becomes or could become due under the look-through earnout right.

The tax-related liability need not be a liability of that entity.

Note: Subparagraph (b)(ii) covers changes to the amount of that tax-related liability that happen directly or indirectly because of subsection (1) or (2).

- (4) If at a particular time a right is taken never to have been a \*look-through earnout right because of subsection 118-565(2), the Commissioner may amend an assessment of a \*tax-related liability for up to 4 years after that time if:
- (a) an entity provides or receives a \*financial benefit under the right; and
  - (b) the amount of the tax-related liability:
    - (i) depends on that entity's taxable income for the income year in which the \*CGT event happens; or
    - (ii) was otherwise affected by that right's character as a look-through earnout right before subsection 118-565(2) applied.

The tax-related liability need not be a liability of that entity.

Note: Subsection 118-565(2) restricts look-through earnout rights to rights to financial benefits over a period not exceeding 5 years from the end of the income year in which the CGT event happens.

- (5) If, after providing or receiving a \*financial benefit under a right referred to in subsection (3) or (4):
- (a) you are dissatisfied with an assessment referred to in that subsection; and
  - (b) the Commissioner notifies you that the Commissioner has decided under that subsection not to amend your assessment;
- you may object against the assessment, to the extent that it does not take account of that right's character (as a \*look-through earnout right or not such a right), in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Division 118—Exemptions**

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### **Guide to Division 118**

#### **118-1 What this Division is about**

This Division sets out various exemptions for many capital gains and losses.

There are other provisions that provide exemptions from CGT liability, for example, Division 104 (exceptions from CGT events), Division 152 (small business relief) and Division 50 (exempt entities).

Note 1: There are also these exemptions in the *Income Tax Assessment Act 1936*:

- section 23AH (about foreign branch gains and losses of companies);
- section 26BC (about securities lending arrangements);
- section 121AS (about demutualisation of insurance companies);
- sections 121EL, 121ELA and 121ELB (about offshore banking units);
- section 159GZZZN (about buy-back and cancellation of shares);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- section 315 (about superannuation and related businesses);
- section 408 (about calculating the attributable income of a CFC).

Note 2: There are also exemptions in Division 54.

Note 3: There are also exemptions in Divisions 315 and 316 (about demutualisation of certain insurers).

## **Subdivision 118-A—General exemptions**

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#### **Exempt or loss-denying transactions**

118-37	Compensation, damages etc.
118-40	Expiry of a lease
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118-70	Transactions by exempt entities
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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Section 118-5**

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118-77 Native title and rights to native title benefits

**Boat capital gains**

118-80 Reduction of boat capital gain

**Special disability trusts**

118-85 Special disability trusts

**Exempt assets**

**118-5 Cars, motor cycles and valour decorations**

A \*capital gain or \*capital loss you make from any of these \*CGT assets is disregarded:

- (a) a \*car, motor cycle or similar vehicle;
- (b) a decoration awarded for valour or brave conduct (unless you paid money or gave any other property for it).

**118-10 Collectables and personal use assets**

- (1) A \*capital gain or \*capital loss you make from a \*collectable is disregarded if the first element of its \*cost base, or the first element of its \*cost if it is a \*depreciating asset, is \$500 or less.

Example: On 10 July 2001, Gayle buys a print for \$450 and hangs it in her home. On 30 November 2001 she takes the print to her office and hangs it in the lobby. Gayle self assesses the effective life of the print to be 7 years.

Gayle sells the print to Anna for \$700 on 2 January 2002.

How much can Gayle deduct for the 2001-02 income year?

The cost of the print is \$450. Gayle chooses to use the prime cost method to calculate its decline in value.

The print's decline in value is:

$$\$450 \times \frac{177}{365} \times \frac{100\%}{7 \text{ years}}$$

= \$31

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Gayle can deduct \$6 as the taxable use portion of the decline in value under Division 40:

$$\frac{34}{177} \times 31$$

Due to the balancing adjustment event that occurred on 2 January 2002, \$54 is included in Gayle's assessable income for the 2001-02 income year under section 40-285. The amount is reduced for non-taxable use by section 40-290.

A capital gain of \$202 is disregarded under this section because the asset is a collectable acquired for less than \$500.

- (2) However, there is a special rule if the \*collectable is an interest in one of these \*CGT assets:
- (a) \*artwork, jewellery, an antique, or a coin or medallion;
  - (b) a rare folio, manuscript or book;
  - (c) a postage stamp or first day cover.

A \*capital gain or \*capital loss you make from the interest is disregarded only if the \*market value of the asset (when you \*acquired the interest) is \$500 or less.

Note: If you last acquired the interest before 16 December 1995, a capital gain or loss is disregarded if you acquired the *interest* for \$500 or less: see section 118-10 of the *Income Tax (Transitional Provisions) Act 1997*.

- (3) A \*capital gain you make from a \*personal use asset, or part of the asset, is disregarded if the first element of the asset's \*cost base, or the first element of its \*cost if it is a \*depreciating asset, is \$10,000 or less.

Note: A capital loss you make from a personal use asset is disregarded: see subsection 108-20(1).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**118-12 Assets used to produce exempt income etc.**

- (1) A \*capital gain or \*capital loss you make from a \*CGT asset that you used solely to produce your \*exempt income or \*non-assessable non-exempt income is disregarded.
- (2) However, the exemption does not apply if the asset was used to gain or produce an amount that is \*non-assessable non-exempt income because of:
  - (a) any of these provisions of this Act:
    - (i) section 59-15 (mining payments);
    - (ia) section 59-35 (amounts that would be mutual receipts but for prohibition on distributions to members or issue of MCIs);
    - (ii) subsection 70-90(2) (disposing of trading stock outside the ordinary course of business);
    - (iii) section 86-30 (income of a personal services entity);
    - (iv) subsection 86-35(1) (payment by a personal services entity);
    - (v) subsection 86-35(2) (share of personal services entity's net income);
    - (vi) section 240-40 (treatment of arrangement payments);
    - (via) section 242-40 (about luxury car lease payments);
    - (vib) section 768-5 (foreign equity distributions on participation interests);
    - (vii) section 802-15 (foreign residents—exempting CFI from Australian tax);
    - (viii) section 840-815 (foreign residents—final withholding tax on managed investment trust income); or
  - (b) any of these provisions of the *Income Tax Assessment Act 1936*:
    - (i) section 23AH (foreign branch profits of Australian companies);
    - (ii) section 23AI (amounts paid out of attributed income);
    - (iv) section 23AK (attributed foreign investment fund income);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (v) subsection 23L(1) (fringe benefits);
- (vi) subsection 99B(2A) (attributed trust income);
- (vii) section 128D (dividends, royalties and interest subject to withholding tax);
- (viii) subsection 271-105(3) in Schedule 2F (amounts subject to family trust distribution tax).

Note: These provisions make amounts non-assessable non-exempt income to prevent them being double taxed rather than to remove them entirely from the taxation system. Therefore, the policy reason for disregarding gains and losses does not apply to assets used to produce those amounts.

### **118-13 Shares in a PDF**

A \*capital gain or \*capital loss you make from a \*CGT event happening in relation to \*shares in a \*PDF is disregarded.

### **118-15 Registered emissions units**

- (1) A \*capital gain or \*capital loss you make from a \*registered emissions unit is disregarded.
- (3) A \*capital gain or \*capital loss you make from a right to receive an \*Australian carbon credit unit is disregarded.

### **Anti-overlap provisions**

#### **118-20 Reducing capital gains if amount otherwise assessable**

- (1) A \*capital gain you make from a \*CGT event is reduced if, because of the event, a provision of this Act (outside of this Part) includes an amount (for any income year) in:
  - (a) your assessable income or \*exempt income; or
  - (b) if you are a partner in a partnership, the assessable income or exempt income of the partnership.
- (1A) Subsection (1) applies to an amount that, under a provision of this Act (outside of this Part), is included in:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) your assessable income or \*exempt income; or
  - (b) if you are a partner in a partnership, the assessable income or exempt income of the partnership;
- in relation to a \*CGT asset as if it were so included because of the \*CGT event referred to in that subsection if the amount would also be taken into account in working out the amount of a \*capital gain you make.

Note: An example is an amount assessable under Division 16E of Part III of the *Income Tax Assessment Act 1936*, which deals with accruals taxation of certain securities.

(1B) The rule in subsection (1) does not apply to:

- (a) an amount that is taken to be a dividend under section 159GZZZP of the *Income Tax Assessment Act 1936* (which relates to buy-backs of \*shares); or
  - (b) an amount included in assessable income under subsection 207-20(1), 207-35(1) or 207-35(3) of this Act (which relate to franked distributions).
- (2) The gain is reduced to zero if it does *not* exceed:
- (a) the amount included; or
  - (b) if you are a partner, your share (the *partner's share*) of the amount included in the assessable income or \*exempt income of the partnership (calculated according to your entitlement to share in the partnership net income or loss).

Example: Liz bought some land in 1990, as part of a profit-making scheme. In December 1998 she sells it.

Her profit from the sale is \$40,000 and is included in her assessable income under section 6-5 (about ordinary income).

Suppose she made a capital gain from the sale of \$30,000. It is reduced to zero because it does not exceed the amount included.

(3) The gain is reduced by the amount included, or the amount of the partner's share, if the gain exceeds that amount.

Note: These rules are modified for complying superannuation funds that become non-complying and for foreign superannuation funds that become Australian superannuation funds: see Division 295.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (4) A \*capital gain you make from a \*CGT event is reduced by the extent that a provision of this Act (except sections 59-40 and 316-255) treats:
- (a) an amount of your \*ordinary income or \*statutory income from the event as being \*non-assessable non-exempt income; or
  - (b) if you are a partner, your share of the ordinary income or \*statutory income of the partnership from the event (calculated according to your entitlement to share in the partnership net income or loss) as being non-assessable non-exempt income of the partnership.
- (4A) A \*capital gain the trustee of a \*superannuation fund makes from a \*CGT event happening in relation to a \*CGT asset in an income year is reduced if the asset's \*market value was taken into account in working out the fund's income from previous years under section 295-325 or 295-330.
- (4B) The gain is reduced to zero if it does not exceed the amount that would have been the \*capital gain from the \*CGT event if the \*capital proceeds from the event were the asset's \*market value that was taken into account in working out that net previous income. If the gain exceeds that amount, it is reduced by that amount.

*Exceptions*

- (5) The gain is not reduced if an amount is included in your assessable income, or the assessable income of the partnership, for any income year because of a balancing adjustment.
- (6) The gain is not reduced if an amount is included in your \*non-assessable non-exempt income under section 768-5 (about foreign equity distributions on participation interests) because a company makes a \*foreign equity distribution that is:
- (a) debited against a \*share capital account of the company; or
  - (c) debited against an asset revaluation reserve of the company;
- or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (d) directly or indirectly attributable to amounts transferred from such an account or reserve of the company.

**118-21 Carried interests**

*CGT events relating to carried interests not to be treated as income*

- (1) The modifications in subsections (2) and (3) apply if \*CGT event K9 happens in relation to your entitlement to receive a payment of the \*carried interest of a \*general partner in a \*VCLP, an \*ESVCLP or an \*AFOF or a \*limited partner in a \*VCMP.
- (2) These provisions do not apply to the CGT event:
- (a) sections 6-5 (about \*ordinary income), 8-1 (about amounts you can deduct), 15-15 and 25-40 (about profit-making undertakings or plans) and 118-20 (reducing capital gains if amount otherwise assessable);
  - (b) sections 25A and 52 of the *Income Tax Assessment Act 1936* (about profit-making undertakings or schemes).
- (3) Section 6-10 (about \*statutory income) does not apply to the \*CGT event except so far as that section applies in relation to section 102-5 (about net capital gains).

**118-22 Superannuation lump sums and employment termination payments**

In applying section 118-20, treat a \*superannuation lump sum or an \*employment termination payment that you receive as being included in your assessable income.

**118-24 Depreciating assets**

- (1) A \*capital gain or \*capital loss you make from a \*CGT event (that is also a \*balancing adjustment event) that happens to a \*depreciating asset is disregarded if the asset was:
- (a) an asset you \*held; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) if you are a partner, an asset of the partnership; or
- (c) if you are absolutely entitled to the asset as against the trustee of a trust (disregarding any legal disability), an asset of the trustee;

where the decline in value of the asset was worked out under Division 40 (including that Division as it applies under Division 355), or the deduction for the asset was calculated under Division 328, or would have been if the asset had been used.

- (2) However, subsection (1) does not apply to:
  - (a) a \*capital gain or \*capital loss you make from \*CGT event J2 or \*CGT event K7 happening; or
  - (b) a \*depreciating asset for which you or another entity has deducted or can deduct amounts under Subdivision 40-F or 40-G.

### **118-25 Trading stock**

- (1) A \*capital gain or \*capital loss you make from a \*CGT asset is disregarded if, at the time of the \*CGT event, the asset is:
  - (a) your \*trading stock; or
  - (b) if you are a partner, trading stock of the partnership; or
  - (c) if you are absolutely entitled to the asset as against the trustee of a trust (disregarding any legal disability), trading stock of the trustee.
- (2) A \*capital gain or \*capital loss you make in these circumstances is disregarded:
  - (a) you start holding as \*trading stock a \*CGT asset you already own but do not hold as trading stock; and
  - (b) you elect under paragraph 70-30(1)(a) to be treated as having sold the asset for its cost (worked out under that section).

Note 1: Paragraph 70-30(1)(a) allows you to elect the cost of the asset, or its market value, just before it became trading stock.

Note 2: You may make a capital gain or loss if you elect its market value: see CGT event K4.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**118-27 Division 230 financial arrangements and financial arrangements to which Subdivision 250-E applies**

- (1) A \*capital gain or \*capital loss you make:
- (a) from a \*CGT asset; or
  - (b) in creating a CGT asset; or
  - (c) from the discharge of a liability;
- is disregarded if, at the time of the \*CGT event, the asset or liability is, or is part of, a \*Division 230 financial arrangement.
- Note 1: Paragraph (b) is relevant for CGT event D1.  
Note 2: Paragraph (c) is relevant for CGT event L7.
- (2) Subsection (1) does not apply to the following:
- (a) a gain or loss that subsection 230-310(4) (which deals with hedging financial arrangements) provides is to be treated as a \*capital gain or \*capital loss;
  - (b) a loss that is reduced under subsection 230-465(2), to the extent of that reduction (this is the extent to which the loss is of a capital nature).
- (3) Subsection (1) does not apply if the situation that gives rise to the \*CGT event does *not* result in a gain from the arrangement being included in your assessable income under Division 230, or in a loss from the arrangement entitling you to a deduction under Division 230.
- (4) A \*capital gain or \*capital loss you make from a \*CGT asset is disregarded if, at the time of the \*CGT event, the asset is, or is part of, a \*financial arrangement to which Subdivision 250-E applies.

**118-30 Film copyright**

- (1) A \*capital gain or \*capital loss you make from a \*CGT event relating to your interest in the copyright in a film is disregarded if an amount is included in your assessable income under section 26AG (about film proceeds) of the *Income Tax Assessment Act 1936* because of the event.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) If you are a partner in a partnership, a \*capital gain or \*capital loss you make from a \*CGT event relating to the partnership's interest in the copyright in a film is disregarded if an amount is included in the assessable income of a partner (including you) under section 26AG of that Act because of the event.
- (3) If you are absolutely entitled to an interest in the copyright in a film as against the trustee of a trust (disregarding any legal disability), a \*capital gain or \*capital loss you make from a \*CGT event relating to the interest is disregarded if an amount is included in your assessable income or the net income of the trust under section 26AG of that Act because of the event.

### **118-35 R&D**

Disregard a \*capital gain or \*capital loss from a \*CGT event if an amount is included in your assessable income in any income year under section 355-410 (about disposal of R&D results) because of that CGT event.

### **Exempt or loss-denying transactions**

#### **118-37 Compensation, damages etc.**

- (1) A \*capital gain or \*capital loss you make from a \*CGT event relating directly to any of these is disregarded:
  - (a) compensation or damages you receive for:
    - (i) any wrong or injury you suffer in your occupation; or
    - (ii) any wrong, injury or illness you or your \*relative suffers personally;
  - (b) compensation or damages you receive as the trustee of a trust (other than a trust that is a \*complying superannuation entity) for:
    - (i) any wrong or injury a beneficiary of the trust suffers in his or her occupation; or
    - (ii) any wrong, injury or illness a beneficiary of the trust, or the beneficiary's relative, suffers personally;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ba) a \*CGT asset you receive, as a beneficiary of a trust, from the trustee of the trust to the extent that the CGT asset is attributable to compensation or damages that the trustee receives as described in paragraph (b) for:
  - (i) any wrong or injury you suffer in your occupation; or
  - (ii) any wrong, injury or illness you or your relative suffers personally;
- (c) gambling, a game or a competition with prizes;
- (g) a tobacco industry exit grant that you receive under the program known as the Tobacco Growers Adjustment Assistance Programme 2006 if, as a condition of receiving the grant, you entered into an undertaking not to become the owner or operator of any agricultural \*enterprise within 5 years after receiving the grant;
- (ga) a \*water entitlement, to the extent that the CGT event happens because an entity \*derives a \*SRWUIP payment that is \*non-assessable non-exempt income under section 59-65;
- (gb) a \*SRWUIP payment you derive that is non-assessable non-exempt income under section 59-65;
- (h) a right or entitlement to a \*tax offset, a \*deduction, or a similar benefit under an \*Australian law, a \*foreign law or a law of part of a foreign country;
- (i) a variation, transfer or revocation of an allocation (within the meaning of the *National Rental Affordability Scheme Act 2008*);
- (j) anything of economic value provided to you (whether directly or indirectly, such as through an \*NRAS consortium of which you are a \*member) by:
  - (i) a Department of a State or Territory; or
  - (ii) a body (whether incorporated or not) established for a public purpose by or under a law of a State or Territory;in relation to your participation in the \*National Rental Affordability Scheme.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) A \*capital gain or \*capital loss is disregarded if you make it as a result of receiving a payment or property as reimbursement or payment of your expenses, or receiving or using a voucher or certificate, under:
- (a) a scheme established by an \*Australian government agency, a \*local governing body or a \*foreign government agency under an enactment or an instrument of a legislative character; or
  - (b) the General Practice Rural Incentives Program or the Rural and Remote General Practice Program; or
  - (c) the Sydney Aircraft Noise Insulation Project; or
  - (d) the M4/M5 Cashback Scheme; or
  - (e) the Unlawful Termination Assistance Scheme or the Alternative Dispute Resolution Assistance Scheme.
- (3) A \*capital gain you make from compensation you receive under the \*firearms surrender arrangements is disregarded.
- (4) A \*capital gain or \*capital loss you make from a payment you receive is disregarded if:
- (a) you are an Australian resident; and
  - (b) you receive the payment:
    - (i) under the program known as the “German Forced Labour Compensation Programme”; and
    - (ii) from the Foundation known as “Remembrance, Responsibility and Future” or any of the Foundation’s partner organisations; and
  - (c) the payment is in the nature of compensation for:
    - (i) any wrong or injury; or
    - (ii) any loss of, or damage to, property; that you, or another person, suffered as a result of injustices committed during the National Socialist period.
- (5) A \*capital gain or \*capital loss you make as a result of receiving a payment or property is disregarded if:
- (a) you are an individual who is an Australian resident; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) you receive the payment or property from a source in a foreign country; and
- (c) you do not receive the payment or property directly or indirectly from an \*associate of yours; and
- (d) the payment or property you receive is in connection with:
  - (i) any wrong or injury; or
  - (ii) any loss of, or damage to, property; or
  - (iii) any other detriment;  
that you, or another individual, suffered as a result of:
  - (iv) persecution by the National Socialist regime of Germany during the National Socialist period; or
  - (v) persecution by any other enemy of the Commonwealth during the Second World War; or
  - (vi) persecution by an enemy-associated regime during the Second World War; or
  - (vii) flight from persecution mentioned in subparagraph (iv), (v) or (vi); or
  - (viii) participation in a resistance movement during the Second World War against forces of the National Socialist regime of Germany; or
  - (ix) participation in a resistance movement during the Second World War against forces of any other enemy of the Commonwealth.
- (6) For the purposes of subsection (5), the duration of the Second World War includes:
  - (a) the period immediately before the Second World War; and
  - (b) the period immediately after the Second World War.
- (7) For the purposes of subsection (5), a regime is an **enemy-associated regime** if, and only if, it was:
  - (a) in alliance with; or
  - (b) occupied by; or
  - (c) effectively controlled by; or
  - (d) under duress from; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (e) surrounded by;  
either or both of the following:
  - (f) the National Socialist regime of Germany;
  - (g) any other enemy of the Commonwealth.
- (8) Subsection (5) applies to a payment or property received by the \*legal personal representative of an individual in a corresponding way to the way in which that subsection would have applied if the payment or property had been received by the individual.
- (9) Subsection (5) applies to a payment or property received by:
  - (a) the \*legal personal representative of a deceased individual; or
  - (b) the trustee of a trust established by the will of a deceased individual;in a corresponding way to the way in which that subsection would have applied if:
  - (c) the individual had not died; and
  - (d) the payment or property had been received by the individual.

