Australian Government
Australian Taxation Office

Capital gains tax

- https://www.ato.gov.au/General/Capital-gains-tax/
- Last modified: 15 Jun 2018
- QC 22147

If you sell a capital asset, such as real estate or shares, you usually make a capital gain or a capital loss. This is the difference between what it cost you to acquire the asset and what you receive when you dispose of it.

You need to report capital gains and losses in your income tax return and pay tax on your capital gains. Although it's referred to as capital gains tax (CGT), this is actually part of your income tax, not a separate tax.

When you make a capital gain, it is added to your assessable income and may significantly increase the tax you need to pay. As tax is not withheld for capital gains, you may want to work out how much tax you will owe and set aside sufficient funds to cover the relevant amount.

If you make a capital loss, you can't claim it against your other income but you can use it to reduce a capital gain.

All assets you've acquired since tax on capital gains started (on 20 September 1985) are subject to CGT unless specifically excluded.

- Most personal assets are exempt from CGT, including your home, car and personal use assets such as furniture.
- CGT also doesn't apply to depreciating assets used solely for taxable purposes, such as business equipment or fittings in a rental property.

The point at which you make a capital gain or loss is usually when you enter into the contract for disposal, not when you settle. So if you sign a contract to sell an investment property in June 2017, and settle in August 2017, you need to report the capital gain or loss in your 2016–17 tax return.

If you're an Australian resident, CGT applies to your assets anywhere in the world. For Norfolk Island residents, CGT applies to assets acquired from 23 October 2015. Foreign residents make a capital gain or loss if a CGT event happens to an asset that is 'taxable Australian property'.

Find out about:

- [CGT assets and exemptions]
- [Acquiring assets and keeping records]
- [Selling an asset and other CGT events]
- [Working out your capital gain or loss]
- [Your home and other real estate]
- [Shares, units and similar investments]
- [Making prepayments]

See also:

- [Trusts]
- [Deceased estates and inheritances]
- [Relationship breakdown]
- [Small business CGT concessions]
- [International issues]
- [Completing the capital gains section of your tax return]

CGT assets and exemptions

- https://www.ato.gov.au/General/Capital-gains-tax/CGT-assets-and-exemptions/
- Last modified: 16 Mar 2018
- QC 22163

All assets you've acquired since capital gains tax (CGT) started (on 20 September 1985) are subject to CGT unless specifically excluded.

For example, CGT applies to:

- real estate
- shares, units and similar investments
- leases, goodwill, licences, foreign currency, contractual rights, and major capital improvements made to land or pre-CGT assets
- collectables and personal use assets above a certain value (there are restrictions on using any capital losses from these items).

Some assets are exempt from CGT, such as:

- your main residence (there are some exceptions)
- a car or motorcycle
- depreciating assets used solely for taxable purposes, such as business equipment or fittings in a rental property
- any asset acquired before 20 September 1985.

Exemptions

Some capital gains are exempt (that is, you don't include them in your assessable income). Also, you must disregard some capital losses (that is, you can't use them to offset a capital gain and therefore reduce your assessable income).

Exemptions include capital gains or losses for:

- your main residence (but there are exceptions)
- your car (we define a car as a motor vehicle designed to carry a load of less than one tonne and fewer than nine passengers), motorcycle or similar vehicle
- personal use items acquired for less than $10,000
- collectables acquired for $500 or less, or worth $500 or less when acquired
- depreciating assets used solely for taxable purposes, and trading stock
- assets you acquired before 20 September 1985 (these are called 'pre-CGT assets')
  - except for some pre-CGT shares in private companies, or pre-CGT interests in private trusts, where a combination of factors can occasionally trigger a CGT event giving rise to a taxable capital gain – see Taxation Ruling TR 2004/18 *Income tax: capital gains: application of CGT event K6 (about pre-CGT shares and pre-CGT trust interests) in section 104-230 of the Income Tax Assessment Act 1997*
- a decoration awarded for valour or brave conduct, unless you paid or exchanged property for it
- assets used solely to produce exempt income or some types of non-assessable non-exempt income
- compensation or damages received for any
  - wrong or injury you suffered in your occupation
  - wrong, injury or illness you or your relatives suffered
- winnings or losses from gambling, a game or a competition with prizes
- reimbursement or payment of your expenses under the following
  - Unlawful Termination Assistance Scheme
  - Alternative Dispute Resolution Assistance Scheme
  - M4/M5 Cashback Scheme
  - a scheme established by an Australian Government agency, a local government body or foreign government agency under an act or other legislative instrument (in this context 'expenses' does not include a payment for the loss, destruction or transfer of an asset)
- the transfer of a super interest in one small super fund (a complying fund that has fewer than five members) to another on the breakdown of a relationship between spouses or former spouses
- rights in relation to a superannuation agreement (as defined in the *Family Law Act 1975*) being created or ended
- a CGT event happening to the segregated current pension asset of a complying super fund
- some payouts under a general insurance policy, life insurance policy or annuity instrument
- a payment you received on surrender of an insurance policy where you are the original beneficial owner of the policy
- shares in a pooled development fund

- shares of certain profits, gains or losses arising from disposal of investments by certain venture capital entities
- a financial arrangement where gains and losses are calculated under the taxation of financial arrangements (TOFA) rules
- some types of testamentary gifts (gifts made through a will).

Collectables

Collectables include the following items used or kept mainly for the personal use or enjoyment of you or your associates:

- paintings, sculptures, drawings, engravings or photographs; reproductions of these items; or property of a similar description or use
- jewellery
- antiques
- coins or medallions
- rare folios, manuscripts or books
- postage stamps or first day covers.

A collectable is also:

- an interest in any of the items listed above
- a debt that arises from any of those items
- an option or right to acquire any of those items.

You disregard any capital gain or loss you make from a collectable if any of the following apply:

- you acquired the collectable for $500 or less
- you acquired your interest in the collectable for $500 or less before 16 December 1995
- you acquired an interest in the collectable when it had a market value of $500 or less.

If you dispose of individual collectables that you would usually dispose of as a set, you're exempt from paying CGT only if you acquired the set for $500 or less on or after 16 December 1995.

Capital losses from collectables can be used only to reduce capital gains from other collectables. If you don't have a capital gain from another collectable in the same year, you can carry forward the capital loss to use it in a future year. There's no time limit on how long you can carry forward a net capital loss on a collectable or any other capital asset.

Personal use assets

Personal use assets are CGT assets, other than collectables, used or kept mainly for the personal use or enjoyment of you or your associates. Any personal use asset you acquired for less than $10,000 is disregarded for CGT purposes.

Personal use assets include:

- boats
- furniture
- electrical goods
- household items.

A personal use asset is also:

- an option, or a right, to acquire a personal use asset
- a debt resulting from
  - a CGT event involving a CGT asset kept mainly for your personal use and enjoyment
  - you doing something other than gaining or producing your assessable income or carrying on a business (for example, making a private loan to a family member or friend).

Your main residence and car or motorcycle are not classed as personal use assets.

If you dispose of personal use assets individually that would usually be sold as a set, you get the exemption only if you acquired the set for $10,000 or less.

All capital losses you make on personal use assets are disregarded. This means you can't use capital losses on personal use assets to reduce your capital gains on other personal use assets.

Depreciating assets

CGT doesn't apply to most depreciating assets you use solely for taxable purposes (such as business equipment or items in a rental property).

Gains or losses made on these assets are treated as assessable income or claimed as deductions, unless the assets were part of a depreciation pool. However, if you've used a depreciating asset for a non-taxable purpose (for private purposes, for example), CGT may apply.

See also:

- Depreciating assets and CGT

Next steps:

- Acquiring assets and keeping records
- Selling an asset and other CGT events

Acquiring assets and keeping records

- https://www.ato.gov.au/General/Capital-gains-tax/Acquiring-assets-and-keeping-records/

- Last modified: 17 Jul 2017
- QC 22148

When you acquire a capital gains tax (CGT) asset, you need to:

- establish your acquisition date – usually this is when you become the owner of the asset (the contract date), but not always
- start keeping records of every transaction, event or circumstance that may be relevant to working out whether you've made a capital gain or loss.

If you jointly own the asset with others, you need to understand each owner's share or interest in it.

These things will help you work out your capital gain or loss correctly and ensure you don't pay more CGT than necessary.

See also:

- Selling an asset and other CGT events

Timing of acquisition

- https://www.ato.gov.au/General/Capital-gains-tax/Acquiring-assets-and-keeping-records/Timing-of-acquisition/
- Last modified: 17 Jul 2017
- QC 52165

You need to establish exactly when you acquired your CGT asset because:

- CGT doesn't apply if you owned it before CGT started on 20 September 1985 (though major improvements to a property since may be subject to CGT)
- the rules about how you work out your capital gain or loss have changed over time
- how long you have had it may affect how you work out your capital gain.

Generally, the time you acquire a CGT asset (your acquisition date) is when you become its owner, most commonly because you've bought it or received it as a gift.

However, there are two common situations where your acquisition date is likely to be different from the date you become the owner:

- when you buy an asset under contract and don't take immediate possession, such as with real estate – in this case your acquisition date is the time you enter into the contract (normally the date on the contract) and not the date of settlement (except for certain transfers to trusts)
- when you inherit a CGT asset – in this case the acquisition date is the date of death of the person who bequeathed it to you.

See also:

- [Record keeping for CGT]
- [Joint ownership]
- [Time of the CGT event]

Record keeping for CGT

- https://www.ato.gov.au/General/Capital-gains-tax/Acquiring-assets-and-keeping-records/Record-keeping-for-CGT/
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- QC 22151

You must keep records of every transaction, event or circumstance that may be relevant to working out whether you've made a capital gain or loss from a capital gains tax (CGT) event. Generally you need to keep your records for at least five years after the year when the CGT event happened.

Keeping adequate records will help you work out your capital gain or loss correctly when a CGT event happens.

Good records can also help your beneficiaries deal with the impact of CGT. If you leave an asset to another person, it may be subject to CGT if they dispose of it in the future. For example, if your daughter sells shares you've left her in your will, she will need your records to work out her cost base for the shares and how much CGT she has to pay.

You should also keep records for a net capital loss in a year, which you may be able to offset against a capital gain in a later year. (There's no time limit on how long you can carry forward a net capital loss.)

Once you've offset the loss against a capital gain, you should generally keep your records of the CGT event that resulted in the loss for a further two years (for individuals and small businesses; four years for other taxpayers).

On this page:

- Records to keep
- It’s never too late

Records to keep

Your records must be in English (or be readily accessible in or translatable to English) and must show:

- the nature of the transaction, event or circumstances

- the date it happened
- the parties to the transaction
- how the transaction, event or circumstances are relevant to working out the capital gain or loss.