#### **118-40 Expiry of a lease**

A \*capital loss a lessee makes from the expiry, surrender, forfeiture or assignment of a lease (except one granted for 99 years or more) is disregarded if the lessee did not use the lease solely or mainly for the \*purpose of producing assessable income.

#### **118-42 Transfer of stratum units**

If:

- (a) you own land on which there is a building; and
- (b) you subdivide the building into \*stratum units; and
- (c) you transfer each unit to the entity who had the right to occupy it just before the subdivision;

a \*capital gain or \*capital loss you make from transferring the unit is disregarded.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**118-45 Sale of rights to mine**

A \*capital gain or \*capital loss you make from the sale, transfer or assignment of your rights to mine in a particular area in Australia is disregarded if you have \*exempt income for the income year (because of the former section 330-60) from the sale, transfer or assignment.

**118-55 Foreign currency hedging gains and losses**

A \*capital gain or \*capital loss you make from a contract you entered into solely to reduce the risk of financial loss you may suffer from currency exchange rate fluctuations is disregarded if the contract relates to:

- (a) a liability you have to make a payment under another contract; or
- (b) a \*CGT asset that is a right you \*acquired *before* 20 September 1985 to receive money under another contract.

**118-60 Certain gifts**

- (1) A \*capital gain or \*capital loss made from a testamentary gift of property that would have been deductible under section 30-15 if it had not been a testamentary gift is disregarded.
- (1A) If the only reason the gain or loss is not disregarded under subsection (1) is because the property has not been valued by the Commissioner at more than \$5,000, then, for the purposes of that subsection, it is taken to have been so valued.
- (2) A \*capital gain or \*capital loss made from a gift of property that is deductible under section 30-15 because of item 4 or 5 in the table in that section is disregarded.
- (3) However, subsection (2) does not apply if the gift was not a testamentary gift and the property is later \*acquired for less than \*market value by the person who made the gift or an \*associate of that person.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (4) If the gift was a testamentary gift and the property is later \*acquired for less than \*market value by the deceased person's estate or a person (the *deceased's associate*) who:
- (a) is an \*associate of the deceased person's estate; or
  - (b) was an associate of the deceased person immediately before the deceased person's death;
- the \*cost base and the \*reduced cost base of the property in the hands of the estate or the deceased's associate is worked out under section 128-15 as if the property had passed in the estate to the estate or the deceased's associate.

### **118-65 Later distributions of personal services income**

A \*capital loss you make from a payment is disregarded if it is a payment to any entity of:

- (a) \*personal services income included in an individual's assessable income under section 86-15; or
- (b) any other amount that is attributable to that income.

### **118-70 Transactions by exempt entities**

A \*capital loss made by an entity is disregarded if it was an \*exempt entity at the time it made the loss.

### **118-75 Marriage or relationship breakdown settlements**

- (1) A \*capital gain or \*capital loss you make as a result of \*CGT event C2 happening is disregarded if:
- (a) you make the gain or loss in relation to a right that directly relates to the breakdown of a relationship between \*spouses; and
  - (b) at the time of the CGT event:
    - (i) you and your spouse or former spouse are separated; and
    - (ii) there is no reasonable likelihood of cohabitation being resumed.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Example: Maude receives an amount from Claude by way of a settlement directly related to the breakdown of their marriage. CGT event C2 would happen to Maude on satisfaction of her legally enforceable right to the amount. Any capital gain or loss that Maude makes in these circumstances is disregarded.

- (2) For the purposes of this section, the question whether \*spouses or former spouses have separated is to be determined in the same way as it is for the purposes of section 48 of the *Family Law Act 1975* (as affected by sections 49 and 50 of that Act).

**118-77 Native title and rights to native title benefits**

- (1) A \*capital gain or \*capital loss you make is disregarded if:
- (a) you are an \*Indigenous person or an \*Indigenous holding entity; and
  - (b) you make the gain or loss because one of the following things happens in relation to a \*CGT asset mentioned in subsection (2):
    - (i) you transfer the CGT asset to one or more entities that are either Indigenous persons or Indigenous holding entities;
    - (ii) you create a trust, that is an Indigenous holding entity, over the CGT asset;
    - (iii) your ownership of the CGT asset ends, resulting in \*CGT event C2 happening in relation to the CGT asset.
- (2) The \*CGT assets are as follows:
- (a) \*native title;
  - (b) the right to be provided with a \*native title benefit.

Note: Paragraph (a) does not require a determination of native title under the *Native Title Act 1993*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Boat capital gains

### 118-80 Reduction of boat capital gain

A \*capital gain you make from a \*CGT event happening in relation to a boat for an income year is reduced by an amount that is a quarantined amount for you for the income year under subsection 26-47(2).

Note: Section 26-47 denies deductions for the excess of boat expenditure over boat income.

## Special disability trusts

### 118-85 Special disability trusts

- (1) A \*capital gain or \*capital loss you make is disregarded if you make it from transferring a \*CGT asset for no consideration to:
  - (a) a \*special disability trust; or
  - (b) a trust that becomes a special disability trust as soon as practicable after the transfer.
- (2) In working out whether the transfer was for consideration, disregard any interest in the trust.

## Subdivision 118-B—Main residence

### Guide to Subdivision 118-B

#### 118-100 What this Subdivision is about

You can ignore a capital gain or capital loss you make from a CGT event that happens to a dwelling that is your main residence.

However, this exemption may not apply if you are a foreign resident, and may not apply in full if:

- it was your main residence during part only of your ownership period; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- it was used for the purpose of producing assessable income.

There are special rules for dwellings passed from, or owned by a trustee of, a deceased estate.

There is a similar exemption for a CGT event that is a compulsory acquisition (or similar arrangement) happening to adjacent land but not also to the dwelling itself.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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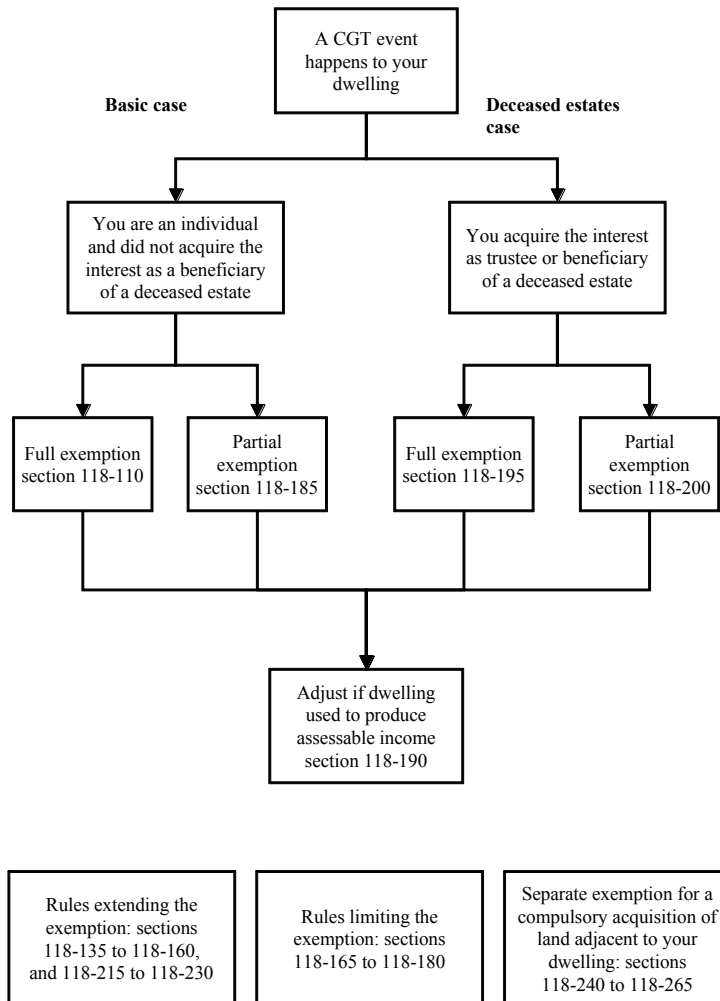
**118-105 Map of this Subdivision**

*Event that may attract exemption*

*The 2 different cases*

*Extent of exemption depends on whether dwelling is your main residence throughout ownership period (and on other factors for deceased estates)*

*Other rules that apply*



Note: The exemption may not be available for the main residence of a foreign resident.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Basic case and concepts

### 118-110 Basic case

- (1) A \*capital gain or \*capital loss you make from a \*CGT event that happens in relation to a \*CGT asset that is a \*dwelling or your \*ownership interest in it is disregarded if:
- (a) you are an individual; and
  - (b) the dwelling was your main residence throughout your \*ownership period; and
  - (c) the interest did not \*pass to you as a beneficiary in, and you did not \*acquire it as a trustee of, the estate of a deceased person.

Note 1: You may make a capital gain or capital loss even though you comply with this section if the dwelling was used for the purpose of producing assessable income: see section 118-190.

Note 2: There is a separate rule for beneficiaries and trustees of deceased estates: see section 118-195.

Note 3: There is a separate rule for a CGT event that is a compulsory acquisition (or similar arrangement) happening to adjacent land but not also to the dwelling itself: see section 118-245.

- (2) Only these \*CGT events are relevant:
- (a) CGT events A1, B1, C1, C2, E1, E2, F2, K3, K4 and K6 (except one involving the forfeiting of a deposit); and
  - (b) a CGT event that involves the forfeiting of a deposit as part of an uninterrupted sequence of transactions ending in one of the events specified in paragraph (a) subsequently happening.

Note: The full list of CGT events is in section 104-5.

- (3) However, this section does not apply if, at the time the \*CGT event happens, you:
- (a) are an \*excluded foreign resident; or
  - (b) are a foreign resident who does not satisfy the \*life events test.

- (4) You are an *excluded foreign resident*, at a particular time, if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) you are a foreign resident at that time; and
  - (b) the continuous period ending at that time for which you have been a foreign resident is more than 6 years.
- (5) You satisfy the *life events test*, at the time a \*CGT event happens, if:
- (a) the continuous period ending at that time for which you have been a foreign resident is 6 years or less; and
  - (b) you are covered by any of the following subparagraphs:
    - (i) you or your \*spouse has had a \*terminal medical condition that existed at any time during that period of foreign residency;
    - (ii) your \*child has had a terminal medical condition that existed at any time during that period of foreign residency, and that child was under 18 years of age at at least one such time;
    - (iii) your spouse, or your child who was under 18 years of age at death, has died during that period of foreign residency;
    - (iv) the CGT event happens because of a matter referred to in a paragraph of subsection 126-5(1) involving you and your spouse (or former spouse).

**118-115 Meaning of *dwelling***

- (1) A *dwelling* includes:
- (a) a unit of accommodation that:
    - (i) is a building or is contained in a building; and
    - (ii) consists wholly or mainly of residential accommodation; and
  - (b) a unit of accommodation that is a caravan, houseboat or other mobile home; and
  - (c) any land immediately under the unit of accommodation.
- (2) However, except as provided in section 118-120, a *dwelling* does not include any land adjacent to a building.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



## **118-120 Extension to adjacent land etc.**

### *Adjacent land*

- (1) This Subdivision applies to a \*dwelling's \*adjacent land (if the same \*CGT event happens to that land or your \*ownership interest in it) as if it were a dwelling.
- (2) Land adjacent to a \*dwelling is its **adjacent land** to the extent that the land was used primarily for private or domestic purposes in association with the dwelling.
- (3) The maximum area of \*adjacent land covered by the exemption for the \*CGT event (the **current event**) is 2 hectares, less the area of the land immediately under the \*dwelling.
- (4) However, if subsection 118-245(2) applied to you for an earlier \*CGT event that happened in relation to:
  - (a) other land that was part of the \*dwelling's \*adjacent land at the time of the earlier CGT event; or
  - (b) your \*ownership interest in that other land at that time;the maximum area of land covered by the exemption for the current event is the \*maximum exempt area for the current event and the dwelling.

### *Adjacent structures*

- (5) This Subdivision applies to an \*adjacent structure of a flat or home unit (if the same \*CGT event happens to that structure or your \*ownership interest in it) as if it were a \*dwelling.
- (6) A garage, storeroom or other structure associated with a flat or home unit is an **adjacent structure** of the flat or home unit to the extent that the structure was used primarily for private or domestic purposes in association with the flat or home unit.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**118-125 Meaning of *ownership period***

Your *ownership period* of a \*dwelling is the period *on or after* 20 September 1985 when you had an \*ownership interest in:

- (a) the dwelling; or
- (b) land (\*acquired *on or after* 20 September 1985) on which the dwelling is later built.

**118-130 Meaning of *ownership interest in land or a dwelling***

- (1) You have an *ownership interest* in land or a \*dwelling if:
  - (a) for land—you have a legal or equitable interest in it or a right to occupy it; or
  - (b) for a dwelling that is not a flat or home unit—you have a legal or equitable interest in the land on which it is erected, or a licence or right to occupy it; or
  - (c) for a flat or home unit—you have:
    - (i) a legal or equitable interest in a \*stratum unit in it; or
    - (ii) a licence or right to occupy it; or
    - (iii) a \*share in a company that owns a legal or equitable interest in the land on which the flat or home unit is erected and that gives you to a right to occupy it.
- (2) For land or a \*dwelling that you \*acquire under a contract, you have an *ownership interest* in it from:
  - (a) the time when you obtain legal ownership of it; or
  - (b) if the contract or a related contract gives you a right to occupy it at an earlier time—the earlier time.
- (3) For land or a \*dwelling where you have a contract for the happening of the \*CGT event, you have an *ownership interest* in it until your legal ownership of it ends.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Rules that may extend the exemption

### 118-135 Moving into a dwelling

If a \*dwelling becomes your main residence by the time it was first practicable for you to move into it after you \*acquired your \*ownership interest in it, the dwelling is treated as your main residence from when you acquired the interest until it actually became your main residence.

### 118-140 Changing main residences

- (1) If you \*acquire an \*ownership interest in a \*dwelling that is to become your main residence and you still have your ownership interest in your existing main residence, both dwellings are treated as your main residence for the shorter of:
  - (a) 6 months ending when your ownership interest in your existing main residence ends; or
  - (b) the period between the acquisition of the new ownership interest and the time when the ownership interest referred to in paragraph (a) ends.
- (2) Subsection (1) only applies if:
  - (a) your existing main residence was your main residence for a continuous period of at least 3 months in the 12 months ending when your ownership interest in it ends; and
  - (b) your existing main residence was not used for the \*purpose of producing assessable income in any part of that 12 month period when it was not your main residence.

### 118-145 Absences

- (1) If a \*dwelling that was your main residence ceases to be your main residence, you may choose to continue to treat it as your main residence.
- (2) If you use the part of the \*dwelling that was your main residence for the \*purpose of producing assessable income, the maximum

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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period that you can treat it as your main residence under this section while you use it for that purpose is 6 years. You are entitled to another maximum period of 6 years each time the dwelling again becomes and ceases to be your main residence.

- (3) If you do not use the \*dwelling for that purpose, you can treat it as your main residence under this section indefinitely.
- (3A) This section does not apply if the \*dwelling was your main residence because of section 118-147 and ceases to be your main residence because of subsections 118-147(3) and (4).
- (4) If you make the choice, you cannot treat any other \*dwelling as your main residence while you apply this section, except if section 118-140 (about changing main residences) applies.

Example: You live in a house for 3 years. You are posted overseas for 5 years and you rent it out during your absence. On your return you move back into it for 2 years. You are then posted overseas again for 4 years (again renting it out). You then move back into it for 3 years, after which you sell the house.

You have not treated any other dwelling as your main residence during your absences.

You may choose to continue to treat the house as your main residence during both absences because each absence is less than 6 years.

You can make this choice when preparing your income tax return for the income year in which you sold the house.

**118-147 Absence from dwelling replacing main residence that was compulsorily acquired, destroyed etc.**

- (1) This section applies if:
  - (a) a \*dwelling (the *old dwelling*) is treated as your main residence because of your choice under section 118-145; and
  - (b) because of an event (the *key event*) described in subsection 124-70(1):
    - (i) you cease to have any \*ownership interest in the old dwelling; or
    - (ii) the old dwelling is lost or destroyed; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) after the key event you have an ownership interest (the *substitute property interest*) in:
  - (i) a dwelling (the *substitute dwelling*); or
  - (ii) land (the *substitute land*) that did not have a dwelling on it at the later of the time just after the key event and the time you \*acquired the interest; and
- (d) you acquired the substitute property interest at a time (the *substitute property acquisition time*) no later than one year, or within such further time as the Commissioner allows in special circumstances, after the end of the income year in which the key event happens.

Note 1: Subsection 124-70(1) deals with compulsory acquisitions, disposals in circumstances involving powers of compulsory acquisition, expiry of leases granted by Australian government agencies and loss or destruction of a CGT asset.

Note 2: The substitute property acquisition time may be before, at or after the time the key event happened. The old dwelling and the substitute dwelling may be different or the same. The land on which the old dwelling is erected and the substitute land may be different or the same.