These are the kind of records you'll need to keep:

- receipts of purchase or transfer
- details of interest on money you borrowed relating to the asset
- records of agent, accountant, legal and advertising costs
- receipts for insurance costs, rates and land taxes
- any market valuations
- receipts for the cost of maintenance, repairs and modifications
- accounts showing brokerage fees on shares.

You should also keep records to establish whether you've claimed an income tax deduction for an item of expenditure. If you've claimed a deduction for an amount, you can't also include the amount in the cost base of the asset.

It's never too late

If you haven't kept records of your CGT assets, or your records have inadvertently been destroyed, you can still do something about it.

If you bought real estate, your solicitor or estate agent may be able to give you copies of most of the records you need.

If you made improvements to an investment property – for example, if you built an extension – ask the builder for a copy of the receipt for payment.

If you bought shares in a company or units in a unit trust, your stockbroker or investment adviser may be able to give you the information you need.

If you received an asset as a gift and didn't get a market valuation at the time, a professional valuer can tell you what its market value was at the relevant date.

If you lost your records in a natural disaster, we can help you reconstruct them.

The main thing is to get as many details as possible so you can reconstruct your records.

See also:

- Keeping records for real estate
- Keeping records of inherited assets
- Keeping records for shares and units
- Keeping records for CGT small business concessions
- Reconstructing your tax records
- Timing of acquisition
- Time of the CGT event
- Joint ownership

Joint ownership

- https://www.ato.gov.au/General/Capital-gains-tax/Acquiring-assets-and-keeping-records/Joint-ownership/
- Last modified: 29 Jun 2018
- QC 22150

When you share the ownership of a CGT asset with others, you need to establish each owner's share or interest in it.

On this page:

Tenants in common

Individuals who own an asset as tenants in common may hold unequal interests in it. Each owner makes a capital gain or loss from a CGT event in line with their interest.

For example, a couple could own a rental property as tenants in common with one having a 20% interest and the other having an 80% interest. When they sell the rental property (or any other CGT event happens), they split the capital gain or loss between them according to their legal interest.

Joint tenants

For CGT purposes, joint tenants are treated as tenants in common having equal shares in the asset. Each party therefore has an equal share of any capital gain or loss from a CGT event. For example, a couple that owns a rental property as joint tenants splits the capital gain or loss equally when they sell the property.

When one joint tenant dies, their interest in the asset is taken to have been acquired in equal shares by the surviving joint tenants on the date of death.

See also:

- Inherited dwellings

Partnerships

For CGT purposes, a partnership does not itself own assets. Instead, each partner owns a proportion of each CGT asset. The partners use their proportion to work out their capital gain or loss from a CGT event affecting any asset.

See also:

- Record keeping for CGT

- Timing of acquisition

Selling an asset and other CGT events

- https://www.ato.gov.au/General/Capital-gains-tax/Selling-an-asset-and-other-CGT-events/
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- QC 22153

When you sell or otherwise dispose of an asset it's called a capital gains tax (CGT) event. This is the point at which you make a capital gain or loss. There are other CGT events, such as the loss or destruction of a CGT asset or creating contractual or other rights.

You need to know which type of CGT event applies in your situation. This is because it affects how you calculate your capital gain or loss and when you include it in your net capital gain or net capital loss.

For some CGT events, such as exchanging an asset for a replacement asset, you can defer or roll over any capital gain you make until another CGT event (such as selling the replacement asset).

Find out about:

- Time of the CGT event
- Types of CGT events
- Rollovers
- Making choices and requesting extensions
- Involuntary disposal of a CGT asset

See also:

- Working out your capital gain or loss

Time of the CGT event

- https://www.ato.gov.au/General/Capital-gains-tax/Selling-an-asset-and-other-CGT-events/Time-of-the-CGT-event/
- Last modified: 17 Jul 2017
- QC 52166

It's important to establish the timing of a capital gains tax (CGT) event because it tells you in which income year to report your capital gain or loss, and may affect how you calculate your tax liability.

If you dispose of a CGT asset, the CGT event usually happens when you enter into the contract for disposal. In the case of real estate, for example, the CGT event generally occurs when you enter into the contract – that is, the date on the contract, not when you settle. If there's no contract, the CGT event generally happens when you stop being the asset's owner.

If your CGT asset is lost or destroyed, the CGT event happens when you first receive compensation for the loss or destruction. If you don't receive any compensation, the CGT event happens when the loss is discovered or the destruction occurred.

Example: Contract

In June 2016, Sue entered into a contract to sell land. The contract settled in October 2016.

Sue made the capital gain in the 2015–16 year (the income year she entered into the contract), not the 2016–17 year (the income year settlement took place).

Example: Insurance policy

Laurie owned a rental property that was destroyed by fire in June 2015. He received a payment under an insurance policy in October 2015. The CGT event happened in October 2015.

See also:

- Types of CGT events
- Involuntary disposal of a CGT asset
- Relationship breakdown
- Working out your capital gain or loss

Types of CGT events

- https://www.ato.gov.au/General/Capital-gains-tax/Selling-an-asset-and-other-CGT-events/Types-of-CGT-events/
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- QC 22154

Capital gains tax (CGT) events are the different types of transactions or events that may result in a capital gain or loss. Many CGT events involve a CGT asset – for example, a sale of shares. Some relate directly to capital receipts (capital proceeds).

You need to know which type of CGT event you're dealing with, because it affects how you work out your capital gain or loss and may determine its timing. If more than one CGT event happens, you apply the rules for the one most specific to your situation.

Events are grouped into the following categories:

- Disposal (A)
- Hire purchase and similar agreements (B)
- End of a CGT asset (C)
- Bringing a CGT asset into existence (D)
- Trusts (E)
- Leases (F)
- Shares (G)
- Special capital receipts (H)
- Cessation of residency (I)
- Rollovers (J)
- Other CGT events (K)
- Consolidations (L)

Legislative references below are to the *Income Tax Assessment Act 1997*.

Disposal (A)

CGT event	Time of event	Capital gain	Capital loss
A1 - Disposal of a CGT asset	When the disposal contract is entered into or, if none, when the entity stops being the asset's owner	The capital proceeds from disposal *less* the asset's cost base	The asset's reduced cost base *less* the capital proceeds

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Hire purchase and similar agreements (B)

	Time of		

CGT event	event	Capital gain	Capital loss
B1 - Use and enjoyment before title passes	When use of the CGT asset passes	The capital proceeds *less* the asset's cost base	The asset's reduced cost base *less* the capital proceeds

End of a CGT asset (C)

CGT event	Time of event	Capital gain	Capital loss
C1 - Loss or destruction of a CGT asset	When compensation is first received or, if none, when the loss is discovered or destruction occurred	The capital proceeds *less* the asset's cost base	The asset's reduced cost base *less* the capital proceeds
C2 - Cancellation, surrender and similar endings	When the contract ending an asset is entered into or, if none, when an asset ends	The capital proceeds from the ending *less* the asset's cost base	The asset's reduced cost base *less* the capital proceeds
C3 - End of an option to acquire shares etc	When the option ends	The capital proceeds from granting the option *less* the expenditure in granting it	The expenditure in granting the option *less* the capital proceeds

Bringing a CGT asset into existence (D)

CGT event	Time of event	Capital gain	Capital loss
D1 - Creating contractual or other rights	When the contract is entered into or the right is created	The capital proceeds from creating the right *less* the incidental costs of creating the right	The incidental costs of creating the right *less* the capital proceeds
D2 - Granting an option	When the option is granted	The capital proceeds from the grant *less* the expenditure to grant it	The expenditure to grant the option *less* the capital proceeds

D3 - Granting a right to income from mining	When the contract is entered into or, if none, when the right is granted	The capital proceeds from the grant of right *less* the expenditure to grant it	The expenditure to grant the right *less* the capital proceeds
D4 - Entering into a conservation covenant	When covenant is entered into	The capital proceeds from covenant *less* the cost base apportioned to the covenant	The reduced cost base apportioned to the covenant *less* the capital proceeds from covenant

Trusts (E)

CGT event	Time of event	Capital gain	Capital loss
E1 - Creating a trust over a CGT asset	When the trust is created	Capital proceeds from creating the trust *less* the asset's cost base	The asset's reduced cost base *less* the capital proceeds
E2 - Transferring a CGT asset to a trust	When the asset is transferred	Capital proceeds from the transfer *less* the asset's cost base	The asset's reduced cost base *less* the capital proceeds
E3 - Converting a trust to a unit trust	When the trust is converted	Market value of the asset at that time *less* its cost base	The asset's reduced cost base *less* that market value
E4 - Capital payment for trust interest	When the trustee makes the payment	Non-assessable part of the payment *less* the cost base of the trust interest	No capital loss
E5 - Beneficiary becoming entitled to a trust asset	When the beneficiary becomes absolutely entitled	For a trustee: market value of the CGT asset at that time *less* its cost base For a beneficiary: that market value *less* the cost base of the beneficiary's	For a trustee: the reduced cost base of the CGT asset at that time *less* that market value For a beneficiary: the reduced cost base of the beneficiary's capital

		capital interest	interest *less* that market value
E6 - Disposal to a beneficiary to end an income right	The time of the disposal	For a trustee: market value of the CGT asset at that time *less* its cost base For a beneficiary: that market value *less* the cost base of the beneficiary's right to income	For a trustee: the reduced cost base of the CGT asset at that time *less* that market value For a beneficiary: the reduced cost base of the beneficiary's right to income *less* that market value
E7 - Disposal to a beneficiary to end capital interest	The time of the disposal	For a trustee: market value of the CGT asset at that time *less* its cost base For a beneficiary: that market value *less* the cost base of the beneficiary's capital interest	For a trustee: the reduced cost base of the CGT asset at that time *less* that market value For a beneficiary: the reduced cost base of the beneficiary's capital interest *less* that market value
E8 - Disposal by a beneficiary of capital interest	When the disposal contract is entered into or, if none, when the beneficiary ceases to own the CGT asset	Capital proceeds *less* the appropriate proportion of the trust's net assets	The appropriate proportion of the trust's net assets *less* the capital proceeds
E9 - Creating a trust over future property	When the entity makes an agreement	Market value of the property (as if it existed when the agreement was made) *less* incidental costs in making the agreement	The incidental costs in making the agreement *less* the market value of the property (as if it existed when the agreement was made)
E10 - Annual cost base reduction exceeds cost base of interest	When the reduction happens	Excess of cost base reduction over cost base	No capital loss

in attribution managed investment trust (AMIT)			

Leases (F)