- (2) You may choose to treat the substitute dwelling, or a \*dwelling you built on the substitute land within 4 years after the later of the time of the key event and the substitute property acquisition time, as your main residence from the later of the following times (or from either of them if they are the same):
  - (a) the substitute property acquisition time;
  - (b) the time one year before the key event happened.
- (3) Subsection (4) limits the time you can treat a \*dwelling as your main residence under this section if you use all or part of it or the substitute land, after the later of the key event and the substitute property acquisition time, for the \*purpose of producing assessable income.
- (4) The maximum period you can treat the \*dwelling that way while you use it or the substitute land as described in subsection (3) is:
  - (a) 6 years; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) if, just before the key event, you used all or part of the old dwelling for that purpose—so much of the period of 6 years described in subsection 118-145(2) in relation to the old dwelling as had not passed before the event.
- (5) If you do not use the \*dwelling or substitute land as described in subsection (3) you can treat the dwelling as your main residence under this section indefinitely.
- (6) If you make the choice:
  - (a) you cannot treat any other \*dwelling as your main residence while you apply this section; and
  - (b) section 118-140 does not apply in relation to your \*acquisition, while you still have an \*ownership interest in the old dwelling, of an ownership interest in the dwelling you choose to treat as your main residence under this section; and
  - (c) section 118-150 does not apply after the key event to the land on which the old dwelling is erected or the substitute land; and
  - (d) section 118-155 does not apply after the key event in relation to the old dwelling, the substitute dwelling or a dwelling built on the substitute land.
- (7) Paragraph (6)(a) does not prevent the old dwelling from being your main residence at any time before the key event happened.

**118-150 If you build, repair or renovate a dwelling**

- (1) This section applies to land in which you have an \*ownership interest (except a life interest) if you build a \*dwelling on the land, or repair, renovate or finish building a dwelling on the land.
- (2) You can choose to apply this Subdivision as if the \*dwelling that you are building, repairing or renovating on the land were your main residence from the time you \*acquired the \*ownership interest.
- (3) You can make the choice only if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) a \*dwelling on the land that you construct, repair or renovate becomes your main residence (except because of section 118-147) as soon as practicable after the work is finished; and
  - (b) it continues to be your main residence for at least 3 months.
- (4) There is a time limit during which the choice can operate. This is the shorter of:
- (a) 4 years, or a longer time allowed by the Commissioner, before the \*dwelling becomes your main residence; and
  - (b) the period starting when you \*acquired your \*ownership interest in the land and ending when the dwelling becomes your main residence.
- (5) If there was already a \*dwelling on the land when you \*acquired your \*ownership interest and you or someone else occupied it after that time, the period in subsection (2) and paragraph (4)(b) starts when the dwelling ceased to be occupied.
- (6) Once you make the choice, no other \*dwelling can be treated as your main residence during the period referred to in subsection (4), except if section 118-140 (about changing main residences) applies.

### **118-155 Where individual referred to in section 118-150 dies**

- (1) This section applies if the individual referred to in subsection 118-150(1) dies:
- (a) after the work began, or the individual entered into a contract for it to be done, but before it was finished; or
  - (b) after the work was finished but before it was practicable for the \*dwelling to become the individual's main residence; or
  - (c) during the period of 3 months referred to in paragraph 118-150(3)(b).
- (2) If the individual owned the interest in the land as a joint tenant, the surviving joint tenant or, if none, the trustee of the individual's

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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estate, can choose to apply this Subdivision as if the \*dwelling were the main residence of the individual:

- (a) when the individual died; and
- (b) for the shorter of:
  - (i) 4 years before the individual's death; or
  - (ii) the period starting when the individual \*acquired the interest in the land and ending when the individual died.
- (3) If there was already a \*dwelling on the land when the individual \*acquired the interest in the land and someone occupied it after that time, the period in subparagraph (2)(b)(ii) starts when the dwelling ceased to be occupied so that it could be repaired or renovated.
- (4) If the \*dwelling is treated as the deceased's main residence under this section, no other dwelling can be treated as the deceased's main residence at the same time.
- (5) However, this section does not apply if, just before the individual's death, the individual was an \*excluded foreign resident.

**118-160 Destruction of dwelling and sale of land**

- (1) This section applies if a \*dwelling that is your main residence is accidentally destroyed and a \*CGT event happens in relation to the land on which it was built without you erecting another dwelling on the land.
- (2) You can choose to apply this Subdivision to the land as if, from the time of the destruction until your \*ownership interest in the land ends, the \*dwelling had not been destroyed and were your main residence.
- (3) If you do so, you cannot treat any other \*dwelling as your main residence during that period, except under section 118-140 (about changing main residences).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



## Rules that may limit the exemption

### 118-165 Separate CGT event for adjacent land or other structures

The exemption does not apply to a \*CGT event that happens in relation to land, or a garage, storeroom or other structure, to which the exemption can extend under section 118-120 (about adjacent land) if that event does not also happen in relation to the \*dwelling or your \*ownership interest in it.

Note: There is a separate rule for a CGT event that is a compulsory acquisition (or similar arrangement) happening to adjacent land but not also to the dwelling itself: see section 118-245.

### 118-170 Spouse having different main residence

- (1) If, during a period, a \*dwelling is your main residence and another \*dwelling is the main residence of your \*spouse (except a spouse living permanently separately and apart from you), you and your spouse must either:
  - (a) choose one of the dwellings as the main residence of both of you for the period; or
  - (b) nominate the different dwellings as your main residences for the period.
- (2) If you nominate the different \*dwellings as your main residences for the period, you split the exemption in accordance with subsections (3) and (4).
- (3) If your interest in the \*dwelling you chose was not, during the period, more than half of the total interests in the dwelling, the dwelling is taken to have been your main residence during the period. Otherwise, the dwelling is taken to have been your main residence for half of the period.
- (4) If your \*spouse's interest in the \*dwelling your spouse chose was not, during the period, more than half of the total interests in the dwelling, the dwelling is taken to have been your spouse's main

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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residence during the period. Otherwise, the dwelling is taken to have been your spouse's main residence for half of the period.

Example: You and your spouse (who are Australian residents) own a town house as tenants in common in equal shares. You and your spouse also own a beach house as tenants in common, with your interest being 30% and your spouse's 70%. From 1 July 1999, you live mainly in the town house and your spouse lives mainly in the beach house. On 1 July 2000 you and your spouse dispose of both dwellings.

For the period 1 July 1999-30 June 2000 you nominate the town house as your main residence and your spouse nominates the beach house. The town house is taken to be your main residence during the period. The beach house is taken to be your spouse's main residence during half the period.

### 118-175 Dependent child having different main residence

If, at a particular time, a \*dwelling is your main residence and another \*dwelling is the main residence of a \*child of yours who is under 18 and is dependent on you for economic support, you must choose one of them as the main residence of both of you.

### Roll-overs under Subdivision 126-A

#### 118-178 Previous roll-over under Subdivision 126-A

- (1) This section applies to you if:
  - (a) you \*acquired an \*ownership interest in a \*dwelling from another person (your *former partner*) as a result of a \*CGT event (the *earlier event*); and
  - (b) your former partner acquired the ownership interest on or after 20 September 1985; and
  - (c) there was a roll-over under Subdivision 126-A (marriage or relationship breakdown roll-over) for the earlier event; and
  - (d) a CGT event (the *later event*) happens in relation to the ownership interest.
- (2) This Subdivision applies to the later event in the way that it would if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) your \*ownership interest had commenced when your former partner's ownership interest commenced (the *acquisition time*); and
- (b) from the acquisition time until the time your former partner's ownership interest ended:
  - (i) you had used the \*dwelling in the same way that your former partner used it; and
  - (ii) the dwelling had been your main residence for the same number of days as it was your former partner's main residence.

Example 1: Peter (the transferor spouse) is the 100% owner of a dwelling that he uses only as a main residence before transferring it to Susan (the transferee spouse). Susan uses the dwelling only as a rental property.

Susan will be eligible for a partial main residence exemption having regard to how both Peter and Susan used the dwelling if, at the time the dwelling is sold, Susan is an Australian resident.

Example 2: Caroline (the transferor spouse) is the 100% owner of a dwelling that she uses only as a rental property before transferring it to David (the transferee spouse). David uses the dwelling only as a main residence.

David will be eligible for only a partial main residence exemption having regard to how both Caroline and David used the dwelling if, at the time the dwelling is sold, David is an Australian resident.

### **118-180 Acquisition of dwelling from company or trust on marriage or relationship breakdown—roll-over provision applying**

- (1) This Subdivision applies to you as if you owned an \*ownership interest in land or a dwelling during a period when it was actually owned by a company or trustee if:
  - (a) you \*acquired the interest from the company or trustee; and
  - (b) it was acquired by the company or trustee *on or after* 20 September 1985; and
  - (c) a roll-over was available to the company or trustee under Subdivision 126-A.
- (2) If subsection (1) applies to a \*dwelling, it cannot be treated as your main residence during the period, despite other provisions of this

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Subdivision that would allow you to treat it as your main residence during the period.

**Partial exemption rules**

**118-185 Partial exemption where dwelling was your main residence during part only of ownership period**

- (1) You get only a partial exemption for a \*CGT event that happens in relation to a \*dwelling or your \*ownership interest in it if:
  - (a) you are an individual; and
  - (b) the dwelling was your main residence for part only of your \*ownership period; and
  - (c) the interest did not \*pass to you as a beneficiary in, and you did not \*acquire it as a trustee of, the estate of a deceased person.
- (2) You calculate your \*capital gain or \*capital loss using the formula:

$$\text{CG or CL amount} \times \frac{\text{Non-main residence days}}{\text{Days in your *ownership period}}$$

where:

**CG or CL amount** is the \*capital gain or \*capital loss you would have made from the \*CGT event apart from this Subdivision.

**non-main residence days** is the number of days in your \*ownership period when the \*dwelling was not your main residence.

Note: The capital gain or loss may be further adjusted if the dwelling was used to produce assessable income: see section 118-190.

Example: You bought a house in July 2020 and moved in immediately. In July 2023, you moved out and began to rent it. You sold it in July 2030, making (apart from this Subdivision) a capital gain of \$10,000. At the time you sold the house, you were an Australian resident.

You choose to continue to treat the dwelling as your main residence under section 118-145 (about absences) for the first 6 of the 7 years during which you rented the house out.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Under this section, you will be taken to have made a capital gain of:

$$\$10,000 \times \frac{365}{3,650} = \$1,000$$

- (3) However, this section does not apply if, at the time the \*CGT event happens, you:
- (a) are an \*excluded foreign resident; or
  - (b) are a foreign resident who does not satisfy the \*life events test.

### **118-190 Use of dwelling for producing assessable income**

- (1) You get only a partial exemption for a \*CGT event that happens in relation to a \*dwelling or your \*ownership interest in it if:
- (a) apart from this section, because the dwelling was your main residence or someone else's during a period:
    - (i) you would not make a \*capital gain or \*capital loss from the event; or
    - (ii) you would make a lesser capital gain or loss than if this Subdivision had not applied; and
  - (b) the dwelling was used for the \*purpose of producing assessable income during all or a part of that period; and
  - (c) if you had incurred interest on money borrowed to \*acquire the dwelling, or your ownership interest in it, you could have deducted some or all of that interest.

Example: You acquire a house as a beneficiary in a deceased estate, rent it out for 12 months and sell it within 2 years of the deceased's death. You can ignore the rental because the exemption does not require the house to be your main residence during the 2 years after the death.

- (2) The \*capital gain or \*capital loss that you would have made apart from this section from the \*CGT event is increased by an amount that is reasonable having regard to the extent to which you would have been able to deduct that interest.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) However, you ignore any use of the \*dwelling for the \*purpose of producing assessable income during any period that you continue to treat it as your main residence under section 118-145 (about absences) to the extent that any part of it was not used for that purpose just before it last ceased to be your main residence.

Example: To continue the example from section 118-185, assume that, when you moved in, you used  $\frac{1}{4}$  of the house as a doctor's surgery.

Under section 118-185, your capital gain was \$1,000.

Under this section, it would be reasonable to add an amount of:

$$\$10,000 \times \frac{9}{10} \times \frac{1}{4} = \$2,250$$

You have a total capital gain of \$3,250 on the sale of the house.

- (3A) Also, you ignore any use of the \*dwelling for the \*purpose of producing assessable income during any period that you treat it as your main residence under section 118-147 (about absences) to the extent that any part of the old dwelling mentioned in that section was not used for that purpose just before the old dwelling last ceased to be your main residence.
- (4) If a \*dwelling or your \*ownership interest in a dwelling \*passed to you as a beneficiary in a deceased estate, or you owned it as the trustee of a deceased estate, you ignore any use of the \*dwelling for the \*purpose of producing assessable income before the deceased's death if:
- (a) the dwelling was the deceased's main residence just before the death; and
  - (b) it was not being used for that purpose just before the death, or any use for that purpose just before the death was ignored because of subsection (3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 118-192 Special rule for first use to produce income

- (1) There is a special rule if:
  - (a) you would get only a partial exemption under this Subdivision for a \*CGT event happening in relation to a \*dwelling or your \*ownership interest in it because the dwelling was used for the \*purpose of producing assessable income during your \*ownership period; and
  - (aa) that use occurred for the first time after 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996; and
  - (b) you would have got a full exemption under this Subdivision if the CGT event had happened just before the first time (the ***income time***) it was used for that purpose during your ownership period.
- (2) You are taken to have \*acquired the \*dwelling or your \*ownership interest at the income time for its \*market value at that time.
- (3) If your \*ownership interest in the \*dwelling \*passed to you as a beneficiary in a deceased estate, or you owned it as the trustee of a deceased estate and the \*CGT event did not happen within 2 years of the deceased's death, you apply this Subdivision as if:
  - (a) you had \*acquired the interest as an individual and not as a beneficiary or trustee of a deceased estate; and
  - (b) for applying the formula in section 118-185, your *non-main residence days* were the number of days in your \*ownership period when the dwelling was not the main residence of an individual referred to in item 2, column 3 of the table in section 118-195.

Note: There are special rules for dwellings acquired before 7.30 pm on 20 August 1996: see section 118-195 of the *Income Tax (Transitional Provisions) Act 1997*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 118-195

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## Dwellings acquired from deceased estates

### 118-195 Dwelling acquired from a deceased estate

- (1) A \*capital gain or \*capital loss you make from a \*CGT event that happens in relation to a \*dwelling or your \*ownership interest in it is disregarded if:
- (a) you are an individual and the interest \*passed to you as a beneficiary in a deceased estate, or you owned it as the trustee of a deceased estate; and
  - (b) at least one of the items in column 2 and at least one of the items in column 3 of the table are satisfied; and
  - (c) the deceased was not an \*excluded foreign resident just before the deceased's death.

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<b>Beneficiary or trustee of deceased estate acquiring interest</b>		
<b>Item</b>	<b>One of these items is satisfied</b>	<b>And also one of these items</b>
1	the deceased *acquired the *ownership interest <i>on or after</i> 20 September 1985 and the *dwelling was the deceased's main residence just before the deceased's death and was not then being used for the *purpose of producing assessable income	your *ownership interest ends within 2 years of the deceased's death, or within a longer period allowed by the Commissioner

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Beneficiary or trustee of deceased estate acquiring interest**

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Item	One of these items is satisfied	And also one of these items
2	the deceased *acquired the *ownership interest before 20 September 1985	the *dwelling was, from the deceased's death until your *ownership interest ends, the main residence of one or more of: <ul style="list-style-type: none"> <li>(a) the spouse of the deceased immediately before the death (except a spouse who was living permanently separately and apart from the deceased); or</li> <li>(b) an individual who had a right to occupy the dwelling under the deceased's will; or</li> <li>(c) if the *CGT event was brought about by the individual to whom the *ownership interest *passed as a beneficiary—that individual</li> </ul>

- Note 1: You may make a capital gain or capital loss if the dwelling was used for the purpose of producing assessable income: see section 118-190.
- Note 2: In some cases the use of a dwelling to produce assessable income can be disregarded: see sections 118-145 and 118-190.
- Note 3: There are special rules for dwellings acquired before 7.30 pm on 20 August 1996. These rules also affect the operation of section 118-192 and subsections 118-190(4) and 118-200(4): see section 118-195 of the *Income Tax (Transitional Provisions) Act 1997*.

- (1A) For the purposes of a provision of this Subdivision that applies the table in subsection (1):
- (a) disregard paragraphs (a) and (b) in column 3 of item 2 of the table if, just before the deceased's death, the deceased was an \*excluded foreign resident; and
  - (b) disregard paragraph (c) in column 3 of item 2 of the table if, at the time the relevant \*CGT event happened, the individual was an excluded foreign resident.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 118-197

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Note: The other provisions that apply the table include paragraph 118-192(3)(b), subsection 118-200(2), paragraph 118-225(3)(c) and section 118-260.

- (2) Only these \*CGT events are relevant:
- (a) CGT events A1, B1, C1, C2, E1, E2, F2, K3, K4 and K6 (except one involving the forfeiting of a deposit); and
  - (b) a CGT event that involves the forfeiting of a deposit as part of an uninterrupted sequence of transactions ending in one of the events specified in paragraph (a) subsequently happening.

Note: The full list of CGT events is in section 104-5.

**118-197 Special rule for surviving joint tenant**

This Subdivision applies to you as if the \*ownership interest of another individual in a \*dwelling had \*passed to you as a beneficiary in a deceased estate if:

- (a) you and the other individual owned ownership interests in the dwelling as joint tenants; and
- (b) the other individual dies.

**118-200 Partial exemption for deceased estate dwellings**

- (1) You get only a partial exemption (or no exemption) if:
- (a) you are an individual and your \*ownership interest in a \*dwelling \*passed to you as a beneficiary in a deceased estate, or you owned it as the trustee of a deceased estate; and
  - (b) section 118-195 does not apply.
- (2) You calculate your \*capital gain or \*capital loss using the formula:

$$\text{CG or CL amount} \times \frac{\text{Non-main residence days}}{\text{Total days}}$$

where:

**CG or CL amount** is the \*capital gain or \*capital loss you would have made from the \*CGT event apart from this Subdivision.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

***non-main residence days*** is the sum of:

- (a) if the deceased \*acquired the \*ownership interest *on or after* 20 September 1985—the number of days in the deceased’s \*ownership period when the \*dwelling was not the deceased’s main residence; and
- (aa) if the deceased acquired the ownership interest *on or after* 20 September 1985 and, just before the deceased’s death, the deceased was an \*excluded foreign resident—the number of remaining days in the deceased’s ownership period; and
- (b) the number of days in the period from the death until your ownership interest ends when the dwelling was not the main residence of an individual referred to in item 2, column 3 of the table in section 118-195.

***total days*** is:

- (a) if the deceased \*acquired the \*ownership interest *before* 20 September 1985—the number of days in the period from the death until your ownership interest ends; or
  - (b) if the deceased acquired the ownership interest *on or after* that day—the number of days in the period from the acquisition of the dwelling by the deceased until your ownership interest ends.
- (3) However, you can adjust the formula by ignoring any *non-main residence days* and *total days* in the period from the deceased’s death until your \*ownership interest ended, if:
- (a) the deceased \*acquired the ownership interest *on or after* 20 September 1985; and
  - (b) your ownership interest ends within:
    - (i) 2 years of the deceased’s death; or
    - (ii) a longer period allowed by the Commissioner; and
  - (c) you get a more favourable result by doing so; and
  - (d) the deceased was not an \*excluded foreign resident just before the deceased’s death.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Section 118-205**

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Note 1: The formula in this section will be adjusted (or further adjusted) under section 118-205 if the deceased acquired the dwelling through a deceased estate.

Note 2: There may be a further adjustment if the dwelling was used for the purpose of producing assessable income: see section 118-190.

- (4) You ignore any *non-main residence days* before the deceased's death if:
- (a) the \*dwelling was the deceased's main residence just before the death; and
  - (b) the dwelling was not being used for the \*purpose of producing assessable income just before the death, or any use for that purpose just before the death was ignored because of subsection 118-190(3) or (3A); and
  - (c) the deceased was not an \*excluded foreign resident just before the deceased's death.

**118-205 Adjustment if dwelling inherited from deceased individual**

- (1) You must adjust the formula in subsection 118-200(2) if the \*ownership interest of the deceased individual referred to in section 118-200 (the *most recently deceased*) \*passed to the individual *on or after* 20 September 1985 as a beneficiary in, or the individual owned it as trustee of, a deceased estate.

Note: Any gains or losses of individuals earlier in the inheritance chain are included in the gain or loss you would have made apart from this Subdivision. This section adjusts the formula to take account of times when the dwelling was the main residence of the individuals.

- (2) Add to the component *total days* in the formula the fewer of:
- (a) the number of days between 20 September 1985 and the day when the interest \*passed to or was \*acquired as trustee by the most recently deceased; and
  - (b) the number of days between the time when an \*ownership interest in the \*dwelling was last acquired *on or after* 20 September 1985 by an individual except as a beneficiary in a deceased estate or as trustee of a deceased estate and the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

day when the interest passed to or was acquired as trustee by the most recently deceased.

- (3) Add to the component ***non-main residence days*** in the formula the number of days in the period applicable under subsection (2) that the \*dwelling was not the main residence of one or more of:
- (a) an individual who owned the dwelling at the time of the individual's death; or
  - (b) an individual who, immediately before the death of an individual referred to in paragraph (a), was the spouse of that individual (except a spouse who was living permanently separately and apart from the individual); or
  - (c) an individual who had a right to occupy the dwelling under a will; or
  - (d) an individual to whom an \*ownership interest in the dwelling \*passed as a beneficiary in, or who \*acquired an ownership interest in the dwelling as trustee of, a deceased estate.
- (4) Add to the component ***non-main residence days*** in the formula the number of days in the period applicable under subsection (2) that the \*dwelling was the main residence of an individual who:
- (a) owned the dwelling; and
  - (b) was an \*excluded foreign resident;
- just before the individual's death.

### **118-210 Trustee acquiring dwelling under will**

- (1) This section applies if you are the trustee of a deceased estate and, under the deceased's will, you \*acquire an \*ownership interest in a \*dwelling for occupation by an individual.
- (2) If a \*CGT event happens to the interest in relation to the individual and you receive no money or property for it:
- (a) a \*capital gain or \*capital loss you make from the event is disregarded; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 118-210

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- (b) the first element of the \*dwelling's \*cost base and \*reduced cost base in the hands of the individual is its cost base and reduced cost base in your hands at the time of the event; and
  - (c) the individual is taken to have \*acquired it when you did.
- (3) If:
- (a) you receive money or property for the \*CGT event happening or the event happens in relation to another entity; and
  - (b) the dwelling was the main residence of the individual from the time you \*acquired the interest until the time of the event;
- you do not make a \*capital gain or \*capital loss from the CGT event.
- (4) However, if the \*dwelling was the main residence of the individual during part only of that period, you make a \*capital gain or \*capital loss worked out using the formula:

$$\text{CG or CL amount} \times \frac{\text{Non-main residence days}}{\text{Days in that period}}$$

where:

**CG or CL amount** is the \*capital gain or \*capital loss you would have made from the \*CGT event apart from this Subdivision.

**non-main residence days** is the number of days in that period when the \*dwelling was not the individual's main residence.

- (5) Only these \*CGT events are relevant:
- (a) CGT events A1, B1, C1, C2, E1, E2, E5, F2, K3, K4 and K6 (except one involving the forfeiting of a deposit); and
  - (b) a CGT event that involves the forfeiting of a deposit as part of an uninterrupted sequence of transactions ending in one of the events specified in paragraph (a) subsequently happening.

Note: The full list of CGT events is in section 104-5.

- (6) However, this section does not apply if, just before the deceased's death, the deceased was an \*excluded foreign resident.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Special disability trusts

### 118-215 What the following provisions are about

The trustee of a trust that is or has been a special disability trust may be eligible for an exemption to the extent that a dwelling is the main residence of the individual who is or has been the principal beneficiary of the trust.

Another beneficiary of the trust may be eligible for an exemption if the dwelling is distributed to that other beneficiary at or after the principal beneficiary's death.

Note 1: The following provisions also apply to the exemption about compulsory acquisitions of adjacent land (see section 118-245).

Note 2: The exemptions may not apply if the principal beneficiary of the trust is a foreign resident.

### 118-218 Exemption available to trustee—main case

- (1) This section applies to you in relation to a \*CGT event if:
- (a) the CGT event happens in relation to a \*CGT asset; and
  - (b) just before the CGT event happens, you hold the CGT asset as trustee of a trust; and
  - (c) the trust was a \*special disability trust on at least one of the days on which you held the CGT asset.

Note: This section may not apply if the principal beneficiary of the trust is a foreign resident (see subsection (5)).

- (2) For the purposes of applying this Subdivision in relation to the \*CGT event, on each day to which paragraph (1)(c) applies:
- (a) treat yourself as holding the \*CGT asset personally (and not as trustee of the trust); and
  - (b) if the \*principal beneficiary of the trust uses the applicable \*dwelling in a particular way on that day—treat yourself as using the dwelling in that way on that day.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Section 118-220**

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**Example:** If the principal beneficiary uses the dwelling as his or her main residence on the day, then treat yourself as using the dwelling as your main residence on that day.

**Note 1:** The CGT asset need not be a dwelling (or an ownership interest in a dwelling) if it is land adjacent to a dwelling, an adjacent structure of a flat or home unit, or an ownership interest in such an asset.

**Note 2:** If the trustee is an individual, the individual's actual circumstances are ignored. Similarly, this subsection does not affect how this Subdivision applies for the individual's actual circumstances. See section 960-100.

- (3) If you are not an individual, treat yourself as being an individual for the purposes of applying this Subdivision in relation to the \*CGT event.
- (4) If the \*CGT asset, or your \*ownership interest in it, \*passed to you as a beneficiary in a deceased estate:
- (a) treat the deceased as never having used the applicable \*dwelling for the \*purpose of producing assessable income; and
  - (b) treat the dwelling as being the deceased's main residence on each day during the deceased's \*ownership period;
- for the purposes of applying this Subdivision in relation to the \*CGT event.
- (5) Despite subsection (1), this section does not apply if, at the time the \*CGT event happens, the \*principal beneficiary of the trust:
- (a) is an \*excluded foreign resident; or
  - (b) is a foreign resident who does not satisfy the \*life events test.

**118-220 Exemption available to trustee—after the principal beneficiary's death**

This section applies to you in relation to a \*CGT event if:

- (a) the trustee of a trust holds a \*CGT asset on a particular day (the *transition day*); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



- (b) on the transition day, or on an earlier day on which the CGT asset was held by the trustee of the trust, the trust is a \*special disability trust; and
- (c) the individual who is or has been the \*principal beneficiary of the trust dies on the transition day; and
- (d) the CGT event happens in relation to the CGT asset at or after the deceased's death; and
- (e) the CGT event happens while you hold the CGT asset:
  - (i) as trustee of the trust; or
  - (ii) as trustee of an implied trust arising because of the deceased's death.

### **118-222 Exemption available to other beneficiary who acquires the CGT asset after the principal beneficiary's death**

This section applies to you in relation to a \*CGT event if:

- (a) the CGT event happens in relation to a \*CGT asset; and
- (b) you \*acquired the CGT asset or your \*ownership interest in it:
  - (i) as a result of an earlier CGT event; and
  - (ii) as a beneficiary of a trust; and
- (c) section 118-220 applied to the trustee of the trust in relation to the earlier CGT event and the CGT asset.

### **118-225 Amount of exemption available after the principal beneficiary's death—general**

*Full exemption for trustee unless sells asset for proceeds etc.*

- (1) A \*capital gain or \*capital loss you make from a \*CGT event is disregarded if:
  - (a) section 118-220 applies to you in relation to the CGT event; and
  - (b) as a result of the CGT event, an entity \*acquires the \*CGT asset:
    - (i) as trustee of an implied trust arising because of the deceased's death; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 118-225

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- (ii) as a beneficiary of the relevant trust referred to in paragraph 118-220(e).

*Exemption for beneficiary, or trustee selling asset for proceeds etc.*

- (2) If:
- (a) section 118-220 applies to you in relation to a \*CGT event, but paragraph (1)(b) does not; or
  - (b) section 118-222 applies to you in relation to a CGT event; the amount of the \*capital gain or \*capital loss that you would have made apart from this section from the CGT event is decreased by an amount that is reasonable.
- (3) In determining what is a reasonable decrease:
- (a) if section 118-220 applies to you, but paragraph (1)(b) does not—treat yourself as being an individual who owned the \*CGT asset as the trustee of the deceased’s estate; and
  - (b) if section 118-222 applies to you—treat yourself as being an individual and treat the CGT asset or your \*ownership interest in it as having \*passed to you as a beneficiary in the deceased’s estate; and
  - (c) have regard to the principles in this Subdivision, and to:
    - (i) the extent that the applicable \*dwelling was the deceased’s main residence for the relevant period; and
    - (ii) the extent that the dwelling was used for the \*purpose of producing assessable income during the relevant period.
- (4) For the purposes of subparagraph (3)(c)(i), assume the \*dwelling was not the deceased’s main residence on each day the trust referred to in paragraph 118-220(b) was not a \*special disability trust.
- (5) However, subsection (2) does not apply if, just before the deceased’s death, the deceased was an \*excluded foreign resident.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**118-227 Amount of exemption available after the principal beneficiary's death—cost base and reduced cost base**

- (1) If section 118-220 applies to you and:
- (a) the applicable \*dwelling was the deceased's main residence just before the deceased's death; and
  - (b) that dwelling was not then being used for the \*purpose of producing assessable income; and
  - (c) the trust referred to in paragraph 118-220(b) was then a \*special disability trust; and
  - (ca) the deceased was not an \*excluded foreign resident just before the deceased's death;
- then:
- (d) the first element of the \*CGT asset's \*cost base, in your hands, is the CGT asset's \*market value just before the deceased's death; and
  - (e) the first element of the CGT asset's \*reduced cost base, in your hands, is worked out similarly.
- (2) However, if section 118-220 applies to you as trustee of an implied trust arising because of the deceased's death, but subsection (1) does not, then:
- (a) the first element of the \*CGT asset's \*cost base, in your hands, is the CGT asset's cost base just before the deceased's death; and
  - (b) the first element of the CGT asset's \*reduced cost base, in your hands, is worked out similarly.
- (3) If section 118-222 applies to you:
- (a) the first element of the \*CGT asset's \*cost base, in your hands, is the CGT asset's cost base just before the earlier \*CGT event happened that resulted in you \*acquiring the CGT asset or your \*ownership interest in it; and
  - (b) the first element of the CGT asset's \*reduced cost base, in your hands, is worked out similarly.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 118-230

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**118-230 Application of CGT events E5 and E7 in relation to main residence exemption and special disability trusts**

If \*CGT event E5 or E7 happens in relation to a \*CGT asset held by a trust that is or has been a \*special disability trust, treat the lists of CGT events in paragraphs 118-110(2)(a) and 118-195(2)(a) as including a reference to that CGT event.

**Compulsory acquisitions of adjacent land only**

**118-240 What the following provisions are about**

You can ignore a capital gain or capital loss you make from a compulsory acquisition (or similar arrangement) that happens only to land that is adjacent to:

- (a) a dwelling that is your main residence; or
- (b) a dwelling that passed to you as a beneficiary, or trustee, of a deceased estate;

to the extent that the land was used primarily for private or domestic purposes in association with the dwelling.

There is a limit on the maximum area of land covered by the exemption.

Note 1: The exemption may not apply in full if the dwelling:

- (a) was not always a main residence; or
- (b) was used for the purpose of producing assessable income.

Note 2: The exemption may not apply at all if you are a foreign resident.

**118-245 CGT events happening only to adjacent land**

*Total adjacent land is 2 hectares or less*

- (1) A \*capital gain or \*capital loss you make from a \*CGT event that happens in relation to land (the **exempt land**), or your \*ownership interest in it, is disregarded if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) you are an individual; and
- (b) the exempt land is all or part of a \*dwelling's \*adjacent land at the time of the CGT event; and
- (c) the CGT event does not happen in relation to the dwelling and does not happen in relation to your ownership interest in the dwelling; and
- (d) one of the following subparagraphs applies:
  - (i) the dwelling was your main residence throughout all or part of your \*ownership period of the dwelling;
  - (ii) your ownership interest in the dwelling \*passed to you as a beneficiary in a deceased estate;
  - (iii) you own your ownership interest in the dwelling as the trustee of a deceased estate; and
- (e) section 118-250 (about compulsory acquisitions of adjacent land) applies to the CGT event and the exempt land; and
- (f) the sum of the following is 2 hectares or less:
  - (i) the area of all of the dwelling's adjacent land at the time of the CGT event;
  - (ii) the area of the land immediately under the dwelling;
  - (iii) if this section applied to you for an earlier CGT event that involved reducing the area of the dwelling's adjacent land at the time of that earlier CGT event—that reduction in area.

Note: You may get only a partial exemption for the gain or loss (see section 118-260).

*Total adjacent land is more than 2 hectares*

- (2) If:
  - (a) apart from paragraph (1)(f), subsection (1) would apply to the gain or loss; and
  - (b) you choose this subsection to apply to the gain or loss; disregard so much of the gain or loss that relates to land (the **exempt land**) within the \*maximum exempt area for the \*CGT event and the \*dwelling.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: You may get only a partial exemption for this portion of the gain or loss (see section 118-260).

*No exemption if you are an excluded foreign resident*

- (3) However, this section does not apply if, at the time the \*CGT event happens, you:
- (a) are an \*excluded foreign resident; or
  - (b) are a foreign resident who does not satisfy the \*life events test.

**118-250 Compulsory acquisitions of adjacent land**

- (1) This section applies to the \*CGT event and the exempt land if the CGT event involves:
- (a) the compulsory \*acquisition of the exempt land by:
    - (i) an \*Australian government agency; or
    - (ii) an entity under a power conferred by an \*Australian law; or
  - (b) you \*disposing of the exempt land to an entity in circumstances meeting all of these conditions:
    - (i) the disposal takes place after a notice was served on you by or on behalf of the entity;
    - (ii) the notice invited you to negotiate with the entity with a view to the entity acquiring the exempt land by agreement;
    - (iii) the notice informed you that if the negotiations were unsuccessful, the exempt land would be compulsorily acquired by the entity;
    - (iv) the compulsory acquisition would have been under a power of compulsory acquisition conferred by an Australian law.

Note: For paragraph (b), the entity may be an Australian government agency.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) This section applies to the \*CGT event and the exempt land if the CGT event involves:
- (a) your \*ownership interest in the exempt land being compulsorily cancelled (however described) or varied (however described) by:
    - (i) an \*Australian government agency; or
    - (ii) an entity under a power conferred by an \*Australian law; or
  - (b) you surrendering (however described) or varying (however described) your ownership interest in the exempt land in circumstances meeting all of these conditions:
    - (i) the surrender or variation takes place after a notice was served on you by or on behalf of an entity;
    - (ii) the notice invited you to negotiate with the entity with a view to you agreeing to surrender or vary your ownership interest;
    - (iii) the notice informed you that if the negotiations were unsuccessful, your ownership interest would be compulsorily cancelled, or varied, under a power conferred by an Australian law.
- Note: For paragraph (b), the entity may be an Australian government agency.
- (3) This section applies to the \*CGT event and the exempt land if the CGT event involves:
- (a) an interest or right in or relating to the exempt land being compulsorily conferred on:
    - (i) an \*Australian government agency; or
    - (ii) an entity under a power conferred by an \*Australian law; or
  - (b) you conferring on an entity an interest or right in or relating to the exempt land in circumstances meeting all of these conditions:
    - (i) the conferral takes place after a notice was served on you by or on behalf of an entity;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) the notice invited you to negotiate with the entity with a view to you agreeing to confer an interest or right in or relating to the exempt land;
- (iii) the notice informed you that if the negotiations were unsuccessful, an interest or right in or relating to the exempt land would be compulsorily conferred on the entity under a power conferred by an Australian law.

Note: For paragraph (b), the entity may be an Australian government agency.

- (4) This section applies to the \*CGT event and the exempt land if:
  - (a) your \*ownership interest in the exempt land:
    - (i) was conferred on you by an \*Australian government agency; and
    - (ii) had a limited, but renewable, period of operation; and
  - (b) the CGT event involves that ownership interest not being renewed by that agency.

**118-255** *Maximum exempt area*

Your *maximum exempt area* for the \*CGT event and the \*dwelling is 2 hectares less the amount worked out as follows:

*Method statement*

- Step 1. Identify each earlier \*CGT event (if any) that:
- (a) happened in relation to land that was part of the \*dwelling's \*adjacent land at the time of the earlier CGT event, or happened in relation to your \*ownership interest in that land at that time; and
  - (b) resulted in you losing rights to the substantial use and enjoyment of that land either completely or for at least 10 years;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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for which you made a \*capital gain or \*capital loss that was wholly or partly disregarded because of the application of subsection 118-245(2).

Step 2. For each earlier \*CGT event covered by step 1, work out the area of the exempt land for that application of subsection 118-245(2).

Step 3. Add the results from step 2 to the area of the land immediately under the \*dwelling.

### **118-260 Partial exemption rules**

- (1) If section 118-245 applies to a \*CGT event, the amount of the \*capital gain or \*capital loss that you would have made apart from this section from the CGT event is increased by an amount that is reasonable having regard to the following:
  - (a) the extent that the \*dwelling was not a main residence for the relevant period;
  - (b) the extent that the dwelling was used for the \*purpose of producing assessable income during the relevant period.
- (2) In determining what is a reasonable increase, have regard to the principles in this Subdivision applicable to \*CGT events happening in relation to a \*dwelling or your \*ownership interest in it.

### **118-265 Extension to adjacent structures**

Sections 118-245 to 118-260 (with appropriate modifications) apply to an \*adjacent structure of a flat or home unit in a corresponding way to the way they apply to a \*dwelling's \*adjacent land.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 118-300

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**Subdivision 118-D—Insurance and superannuation**

**Table of sections**

118-300	Insurance policies
118-305	Superannuation
118-310	RSA's
118-313	Superannuation agreements under the Family Law Act
118-315	Segregated exempt assets of life insurance companies
118-320	Segregated current pension assets of a complying superannuation entity

**118-300 Insurance policies**

- (1) A \*capital gain or \*capital loss you make from a \*CGT event happening in relation to a \*CGT asset that is your interest in rights under a \*general insurance policy, a \*life insurance policy or an \*annuity instrument is disregarded in the situations set out in this table.

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<b>Insurance policies</b>		
<b>Item</b>	<b>The *CGT event happens to this type of policy:</b>	<b>... and you are</b>
1	Any insurance policy or *annuity instrument	the insurer or the entity that issued the instrument
2	A *general insurance policy for property where, if a *CGT event happened in relation to the property, any *capital gain or *capital loss would be disregarded	the insured
3	A policy of insurance on the life of an individual or an *annuity instrument	the original owner of the policy or instrument (other than the trustee of a *complying superannuation entity)
4	A policy of insurance on the life of an individual or an *annuity instrument	an entity that *acquired the interest in the policy or instrument for no consideration

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Insurance policies**

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Item	The *CGT event happens to this type of policy:	... and you are
5	A policy of insurance on the life of an individual or an *annuity instrument	the trustee of a *complying superannuation entity for the income year in which the *CGT event happened
6	A policy of insurance on the life of an individual or an *annuity instrument, where the *life insurance company's liabilities under the policy or instrument are to be discharged out of *complying superannuation assets or *segregated exempt assets	the life insurance company
7	A policy of insurance against an individual suffering an illness or injury	the trustee of a *complying superannuation entity for the income year in which the *CGT event happened

Example 1: Brian (as the insured) receives an insurance payment from his insurer for the destruction of a building he owned as an investment. The payment constitutes capital proceeds on the destruction (CGT event C1). The discharge of the insurance policy (CGT event C2) has no CGT consequences.