CGT event	Time of event	Capital gain	Capital loss
F1 - Granting a lease	For granting a lease: when the entity enters into the lease contract or, if none, at the start of the lease For a lease renewal or extension: at the start of the renewal or extension	Capital proceeds *less* the expenditure on grant, renewal or extension	Expenditure on grant, renewal or extension *less* the capital proceeds
F2 - Granting a long-term lease	For granting a lease: when the lessor grants the lease For a lease renewal or extension: at the start of the renewal or extension	Capital proceeds from the grant, renewal or extension *less* the cost base of the leased property	Reduced cost base of the leased property *less* the capital proceeds from the grant, renewal or extension
F3 - Lessor pays lessee to get lease changed	When the lease term is varied or waived	No capital gain	Amount of expenditure to get lessee's agreement
F4 - Lessee receives payment for changing a lease	When the lease term is varied or waived	Capital proceeds *less* the cost base of lease	No capital loss
F5 - Lessor receives payment	When the lease term is varied or waived	Capital proceeds *less* expenditure in relation to variation or waiver	Expenditure in relation to variation or waiver *less* the capital proceeds

for changing a lease			

Shares (G)

CGT event	Time of event	Capital gain	Capital loss
G1 - Capital payment for shares	When the company pays a non-assessable amount	Payment *less* the cost base of shares	No capital loss
G3 - Liquidator or administrator declares shares or financial instruments worthless	When declaration was made	No capital gain	Reduced cost base of shares or financial instruments'

Special capital receipts (H)

CGT event	Time of event	Capital gain	Capital loss
H1 - Forfeiture of a deposit	When the deposit is forfeited	Deposit *less* expenditure in connection with the prospective sale	Expenditure in connection with the prospective sale *less* deposit
H2 - Receipt for an event relating to a CGT asset	When the act, transaction or event occurred	Capital proceeds *less* the incidental costs	Incidental costs *less* the capital proceeds

Cessation of residency (I)

CGT event	Time of event	Capital gain	Capital loss
I1 - Individual or company stops being an Australian	When the individual or company stops being an	For each CGT asset the individual or company owns, its market value	For each CGT asset the individual or company owns, its reduced cost base

resident	Australian resident	*less* its cost base	*less* its market value
I2 - Trust stops being a resident trust	When the trust ceases to be a resident trust for CGT purposes	For each CGT asset the trustee owns, its market value *less* its cost base	For each CGT asset the trustee owns, its reduced cost base *less* its market value

Rollovers (J)

CGT event	Time of event	Capital gain	Capital loss
J1 - Company stops being a member of a wholly owned group after a rollover	When the company stops being a member of a wholly owned group after a rollover	Market value of the asset at the time of the event *less* its cost base	Reduced cost base of the asset *less* that market value
J2 - Change in relation to a replacement asset or improved asset after a rollover under Subdivision 152-E	When the change happens	The amount mentioned in subsection 104-185(5)	No capital loss
J4 - Trust failing to cease to exist after rollover under Subdivision 124-N	When the failure to cease to exist happens	For a company: market value of the asset at the time the company acquired it *less* its cost base at that time For a shareholder: market value of the share at the time the shareholder acquired it *less* its cost base at that time	For a company: reduced cost base of the asset at the time the company acquired it *less* its market value at that time For a shareholder: reduced cost base of the share at the time the shareholder acquired it *less* its market value at that time

J5 - Failure to acquire a replacement asset and to incur fourth element expenditure after a rollover under Subdivision 152E	At the end of the replacement asset period	The amount of the capital gain that you disregarded under Subdivision 152-E	No capital loss
J6 - Cost of acquisition of replacement asset or amount of fourth element expenditure, or both, not sufficient to cover disregarded capital gain	At the end of the replacement asset period	The amount mentioned in subsection 104-198(3)	No capital loss

Other CGT events (K)

CGT event	Time of event	Capital gain	Capital loss
K2 - Bankrupt pays an amount in relation to debt	When payment is made	No capital gain	That part of the payment that relates to the denied part of a net capital loss
K3 - Asset passing to a tax-advantaged entity	When an individual dies	Market value of the asset at death *less* its cost base	Reduced cost base of the asset *less* that market value
K4 - CGT asset starts being trading stock	When the asset starts being trading stock	Market value of asset *less* its cost base	Reduced cost base of the asset *less* that market value
K5 - Special capital loss from a collectable that has fallen in market value	When CGT event A1, C2 or E8 happens to shares in the company, or an interest in the trust, that owns the collectable	No capital gain	Market value of the shares or interest (as if the collectable had not fallen in market value) *less* the capital proceeds from CGT event A1, C2 or E8
K6 - Pre-CGT	When another	Capital proceeds	No capital loss

shares or trust interest	CGT event involving the shares or interest happens	from the shares or trust interest that are attributable to post-CGT assets owned by the company or trust, *less* the assets' cost bases	
K7 - Balancing adjustment occurs for a depreciating asset that you used for purposes other than taxable purposes	When the balancing adjustment event occurs	Termination value *less* cost times fraction	Cost *less* termination value times fraction
K8 - Direct value shifts affecting your equity or loan interests in a company or trust	The decrease time for the interests	Capital gain worked out under section 725-365	No capital loss
K9 - Entitlement to receive payment of a carried interest	When you become entitled to receive the payment	Capital proceeds from the entitlement	No capital loss
K10 - You make a forex realisation gain as a result of forex realisation event 2 and item 1 of the table in subsection 775-70(1) applies	When the forex realisation event happens	Equal to the forex realisation gain	No capital loss
K11 - You make a forex realisation loss as a result of forex realisation event 2 and item 1 of the	When the forex realisation event happens	No capital gain	Equal to the forex realisation loss

table in subsection 775-75(1) applies			
K12 - Foreign hybrid loss exposure adjustment	Just before the end of the income year	No capital gain	The amount stated in subsection 104-270(3)

Consolidations (L)

CGT event	Time of event	Capital gain	Capital loss
L1 - Reduction under section 705-57 in tax cost setting amount of assets of entity becoming subsidiary member of consolidated group or multiple entry consolidated (MEC) group	Just after entity becomes subsidiary member	No capital gain	Amount of reduction
L2 - Amount remaining after step 3A (of the table in section 705-60) of joining 'allocable cost amount' is negative	Just after entity becomes subsidiary member	Amount remaining	No capital loss
L3 - Tax cost setting amounts for retained cost base assets exceed joining 'allocable cost amount'	Just after entity becomes subsidiary member	Amount of excess	No capital loss
L4 - No reset cost base assets against which to apply excess of net 'allocable cost amount' on joining	Just after entity becomes subsidiary member	No capital gain	Amount of excess
L5 - Amount remaining after step 4 (of the table in section 711-20) of leaving 'allocable cost amount' is negative	When entity ceases to be subsidiary member	Amount remaining	No capital loss
L6 - Error in calculation of tax cost setting amount for joining entity's assets	Start of the income year when the Commissioner becomes	The net overstated amount resulting from the	The net understated amount resulting from the

	aware of the errors	errors, or a portion of that amount	errors, or a portion of that amount
L8 - Reduction in tax cost setting amount for reset cost base assets on joining cannot be allocated	Just after entity becomes a subsidiary member	No capital gain	Amount of reduction that cannot be allocated

See also:

- [Rollovers]
- [Working out your capital gain or loss]

Rollovers

- https://www.ato.gov.au/General/Capital-gains-tax/Selling-an-asset-and-other-CGT-events/Rollovers/
- Last modified: 17 Jul 2017
- QC 22164

You may be allowed to roll over (defer or disregard) a capital gain or loss from a capital gains tax (CGT) event until another CGT event happens in the case of assets involved in the following events:

- small business restructure or asset replacement
- relationship breakdown
- loss, destruction or compulsory acquisition
- scrip for scrip
- demergers
- other replacement-asset rollovers
- other same-asset rollovers.

Scrip for scrip

You may be able to defer a capital gain if you dispose of your shares in a company or interest in a trust as a result of a takeover.

See also:

- Takeovers and mergers, scrip-for-scrip rollover

Demergers

You may be able to defer a capital gain or loss if a CGT event happens to your shares in a company or your interest in a trust as a result of a demerger.

See also:

- Demergers and CGT rollovers

Other replacement-asset rollovers

You may be able to defer a capital gain or loss when you replace an asset in the following circumstances

- you, as an individual (sole trader), trustee, or a partner in a partnership, dispose of assets to a wholly owned company and assume assets in the company such as shares (that is, you change your business status by becoming a company)
- you acquire replacement assets as a result of a CGT event happening to your small business assets
- your statutory licence is renewed, extended or replaced
- you're a financial service provider and you have assets such as licences replaced on transition to the financial services reform regime
- your strata title is converted
- your shares or units are exchanged for shares or units in the same company or unit trust
- your rights or options to acquire shares or units in a company or unit trust are exchanged for shares or units in the company or trust
- your shares in one company are exchanged for shares in an interposed company
- your units in a unit trust are exchanged for shares in a company
- your unincorporated body (such as a club or association) is converted to an incorporated company
- you dispose of an existing crown lease and replace it with another
- you dispose of depreciating assets and replace them
- you dispose of prospecting and mining entitlements and replace them
- you dispose of a security under a securities lending arrangement
- your ownership of units or interests ends under a trust restructure
- a membership interest in a medical defence organisation is replaced with a similar membership interest in another medical defence organisation and both organisations are companies limited by guarantee
- you replace an entitlement to water with one or more different water entitlements.

Other same-asset rollovers

You may be able to defer a capital gain or loss when assets are transferred or disposed of in the following circumstances:

- an individual or trustee transfers a CGT asset to a wholly owned company
- partners transfer their interest in a CGT asset to a wholly owned company
- related companies transfer a CGT asset between them

- a trust disposes of a CGT asset to a company under a trust restructure
- a change to the trust deed of a complying approved deposit fund, a complying super fund or a fund that accepts worker entitlement contributions triggers a CGT event for the fund
- a CGT asset is transferred from one small super fund to another because of a breakdown of the relationship between spouses or former spouses
- a trustee of a trust creates a trust over a CGT asset or transfers a CGT asset to another trust where both the transferring and receiving trusts meet certain requirements.

See also:

- Types of CGT events
- Working out your capital gain or loss

Making choices and requesting extensions

- https://www.ato.gov.au/General/Capital-gains-tax/Selling-an-asset-and-other-CGT-events/Making-choices-and-requesting-extensions/
- Last modified: 29 Jun 2018
- QC 18383

There are a number of provisions in the capital gains tax (CGT) laws that allow you to make a choice.

Some of the provisions allow you to defer or roll over a capital gain you make when a CGT event (such as exchanging an asset for a replacement asset) happens.

On this page:

- When and how you make a choice
- Requesting an extension of time

When and how you make a choice

The general rule is that you must make a choice to defer or roll over your capital gain by the day you lodge the tax return for the year in which the relevant CGT event happened. The way you prepare your tax return is sufficient evidence of the choice.

However, there are some exceptions:

- Companies must make some decisions about replacement asset rollovers earlier than the day they lodge their tax return.
- Choices relating to the small business retirement exemption must be made in writing.

- Choices relating to the assessment of capital gains of resident testamentary trusts must be made by a trustee within a specified period.

Your choice is binding. Once you make a choice, it can't be changed.