Example 2: Peter is the original beneficial owner of the rights under a policy of insurance on the life of an individual. He transfers the rights to his spouse for nothing. There are no CGT consequences for him, and none for his spouse if he dies.

*Payment to trust beneficiary (or representative) if trustee owns the policy or instrument*

(1A) A \*capital gain or \*capital loss you make from a \*CGT event happening because you receive a \*CGT asset from the trustee of a trust is disregarded if:

- (a) you receive the CGT asset as:
  - (i) a beneficiary of the trust; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**Section 118-305**

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- (ii) a \*legal personal representative of a beneficiary of the trust; and
  - (b) the CGT asset is attributable to another CGT event and CGT asset to which table item 3 in subsection (1) applies for the trustee.
- (2) Only these \*CGT events are relevant: CGT events A1, B1, C2, E1, E2, E3, E5, E6, E7, E8, I1, I2, K3 and K4.

Note: The full list of CGT events is in section 104-5.

**118-305 Superannuation**

- (1) A \*capital gain or \*capital loss is disregarded if you make it from a \*CGT event happening in relation to any of the following:
- (a) a right to an allowance, annuity or capital amount payable out of a \*superannuation fund or \*approved deposit fund;
  - (b) a right to an asset of such a fund;
  - (c) a right to any part of such an allowance, annuity, capital amount or asset.

Example: Angela retires from her employment and receives a lump sum payment from her superannuation fund. This is an example of CGT event C2 (her rights to receive the payment ending). There are no CGT consequences for Angela.

- (2) However, this exemption is not available if:
- (a) you are the trustee of the fund and a \*CGT event happens in relation to a \*CGT asset of the fund; or
  - (b) an entity receives a payment or property where:
    - (i) the entity was not a member of the fund; and
    - (ii) the entity \*acquired the right to the payment or property for consideration.
- (3) Subsection (2) does not apply if:
- (a) a \*payment split applies to a \*splittable payment; and
  - (b) as a result, a payment is made to the \*non-member spouse (or to his or her \*legal personal representative if the non-member spouse has died).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**118-310 RSA's**

A \*capital gain or \*capital loss you make from a \*CGT event happening in relation to a right to, or any part of, an \*RSA is disregarded.

**118-313 Superannuation agreements under the Family Law Act**

A \*capital gain or \*capital loss you make from \*CGT event C2 or D1 relating directly to any of the following is disregarded:

- (a) the making of a superannuation agreement (within the meaning of Part VIIIIB or VIIC of the *Family Law Act 1975*);
- (b) the termination, or setting aside, of such an agreement;
- (c) such an agreement otherwise coming to an end.

**118-315 Segregated exempt assets of life insurance companies**

A \*capital gain or \*capital loss that a \*life insurance company makes from a \*CGT event happening in relation to a \*segregated exempt asset is disregarded.

**118-320 Segregated current pension assets of a complying superannuation entity**

- (1) A \*capital gain or \*capital loss that a \*complying superannuation entity makes from a \*CGT event happening in relation to a \*segregated current pension asset is disregarded.
- (2) However, subsection (1) does not apply to a \*capital gain if the capital gain would, if it were an amount of \*ordinary income or \*statutory income received by the \*complying superannuation fund, be \*non-arm's length income.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 118-350

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## Subdivision 118-E—Units in pooled superannuation trusts

### 118-350 Units in pooled superannuation trusts

- (1) A \*capital gain or \*capital loss an entity makes from a \*CGT event happening in relation to a unit in a unit trust is disregarded if:
  - (a) the trust is a \*pooled superannuation trust for the income year in which the event happened; and
  - (b) one of the conditions in subsection (2) is satisfied.
- (2) The entity must be:
  - (a) the trustee of a \*complying superannuation entity for the income year in which the \*CGT event happened; or
  - (b) a \*life insurance company and, just before the event happened, the unit must have been a \*complying superannuation asset or a \*segregated exempt asset of the company.

## Subdivision 118-F—Venture capital investment

### Guide to Subdivision 118-F

#### 118-400 What this Subdivision is about

You can ignore capital gains and capital losses from CGT events that relate to investments, in Australian companies and unit trusts (and in some cases foreign holding companies), that meet the requirements of this Subdivision.

These investments are made:

- (a) through limited partnerships, known as venture capital limited partnerships or early stage venture capital limited partnerships, that are unconditionally registered under Part 2 of the *Venture Capital Act 2002*; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) through limited partnerships, known as Australian venture capital funds of funds, that are unconditionally registered under that Part; or
- (c) directly by foreign residents who are registered under Part 3 of that Act.

However, unless investments are made through early stage venture capital limited partnerships, you must be a foreign resident for this Subdivision to apply.

Note: Registration of a limited partnership under Part 2 of that Act also leads to its income and losses being assessed under Division 5 of Part III of the *Income Tax Assessment Act 1936* on the basis that it is a partnership.

This is an exception to the general rule, under Division 5A of that Part, that limited partnerships are assessed as companies.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 118-405

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- 118-450 Values of assets and investments of entities without auditors  
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**Operative provisions**

**118-405 Exemption for certain foreign venture capital investments through venture capital limited partnerships**

*General*

- (1) All of your share in a \*capital gain or a \*capital loss from a \*CGT event is disregarded if:
- (a) you are an \*eligible venture capital partner in a \*limited partnership; and
  - (b) the CGT event relates to an investment that the partnership made that is an \*eligible venture capital investment; and
  - (c) when the partnership made the investment, the partnership was a \*venture capital limited partnership that was \*unconditionally registered; and
  - (d) at the time of the CGT event, the partnership:
    - (i) owned the investment; and
    - (ii) had owned the investment for at least 12 months; and
    - (iii) was a venture capital limited partnership that was unconditionally registered; and
    - (iv) in the case of a capital gain—met all of the \*registration requirements of a VCLP that are not \*investment registration requirements.

Note: The registration requirements of a VCLP are set out in section 9-1 of the *Venture Capital Act 2002*. It is important to understand that this is a separate requirement from registration under Part 2 of that Act (which effectively determines whether an entity is a VCLP).

It is technically possible to be registered under Part 2 of that Act without meeting the registration requirements of a VCLP, but you might still not be entitled to exemption under this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Meaning of venture capital limited partnership*

- (2) A \*limited partnership is a **venture capital limited partnership** at a particular time if, at that time, the partnership's registration as a venture capital limited partnership under Part 2 of the *Venture Capital Act 2002* is, or is taken to have been, in force.

For when the registration is, or is taken to have been, in force, see section 13-10 of the *Venture Capital Act 2002*.

Note: In this Act and the *Venture Capital Act 2002*, the term "venture capital limited partnership" is usually abbreviated to "VCLP".

*Effect of converting convertible notes etc.*

- (3) A partnership that acquired a \*share in a company by converting a \*convertible note, or a convertible preference share, issued by the company is treated, for the purposes of subparagraph (1)(d)(ii), as having owned the share from the time when it last acquired the convertible note or convertible preference share.
- (4) A partnership that acquired a unit in a unit trust by converting a \*convertible note issued by or on behalf of the trustee of the unit trust is treated, for the purposes of subparagraph (1)(d)(ii), as having owned the unit from the time when it last acquired the convertible note.
- (5) Subsection (3) or (4) applies whether or not the acquisition of the \*convertible note, or convertible preference share, was an \*eligible venture capital investment.
- (6) A partnership that converts a \*convertible note into a share or a unit is treated, for the purposes of subparagraph (1)(d)(ii), as continuing to own the convertible note until the partnership no longer owns the share or unit.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 118-407

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**118-407 Exemption for certain venture capital investments through early stage venture capital limited partnerships**

*General*

- (1) All of your share in a \*capital gain or a \*capital loss from a \*CGT event is disregarded if:
- (a) you are a partner in a \*limited partnership; and
  - (b) the CGT event relates to an investment that the partnership made that:
    - (i) is an \*eligible venture capital investment; and
    - (ii) meets all of the \*additional investment requirements for ESVCLPs for the investment; and
  - (c) when the partnership made the investment, the partnership was an \*early stage venture capital limited partnership that was \*unconditionally registered; and
  - (d) at the time of the CGT event, the partnership:
    - (i) owned the investment; and
    - (ii) had owned the investment for at least 12 months; and
    - (iii) was an early stage venture capital limited partnership that was unconditionally registered; and
    - (iv) in the case of a capital gain—met all of the \*registration requirements of an ESVCLP that are not \*investment registration requirements.

Note 1: The registration requirements of an ESVCLP are set out in section 9-3 of the *Venture Capital Act 2002*. It is important to understand that this is a separate requirement from registration under Part 2 of that Act (which effectively determines whether an entity is an ESVCLP).

It is technically possible to be registered under Part 2 of that Act without meeting the registration requirements of an ESVCLP, but you might still not be entitled to exemption under this section.

Note 2: This section does not apply if you get a partial exemption in relation to a CGT event under section 118-408.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Residency requirements for general partners*

- (2) However, if you are a \*general partner in the partnership, subsection (1) does not apply to you unless you are:
- (a) an Australian resident; or
  - (b) a resident of a foreign country in respect of which a double tax agreement (as defined in Part X of the *Income Tax Assessment Act 1936*) is in force that is an agreement of a kind referred to in subparagraph (b)(i), (ia), (ii), (iii), (iv) or (v) of that definition.
- (3) For the purposes of this section, the place of residence of a \*general partner in a \*limited partnership:
- (a) that is a company or limited partnership; and
  - (b) that is not an Australian resident;
- is the place in which the general partner has its central management and control.

*Meaning of early stage venture capital limited partnership*

- (4) A \*limited partnership is an **early stage venture capital limited partnership** at a particular time if, at that time, the partnership's registration as an early stage venture capital limited partnership under Part 2 of the *Venture Capital Act 2002* is, or is taken to have been, in force.

Note 1: For when the registration is, or is taken to have been, in force, see section 13-10 of the *Venture Capital Act 2002*.

Note 2: In this Act and the *Venture Capital Act 2002*, the term "early stage venture capital limited partnership" is usually abbreviated to "ESVCLP".

*Effect of converting convertible notes etc.*

- (6) A partnership that acquired a \*share in a company by converting a \*convertible note, or a convertible preference share, issued by the company is treated, for the purposes of subparagraph (1)(d)(ii), as having owned the share from the time when it last acquired the convertible note or convertible preference share.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 118-408

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- (7) A partnership that acquired a unit in a unit trust by converting a \*convertible note issued by the trustee of the unit trust is treated, for the purposes of subparagraph (1)(d)(ii), as having owned the unit from the time when it last acquired the convertible note.
- (8) Subsection (6) or (7) applies whether or not the acquisition of the \*convertible note, or convertible preference share, was an \*eligible venture capital investment.
- (9) A partnership that converts a \*convertible note into a share or a unit is treated, for the purposes of subparagraph (1)(d)(ii), as continuing to own the convertible note until the partnership no longer owns the share or unit.

**118-408 Partial exemption for some capital gains otherwise fully exempt under section 118-407**

- (1) Despite section 118-407, you get only a partial exemption for a \*capital gain from a \*CGT event relating to an \*eligible venture capital investment if:
  - (a) apart from this section, all of your share in the capital gain from the CGT event relating to the investment would be disregarded under section 118-407; and
  - (b) at the end of an income year to which subsection (4) applies (a *valuation year*), the sum of the values of:
    - (i) the assets of the company or unit trust in which the investment is made; and
    - (ii) the assets of each other entity that is a \*connected entity of the company or unit trust; exceeds \$250 million; and
  - (c) the CGT event happens after:
    - (i) if there is only one valuation year—the end of the period of 6 months after the end of that valuation year; or
    - (ii) if there is more than one valuation year—the end of the period of 6 months after the end of the earliest of those valuation years.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) If subsection (1) applies, work out your \*capital gain using the formula:

Normal capital gain – Valuation year capital gain

where:

**normal capital gain** is what your \*capital gain from the \*CGT event would be apart from section 118-407 and this section.

**valuation year capital gain** is the capital gain you would have made in relation to the \*CGT event if the CGT event had happened:

- (a) if there is only one valuation year—at the end of the period of 6 months after the end of that valuation year; or
- (b) if there is more than one valuation year—at the end of the period of 6 months after the end of the earliest of those valuation years.

Work out the capital gain based on what the \*capital proceeds would have been, and on other matters relating to the amount of the gain being determined on a reasonable basis, if the CGT event resulting in the gain had happened at the end of that period.

- (3) Despite subsection (2), you are taken not to have a \*capital gain, or a \*capital loss, from the \*CGT event if the amount worked out under the formula in that subsection would be less than zero.
- (4) This subsection applies to any income year that:
- (a) precedes the income year in which the \*CGT event happens; but
  - (b) does not precede the income year in which the investment was made.

Note: There must always be at least one valuation year, because paragraph 118-407(1)(d) ensures the CGT event will not happen in the year the investment was made.

- (5) Section 118-407 does not apply in relation to a \*CGT event if this section applies in relation to the CGT event.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 118-410

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**118-410 Exemption for certain foreign venture capital investments through Australian venture capital funds of funds**

*Gains or losses as a partner in a VCLP or an ESVCLP*

- (1) All of your share in a \*capital gain or a \*capital loss from a \*CGT event is disregarded if:
- (a) you are an \*eligible venture capital partner in a \*limited partnership; and
  - (b) the CGT event relates to an \*eligible venture capital investment made by a \*VCLP, or an \*ESVCLP, in which the partnership is a partner; and
  - (c) when the investment was made, the partnership was an \*Australian venture capital fund of funds that was \*unconditionally registered; and
  - (d) when the investment was made, the VCLP or ESVCLP was unconditionally registered; and
  - (e) at the time of the CGT event, the partnership:
    - (i) was an Australian venture capital fund of funds that was unconditionally registered; and
    - (ii) in the case of a capital gain—met all of the \*registration requirements of an AFOF that are not \*investment registration requirements; and
  - (f) at the time of the CGT event, the VCLP or ESVCLP:
    - (i) owned the investment; and
    - (ii) had owned the investment for at least 12 months; and
    - (iii) was unconditionally registered; and
    - (iv) in the case of a capital gain—met all of the \*registration requirements of a VCLP, or all of the \*registration requirements of an ESVCLP, (as the case requires) that are not investment registration requirements.

Note: The registration requirements of an AFOF are set out in section 9-5 of the *Venture Capital Act 2002*. It is important to understand that this is a separate requirement from registration under Part 2 of that Act (which effectively determines whether an entity is an AFOF).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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It is technically possible to be registered under Part 2 of that Act without meeting the registration requirements of an AFOF, but you might still not be entitled to exemption under this section.

*Gains or losses from direct investments*

- (2) All of your share in a \*capital gain or a \*capital loss from a \*CGT event is disregarded if:
- (a) you are an \*eligible venture capital partner in a \*limited partnership; and
  - (b) in the case of a capital gain—the CGT event relates to an \*eligible venture capital investment that the partnership made in a company, or a unit trust, in which a \*VCLP, or an \*ESVCLP, of which the partnership is a partner, owns one or more eligible venture capital investments; and
  - (c) when the investment was made, the partnership was an \*Australian venture capital fund of funds that was \*unconditionally registered; and
  - (d) when the investment was made, the VCLP or ESVCLP owned one or more eligible venture capital investments in the company referred to in paragraph (b); and
  - (e) at the time of the CGT event, the partnership:
    - (i) owned the investment; and
    - (ii) had owned the investment for at least 12 months; and
    - (iii) was an Australian venture capital fund of funds that was unconditionally registered; and
    - (iv) in the case of a capital gain—met all of the \*registration requirements of an AFOF that are not \*investment registration requirements.

Note: The registration requirements of an AFOF are set out in section 9-5 of the *Venture Capital Act 2002*. It is important to understand that this is a separate requirement from registration under Part 2 of that Act (which effectively determines whether an entity is an AFOF).

It is technically possible to be registered under Part 2 of that Act without meeting the registration requirements of an AFOF, but you might still not be entitled to exemption under this section.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 118-410

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*Meaning of Australian venture capital fund of funds*

- (3) A \*limited partnership is an **Australian venture capital fund of funds** at a particular time if, at that time, the partnership's registration as an Australian venture capital fund of funds under Part 2 of the *Venture Capital Act 2002* is, or is taken to have been, in force.

For when the registration is, or is taken to have been, in force, see section 13-10 of the *Venture Capital Act 2002*.

Note: In this Act and the *Venture Capital Act 2002*, the term "Australian venture capital fund of funds" is usually abbreviated to "AFOF".

*Effect of converting convertible notes etc.*

- (4) A partnership that acquired a \*share in a company by converting a \*convertible note, or a convertible preference share, issued by the company is treated, for the purposes of subparagraphs (1)(f)(ii) and (2)(e)(ii), as having owned the share from the time when it last acquired the convertible note or convertible preference share.
- (5) A partnership that acquired a unit in a unit trust by converting a \*convertible note issued by or on behalf of the trustee of the unit trust is treated, for the purposes of subparagraphs (1)(f)(ii) and (2)(e)(ii), as having owned the unit from the time when it last acquired the convertible note.
- (6) Subsection (4) or (5) applies whether or not the acquisition of the \*convertible note, or convertible preference share, was an \*eligible venture capital investment.
- (7) A partnership that converts a \*convertible note into a share or a unit is treated, for the purposes of subparagraphs (1)(f)(ii) and (2)(e)(ii), as continuing to own the convertible note until the partnership no longer owns the share or unit.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



### **118-415 Exemption for certain venture capital investments by foreign residents**

#### *General*

- (1) A \*capital gain or a \*capital loss from a \*CGT event is disregarded if:
- (a) the CGT event relates to an investment that you made that is an \*eligible venture capital investment; and
  - (b) you were an \*eligible venture capital investor when you made the investment; and
  - (c) at the time of the CGT event:
    - (i) you owned the investment; and
    - (ii) you had owned the investment for at least 12 months; and
    - (iii) you were an eligible venture capital investor.

#### *Meaning of eligible venture capital investor*

- (2) An entity is an **eligible venture capital investor** at a particular time if, at that time, the entity:
- (a) is a \*tax-exempt foreign resident; and
  - (b) is registered under Part 3 of the *Venture Capital Act 2002*.

#### *Effect of converting convertible notes etc.*

- (3) An entity that acquired a \*share in a company by converting a \*convertible note, or a convertible preference share, issued by the company is treated, for the purposes of subparagraph (1)(c)(ii), as having owned the share from the time when it last acquired the convertible note or convertible preference share.
- (4) An entity that acquired a unit in a unit trust by converting a \*convertible note issued by or on behalf of the trustee of the unit trust is treated, for the purposes of subparagraph (1)(c)(ii), as having owned the unit from the time when it last acquired the convertible note.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 118-420

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- (5) Subsection (3) or (4) applies whether or not the acquisition of the \*convertible note, or convertible preference share, was an \*eligible venture capital investment.
- (6) An entity that converts a \*convertible note into a share or a unit is treated, for the purposes of subparagraph (1)(c)(ii), as continuing to own the convertible note until the entity no longer owns the share or unit.