We consider you haven't made a choice if you lodge your tax return without being aware that:

- events have happened that required you to make a choice
- a choice was available, or
- a choice you made was not valid.

In these circumstances, we may allow you further time to make a choice.

Requesting an extension of time

If you've lodged a tax return without knowing a choice was available to you under CGT law, you can apply to us to allow you further time to make the choice. You do this by completing one of the following:

- Private ruling application form (not for tax professionals)
- Private ruling application form (tax professionals)

We'll consider your request and advise you of our decision. We decide each case on its merits, considering factors such as whether:

- you have an acceptable explanation for not making the choice by the time it should have been made
- it would be fair and equitable in the circumstances to allow you more time to make a choice
- prejudice to the ATO might result from additional time being allowed to you (the absence of prejudice by itself is not enough to justify granting an extension)
- it would be fair and equitable to people in similar positions and the wider public interest
- any mischief is involved.

Businesses wishing to use the small business CGT concessions can also apply for an extension in situations where they need to take a certain action within a prescribed period of time – for example:

- Where your business has ceased, the active asset test period for a CGT event (for example, the sale of a former business asset) ends when the business ceased if that occurred in the 12 months before the CGT event.
- If you previously chose the small business rollover and you don't acquire a replacement asset or make a capital improvement to an existing asset within the prescribed period, then a further CGT event happens. The prescribed period starts one year before and ends two years after the last CGT event happens in the year for which you choose the rollover.

The application process and criteria are the same as those described above.

See also:

- [Rollovers]
- [Small business CGT concessions]

Involuntary disposal of a CGT asset

- https://www.ato.gov.au/General/Capital-gains-tax/Selling-an-asset-and-other-CGT-events/Involuntary-disposal-of-a-CGT-asset/
- Last modified: 29 Jun 2018
- QC 17204

If your capital gains tax (CGT) asset is lost, destroyed or compulsorily acquired, you may receive money or another CGT asset (or both) as compensation. In this case, you can choose to:

- defer your liability to pay tax on any capital gain arising on the disposal, or
- get a CGT exemption for any replacement asset if you acquired the original asset before 20 September 1985.

This concession is known as a rollover.

If you choose to take the rollover, you don't need to lodge a written election stating your choice – it will be clear from the way you prepare your tax return.

If the involuntary disposal results in a capital loss you can use it to reduce any capital gain made in the current income year or a later year.

Find out about:

- Events for which the rollover is available
- Timing of the CGT event
- Receiving money
- Receiving a replacement asset
- Receiving both money and an asset

Events for which the rollover is available

The rollover is available if one of the following events happens:

- all or part of your CGT asset is lost or destroyed
- your CGT asset is compulsorily acquired by an Australian government agency
- your CGT asset is compulsorily acquired by an entity (other than an Australian government agency or foreign government agency) under a power of compulsory acquisition conferred by an Australian or foreign law
- you dispose of your CGT asset to an entity (other than a foreign government agency) after a notice is served on you inviting you to negotiate a sale agreement. You must have been informed that, if the negotiations are

unsuccessful, the asset will be compulsorily acquired under a power of compulsory acquisition conferred by an Australian or foreign law
- you dispose of land to an entity (other than a foreign government agency) where a mining lease was compulsorily granted over the land, the lease significantly affected your use of the land, the lease was in force immediately before the disposal and the entity to which you disposed of the land was the lessee
- you dispose of land to an entity (other than a foreign government agency) where a mining lease would have been compulsorily granted over the land, the lease would have significantly affected your use of the land, and the entity to which you disposed of the land would have been the lessee
- a lease that had been granted to you by an Australian government agency under a Commonwealth, state or territory law expires and is not renewed.

The compulsory acquisition of minority interests for CGT assets, such as shares in a company, under the *Corporations Act 2001* or similar foreign law, is excluded.

This rollover generally doesn't apply to:

- Main residence
- Plant and other depreciating assets
- Vehicles

Main residence

A compulsory acquisition of part of your main residence may not qualify for the rollover, as the requirement that you acquire a replacement asset that is used for the same (or a similar) purpose may not be able to be met. However, the main residence exemption may apply.

See also:

- Destruction or compulsory acquisition of your home

Plant and other depreciating assets

This rollover is not available for plant disposed of after 11:45am (by legal time in the ACT) on 21 September 1999 and other depreciating assets from 1 July 2001. Instead, if a depreciating asset is lost or destroyed, or acquired compulsorily or by forced negotiation (other than by a foreign government agency), the capital allowances provisions may allow for a balancing adjustment offset.

This means that rather than including an amount in your assessable income by way of a balancing adjustment, you can offset that amount against the cost of a replacement asset.

See also:

- Guide to depreciating assets
- Uniform capital allowances system: disposal of a depreciating asset

Vehicles

For rollover relief to apply, the replacement asset cannot be a car, motorcycle or similar vehicle.

Timing of the CGT event

You need to know the time of the CGT event to work out in which income year a capital gain or loss affects your income tax.

- If an asset is lost or destroyed and you receive compensation, the time of the CGT event is when you first received the compensation.
- If you don't receive any compensation, the time of the CGT event is when the loss was discovered or the destruction occurred.
- If your asset was compulsorily acquired by an entity under an Australian law or foreign law, the time of the CGT event is the earlier of when:
    - you first received compensation from the entity
    - the entity entered the asset (for example, land) or took possession of it.
- If an entity acquires your asset following negotiation (rather than compulsorily acquiring it), the time of the CGT event is:
    - the date the contract to acquire it was made, or
    - the date of the change of ownership if there was no contract.
- If a lease that had been granted to you by an Australian government agency expires and is not renewed, the time of the CGT event is when the lease expired.

An Australian government agency is the Commonwealth, a state, a territory or one of their authorities.

Receiving money

If you receive money as compensation, for the rollover to be available you must incur expenditure on repairing the CGT asset, or acquiring another CGT asset, within a certain period.

The consequences of applying the rollover depend on whether the:

- original asset was acquired before 20 September 1985
- original asset was acquired on or after 20 September 1985.

When the rollover is available

If you receive money because your CGT asset is lost, destroyed or compulsorily acquired, you can choose the rollover only if:

- you incur expenditure in acquiring another CGT asset that is used:
    - in your business (or installed ready for use in the business for a reasonable period), if the original asset was a business asset, or
    - otherwise, for a reasonable period for the same or a similar purpose as the original asset, or

- part of the original asset is lost or destroyed and you incur expenditure of a capital nature in repairing or restoring it.

You must incur at least some of the expenditure:

- no earlier than one year before the event happens, or
- within one year after the end of the income year in which the event happens.

This period may be extended in special circumstances.

Example: Rollover applies

Trish paid for the repair of an asset for which she was compensated after part of it was destroyed on 1 September 2017. Trish's expenditure qualifies for the rollover concession if it is incurred any time during the period 1 September 2016 to 30 June 2019.

The replacement asset need not be identical to the one it is replacing. However, for the rollover to apply, you must use it in the same business or for the same (or a similar) purpose as the one for which you used the original asset. Also, your replacement asset cannot become an item of trading stock or a depreciating asset.

Example: Rollover does not apply

Denise receives money when her manufacturing business premises are destroyed. She buys a rental property with this money.

Denise cannot access the rollover concession because she does not use the rental property for the same or similar purpose as her old business premises.

Original asset acquired before 20 September 1985

If you acquired the original asset before 20 September 1985, you're taken to have acquired the repaired or replacement asset before that day if:

- you repair or restore the original asset, or
- you replace the original asset
  - at a cost of no more than 120% of its market value at the time of the event, or
  - at any cost, provided it (or part of it) was lost or destroyed by a natural disaster and the replacement asset is substantially the same.

This means you disregard any capital gain or loss you make when a later CGT event happens to the repaired or replacement asset.

Original asset acquired on or after 20 September 1985

If you acquired the original asset on or after 20 September 1985, the way the rollover applies depends on whether the money you received is more or less than the cost of repairing or replacing the asset.

Money received is more than the cost of repair or replacement

If you don't use all of the money you received to repair or replace the original asset, this affects your CGT obligation. The amount of capital gain you include on your tax return depends on whether the capital gain is more or less than the difference between the amount you received and the cost of the repair or replacement.

If the capital gain is more than that difference, you reduce your capital gain to the amount of the excess. Include this amount on your tax return in the year the event happens. This capital gain may be eligible for the CGT discount.

When a later CGT event happens, you reduce the amount of expenditure included in the cost base of the asset by the difference between the capital gain before it is reduced and the excess. This enables you to defer part of your CGT liability until a later CGT event happens.

If the capital gain is less than or equal to the excess (the compensation amount less the cost of the repair or replacement), you don't reduce the capital gain and the amount of the expenditure on the repair or replacement included in the cost base.

Example: Money received is more than expenditure incurred

Gerard's business premises were destroyed by fire on 15 March 2018. He received $246,000 in compensation from his insurance company.

It cost him $240,000 to reconstruct the premises, and the cost base attributed to the building was $230,000.

Money received	$246,000
Cost base	$230,000
Capital gain	$16,000
Money received	$246,000
Replacement expenditure	$240,000
Excess	$6,000

The compensation money ($246,000) is $6,000 more than the replacement expenditure ($240,000). The capital gain ($16,000) is $10,000 more than the excess of $6,000. The capital gain is reduced to the excess amount of $6,000.

Gerard's capital gain (before applying the CGT discount of 50%) is $6,000. Therefore, assuming he has not made any other capital losses or capital gains in the 2017–18 income year (and does not have any unapplied net capital losses from earlier years), Gerard includes $3,000 ($6,000 × 50%) as his net capital gain for the 2017–18 income year.

Also, he reduces the expenditure he incurred on the replacement asset by the balance of the capital gain ($10,000) to $230,000. This means $10,000 of the capital gain is deferred.

Money received does not exceed the cost of repair or replacement

If the amount of money you received is less than or equal to the expenditure you incurred to repair or replace the original asset, you disregard any capital gain. You reduce the expenditure you include in the cost base of the asset when a later CGT event happens by the amount of the gain.

Example: Money received is less than the expenditure incurred

Assume that, in the previous example, Gerard incurred $257,000 for repairs and the cost attributed to the building was $244,000.

Gerard made a capital gain of $2,000 because his cost base apportioned to the building was $244,000 at the time of the fire.

Money received	$246,000
Cost base	$244,000
Capital gain	$2,000
Money received	$246,000
Replacement expenditure	$257,000
Shortfall	$11,000

As the compensation money does not exceed the repair expenditure, Gerard disregards the capital gain.

However, the amount of expenditure that Gerard can include in the cost

base of the repaired building is reduced by the amount of the capital gain ($2,000) to $255,000.

Receiving a replacement asset

If a CGT asset you own is lost, destroyed or compulsorily acquired and you receive a replacement asset, you can choose a rollover only if the:

- replacement asset is not a depreciating asset or held as trading stock when you acquire it
- market value of the replacement asset is more than the cost base of the original asset just before the event happened.

If you choose to obtain a rollover when you receive a replacement asset, you disregard any capital gain you make from the original asset. The other consequences depend on whether the:

- original asset was acquired before 20 September 1985
- original asset was acquired on or after 20 September 1985.

Original asset acquired before 20 September 1985

If you acquired the original asset before 20 September 1985, you're taken to have acquired the replacement asset before that day.

Original asset acquired on or after 20 September 1985

If you acquired the original asset on or after 20 September 1985, the first element of the cost base or reduced cost base of the replacement asset is taken to be the cost base or reduced cost base of the original asset at the time of the event.

However, you may have to recalculate the first element of the cost base of your replacement asset if the cost base of the original asset included an amount of indexation and you wish to apply the CGT discount to a capital gain from the replacement asset.

Example: Asset received

The state government compulsorily acquired land that Jon acquired after 19 September 1985. The cost base of the land at the time it was compulsorily acquired was $180,000. As compensation, Jon received another piece of land with a market value of $200,000.

Because the market value of the replacement land was greater than the cost base of the original land just before it was compulsorily acquired, Jon disregards the capital gain made on the disposal of the original land. Jon is taken to have paid $180,000 to acquire the replacement land (that is, the cost base of the original land at the time it was compulsorily acquired).

Indexation or CGT discount

If a CGT event happens to the replacement asset (for example, a later disposal) you may be able to use the indexation method or the discount method to calculate your capital gain. This applies only if the periods of ownership of the original asset and the replacement asset add up to at least 12 months. For indexation to apply, you must have acquired the asset before 11:45am (by legal time in the ACT) on 21 September 1999.

Receiving both money and an asset

If you involuntarily dispose of a CGT asset, and you receive both money and a replacement asset and choose to apply a rollover, the requirements and consequences are different for each part of the compensation.

You need to separately determine what happens to the replacement asset and the money, having regard to the proportion of the original asset attributable to each type of compensation.

The rules are then applied separately to the money and the asset.

Example: Money and an asset received as compensation

The state government compulsorily acquired land Kris bought in 2002. Its cost base at the time was $150,000, but Kris received compensation worth $160,000.

Half of the total compensation was money ($80,000) and half was replacement land (market value $80,000).

Therefore, the cost base of the original land attributable to each part of the compensation is $75,000 (50% × $150,000). Kris bought additional replacement land for $82,000.

The total capital gain is $10,000, which is capital proceeds of cash and property totalling $160,000, less the cost base of $150,000. Half of this capital gain can be attributed to the money and half to the asset (the replacement land).

The money Kris received as compensation is less than the amount he paid to buy the additional land. He can, therefore, disregard the $5,000 of the capital gain that is attributable to the money compensation. He reduces the expenditure on the additional land by $5,000, so the first element of its cost base is only $77,000.

As the market value of the replacement land is more than that part of the cost base of the original land, Kris can choose to take rollover relief and disregard the capital gain of $5,000 relating to the land.

As a result, the value of the replacement land ($75,000) forms the first element of its cost base, not its market value ($80,000) when it was acquired.

See also:

- Working out your capital gain or loss
- Cost base

Working out your capital gain or loss

- https://www.ato.gov.au/General/Capital-gains-tax/Working-out-your-capital-gain-or-loss/
- Last modified: 17 Jul 2017
- QC 22158

For every capital gains tax (CGT) event that happens to your assets during the year, you need to work out your capital gain or loss.

If you have both capital gains and capital losses, you also have to work out your net capital gain or net capital loss for the year.

If you have a distribution from a managed fund, the fund has already worked out your capital gain or loss and should have given you the information on a distribution statement.

Individuals and small businesses (excluding companies) can generally discount a capital gain by 50% if they hold the asset for more than one year.

There are three methods to work out your capital gain. There is only one way to work out a capital loss.

Find out about:

- Working out your capital gain
- Working out your capital loss
- Working out your net capital gain or loss

See also:

- Capital proceeds
- Cost base
- Depreciating assets and CGT

- [Debt forgiveness and CGT]
- [International issues]
- [Managed investment fund (trust) distributions]
- [Earnout arrangements and CGT]

Working out your capital gain

- https://www.ato.gov.au/General/Capital-gains-tax/Working-out-your-capital-gain-or-loss/Working-out-your-capital-gain/
- Last modified: 09 Aug 2018
- QC 22159

For most CGT events, your capital gain is the difference between your capital proceeds and the cost base of your CGT asset. (The cost base of a CGT asset is largely what you paid for it, together with some other costs associated with acquiring, holding and disposing of it.)

There are three methods for working out your capital gain. You can choose the method that gives you the best result – that is, the smallest capital gain.

CGT discount method

- *Eligibility:* For assets held for 12 months or more before the relevant CGT event.
  - Not available to companies.
  - For foreign resident individuals, the 50% discount is removed or reduced on capital gains made after 8 May 2012.
- *Description:* Allows you to reduce your capital gain by
  - 50% for resident individuals (including partners in partnerships) and trusts
  - 33.33% for complying super funds and eligible life insurance companies.
- *How to do it:* Subtract the cost base from the capital proceeds, deduct any capital losses, then reduce by the relevant discount percentage.
- *See:* [The discount method].

Indexation method

- *Eligibility* – For assets
  - acquired before 11.45am (by legal time in the ACT) on 21 September 1999
  - held for 12 months or more before the relevant CGT event.
- *Description:* Allows you to increase the cost base by applying an indexation factor based on the consumer price index (CPI) up to September 1999.
- *How to do it:* Apply the relevant indexation factor, then subtract the indexed cost base from the capital proceeds.

- *See:* The indexation method.

Other method

- *Eligibility:* For assets held for less than 12 months before the relevant CGT event.
- *Description:* Basic method of subtracting the cost base from the capital proceeds.
- *How to do it:* Subtract the cost base (or the amount specified by the relevant CGT event) from the capital proceeds.
- *See:* The 'other' method.

CGT methods and 12-month ownership period

For each of the three methods, in determining whether you acquired the asset at least 12 months before the CGT event:

- exclude both the day of acquisition and the day of the CGT event
- in some situations you include the asset's previous ownership – for example, if you acquired the asset through a deceased estate, or as a result of a relationship breakdown.

Example: 12-month ownership period

Sally bought a CGT asset on 2 February. Her 12-month ownership period started on 3 February (the day after she bought the asset) and ends 365 days later (366 in a leap year), at the end of 2 February the following year.

If Sally sells the asset before 3 February the following year, she can't claim the discount or use indexation because she hasn't owned the asset for at least 12 months.

Next steps:

- Work out which methods you can use
- Choosing the indexation or discount methods
- You can use the Capital gain or capital loss worksheet to work out and compare your outcomes when using the discount and indexation methods, and to work out your capital gain or loss using the 'other' method.

See also:

- Capital proceeds
- Cost base

Work out which methods you can use

- https://www.ato.gov.au/General/Capital-gains-tax/Working-out-your-capital-gain-or-loss/Working-out-your-capital-gain/Work-out-which-methods-you-can-use/
- Last modified: 20 Jun 2017
- QC 52168

To determine which method (or methods) you can use to work out your capital gain, work through the following questions:

1. Does the CGT event involve an asset? If you make a capital gain from a CGT event that creates a new asset – for example, receiving a payment for agreeing not to do something (entering into a restrictive covenant) – you can't satisfy the 12-month ownership rule so your CGT event doesn't qualify for the CGT discount.

- Yes: Go to question 2
- No: Use the 'other' method

2. Have you owned the asset for less than 12 months?

- Yes: Go to question 3
- No: Go to question 6

3. Did you acquire the asset as the legal personal representative or as a beneficiary of a deceased estate? (See Deceased estates and inheritances.)

- Yes: Go to question 3a
- No: Go to question 4

3a: Did the person who died acquire it before 20 September 1985?

- Yes: Go to question 3b
- No: Go to question 3c

3b: Did you dispose of the asset less than 12 months after they died?

- Yes: Use the 'other' method
- No: Go to question 6

3c: Did you dispose of the asset less than 12 months after the deceased person acquired it?

- Yes: Use the 'other' method
- No: Go to question 6

4. Did you acquire the asset as the result of a marriage or relationship breakdown? (See Relationship breakdown.)

- Yes: Go to question 4a
- No: Go to question 5

4a: Did the period that your spouse owned the asset before it was transferred to

you plus the period you owned the asset total less than 12 months?

- Yes: Use the ‘other’ method
- No: Go to question 6

5. Is the asset a rollover asset? That is, does it replace an asset that was compulsorily acquired, lost or destroyed, disposed of as a result of a mining lease being compulsorily granted, or acquired following negotiations rather than compulsorily? (See Involuntary disposal of a CGT asset.)

- Yes: Go to question 5a
- No: Use the ‘other’ method

5a: Was the total period of ownership of the original asset and the replacement asset less than 12 months?

- Yes: Use the ‘other’ method
- No: Go to question 6

6. Did you acquire the asset before 21 September 1999?

- Yes: Choose the indexation or discount method, whichever gives the better result
- No: Use the discount method
- Note: For foreign resident individuals, the 50% discount is removed or reduced on capital gains made after 8 May 2012 – see CGT discount for foreign resident individuals.

Next steps:

- Choosing the indexation or discount methods
- You can use the Capital gain or capital loss worksheet to work out and compare your outcomes when using the discount and indexation methods, and to work out your capital gain or loss using the 'other' method.

See also:

- Working out your capital loss

The discount method of calculating your capital gain

- https://www.ato.gov.au/General/Capital-gains-tax/Working-out-your-capital-gain-or-loss/Working-out-your-capital-gain/The-discount-method-of-calculating-your-capital-gain/
- Last modified: 29 Jun 2018
- QC 17159

You can use the discount method to calculate the capital gain on most assets you have owned for 12 months or more.

On this page:

- Eligibility
- Certain capital gains are excluded
- Discount percentage

Eligibility

You can use the discount method to calculate your capital gain if:

- you're an individual, trust or complying super fund
- the capital gain tax (CGT) event happened to your asset after 11.45am (by legal time in the ACT) on 21 September 1999
- you acquired the asset at least 12 months before the CGT event
- you did not choose to use the indexation method.

Generally, the discount method does not apply to companies, although it can apply to a limited number of capital gains made by life insurance companies.

You can use the discount method to work out your capital gain from a property if:

- you acquire a property and construct a building or make improvements to it that are not separate assets
- you owned the property for at least 12 months (even if you did not construct the new building or improvements more than 12 months before the CGT event happened).