**118-420 Meaning of *eligible venture capital partner* etc.**

- (1) A partner in a \*limited partnership is an *eligible venture capital partner* if:
  - (a) the partner is a \*tax-exempt foreign resident; or
  - (b) the partner is a \*foreign venture capital fund of funds, and the sum of:
    - (i) the partner's \*committed capital in the partnership; and
    - (ii) the sum of the amounts of committed capital in the partnership of any entities that are \*connected entities of the partner;does not exceed 30% of the partnership's committed capital; or
  - (ba) the partner is a \*widely held foreign venture capital fund of funds; or
  - (c) the partner is a foreign resident who is not a \*general partner of a \*VCLP or an \*ESVCLP and is neither a \*tax-exempt foreign resident nor a \*foreign venture capital fund of funds, and the sum of:
    - (i) the partner's committed capital in the partnership; and
    - (ii) the sum of the amounts of committed capital in the partnership of any entities that are connected entities of the partner;is less than 10% of the partnership's committed capital.

Note: Subsection (7) prevents some trusts from being eligible venture capital partners.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) An entity that is an \*associate of the partner only because the entity is a partner in the partnership in question is taken not to be a \*connected entity of the partner for the purposes of subparagraphs (1)(b)(ii) and (c)(ii).
- (3) An entity is a **tax-exempt foreign resident** if:
- (a) the entity is a foreign resident; and
  - (b) the entity is not a \*general partner of a \*VCLP or an \*ESVCLP; and
  - (c) the entity's income is exempt, or effectively exempt, from taxation in the entity's country of residence.
- (4) An entity that is a \*limited partnership is a **foreign venture capital fund of funds** if:
- (a) the partnership was established in a foreign country; and
  - (b) every partner who is a \*general partner is a foreign resident; and
  - (c) the partnership is not a general partner of a \*VCLP or an \*ESVCLP.
- (5) An entity that is not a \*limited partnership is a **foreign venture capital fund of funds** if:
- (a) whether by operation of law or by election, the entity is not taxed as an entity in its country of residence, but the entity's income is taxed to its members according to their interests in the entity; and
  - (b) the entity was established in a foreign country; and
  - (c) the entity is a foreign resident; and
  - (d) the entity is not a \*general partner of a \*VCLP or an \*ESVCLP.
- (6) An entity is a **widely held foreign venture capital fund of funds** if:
- (a) the entity is a \*foreign venture capital fund of funds; and
  - (b) the entity is a \*widely held entity; and
  - (c) \*eligible venture capital partners (other than foreign venture capital fund of funds) ultimately hold the rights to at least 90% of the entity's income; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (d) each other entity who:
  - (i) if the entity is a \*limited partnership—is a \*general partner of the partnership; or
  - (ii) otherwise—exercises day to day control of the entity; is a \*foreign resident.
- (7) A trust is not an eligible venture capital partner if an Australian resident:
  - (a) is or is likely to become presently entitled, for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936*, to; or
  - (b) has or is likely to have an individual interest, for the purposes of Division 5 of Part III of the *Income Tax Assessment Act 1936*, in;  
a share of income of the trust, either directly or indirectly through one or more interposed partnerships or trusts.
- (8) For the purposes of this section, the place of residence of a \*general partner of a \*limited partnership:
  - (a) that is a company or a limited partnership; and
  - (b) that is a foreign resident;  
is the place in which the general partner has its central management and control.
- (9) For the purposes of this section, the place of residence of an entity referred to in paragraph (5)(a) is the place in which the entity has its central management and control.

**118-425 Meaning of *eligible venture capital investment*—investments in companies**

*Requirements for an eligible venture capital investment*

- (1) An investment is an ***eligible venture capital investment*** if:
  - (a) it is \*at risk; and
  - (b) it is:
    - (i) an acquisition of \*shares in a company; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) an acquisition of options (including warrants) originally issued by a company to acquire shares in the company; or
  - (iii) an acquisition of \*convertible notes (other than convertible notes that are \*debt interests) issued by a company; and
- (c) the company meets the requirements of subsections (2) to (7); and
- (d) the sum of:
- (i) the total amount that the partnership has invested in all the \*equity interests and \*debt interests that the partnership owns in the company; and
  - (ii) the total amount that the partnership has invested in all the equity interests and debt interests that the partnership owns in any entities that are \*connected entities of the company;
- does not exceed 30% of the partnership's \*committed capital.

*Certain entities not treated as connected entities*

- (1A) In applying subparagraph (1)(d)(ii), ignore an entity that is a \*connected entity of the company only because it is an \*associate of the company because of an investment made in the entity by the partnership.

*Location within Australia*

- (2) The company:
- (a) must, at the time the investment is made, be an Australian resident; and
  - (b) if at that time the entity making the investment does not own any other investments in the company—must meet the following requirements:
    - (i) more than 50% of the people who are currently engaged by the company to perform services must perform those services primarily in Australia;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(ii) more than 50% of its assets (determined by value) must be situated in Australia;

during the whole of the period of 12 months, or such shorter period as \*Industry Innovation and Science Australia determines under section 25-5 of the *Venture Capital Act 2002*, starting from the time the investment is made.

However, subparagraph (b)(i) or (ii) does not apply to the company if Industry Innovation and Science Australia so determines under section 25-10 of the *Venture Capital Act 2002*.

See subsection (10) for the value of assets.

Note: A company that fails to meet the requirements of this subsection can still be eligible in certain circumstances: see subsection (12A).

*Predominant activity*

- (3) The company must satisfy at least 2 of these requirements:
- (a) more than 75% of the assets (determined by value) that are assets of either:
    - (i) the company; or
    - (ii) any entity controlled by the company in a way described in section 328-125 (a **controlled entity**);must be used primarily in activities that are not ineligible activities mentioned in subsection (13) of this section;
  - (b) more than 75% of the persons who are employees of either or both of the following:
    - (i) the company;
    - (ii) any one or more of its controlled entities;must be engaged (as such employees) primarily in activities that are not ineligible activities mentioned in subsection (13) of this section;
  - (c) more than 75% of the total assessable income, \*exempt income and \*non-assessable non-exempt income of:
    - (i) the company; and
    - (ii) each of its controlled entities;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

must come from activities that are not ineligible activities mentioned in subsection (13) of this section.

- Note 1: This requirement is ongoing. It is not limited to the circumstances at the time the investment was made.
- Note 2: See subsection (10) for the value of assets.
- Note 3: A company that fails to meet at least 2 of the requirements can still be eligible if:
- (a) Industry Innovation and Science Australia determines that the company's primary activity is not ineligible and the failure is temporary: see subsection (14); or
  - (b) all amounts invested in the company are appropriately invested within the first 6 months: see subsection (14A).

Industry Innovation and Science Australia may also determine that the activities of a controlled entity of the company are to be disregarded in applying this section to the company: see subsection (14B).

*Investment in other entities*

- (4) The company must not invest, in another entity, any part of the amount invested, unless:
- (a) the other entity:
    - (i) is \*connected with the company (but not because the other entity is an \*associate of the company as a result of an investment made in the other entity by the partnership); and
    - (ii) meets the requirements of subsections (3) to (7); or
  - (b) the other entity:
    - (i) is, after the investment is made, controlled by the company in a way described in section 328-125; and
    - (ii) meets the requirements of subsections (2) to (7) of this section (other than subsection (3)).

However, this subsection does not prevent the company from depositing money with an \*ADI, or with a body authorised by or under a law of a foreign country to carry on banking business in that country.

- Note 1: This requirement is ongoing. It is not limited to the circumstances at the time the investment was made.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note 2: The other entity can be taken to meet the requirements of subsection (2) if Industry Innovation and Science Australia determines that its activities are complementary to activities of the company or other controlled entities and that the company meets those requirements at the time of the investment: see subsection (14C).

*Investment in the capacity of a trustee*

- (4A) The company must not, in the capacity of a trustee, use any part of the amount invested.

Note: This requirement is ongoing. It is not limited to the circumstances at the time the investment was made.

*Registered auditor*

- (5) The company must have as its auditor a \*registered auditor at all times (if any) referred to in subsection (5A) during which the company:
- (a) is not a proprietary company within the meaning of the *Corporations Act 2001*; or
  - (b) is a large proprietary company within the meaning of that Act; or
  - (c) would exceed the \*permitted entity value if the amount provided for under subsection 118-440(9) were \$12.5 million.

Note: This requirement is ongoing.

- (5A) The times are:
- (a) the end of the income year in which the investment is made; and
  - (b) all times after the end of that income year.

*Permitted entity value*

- (6) The company must not, immediately before the investment is made, exceed the \*permitted entity value.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Listing*

- (7) The company must be a company whose \*shares:
- (a) are, at the time the investment is made, not listed for quotation in the official list of a stock exchange in Australia or a foreign country; or
  - (b) are so listed at that time, but cease to be so listed at any time during the 12 months after the investment is made.

However, the company is taken to meet the requirements of this subsection in relation to any investment made by an \*ESVCLP (whether or not shares in the company are so listed).

Note: The additional requirements for ESVCLPs deal with listing in relation to initial investments by ESVCLPs in companies: see paragraph 118-428(1)(a).

*Scrip for scrip investments*

- (8) However, a company is taken to meet the requirements of subsections (2) to (7) if:
- (a) the investment is an acquisition of \*shares in that company in exchange for shares in another company; and
  - (b) at the time that the \*VCLP, \*ESVCLP, \*AFOF or \*eligible venture capital investor in question acquired the shares being exchanged, the other company meets the requirements of subsections (2) to (7), but not only because this subsection applies to the other company; and
  - (c) the shares in the other company that are being exchanged are all of the shares in the other company that the entity making the investment owned at the time of the exchange.

*Debt interests*

- (9) To avoid doubt, a \*debt interest cannot be an eligible venture capital investment.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*The value of an asset or investment*

- (10) The value of an asset, or an investment, of an entity at a particular time for the purposes of this section is the value of the asset or investment as shown in:
- (a) the last audited accounts prepared for the entity for the purposes of the *Corporations Act 2001* that relates to a period ending less than 18 months before that time; or
  - (b) if there are no such audited accounts—a statement, prepared in accordance with the \*accounting standards and audited by the entity’s auditor, showing that value as at a time no longer than 12 months before that time.
- (10A) However, for the purposes of this section, the value of the asset or investment at that time is the value provided for by section 118-450 if:
- (a) there are no such audited accounts; and
  - (b) the entity does not have an auditor at that time; and
  - (c) the entity is not required under subsection (5) of this section to have an auditor at that time.

*Application to consolidated or consolidatable groups*

- (12) This section applies to a \*consolidated group or \*consolidatable group as if:
- (a) the \*head company of the group carried on all of the activities that are carried on by \*subsidiary members of the group; and
  - (b) the assets, employees and income of the subsidiary members of the group were assets, employees and income of the head company; and
  - (c) each subsidiary member of the group were parts of the head company rather than separate entities.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Exception to requirements relating to location within Australia*

- (12A) A company is taken to meet the requirements of subsection (2) in relation to an investment made by an entity if the sum of:
- (a) the value of the investment at the time the entity makes it; and
  - (b) the total value of all the other investments that the entity owns at that time that do not, or apart from this subsection would not, meet those requirements;
- does not exceed 20% of the partnership's \*committed capital.

Note: See subsection (10) for the value of investments.

*Ineligible activities*

- (13) These activities are ineligible activities:
- (a) property development or land ownership;
  - (b) finance, to the extent that it is any of the following:
    - (i) banking;
    - (ii) providing capital to others;
    - (iii) leasing;
    - (iv) factoring;
    - (v) securitisation;
  - (c) insurance;
  - (d) construction (including extension, improvement or up-grading) or acquisition of infrastructure facilities (within the meaning of section 93L of the *Development Allowance Authority Act 1992*, as in force just before the commencement of Schedule 6 to the *Statute Update (Smaller Government) Act 2018*) or related facilities (within the meaning of section 93M of that Act), or both;
  - (e) making investments, whether made directly or indirectly, that are directed to deriving income in the nature of interest, rents, dividends, royalties or lease payments.

For the purposes of this subsection, activities that are ancillary or incidental to a particular activity are taken to form part of that activity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: Under Division 362 in Schedule 1 to the *Taxation Administration Act 1953*, Industry Innovation and Science Australia can make rulings that activities, or classes of activities, are not ineligible activities.

- (13A) However, none of the following activities are ineligible activities mentioned in subsection (13):
- (a) developing technology for use in relation to an activity referred to in paragraph (13)(b), (c) or (e);
  - (b) an activity that is ancillary or incidental to the activity of developing technology referred to in paragraph (a) of this subsection;
  - (c) an activity referred to in paragraph (13)(b), (c) or (e) that is the subject of a finding in force under section 118-432 at the time the investment is made.
- (13B) Subsection (13A) does not apply in circumstances prescribed by regulations made for the purposes of this subsection.

*Industry Innovation and Science Australia discretion*

- (14) A company is taken to meet the requirements of subsection (3) even if it fails to satisfy at least 2 of the requirements in that subsection if \*Industry Innovation and Science Australia determines under section 25-15 of the *Venture Capital Act 2002* that:
- (a) the company's primary activity is not an ineligible activity mentioned in subsection (13); and
  - (b) the failure is temporary and did not exist at the time the investment referred to in subsection (1) was made and, if it has been disposed of, when it was disposed of.

*Temporary exception to the requirements for predominant activity*

- (14A) A company is taken to meet the requirements of subsection (3) even if it fails to satisfy at least 2 of the requirements in that subsection if:
- (a) the company's sole purpose is making one or more investments that are \*eligible venture capital investments, or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

would be eligible venture capital investments apart from paragraph (1)(d); and

- (b) during the 6 month period starting immediately before the first investment made by a \*VCLP, \*ESVCLP, \*AFOF or \*eligible venture capital investor, the company has used all of the amounts invested in it:
  - (i) to make investments of a kind referred to in paragraph (a); or
  - (ii) to engage in activities that are ancillary or incidental to making those investments.

However, this subsection applies to the company only for that 6 month period.

*Activities disregarded in applying the predominant activity test*

(14B) If \*Industry Innovation and Science Australia determines under section 25-15 of the *Venture Capital Act 2002* that:

- (a) the activities of the controlled entity of a company are complementary to one or more of the activities, of the company or its other controlled entities, that are not ineligible activities mentioned in subsection (13) of this section; and
- (b) the activities that, taken together, constitute the principal activities of the company and all of its controlled entities are not ineligible activities mentioned in subsection (13) of this section; and
- (c) in all the circumstances, it is appropriate that, for a period specified in the determination, the activities of the controlled entity are disregarded when applying subsection (3) of this section to the company;

in applying subsection (3) of this section to the company, disregard, for the period specified in the determination, the activities of the controlled entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Other entity can be taken to meet requirements relating to location in Australia*

- (14C) In applying subsection (4) to a company in relation to its investment in another entity, the other entity is taken, for the purposes of subparagraph (4)(b)(ii), to meet the requirements of subsection (2) if \*Industry Innovation and Science Australia determines under section 25-15 of the *Venture Capital Act 2002* that:
- (a) the activities of the other entity are complementary to one or more of the activities of the company or its other controlled entities; and
  - (b) the company meets the requirements of subsection (2) of this section at the time the investment is made, or will meet those requirements at the time the investment is proposed to be made.

*Convertible notes and convertible preference shares*

- (15) To the extent that an investment by an entity consists of the acquisition of a \*share in a company by converting a \*convertible note, or a convertible preference share, issued by the company, the investment is, for the purpose of determining whether the company meets the requirements of subsections (2) to (7), taken to have been made at the time when the entity last acquired the convertible note or convertible preference share.

**118-427 Meaning of *eligible venture capital investment*—investments in unit trusts**

*Requirements for an eligible venture capital investment*

- (1) An investment is an ***eligible venture capital investment*** if:
- (a) it is \*at risk; and
  - (b) it is either:
    - (i) an acquisition of units in a unit trust; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) an acquisition of options (including warrants) originally issued by or on behalf of the trustee of a unit trust to acquire units in the unit trust; or
- (iii) an acquisition of \*convertible notes (other than convertible notes that are \*debt interests) issued by or on behalf of the trustee of a unit trust; and
- (c) the unit trust meets the requirements of subsections (3) to (8); and
- (d) the sum of:
  - (i) the total amount that the partnership has invested in all the \*equity interests and \*debt interests that the partnership owns in the unit trust; and
  - (ii) the total amount that the partnership has invested in all the equity interests and debt interests that the partnership owns in any entities that are \*connected entities of the unit trust;does not exceed 30% of the partnership's \*committed capital.

*Certain entities not treated as connected entities*

- (2) In applying subparagraph (1)(d)(ii), ignore an entity that is a \*connected entity of the unit trust only because it is an \*associate of the unit trust because of an investment made in the entity by the partnership.

*Location within Australia*

- (3) The unit trust:
  - (a) must, at the time the investment is made, carry on \*business in Australia; and
  - (b) must, at that time, meet at least one of the following requirements:
    - (i) the central management and control of the unit trust is in Australia;
    - (ii) more than 50% of the beneficial interests in the income of the unit trust are held by Australian residents;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (iii) more than 50% of the beneficial interests in the property of the unit trust are held by Australian residents; and
- (c) if at that time the entity making the investment does not own any other investments in the unit trust—must meet the following requirements:
  - (i) more than 50% of the people who are currently engaged by the trustee of the unit trust to perform services must perform those services primarily in Australia;
  - (ii) more than 50% of its assets (determined by value) must be situated in Australia;

during the whole of the period of 12 months, or such shorter period as \*Industry Innovation and Science Australia determines under section 25-5 of the *Venture Capital Act 2002*, starting from the time the investment is made.

However, subparagraph (c)(i) or (ii) does not apply to the unit trust if Industry Innovation and Science Australia so determines under section 25-10 of the *Venture Capital Act 2002*.

Note: A company that fails to meet the requirements of this subsection can still be eligible in certain circumstances: see subsection (13).

*Predominant activity*

- (4) The unit trust must satisfy at least 2 of these requirements:
  - (a) more than 75% of the assets (determined by value) that are assets of either:
    - (i) the unit trust; or
    - (ii) any entity controlled by the unit trust in a way described in section 328-125 (a ***controlled entity***);must be used primarily in activities that are not ineligible activities mentioned in subsection (14) of this section;
  - (b) more than 75% of the persons who are employees of either or both of the following:
    - (i) the trustee of the unit trust;
    - (ii) any one or more of the unit trust's controlled entities;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



must be engaged (as such employees) primarily in activities that are not ineligible activities mentioned in subsection (14) of this section;

(c) more than 75% of the total assessable income, \*exempt income and \*non-assessable non-exempt income of:

- (i) the unit trust; and
- (ii) each of its controlled entities;

must come from activities that are not ineligible activities mentioned in subsection (14) of this section.

Note 1: This requirement is ongoing. It is not limited to the circumstances at the time the investment was made.

Note 2: See subsection (11) for the value of assets.

Note 3: A unit trust that fails to meet at least 2 of the requirements can still be eligible if Industry Innovation and Science Australia determines that the unit trust's primary activity is not ineligible and the failure is temporary: see subsection (15).

Note 4: Industry Innovation and Science Australia may also determine that the activities of a controlled entity of the unit trust are to be disregarded in applying this section to the unit trust: see subsection (15A).

#### *Investment in other entities*

(5) The unit trust must not invest, in another entity, any part of the amount invested, unless:

(a) the other entity:

- (i) is \*connected with the unit trust (but not because the other entity is an \*associate of the unit trust as a result of an investment made in the other entity by the partnership); and
- (ii) meets the requirements of subsections (4) to (8); or

(b) the other entity:

- (i) is, after the investment is made, controlled by the unit trust in a way described in section 328-125; and
- (ii) meets the requirements of subsections (3) to (8) of this section (other than subsection (4)).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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However, this subsection does not prevent the unit trust from depositing money with an \*ADI, or with a body authorised by or under a law of a foreign country to carry on banking business in that country.

Note 1: This requirement is ongoing. It is not limited to the circumstances at the time the investment was made.

Note 2: The other entity can be taken to meet the requirements of subsection (3) if Industry Innovation and Science Australia determines that its activities are complementary to activities of the unit trust or other controlled entities and that the unit trust meets those requirements at the time of the investment: see subsection (15B).

*Investment in the capacity of a trustee*

(5A) The unit trust must not, in the capacity of a trustee, use any part of the amount invested.

Note: This requirement is ongoing. It is not limited to the circumstances at the time the investment was made.

*Registered auditor*

(6) The unit trust must have as its auditor a \*registered auditor at all times (if any) referred to in subsection (6A) during which the unit trust:

- (a) if it were a company:
  - (i) would not be a proprietary company within the meaning of the *Corporations Act 2001*; or
  - (ii) would be a large proprietary company within the meaning of that Act; or
- (b) would exceed the \*permitted entity value if the amount provided for under subsection 118-440(9) were \$12.5 million.

Note: This requirement is ongoing.

(6A) The times are:

- (a) the end of the income year in which the investment is made; and
- (b) all times after the end of that income year.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Permitted entity value*

- (7) The unit trust must not, immediately before the investment is made, exceed the \*permitted entity value.

*Listing*

- (8) The unit trust must be a unit trust whose units:
- (a) are, at the time the investment is made, not listed for quotation in the official list of a stock exchange in Australia or a foreign country; or
  - (b) are so listed at that time, but cease to be so listed at any time during the 12 months after the investment is made.

However, the unit trust is taken to meet the requirements of this subsection in relation to any investment made by an \*ESVCLP (whether or not units in the unit trust are so listed).

Note: The additional requirements for ESVCLPs deal with listing in relation to initial investments by ESVCLPs in unit trusts: see paragraph 118-428(1)(a).

*Scrip for scrip investments*

- (9) However, a unit trust is taken to meet the requirements of subsections (3) to (8) if:
- (a) the investment is an acquisition of units in that unit trust in exchange for units in another unit trust; and
  - (b) at the time that the \*VCLP, \*ESVCLP, \*AFOF or \*eligible venture capital investor in question acquired the units being exchanged, the other unit trust meets the requirements of subsections (3) to (8), but not only because this subsection applies to the other unit trust; and
  - (c) the units in the other unit trust that are being exchanged are all of the units in the other unit trust that the entity making the investment owned at the time of the exchange.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Debt interests*

- (10) To avoid doubt, a \*debt interest cannot be an \*eligible venture capital investment.

*The value of an asset or investment*

- (11) The value of an asset or investment of an entity at a particular time for the purposes of this section is:
- (a) the value of the asset or investment as shown in a statement, prepared in accordance with the \*accounting standards and audited by the entity's auditor, showing that value as at a time no longer than 12 months before that time; or
  - (b) the value provided for by section 118-450 if:
    - (i) the entity does not have an auditor at that time; and
    - (ii) the entity is not required under subsection (6) of this section to have an auditor at that time.

*Application to groups*

- (12) If a group of entities:
- (a) is treated as a \*consolidated group because of a choice that a unit trust has made under section 713-130; or
  - (b) would be treated as a consolidated group because of such a choice:
    - (i) if a unit trust were to make such a choice; or
    - (ii) if a unit trust that is not a \*public trading trust were such a trust and were to make such a choice;
- this section applies in relation to the entities as if:
- (c) the unit trust carried on, as the \*head company of the consolidated group or consolidatable group, all of the activities that are carried on by the other members of the group; and
  - (d) the assets, employees and income of the other members of the group were assets, employees and income of the unit trust; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (e) each of the other members of the group were parts of the unit trust rather than separate entities.

*Exception to requirements relating to location within Australia*

- (13) A unit trust is taken to meet the requirements of subsection (3) in relation to an investment made by an entity if the sum of:
  - (a) the value of the investment at the time the entity makes it; and
  - (b) the total value of all the other investments that the entity owns at that time that do not, or apart from this subsection would not, meet those requirements;does not exceed 20% of the partnership's \*committed capital.

Note: See subsection (11) for the value of investments.

*Ineligible activities*

- (14) These activities are ineligible activities:
  - (a) property development or land ownership;
  - (b) finance, to the extent that it is any of the following:
    - (i) banking;
    - (ii) providing capital to others;
    - (iii) leasing;
    - (iv) factoring;
    - (v) securitisation;
  - (c) insurance;
  - (d) construction (including extension, improvement or up-grading) or acquisition of infrastructure facilities (within the meaning of section 93L of the *Development Allowance Authority Act 1992*, as in force just before the commencement of Schedule 6 to the *Statute Update (Smaller Government) Act 2018*) or related facilities (within the meaning of section 93M of that Act), or both;
  - (e) making investments, whether made directly or indirectly, that are directed to deriving income in the nature of interest, rents, dividends, royalties or lease payments.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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For the purposes of this subsection, activities that are ancillary or incidental to a particular activity are taken to form part of that activity.

Note: Under Division 362 in Schedule 1 to the *Taxation Administration Act 1953*, Industry Innovation and Science Australia can make rulings that activities, or classes of activities, are not ineligible activities.

- (14A) However, none of the following activities are ineligible activities mentioned in subsection (14):
- (a) developing technology for use in relation to an activity referred to in paragraph (14)(b), (c) or (e);
  - (b) an activity that is ancillary or incidental to the activity of developing technology referred to in paragraph (a) of this subsection;
  - (c) an activity referred to in paragraph (14)(b), (c) or (e) that is the subject of a finding in force under section 118-432 at the time the investment is made.
- (14B) Subsection (14A) does not apply in circumstances prescribed by regulations made for the purposes of this subsection.

*Industry Innovation and Science Australia discretion*

- (15) A unit trust is taken to meet the requirements of subsection (4) even if it fails to satisfy at least 2 of the requirements in that subsection if \*Industry Innovation and Science Australia determines under section 25-15 of the *Venture Capital Act 2002* that:
- (a) the unit trust's primary activity is not an ineligible activity mentioned in subsection (14); and
  - (b) the failure is temporary and did not exist at the time the investment referred to in subsection (1) was made and, if it has been disposed of, when it was disposed of.

*Activities disregarded in applying the predominant activity test*

- (15A) If \*Industry Innovation and Science Australia determines under section 25-15 of the *Venture Capital Act 2002* that:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) the activities of the controlled entity of a unit trust are complementary to one or more of the activities, of the unit trust or its other controlled entities, that are not ineligible activities mentioned in subsection (14) of this section; and
- (b) the activities that, taken together, constitute the principal activities of the unit trust and all of its controlled entities are not ineligible activities mentioned in subsection (14) of this section; and
- (c) in all the circumstances, it is appropriate that, for a period specified in the determination, the activities of the controlled entity are disregarded when applying subsection (4) of this section to the unit trust;

in applying subsection (4) of this section to the unit trust, disregard, for the period specified in the determination, the activities of the controlled entity.

*Other entity can be taken to meet requirements relating to location in Australia*

- (15B) In applying subsection (5) to a unit trust in relation to its investment in another entity, the other entity is taken, for the purposes of subparagraph (5)(b)(ii), to meet the requirements of subsection (3) if \*Industry Innovation and Science Australia determines under section 25-15 of the *Venture Capital Act 2002* that:
- (a) the activities of the other entity are complementary to one or more of the activities of the unit trust or its other controlled entities; and
  - (b) the unit trust meets the requirements of subsection (3) of this section at the time the investment is made, or will meet those requirements at the time the investment is proposed to be made.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 118-428

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*Convertible notes*

- (16) To the extent that an investment by an entity consists of the acquisition of a unit in a unit trust by converting a \*convertible note issued by or on behalf of the trustee of the unit trust, the investment is, for the purpose of determining whether the unit trust meets the requirements of subsections (3) to (8), taken to have been made at the time when the entity last acquired the convertible note.
- (17) Subsection (16) applies whether or not the acquisition of the \*convertible note was an \*eligible venture capital investment.

**118-428 Additional investment requirements for ESVCLPs**

- (1) The *additional investment requirements for ESVCLPs*, for an investment in a company or in a unit trust, are:
  - (a) if the entity making the investment does not, when the investment is made, own any other investment in the company or unit trust:
    - (i) \*shares in the company; or
    - (ii) units in the unit trust;are not, when the investment is made, listed for quotation in the official list of a stock exchange in Australia or a foreign country; and
  - (b) if the investment is \*pre-owned when the investment is made:
    - (i) the entity already owns investments in the company or unit trust; or
    - (ii) the entity will, in connection with making the investment, make other investments in the company or unit trust, some or all of which are not pre-owned; and
  - (c) if the investment is pre-owned when the investment is made—the sum of:
    - (i) the value of the investment when the entity makes it; and
    - (ii) the total value of all the other pre-owned investments that the entity owns at that time;does not exceed 20% of the partnership's \*committed capital.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Note: See subsection (3) for the value of investments.

- (2) An investment is *pre-owned* if it was issued or allotted to an entity other than the entity that owns the investment. However, the investment is not pre-owned if it:
- (a) was issued:
    - (i) to an underwriter or sub-underwriter of the issue of the investment; or
    - (ii) to a person for the purpose of being offered for sale; and
  - (b) was still held by the underwriter, sub-underwriter or person immediately before being acquired by the entity that now owns the investment.
- (3) The value of an investment of an entity at a particular time for the purposes of this section is the value of the investment as shown in:
- (a) the last audited accounts prepared for the entity for the purposes of the *Corporations Act 2001* that relates to a period ending less than 18 months before that time; or
  - (b) a statement, prepared in accordance with the \*accounting standards and audited by the entity's auditor, showing that value as at a time no longer than 12 months before that time.
- (4) However, for the purposes of this section, the value of the investment at that time is the value provided for by section 118-450 if:
- (a) there are no such audited accounts; and
  - (b) the entity does not have an auditor at that time.

### **118-430 Meaning of *at risk***

An \*eligible venture capital investment is *at risk* if the entity that owns the investment had no \*arrangement as to:

- (a) the maintenance of the value of the investment; or
- (b) the maintenance of any earnings or other return that might be made from owning the investment, including (if the investment relates to a unit trust) the maintenance of any conferrals of present entitlement to income or capital of the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 118-432

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unit trust or to any distributions of income or capital of the unit trust.

**118-432 Findings of substantially novel applications of technology**

*Public findings*

- (1) \*Industry Innovation and Science Australia may, by legislative instrument, find that each activity within a specified class is a substantially novel application of one or more technologies.

Note: A substantially novel application of a technology could, for example, take the form of a substantially novel product or service.

*Private findings*

- (2) \*Industry Innovation and Science Australia may, on application by a company or unit trust, make a written decision:
- (a) finding that a specified activity is a substantially novel application of one or more technologies; or
  - (b) refusing to make such a finding about a specified activity.

Note: A refusal to make a finding is reviewable (see Part 5 of the *Venture Capital Act 2002*).

*Period for which a finding is in force*

- (3) Subject to variation or revocation, a finding under subsection (1) or paragraph (2)(a) is in force for the period specified in the finding.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

*Applications for private findings*

- (4) An application for a finding under paragraph (2)(a) must be in the \*form approved by Industry Innovation and Science Australia.
- (5) \*Industry Innovation and Science Australia must notify the applicant in writing of any decision under subsection (2) about the application.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (6) A failure to comply with subsection (5) does not affect the validity of a finding or decision.

**118-435 Special rule relating to investment in foreign resident holding companies**

- (1) A company that meets the requirements of subsections 118-425(6) and (7) is treated as also meeting the requirements of subsections 118-425(2), (3), (4), (4A) and (5) if:
- (a) it is a resident of:
    - (i) Canada; or
    - (ii) France; or
    - (iii) Germany; or
    - (iv) Japan; or
    - (v) the United Kingdom; or
    - (vi) the United States of America; or
    - (vii) any other foreign country prescribed by the regulations; and
  - (b) it beneficially owns all the \*shares in another company or all the units in a unit trust; and
  - (c) it does not carry on any \*business other than to support the primary activity of the other company or unit trust; and
  - (d) the other company meets the requirements of subsections 118-425(2) to (7), or the unit trust meets the requirements of subsections 118-427(3) to (8), as the case requires.
- (2) However, if:
- (a) the company is so treated as meeting those requirements; and
  - (b) at any time within the period of 12 months after the day on which the first \*eligible venture capital investment was made in the company:
    - (i) the other company ceases to be an Australian resident; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 118-440

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- (ii) the unit trust ceases to carry on \*business in Australia; as the case requires;
- then:
- (c) any eligible venture capital investments already made in the company or unit trust cease to be eligible venture capital investments; and
  - (d) any further investments made in the company or unit trust are not eligible venture capital investments.

**118-440 Meaning of *permitted entity value***

- (1) An entity exceeds the *permitted entity value* immediately before a proposed investment is made in the entity if, at that time, the sum of the following exceeds the amount provided for under subsection (9):
    - (a) the total value of the entity's assets;
    - (b) the total value of the assets of any other entity \*connected with the entity to the extent that they are not reflected in the value of any assets referred to in paragraph (a).
- Note: The time the entity makes the investment is, for a share acquired by converting a convertible note or convertible preference share or for a unit in a unit trust acquired by converting a convertible note, the time when the entity last acquired the convertible note or convertible preference share: see subsections 118-425(15) and 118-427(16).
- (2) The total value of the assets of an entity is the total value of its assets (both current and non-current) as shown in:
    - (a) the last audited accounts prepared for the entity for the purposes of the *Corporations Act 2001* that relates to a period ending less than 18 months before that time; or
    - (b) if there are no such audited accounts—a statement, prepared in accordance with the \*accounting standards and audited by the entity's auditor, showing that value as at a time no longer than 12 months before that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2A) However, for the purposes of this section, the total value of its assets at that time is the sum of the values of those assets provided for by section 118-450 if:
- (a) there are no such audited accounts; and
  - (b) the entity does not have an auditor at that time; and
  - (c) the entity is not required under subsection 118-425(5) or 118-427(6) to have an auditor at that time.
- (3) In applying paragraphs (1)(b), (5)(b) and (7)(c), ignore the total value of the assets of an entity that is \*connected with the entity first-mentioned in subsection (1) (the **target entity**) either immediately before or immediately after the investment referred to in that subsection if it is so connected only because of \*eligible venture capital investments made in both of those entities by the same \*VCLP, \*ESVCLP, \*AFOF or \*eligible venture capital investor.
- (4) In applying paragraphs (1)(b), (5)(b) and (7)(c), ignore the total value of the assets of an entity that, immediately after the investment is made, is not \*connected with the target entity.
- (5) Despite the previous provisions of this section, the target entity exceeds the **permitted entity value** immediately before the time (the **investment time**) when the \*VCLP, \*ESVCLP, \*AFOF or \*eligible venture capital investor made the investment in the target entity if:
- (a) the target entity was \*connected with an entity (the **linked entity**) in which the VCLP, ESVCLP, AFOF or eligible venture capital investor had made an \*eligible venture capital investment at some time in the period of 12 months before the investment time; and
  - (b) the sum of the total value of the assets of the target entity and of any entity \*connected with the target entity (at the investment time) and the linked entity and of any entity connected with the linked entity (at the time that the entity making the investment made its investment in the linked entity) exceeds the amount provided for under subsection (9).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (6) The Commissioner may determine that subsection (5) does not apply if the Commissioner is satisfied that:
- (a) the activities of the target entity are not the same as, not an integral part of and not a necessary support for the activities of the linked entity; and
  - (b) the making of the investment in the target entity is not part of a \*scheme to acquire interests in all or a substantial part of a group of companies that are \*connected with each other.
- (7) Despite the previous provisions of this section, the target entity exceeds the *permitted entity value* immediately before the investment time if:
- (a) the target entity was \*connected with an entity (also the *linked entity*) in which the \*VCLP, \*ESVCLP, \*AFOF or \*eligible venture capital investor had made an \*eligible venture capital investment more than 12 months before the investment time; and
  - (b) the activities of the target entity are the same as, are an integral part of or are a necessary support for the activities of the linked entity; and
  - (c) the sum of the total value of the assets of the target entity and of any entity \*connected with the target entity (at the investment time) and the linked entity and of any entity connected with the linked entity (at the time that the entity making the investment made its investment in the linked entity) exceeds the amount provided for under subsection (9).
- (8) In applying paragraphs (5)(b) and (7)(c), ignore the total value of the assets of an entity that is \*connected with the linked entity either immediately before or immediately after the investment in the linked entity if it is so connected only because of \*eligible venture capital investments made in both of those entities by the same \*VCLP, \*ESVCLP, \*AFOF or \*eligible venture capital investor.
- (9) The amount in relation to a proposed investment is:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) if an \*ESVCLP is to make the proposed investment—\$50 million; or
- (b) in any other case—\$250 million.

#### **118-445 Meaning of *committed capital***

- (1) A partner's *committed capital* in a partnership is the sum of the amounts that the partner may, under the partnership agreement establishing the partnership, become obliged to contribute to the partnership.
- (2) It does not matter whether:
  - (a) the partner contributes all of those amounts; or
  - (b) any amounts contributed are subsequently returned to the partner; or
  - (c) the contributions give rise to \*equity interests or \*debt interests in the partnership, or both.
- (3) A partnership's *committed capital* is the sum of the committed capital of all of the partnership's partners.

#### **118-450 Values of assets and investments of entities without auditors**

- (1) If, under a provision of this Subdivision, the value of an asset or investment at a particular time is the value provided for by this section, that value is:
  - (a) if paragraph (b) does not apply—its \*market value at that time; or
  - (b) the amount stated to be its current market value, at that time or a time in the 12 months preceding that time, in a statutory declaration by:
    - (i) if the entity is a company—the directors of the company; or
    - (ii) if the entity is a unit trust—the trustees of the unit trust.
- (2) Paragraph (1)(b) does not apply if the Commissioner reasonably believes that the amount stated in the statutory declaration to be the

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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\*market value of the asset or investment at the relevant time is inaccurate.