There are some exceptions to the requirement that you must have owned an asset for at least 12 months for the discount method to apply. For example, you can use the discount method if:

- you acquire a CGT asset as a legal personal representative or beneficiary of a deceased estate. The 12-month requirement is satisfied if the deceased acquired the asset 12 months or more before you disposed of it
- you acquired a CGT asset as the result of a marriage or relationship breakdown. You satisfy the 12-month requirement if the combined period your spouse and you owned the asset is more than 12 months
- a CGT asset was compulsorily acquired, lost or destroyed and you acquired a rollover replacement asset, you will satisfy the 12-month requirement for the replacement asset if the period of ownership of the original asset and the replacement asset was at least 12 months.

For foreign resident individuals, the 50% discount was removed or reduced on capital gains made after 8 May 2012 on taxable Australian property – see CGT discount for foreign resident individuals.

See also:

- Relationship breakdown

- Involuntary disposal of a CGT asset
- CGT discount for foreign resident individuals

Certain capital gains are excluded

The CGT discount does not apply to capital gains from certain CGT events:

- D1 Creating contractual or other rights
- D2 Granting an option
- D3 Granting a right to income from mining
- E9 Creating a trust over future property
- F1 Granting a lease
- F2 Granting a long-term lease
- F5 Lessor receives payment for changing a lease
- H2 Receipt for an event relating to a CGT asset
- J2 Change in relation to a replacement asset or improved asset after a rollover under Subdivision 152-E
- J5 Failure to acquire replacement asset and to incur fourth element expenditure after a rollover under Subdivision 152-E
- J6 Cost of acquisition of replacement asset or amount of fourth element expenditure, or both, not sufficient to cover disregarded capital gain
- K10 Forex realisation gain.

If you make a capital gain from a CGT event that creates a new asset – for example, receiving a payment for agreeing not to do something (entering into a restrictive covenant) – you cannot satisfy the 12-month ownership rule so your CGT event does not qualify for the CGT discount.

The CGT discount may be denied:

- if the CGT event that gave rise to the capital gain occurred under an agreement that was made within 12 months of the acquisition of the asset
- on the disposal of certain shares or trust interests in non-widely held companies and trusts – that is, those with fewer than 300 members
- if an arrangement was entered into for the purposes of claiming the CGT discount under which an 'income' asset was converted into a 'capital' asset (conversion of income to capital) (Part IVA of the *Income Tax Assessment Act 1936*).

If the 'home first used to produce income' rule applies and the period between when you first used the dwelling to produce income and the CGT event happening is not at least 12 months, the discount method is not available.

See also:

- Value of home when first used to produce income

Discount percentage

The discount percentage is the percentage by which you reduce your capital gain. You can reduce the capital gain only after you have applied all the capital losses for

the income year and any unapplied net capital losses from earlier years.

The discount percentage is 50% for individuals and trusts, and 33.33% for complying super funds and eligible life insurance companies.

For foreign resident individuals, the 50% discount was removed or reduced on capital gains made after 8 May 2012 on taxable Australia property – see [CGT discount for foreign resident individuals].

> Example
>
> Justin, an Australian resident, buys a block of land. He holds it for 18 months and sells it, making a profit of $10,000. He has no capital losses. If he uses the discount method of calculation, he will declare a capital gain of $5,000.

Next step:

- You can use the Capital gain or capital loss worksheet to work out and compare your outcomes when using the discount and indexation methods, and to work out your capital gain or loss using the 'other' method.

See also:

- Choosing the indexation or discount methods
- The indexation method of calculating your capital gain

The indexation method of calculating your capital gain

- https://www.ato.gov.au/General/Capital-gains-tax/Working-out-your-capital-gain-or-loss/Working-out-your-capital-gain/The-indexation-method-of-calculating-your-capital-gain/
- Last modified: 29 Jun 2018
- QC 17158

On this page:

- Eligibility
- Applying the indexation method

Eligibility

You can use the indexation method to calculate your capital gain if:

- a capital gains tax (CGT) event happened to an asset you acquired before 11.45am (by legal time in the ACT) on 21 September 1999, and
- you owned the asset for 12 months or more.

If you're not a company, you meet the two conditions above and you want to use the indexation method, you must choose to do so, otherwise the discount method will apply. The way you prepare your tax return is sufficient evidence of the choice.

If you're a company (other than a listed investment company) and the capital gain meets the above conditions, you must use the indexation method to calculate the capital gain.

There are some exceptions to the requirement that you must have owned an asset for at least 12 months for indexation to apply. For example, you can use the indexation method if you acquire a CGT asset:

- as a legal personal representative or beneficiary of a deceased estate. The 12-month requirement is satisfied if the deceased acquired the asset 12 months or more before you disposed of it, or
- as the result of a marriage or relationship breakdown. You satisfy the 12-month requirement if the combined period your spouse and you owned the asset is more than 12 months.

Applying the indexation method

Under the indexation method you increase each amount included in an element of the cost base (other than those in the third element, 'costs of owning the asset') by an indexation factor.

The indexation factor is worked out using the consumer price index (CPI).

If the CGT event happened on or after 11.45am (by legal time in the ACT) on 21 September 1999, you can only index the elements of your cost base up to 30 September 1999. You use this formula:

$$\frac{\text{CPI for quarter ending 30 September 1999}}{\text{CPI for quarter in which expenditure was incurred}} = \text{Indexation factor}$$

If the CGT event happened before 11.45am (by legal time in the ACT) on 21 September 1999, you use this formula:

$$\frac{\text{CPI for quarter when CGT event happened}}{\text{CPI for quarter in which expenditure was incurred}} = \text{Indexation factor}$$

Work out the indexation factor to three decimal places, rounding up if the fourth decimal place is five or more (for example, 1.4125 would become 1.413).

For most assets, you index expenditure from the date you incur it, even if you don't pay some of the expenditure until later. However, there is an exception for partly

paid shares or units acquired on or after 16 August 1989. If the company or trust later makes a call on the shares or units, you use the CPI for the quarter in which you made that later payment.

Next steps:

- You can use the Capital gain or capital loss worksheet to work out and compare your outcomes when using the discount and indexation methods, and to work out your capital gain or loss using the 'other' method.

See also:

- Choosing the indexation or discount methods
- Consumer price index (CPI) rates
- The discount method of calculating your capital gain
- Cost base

The 'other' method of calculating your capital gain

- https://www.ato.gov.au/General/Capital-gains-tax/Working-out-your-capital-gain-or-loss/Working-out-your-capital-gain/The--other--method-of-calculating-your-capital-gain/
- Last modified: 29 Jun 2018
- QC 17164

The ‘other’ method is the simplest of the three methods for calculating a capital gain. You must use this method to calculate your capital gain if you have bought and sold your asset within 12 months or, generally, for capital gains tax (CGT) events that do not involve an asset.

Generally, to use the 'other' method, you simply subtract your cost base from your capital proceeds. The amount of proceeds left is your capital gain.

Example: Property purchased and sold within 12 months

Marie-Anne bought a property for $250,000 under a contract dated 24 June 2017. The contract provided for payment of a deposit of $25,000 on that date, with the balance of $225,000 to be paid on settlement on 4 August 2017.

Marie-Anne paid stamp duty of $5,000 on 20 July 2017. On 4 August 2017, she received an account for solicitor’s fees of $2,000, which she paid as part of the settlement process.

Marie-Anne sold the property on 16 October 2017 (the day contracts were exchanged) for $315,000. She incurred costs of $1,500 in solicitor's fees and $4,000 in agent's commission.

As she bought and sold her property within 12 months, Marie-Anne must use the 'other' method to calculate her capital gain.

Deposit	$25,000
Balance	$225,000
Stamp duty	$5,000
Solicitor's fees for purchase of property	$2,000
Solicitor's fees for sale of property	$1,500
Agent's commission	$4,000
Cost base (total)	$262,500

Marie-Anne works out her capital gain as follows:

Capital proceeds	$315,000
less cost base	$262,500
Capital gain calculated using the 'other' method	$52,500

Assuming Marie-Anne hasn't made any other capital losses or capital gains in the 2017–18 income year, and doesn't have any unapplied net capital losses from earlier years, the net capital gain to be included on her tax return is $52,500.

Next steps:

- You can use the Capital gain or capital loss worksheet to work out and compare your outcomes when using the discount and indexation methods, and to work out your capital gain or loss using the 'other' method.

See also:

- Working out your capital loss

Choosing the indexation or discount methods

- https://www.ato.gov.au/General/Capital-gains-tax/Working-out-your-capital-gain-or-loss/Working-out-your-capital-gain/Choosing-the-indexation-or-discount-methods/
- Last modified: 17 Jul 2017
- QC 52173

For assets you acquired before 11.45am (by legal time in the ACT) on 21 September 1999 and have held for 12 months or more, you can choose to use the indexation method or discount method to calculate your capital gain.

The best option for you depends on a range of factors: the type of asset you own, the dates you owned it, past rates of inflation and whether you have any capital losses available.

You can use the Capital gain or capital loss worksheet to work out and compare your capital gain or loss for either or both of these methods (and to work out your capital gain or loss for the 'other' method).

On this page:

- Comparing methods
- Comparing methods where capital losses are available
- Using multiple methods where capital losses are available
- Using multiple methods where the available methods vary

Comparing methods

It's usually best to calculate your capital gain using both methods to find out which gives you the better result. This is shown in the worked examples below.

Example: Choosing the best method – property

Val bought an investment property for $150,000 under a contract dated 24 June 1991. The contract provided for the payment of a deposit of $15,000 on that date, with the balance of $135,000 to be paid on settlement on 5 August 1991.

She paid stamp duty of $5,000 on 20 July 1991. On 5 August 1991, she received an account for solicitor’s fees of $2,000, which she paid as part of the settlement process.

She sold the property on 15 October 2016 (the day the contracts were exchanged) for $600,000. She incurred costs of $1,500 in solicitor’s fees and $15,000 in agent’s commission.

Indexation method

The indexation factor is the CPI for the September 1999 quarter divided by the CPI for the quarter in which the expenditure was incurred:

- for the June 1991 quarter this is 68.7 ÷ 59.0 = 1.164
- for the September 1991 quarter this is 68.7 ÷ 59.3 = 1.159.

Val works out her indexed cost base as follows:

Deposit × indexation factor $15,000 × 1.164	=	$17,460
Balance × indexation factor $135,000 × 1.164	=	$157,140
Stamp duty × indexation factor $5,000 × 1.159	=	$5,795
Solicitors' fees for purchase of property × indexation factor $2,000 × 1.159	=	$2,318
Solicitor's fees for sale of property (indexation does not apply)		$1,500
Agent's commission for sale of property (indexation does not apply)		$15,000
Cost base (total)		$199,213

Val works out her capital gain as follows:

Capital proceeds	$600,000
less cost base	$199,213
Capital gain	$400,787

(Val's total current year capital gain using this method is $400,787.)

Assuming Val has not made any other capital losses or capital gains in the 2016–17 income year and does not have any unapplied net capital losses from earlier years, her net capital gain using the indexation method is $400,787.