**118-455 Impact Assessment of this Subdivision**

- (1) As soon as practicable after 24 months after the *Treasury Laws Amendment (Tax Integrity and Other Measures) Act 2018* receives the Royal Assent, the Minister must cause an impact assessment of the operation of this Subdivision and other related tax concessions to be conducted.
- (2) The impact assessment must:
  - (a) examine the operation of the tax concession regime for:
    - (i) investments made through a \*VCLP, \*ESVCLP or \*AFOF; and
    - (ii) investments made directly by foreign residents registered under Part 3 of the *Venture Capital Act 2002*; and
  - (b) be conducted by the Department and Industry Innovation and Science Australia; and
  - (c) make provision for public consultation.
- (3) For the purposes of conducting the impact assessment, the reference to Industry Innovation and Science Australia in item 6 of the table in subsection 355-65(4) of Schedule 1 to the *Taxation Administration Act 1953* is taken to include the Secretary of the Department.
- (4) The Minister must cause a written report about the impact assessment to be prepared.
- (5) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the report is given to the Minister.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



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## **Subdivision 118-G—Venture capital: investment by superannuation funds for foreign residents**

### **Guide to Subdivision 118-G**

#### **118-500 What this Subdivision is about**

A foreign resident tax exempt pension fund that invests in venture capital equity in an Australian company or fixed trust (a resident investment vehicle) can disregard a capital gain or capital loss it makes from a CGT event that happens to that equity if:

- (a) the entity is registered under the *Pooled Development Funds Act 1992*; and
- (b) the entity owned the equity for at least 12 months.

#### **Table of sections**

118-505	Exemption for certain foreign venture capital
118-510	Meaning of <i>resident investment vehicle</i>
118-515	Meaning of <i>venture capital entity</i>
118-520	Meaning of <i>superannuation fund for foreign residents</i>
118-525	Meaning of <i>venture capital equity</i>

#### **118-505 Exemption for certain foreign venture capital**

- (1) A \*capital gain or \*capital loss is disregarded if it is made from a \*CGT event happening in relation to a \*CGT asset that is \*venture capital equity where the asset:
- (a) was \*acquired by a \*venture capital entity; and
  - (b) at the time of the CGT event:
    - (i) was owned by that entity; and
    - (ii) had been owned by that entity for at least 12 months.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) The \*venture capital entity must be registered under Part 7A of the *Pooled Development Funds Act 1992* at the time of the \*CGT event.

**118-510 Meaning of *resident investment vehicle***

- (1) A ***resident investment vehicle*** is a company that is an Australian resident, or a trust that is a \*resident trust for CGT purposes, if:
- (a) the sum of:
    - (i) the total value of the assets of the company or trust, and
    - (ii) the total value of the assets of any company or trust \*connected with the first company or trust; and
    - (iii) the amount of the investment proposed to be made in venture capital equity in the company or trust by the relevant \*venture capital entity;is not more than \$50,000,000 just before the time (the ***acquisition time***) when the relevant venture capital entity acquires venture capital equity in the company or trust; and
  - (b) the primary activity of the company or trust is not, at any time, property development or land ownership.
- (2) However, a trust is not a ***resident investment vehicle*** unless entities have \*fixed entitlements to all of the income and capital of the trust.
- (3) The total value of the assets of a company or trust is the total value of its assets (both current and non-current) as shown in:
- (a) the last audited accounts prepared for the company or trust for the purposes of the *Corporations Act 2001* that relates to a period ending less than 18 months before the acquisition time; or
  - (b) if there are no such audited accounts—a statement audited by the company’s or trust’s auditor showing that value as at a time no longer than 12 months before the acquisition time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **118-515 Meaning of *venture capital entity***

- (1) An entity (except a partner in a partnership) is a *venture capital entity* if:
  - (a) it is a foreign resident; and
  - (b) it is a \*superannuation fund for foreign residents; and
  - (c) it is not a \*prescribed dual resident; and
  - (d) it is a resident of:
    - (i) Canada; or
    - (ii) France; or
    - (iii) Germany; or
    - (iv) Japan; or
    - (v) the United Kingdom; or
    - (vi) the United States of America; or
    - (vii) some other foreign country prescribed by the regulations; and
  - (e) its income is exempt, or effectively exempt, from taxation in its country of residence.
- (2) A partner in a partnership is a *venture capital entity* if:
  - (a) all of the partners in it are entities that are \*venture capital entities under subsection (1); or
  - (b) the partnership is a \*limited partnership and:
    - (i) all of the partners in it (except its general partner or managing partner) are venture capital entities under subsection (1); and
    - (ii) its general partner or managing partner has interests in less than 10% of the total value of the assets of the partnership.

### **118-520 Meaning of *superannuation fund for foreign residents***

- (1) A fund is a *superannuation fund for foreign residents* at a time if:
  - (a) at that time, it is:
    - (i) an indefinitely continuing fund; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) a provident, benefit, superannuation or retirement fund;  
and
  - (b) it was established in a foreign country; and
  - (c) it was established, and is maintained at that time, only to provide benefits for individuals who are not Australian residents; and
  - (d) at that time, its central management and control is carried on outside Australia by entities none of whom is an Australian resident.
- (2) However, a fund is not a *superannuation fund for foreign residents* if:
- (a) an amount paid to the fund or set aside for the fund has been or can be deducted under this Act; or
  - (b) a \*tax offset has been allowed or is allowable for such an amount.

**118-525 Meaning of *venture capital equity***

- (1) A \*CGT asset is *venture capital equity* for a \*venture capital entity if it is a \*share in a company or an interest in a trust where:
- (a) the company or trust is a \*resident investment vehicle; and
  - (b) the share or interest was issued or allotted to the entity by the company or trust; and
  - (c) the entity was at risk in owning the share or interest in that it had no \*arrangement (either before or after the share or interest was issued or allotted) as to:
    - (i) the maintenance of the value of the share or interest; or
    - (ii) any earnings or other return that might be made from owning it; or
    - (iii) protection from commercial loss because of owning it.

Example: A company borrows money to purchase some shares. The terms of the loan include a term that, if the value of the shares falls below the amount of the loan, the company can repay the loan by transferring the shares to the lender.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

The company's ownership of the shares is not at risk, because there is no possibility that it can lose money under the transaction.

- (2) However, \*shares or interests in the \*resident investment vehicle issued or allotted to a \*venture capital entity are not **venture capital equity** for the entity if:
- (a) one or more of these events happens:
    - (i) a share or interest in the resident investment vehicle that was \*acquired by some other entity before that issue or allotment is cancelled or redeemed; or
    - (ii) there is a return of some of the capital of the resident investment vehicle that was acquired before that issue or allotment; or
    - (iii) value is shifted out of a share or interest in that vehicle that was acquired before that issue or allotment; and
  - (b) it is reasonable to conclude that the happening of the event referred to in paragraph (a) is connected to that issue or allotment, or to some \*arrangement between the entities concerned.

**Example:** The capital of an Australian company is 100,000 shares, with a market value of \$1 per share. The shares have full voting and dividend rights.

The Australian company issues another 100,000 shares to a foreign company. The new shares are issued at one cent each, but have very limited voting and dividend rights.

The Australian company then changes the rights attaching to its shares so that the new shares have full voting and dividend rights, and the original shares have none.

Value has been shifted out of the original shares, effectively converting "old equity" to "new equity".

- (3) In deciding whether it is reasonable to reach the conclusion referred to in paragraph (2)(b), these matters are relevant:
- (a) whether the amount of the decrease in the \*net value of the \*resident investment vehicle because of the happening of the event referred to in paragraph (2)(a) is the same as, or is calculated by reference to, the value of the issue or allotment of \*shares or interests to the \*venture capital entity; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) the time lapse between the happening of that event and that issue or allotment.

**Subdivision 118-H—Demutualisation of Tower Corporation**

**118-550 Demutualisation of Tower Corporation**

- (1) This section applies if, just before the mutual entity known in New Zealand as Tower Corporation ceased to be a mutual entity, you had membership rights in that entity.

Note: Tower Corporation demutualised on 1 October 1999.

*No capital gain or capital loss from end of membership rights*

- (2) Disregard any \*capital gain or \*capital loss that resulted from any of your membership rights in Tower Corporation ceasing to exist when that entity ceased to be a mutual entity.

Note: Subsection (2) applies to you even if, because you could not be located at the time of demutualisation, you were not immediately issued with shares in the demutualised entity in substitution for your old membership rights, and rights to shares were instead put aside in a trust.

*Cost base of replacement assets*

- (3) The \*cost base and the \*reduced cost base of any \*shares or other \*CGT assets that you \*acquire in substitution for the membership rights that have ceased to exist do not include any amounts that you paid in acquiring or maintaining those old rights.

**Subdivision 118-I—Look-through earnout rights**

**Table of sections**

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118-565	<i>Look-through earnout rights</i>
118-570	Extra ways a CGT asset can be an active asset
118-575	Creating and ending look-through earnout rights
118-580	Temporarily disregard capital losses affected by look-through earnout rights

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **118-560 Object**

- (1) This Subdivision and its related provisions set out special rules for \*look-through earnout rights. The object of these rules is to avoid unnecessary compliance costs and disadvantageous tax outcomes when entities involved in the sale of a business:
  - (a) cannot agree on the current value of some or all of the business' assets due to uncertainty about the future economic performance of the business; and
  - (b) resolve this uncertainty by agreeing to potentially provide future additional consideration linked to this performance.
- (2) These rules achieve this object by:
  - (a) disregarding any \*capital gain or \*capital loss relating to the creation of a \*look-through earnout right; and
  - (b) for the acquirer of the business—treating any \*financial benefits provided (or received) under the right as forming part of (or reducing) the cost base or reduced cost base of the business assets; and
  - (c) for the seller of the business—treating any financial benefits received (or provided) under the right as increasing (or reducing) the capital proceeds for the business assets.

Note: Sections 112-36 and 116-120 are 2 of the more important related provisions that set out these rules.

### **118-565 Look-through earnout rights**

#### *Look-through earnout rights—main case*

- (1) A **look-through earnout right** is a right for which the following conditions are met:
  - (a) the right is a right to future \*financial benefits that are not reasonably ascertainable at the time the right is created;
  - (b) the right is created under an \*arrangement that involves the \*disposal of a \*CGT asset;
  - (c) the disposal causes \*CGT event A1 to happen;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (d) just before the CGT event, the CGT asset was an \*active asset of the entity who disposed of the asset;

Note: For extra ways to be an active asset, see section 118-570.

- (e) all of the financial benefits that can be provided under the right are to be provided over a period ending no later than 5 years after the end of the income year in which the CGT event happens;
- (f) those financial benefits are contingent on the economic performance of:
  - (i) the CGT asset; or
  - (ii) a business for which it is reasonably expected that the CGT asset will be an active asset for the period to which those financial benefits relate;
- (g) the value of those financial benefits reasonably relates to that economic performance;
- (h) the parties to the arrangement deal with each other at \*arm's length in making the arrangement.

*Matters affecting the 5-year maximum period*

- (2) The condition in paragraph (1)(e) is not met, and is treated as never having been met, for the right if:
  - (a) the \*arrangement includes an option to extend or renew the arrangement; or
  - (b) the parties to the arrangement vary the arrangement; or
  - (c) those parties enter into another arrangement over the \*CGT asset or a business for which it is reasonably expected that the CGT asset will be an \*active asset;so that a party could, or does, provide \*financial benefits under the right (or one or more equivalent rights) over a total period ending later than 5 years after the end of the income year in which the \*CGT event happens.
- (3) For the purposes of paragraph (1)(e) or subsection (2), in working out the period over which \*financial benefits under a right can be

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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provided, disregard any part of an \*arrangement that allows for an entity to defer providing such a financial benefit if:

- (a) the deferral is contingent on an event happening that is beyond the control of the parties to the arrangement; and
- (b) the deferral cannot change the amount of any financial benefit provided, or to be provided, under the right; and
- (c) when the arrangement is entered into, the contingent event is not reasonably expected to happen.

*Look-through earnout rights—rights for ending other rights*

- (4) A **look-through earnout right** is a right to receive one or more future \*financial benefits that:
- (a) are for ending a right to which subsection (1) applies; and
  - (b) are certain.

Note: This subsection will not apply if the old right ends as described in subsection (2), as subsection (2) causes the old right to be treated as if it had never been a right to which subsection (1) applies.

### **118-570 Extra ways a CGT asset can be an active asset**

- (1) For the purposes of this Subdivision, treat a \*CGT asset as if it were an active asset of an entity at a particular time, if:
- (a) the entity owns it at that time; and
  - (b) it is either a \*share in a company, or an interest in a trust; and
  - (c) at that time, the entity:
    - (i) is a \*CGT concession stakeholder of the company or trust; or
    - (ii) if the entity is not an individual—has a \*small business participation percentage in the company or trust of at least 20%; and
  - (d) at that time, the company or trust:
    - (i) is carrying on a \*business, and has been carrying on a business since the start of the most recent income year ending before that time; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) is not a \*subsidiary member of a \*consolidated group;  
and
- (e) the assessable income of the company or trust for that most recent income year was greater than nil, and at least 80% of that assessable income was:
  - (i) from the carrying on of one or more businesses; but
  - (ii) not \*derived (directly or indirectly) from an asset of a kind to which paragraph 152-40(4)(d) or (e) applies.

Note: Paragraphs 152-40(4)(d) and (e) refer to financial instruments and assets used to derive interest, annuities, rent, royalties or foreign exchange gains.

- (2) For the purposes of this Subdivision, treat a \*CGT asset as if it were an active asset of an entity at a particular time, if subsection 152-40(3) would have been satisfied for the asset at that time had paragraph 152-40(3)(a) only required the asset to be:
  - (a) a \*share in a company; or
  - (b) an interest in a trust.

Note: This enables shares and interests in foreign entities to be active assets for the purposes of this Subdivision.

- (3) Subsections (1) and (2) do not limit section 152-40 (about active assets).

**118-575 Creating and ending look-through earnout rights**

Disregard a \*capital gain or \*capital loss you make because:

- (a) \*CGT event C2 happens in relation to a \*look-through earnout right you receive; or
- (b) CGT event D1 happens when you create a look-through earnout right in another entity.

**118-580 Temporarily disregard capital losses affected by look-through earnout rights**

- (1) Temporarily disregard a portion of a \*capital loss you make from \*disposing of a \*CGT asset if the capital loss could be reduced by

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

you receiving one or more \*financial benefits under a  
\*look-through earnout right relating to the CGT asset and the  
disposal.

- (2) The portion of the \*capital loss that is temporarily disregarded is:
- (a) if those \*financial benefits can never exceed a maximum amount that is certain—so much of the capital loss as is equal to that maximum amount; or
  - (b) otherwise—all of the capital loss.

Note: When you receive a financial benefit under the look-through earnout right:

- (a) you cease to disregard under this section a portion of your loss related to the amount of that financial benefit; and
- (b) your capital proceeds for the disposal increase (see paragraph 116-120(1)(b)), causing a reduction in the amount of your loss.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 121—Record keeping**

### **Guide to Division 121**

#### **121-10 What this Division is about**

You must keep records of matters that affect the capital gains and losses you make. You must retain them for 5 years after the last relevant CGT event.

#### **Table of sections**

##### **Operative provisions**

121-20	What records you must keep
121-25	How long you must retain the records
121-30	Exceptions
121-35	Asset register entries

#### **Operative provisions**

##### **121-20 What records you must keep**

- (1) You must keep records of every act, transaction, event or circumstance that can reasonably be expected to be relevant to working out whether you have made a \*capital gain or \*capital loss from a \*CGT event. (It does not matter whether the CGT event has already happened or may happen in the future.)

Note 1: There are exceptions: see section 121-30.

Example 1: You dispose of a CGT asset. The records that are relevant to working out your capital gain or loss are records of:

- the date you acquired the asset;
- the date you disposed of it;
- each element of its cost base and reduced cost base and the effect of indexation on those elements;
- what you sold it for (the capital proceeds).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Example 2: Company A disposes of a CGT asset it acquired from company B (a member of the same wholly-owned group and a foreign resident) where company B obtained a roll-over under Subdivision 126-B. In addition to the records mentioned in example 1, company A needs records showing:

- the status of the 2 companies as members of the group;
- which company is the ultimate holding company in the group;
- the cost base and reduced cost base of the asset in the hands of company B just before the roll-over (because these become company A's cost base and reduced cost base).

Example 3: CGT event G2 (about shifts in share values) happens involving company X and Greg (a controller (for CGT purposes) of company X). Z Nominees Pty Ltd (an associate of Greg's) suffers a material decrease in the value of its shares in company X as a result of the shift. Z Nominees needs records showing:

- the essential elements of the relevant scheme;
- the date when the share value shift occurred;
- the amounts of the decreases and increases in the market values of all shares involved in the scheme;
- if shares are issued at a discount under the scheme, the amount of the discount;
- the cost bases and market values of the shares that decreased in value.

Note 2: There is an administrative penalty if you do not keep records as required by this Division: see section 288-25 in Schedule 1 to the *Taxation Administration Act 1953*.

- (2) The records must be in English, or be readily accessible and convertible into English. They must show what is described in this section. (They **show** something if they include whatever material is necessary for that thing to be easily identified or worked out.)
- (3) They must show the nature of the act, transaction, event or circumstance, the day when it happened or arose and:
  - (a) in the case of an act—who did it; and
  - (b) in the case of a transaction—who were the parties to it.
- (4) They must show details (including relevant amounts) of how the act, transaction, event or circumstance is relevant (or can reasonably be expected to be relevant) to working out whether you have made a \*capital gain or \*capital loss from a \*CGT event.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (5) If the necessary records of an act, transaction, event or circumstance do not already exist, you must reconstruct them or have someone else reconstruct them.

Example: Your capital gain or capital loss from a CGT event may depend on the market value of property at a particular time. To record that market value properly, you may need to get a valuation done.

Penalty: 30 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (6) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**121-25 How long you must retain the records**

- (1) You must retain records that section 121-20 requires you to keep.
- (2) You must retain them until the end of 5 years after it becomes certain that no \*CGT event (or no further \*CGT event) can happen such that the records could reasonably be expected to be relevant to working out whether you have made a \*capital gain or \*capital loss from the event.

- (2A) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) This section has effect despite subsection 262A(4) of the *Income Tax Assessment Act 1936* (which requires records to be retained for a different period).

- (4) However, it is not necessary to retain records:

- (a) if the Commissioner notifies you that you do not need to retain them; or
- (b) for a company that has finally ceased to exist.

Note 1: There are special record keeping rules where there has been a roll-over for a merger between superannuation funds under former section 160ZZPI of the *Income Tax Assessment Act 1936*: see section 121-25 of the *Income Tax (Transitional Provisions) Act 1997*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Penalty: 30 penalty units.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

### **121-30 Exceptions**

- (1) You do not need to keep records under section 121-20 if:
  - (a) for each \*CGT event (if any) that has happened such that the records are relevant (or could reasonably be expected to be relevant) to working out whether you have made a \*capital gain or \*capital loss from the event; and
  - (b) for each \*CGT event that may happen in the future such that the records could reasonably be expected to be relevant to working out whether you might make a \*capital gain or \*capital loss from the event;any capital gain or capital loss you made (or might make) from it is to be (or would be) disregarded, except because of a roll-over.
- (2) However, the exceptions in this section do not apply to a \*CGT event as a result of which a \*capital gain or \*capital loss is disregarded under section 855-40 (about capital gains and losses of foreign residents through \*fixed trusts).

### **121-35 Asset register entries**

- (1) You satisfy a requirement under this Division to retain records for a period if you:
  - (a) retain for that period an entry in a register for the records that satisfies the requirements in subsection (2), or a combination of the records and such an entry for them, containing all the information required to be contained in the records; and
  - (b) retain those of the records that contain the information entered in the register for at least 5 years after the requirement in paragraph (2)(b) is satisfied.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) The requirements are:
- (a) you must make an entry in a register, in English, setting out some or all of the information contained in the records; and
  - (b) another entity who is a \*registered tax agent or some other person approved by the Commissioner must certify in the register that the information entered is information from those records.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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