Discount method

Deposit	$15,000

Balance	$135,000
Stamp duty	$5,000
Solicitor’s fees for purchase of property	$2,000
Solicitor’s fees for sale of property	$1,500
Agent’s commission	$15,000
Cost base (total)	$173,500

Val works out her capital gain as follows:

Capital proceeds	$600,000
less cost base	$173,500
Discount capital gain (Val's total current year capital gain using this method)	$426,500
less 50% discount (as Val has no capital losses)	$213,250
Net capital gain	$213,250

As the discount method provides Val with the better result, she will show the amount worked out using the discount method on her tax return rather than the amount worked out using the indexation method.

Example: Choosing the best method – units

In May 1999 Andrew bought 1,200 units in Share Trust for $1,275. This amount included brokerage fees. He gave the units to his brother in August 2014. A CGT event happened when Andrew made the gift. At the time of this CGT event, the units were worth $1,595. As the market value of the units was greater than their cost base, Andrew made a capital gain.

As Andrew bought the units before 21 September 1999 and owned them for more than 12 months, he can use the indexation or discount method to calculate his capital gain, whichever gives him the better result.

Indexation method

If Andrew calculates his capital gain using the indexation method, he indexes the cost of his units and the incidental costs of buying them as follows:

The indexation factor is the CPI for September 1999 quarter divided by the CPI for June 1999 quarter.

In this example, that is 68.7 ÷ 68.1 = 1.009

His indexed cost base is his cost ($1,275) multiplied by the indexation factor (1.009), which is $1,286.48.

So Andrew's capital gain is:

Capital proceeds	$1,595.00
Less indexed cost base	$1,286.48
Capital gain	$308.52
Rounded down	$308.00

Discount method

If Andrew uses the discount method, his capital gain is calculated as:

Capital proceeds	$1,595
Less cost base	$1,275
Capital gain	$320
Less discount	$160
Capital gain	$160

If Andrew had any capital losses he would deduct them before applying the discount.

Andrew chooses the discount method because it gives him a smaller capital gain.

If Andrew had received a non-assessable payment from the fund during the period he owned the units, his cost base may have been reduced and the capital gain may have been greater.

See also:

- Non-assessable payments on shares and units

Comparing methods where capital losses are available

Because capital losses must be offset against capital gains before the discount is applied, your choice may also depend on the amount of capital losses you have available.

Example: Capital gain on property where you also have capital losses

Justin sells some land and has a $10,000 capital gain under the discount method (before applying the 50% CGT discount) or a $7,000 capital gain under the indexation method. If Justin has no capital losses the discount method will produce the smaller capital gain (that is, $5,000 after applying the discount).

However, Justin also made a capital loss of $5,000 on the sale of some shares. He will be better off using the indexation method to work out the capital gain from the sale of his land. Under this method his net capital gain is $2,000 ($7,000 – $5,000). If he used the discount method, his net capital gain would be $2,500 [($10,000 – $5,000) × 50%].

Using multiple methods where capital losses are available

The example below shows that applying one method to work out your capital gains on a whole parcel of shares you acquired before 21 September 1999 may not be to your advantage if you have capital losses or net capital losses to apply.

In this situation, you will get a better result if you apply the indexation method to sufficient shares to absorb the capital loss (or as much of the capital loss as you can) and apply the discount method to any remaining shares.

Example: Capital gains on shares where you also have capital losses

In March 1995, Clare bought 500 shares at $15 each for a total of $7,500, including stamp duty and brokerage costs. She sold the shares in March 2017 at $25 each for a total of $12,500 (there were no brokerage costs on the sale of her shares). Clare had no other capital gains or capital losses in 2016–17, although she had $3,500 net capital losses carried forward from previous income years.

Because Clare owned the shares for more than 12 months, she can use the discount method or the indexation method to work out her capital gains – whichever gives her a better result. To help decide, Clare works out her net capital gain under each method for the whole parcel of shares:

Using CGT discount method:

Capital proceeds	$12,500
less cost base (see note 1)	$7,500
Capital gain	$5,000
less capital losses	$3,500
Gross capital gain	$1,500
50% discount	$750
Net capital gain	$750

Note 1: The cost base for the indexation method is worked out as follows: $7,500 × (68.7 ÷ 63.8 = 1.077)

Using indexation method:

Capital proceeds	$12,500
less cost base (see note 1)	$8,077
Capital gain	$4,423
less capital losses	$3,500
Gross capital gain	$923
50% discount	Nil
Net capital gain	$923

However, because each share is a separate asset, Clare can use different methods to work out her capital gains for shares within the parcel. The lowest net capital gain would result from her applying the indexation method to the sale of 395 shares (see note 2) and the discount method to the remaining 105. She works out her net capital gain as follows:

Indexation method (395 shares)

Capital proceeds	($25 each) $9,875
Cost base	(395 × $15 × 1.077) $6,381
Capital gain	$3,494
less capital losses	$3,500
Capital gain or (loss)	$6 (loss)

CGT discount method (105 shares)

Capital proceeds	($25 each) $2,625
Cost base	(105 × $15) $1,575
Capital gain	$1,050
less any remaining capital losses	$6
Gross capital gain	$1,044
50% discount	$522
Net capital gain	$522

Note 2: To calculate this, Clare worked out the capital gain made on each share using the indexation method ($4,423 ÷ 500 = 8.85) and divided the capital loss by this amount ($3,500 ÷ 8.85 = 395).

Using multiple methods where the available methods vary

If you buy and sell shares within 12 months, you must use the ‘other’ method to calculate your capital gain. If you own your shares for 12 months or more, you may be able to use either the discount method or the indexation method, whichever gives you the better result.

Example: Using all three methods to calculate a capital gain

On 1 July 1993 Tony bought 10,000 shares in Kimbin Ltd for $2 each. He paid a stockbroker’s fee of $250 and stamp duty of $50.

On 1 July 2016 Kimbin Ltd offered each of its shareholders one right for each four shares owned to acquire shares in the company for $1.80 each.

The market value of the shares at the time was $2.50.

On 1 August 2016, Tony exercised all rights and paid $1.80 per share.

On 1 December 2016, Tony sold all his shares in Kimbin Ltd for $3.00 each. He incurred a stockbroker's fee of $500 and stamp duty of $50.

Tony had two parcels of shares – those he acquired on 1 July 1993 and those he acquired at the time he exercised all rights, 1 August 2016. He needs to keep separate records for each parcel and apportion the stockbroker's fee of $500 and stamp duty of $50.

He uses the 'other' method for the 2,500 shares he owned for less than 12 months, as he has no choice:

Capital proceeds	$7,500
less cost base	$4,610
Capital gain	$2,890

For the 10,000 shares he owned for 12 months or more, his capital gain using the indexation method would be:

Capital proceeds	$30,000
less indexed cost base	$23,265
Capital gain	$6,735

This means his net capital gain would be:

'Other' method	$2,890
plus indexation method	$6,735
Net capital gain	$9,625

If Tony uses the discount method instead (assuming he has no capital losses), his capital gain would be:

Capital proceeds	$30,000
less cost base	$20,740
Capital gain	$9,260

He applies the CGT discount of 50%:

$9,260 × 50% = $4,630

This means Tony's net capital gain would be:

'Other' method	$2,890
plus discount method	$4,630
Net capital gain	$7,520

In this case, Tony would choose the discount method, rather than the indexation method, as it gives him the better result – that is, a lower net capital gain.

See also:

- Working out your capital loss

Working out your capital loss

- https://www.ato.gov.au/General/Capital-gains-tax/Working-out-your-capital-gain-or-loss/Working-out-your-capital-loss/
- Last modified: 29 Jun 2018
- QC 22160

If you haven't made a capital gain, you may have made a capital loss. You need to know your reduced cost base before you can establish whether you have made a capital loss.

If your reduced cost base is greater than the capital proceeds you received (or are entitled to receive) for your asset – that is, you've sold an asset for less than what it cost you – you have usually made a capital loss. The difference between the two amounts is your capital loss.

Next steps:

- Reduced cost base
- You can use the Capital gain or capital loss worksheet to work out a capital loss. You can also use it to work out a capital gain and compare the results when using the discount and indexation methods to calculate your gain if you

are entitled to use these methods.

See also:

- Working out your net capital gain or loss

Working out your net capital gain or loss

- https://www.ato.gov.au/General/Capital-gains-tax/Working-out-your-capital-gain-or-loss/Working-out-your-net-capital-gain-or-loss/
- Last modified: 17 Jul 2017
- QC 22161

Once you've worked out your capital gain or loss for each CGT asset, you need to work out your net capital gain or net capital loss for the year. This is the amount that goes on your income tax return.

There are rules to ensure you're not taxed twice. For example, if you make a profit on the sale of land and you're required to include it in your assessable income as ordinary income, you don't also include that profit as a capital gain.

On this page:

- Net capital gain
- Net capital loss
- Capital losses you must disregard

Net capital gain

Your net capital gain is:

Your total capital gains for the year (including those distributed by a managed fund or trust)	–	Your total capital losses (including any net capital losses from previous years)	–	Any CGT discount and small business CGT concessions you're entitled to

Net capital loss

If your total capital losses for the year exceed your total capital gains, your net capital loss is:

Your total capital losses (including any net capital losses from previous years)	–	Your total capital gains for the year (including those distributed by a managed fund or trust)

You can't deduct a net capital loss directly from your income, but you can carry it forward and deduct it from capital gains in later income years.

There is no time limit on how long you can carry forward a net capital loss.

You must offset your capital losses against your capital gains in the order in which you made them. You can't choose not to offset capital losses against capital gains if you have them, but you can choose which capital gains to deduct your losses from.

Net losses from collectables can only be deducted from capital gains made from collectables, not from other capital gains.

There are some capital losses you must disregard.

Company losses

Your company is entitled to deduct net capital losses from current year capital gains as long as it has either:

- substantially maintained the same ownership and control, or
- carried on the same business.

See also:

- How to claim a tax loss (companies)

Trust losses

Capital losses made by a trust can't be distributed to the trust's beneficiaries. They can be carried forward and applied against capital gains in future years.

Capital losses you must disregard

You must disregard any capital loss you make:

- from a personal use asset
- from exempt assets such as cars and motorcycles
- from some collectables
- from a lease (whether the result of expiry, forfeiture, surrender or assignment) unless it is used solely or mainly for producing assessable income, such as a lease on a commercial rental property or a car
- from paying personal services income if the income is included in an individual's assessable income under the alienation of personal services income provisions, or any other amount attributable to that income
- as an exempt (from income tax) entity – this rule ensures that if the status of an exempt entity changes and it becomes taxable, its losses are not carried forward to become deductible from assessable capital gains.

See also:

- Collectables
- Personal use assets
- Small business CGT concessions
- Capital proceeds
- Cost base

Capital proceeds

- https://www.ato.gov.au/General/Capital-gains-tax/Working-out-your-capital-gain-or-loss/Capital-proceeds/
- Last modified: 29 Jun 2018
- QC 17160

Whatever you receive as a result of a capital gains tax (CGT) event is referred to as your 'capital proceeds'. For most CGT events, your capital proceeds are an amount of money or the value of any property you:

- receive, or
- are entitled to receive.

If you receive (or are entitled to receive) foreign currency, you work out the capital proceeds by converting it to Australian currency at the time of the CGT event.

If you receive property (including shares) subject to a deed of escrow (which imposes a restriction on dealing in that property), you include the market value of the property at the time of the relevant CGT event in your capital proceeds.

On this page:

Reducing your capital proceeds

You reduce your capital proceeds from a CGT event if:

- you're not likely to receive some or all of the proceeds
- the non-receipt of some or all of the proceeds is not due to anything you have done or failed to do
- you took all reasonable steps to get payment.

Provided you're not entitled to a tax deduction for the amount you repaid, your capital proceeds are also reduced by:

- any part of the proceeds that you repay, or
- any compensation you pay that can reasonably be regarded as a repayment of the proceeds.

If you're registered for GST and you receive payment when you dispose of a CGT asset, any GST payable is not part of the capital proceeds.

Market value substitution rule

In some cases, if you receive nothing in exchange for a CGT asset (for example, if you give it away as a gift) you're taken to have received the market value of the asset at the time of the CGT event. You may also be taken to have received the

market value if:

- your capital proceeds are more or less than the market value of the CGT asset
- you and the purchaser were not dealing with each other at arm's length in connection with the event.

This is known as the market value substitution rule for capital proceeds.

You're said to be dealing at ‘arm's length’ with someone if each party acts independently and neither party exercises influence or control over the other in connection with the transaction. The law looks at not only the relationship between the parties, but also the quality of the bargaining between them.

Example: Gifting an asset

On 7 May 2007, Martha and Stephen bought a block of land.

In November 2017 they completed a transfer form to have the block transferred to their adult son, Paul, as a gift.

Because they received nothing for it, Martha and Stephen are taken to have received the market value of the land at the time it was transferred to Paul.

See also:

- [Market valuation for tax purposes]
- [Transferring real estate to family or friends]

Proceeds from a depreciating asset

CGT doesn't apply to most depreciating assets you use solely for taxable purposes (such as business equipment or items in a rental property). However, if you've used a depreciating asset for a non-taxable purpose (for private purposes, for example), CGT may apply.

There are special rules for calculating the proceeds from a depreciating asset.

See also:

- [Depreciating assets and CGT]
- [Cost base]
- [Working out your capital gain]

Cost base

- https://www.ato.gov.au/General/Capital-gains-tax/Working-out-your-capital-gain-or-loss/Cost-base/
- Last modified: 29 Jun 2018
- QC 17161

The cost base of a capital gains tax (CGT) asset is generally the cost of the asset when you bought it, plus certain other costs associated with acquiring, holding and disposing of the asset.

There are some CGT events where the cost base and reduced cost base are not relevant. For example, if you enter into an agreement not to work in a particular industry for a set period of time, CGT event D1 specifies that you calculate your capital gain or loss by comparing the capital proceeds with the incidental costs, which is only one element of the cost base. Also the cost base of a depreciating asset is not relevant in working out a capital gain from that asset.

Find out about:

- Elements of the cost base and reduced cost base
- Modifications and interaction with other rules

See also:

- Depreciating assets and CGT
- Debt forgiveness and CGT

Elements of the cost base and reduced cost base

- https://www.ato.gov.au/General/Capital-gains-tax/Working-out-your-capital-gain-or-loss/Cost-base/Elements-of-the-cost-base-and-reduced-cost-base/
- Last modified: 17 Jul 2017
- QC 52174

The cost base of a capital gains tax (CGT) asset is made up of five elements:

1. Money paid or property given for the CGT asset
2. Incidental costs of acquiring the CGT asset or that relate to the CGT event
3. Costs of owning the CGT asset
4. Capital costs to increase or preserve the value of your asset or to install or move it
5. Capital costs of preserving or defending your title or rights to your CGT asset

You add these elements together to work out your cost base.

An amount paid in a foreign currency that is included in an element of the cost base

is converted to Australian currency at the time of the relevant transaction or event – for example, when the money is paid for the asset.

If you're:

- registered for goods and services tax (GST), the elements of the cost base are reduced by the amount of any GST net input tax credits included in the cost
- not registered for GST, you don't make any adjustment – the GST is included in the cost base.

Generally for assets acquired after 13 May 1997 the cost base does not include any costs you have claimed as a tax deduction, or have not claimed but can still claim because the period for amending the relevant income tax assessment has not ended – for example, capital works deductions for capital expenditure.

First element: money paid or property given for the CGT asset

This element is the money paid (or required to be paid) for the asset and the market value of property given (or required to be given) to acquire the asset.

Second element: incidental costs of acquiring the CGT asset or that relate to the CGT event

There are ten incidental costs you may have incurred in acquiring the asset or in relation to the CGT event that happens to it (including its disposal). They are:

- remuneration for the services of a surveyor, valuer, auctioneer, accountant, broker, agent, consultant or legal adviser (you can include the cost of advice on the operation of the tax law as an incidental cost only if the advice was provided by a recognised tax adviser and you incurred the cost after 30 June 1989)
- costs of transfer
- stamp duty or other similar duty
- costs of advertising or marketing (but not entertainment) to find a seller or buyer
- costs relating to the making of any valuation or apportionment to determine your capital gain or loss
- search fees relating to an asset (such as fees to check land titles and similar fees, but not travel costs to find an asset suitable for purchase)
- the cost of a conveyancing kit (or a similar cost)
- borrowing expenses (such as loan application fees and mortgage discharge fees)
- expenditure that:
    - is incurred by the head company of a consolidated group to an entity that is not a member of the group, and
    - reasonably relates to a CGT asset held by the head company
    - is incurred because of a transaction that is between members of the group

- expenditure incurred as a direct result of your ownership of a CGT asset ending (also known as termination or exit fees).

Third element: costs of owning the CGT asset

You don't include these costs if you acquired the asset before 21 August 1991.

The costs of owning an asset include rates, land taxes, repairs and insurance premiums. You also include any non-deductible interest on loans used to finance:

- the acquisition of a CGT asset
- capital expenditure to increase an asset's value.

You can't:

- include these costs in the cost base of collectables or personal use assets
- index these costs
- use them to work out a capital loss.

See also:

- [The indexation method of calculating your capital gain]

Fourth element: capital costs to increase or preserve the value of your asset or to install or move it

The fourth element is capital costs you incurred:

- for the purpose, or the expected effect, of increasing or preserving the asset's value – for example, costs incurred in applying (successfully or unsuccessfully) for zoning changes
- to install or move an asset.

The fourth element does not include capital expenditure incurred in relation to goodwill, which may be deductible as a business-related cost.

Fifth element: capital costs of preserving or defending your title or rights to your CGT asset

This element is your capital expenditure to preserve or defend your ownership of, or rights to, the asset – for example, if you paid a call on shares.

Reduced cost base elements

When a capital gains tax (CGT) event happens to a CGT asset and you haven't made a capital gain, you need the asset's reduced cost base to work out whether you've made a capital loss.

The reduced cost base of a CGT asset has the same five elements as the cost base, except for the third element:

1. [Money or property given for the asset]

2. Incidental costs of acquiring the CGT asset or that relate to the CGT event
3. Balancing adjustment amount, that is, any amount that is assessable because of a balancing adjustment for the asset or that would be assessable if certain balancing adjustment relief were not available
4. Capital costs to increase or preserve the value of your asset or to install or move it
5. Capital costs of preserving or defending your title or rights to your asset.

These elements are not indexed.

You need to work out the amount for each element, then add them together to find out your reduced cost base for the relevant CGT asset.

If you're:

- registered for goods and services tax (GST), you reduce each element of the reduced cost base by the amount of any GST net input tax credits for that element
- not registered for GST, you don't make any adjustment and the GST paid is included in the reduced cost base.

The reduced cost base does not include any costs you have claimed as a tax deduction, or have not claimed but can still claim because the period for amending the relevant income tax assessment has not ended – for example, capital works deductions for capital expenditure.

Example: Capital works deduction: effect on reduced cost base

Danuta acquired a new income-producing asset on 28 September 2005 for $100,000. She sold it for $90,000 in November 2016. While she owned it she claimed capital works deductions of $7,500 for expenditure she incurred.

Her capital loss is worked out as follows:

Cost base	$100,000
less capital works deductions	$7,500
Reduced cost base	$92,500
less capital proceeds	$90,000
Capital loss	$2,500

See also:

- Modifications and interaction with other rules
- Working out your capital gain

Modifications and interaction with other rules

- https://www.ato.gov.au/General/Capital-gains-tax/Working-out-your-capital-gain-or-loss/Cost-base/Modifications-and-interaction-with-other-rules/
- Last modified: 17 Jul 2017
- QC 52175

The general rules for calculating the cost base and reduced cost base are modified in certain situations:

- Expenditure on heritage conservation, land care and water facilities
- Reversal of deduction
- Indexation
- Market value substitution
- Recouped expenditure
- Apportionment

In addition, there are other CGT rules that may affect the cost base or reduced cost base of an asset. For example, they are calculated differently:

- when your home is first used to produce income
- where there are capital works deductions
- for an asset that you receive as a beneficiary or as the legal personal representative of a deceased estate
- for bonus shares, bonus units, rights and options to acquire shares or units and convertible notes
- for depreciating assets
- under a demerger
- for consolidated groups
- if you're affected by the general value shifting regime (GVSR) rules
- if you've been freed from paying a debt
- where you start or cease to have a financial arrangement as consideration for acquiring a CGT asset (see Taxation of financial arrangements).

Expenditure on heritage conservation, land care and water facilities

If you acquired a capital gains tax (CGT) asset after 13 May 1997, the cost base and reduced cost base does not include:

- heritage conservation expenditure
- land care and water facilities expenditure incurred after 12 November 1998 that give rise to a tax offset.

Reversal of deduction

In some cases, a deduction you have claimed on a CGT asset can be partly or wholly 'reversed' – that is, the value of part or all of the deduction may be declared as income in the year the CGT event happens. In this case, the cost base of the CGT asset is increased by the amount you have to include in your assessable income.

Indexation

If you use the indexation method to calculate a capital gain, some of the cost base expenditure you incurred up to 11.45am (by legal time in the ACT) on 21 September 1999 may be indexed to account for inflation up to the September 1999 quarter. Expenditure after that time is not indexed.

The reduced cost base is not indexed. (The indexation method is not available for calculating a capital loss.)

See also:

- The indexation method of calculating your capital gain

Market value substitution

You substitute the market value for the first element of the cost base or reduced cost base if:

- you did not incur expenditure to acquire the asset
- some or all of the expenditure you incurred cannot be valued, or
- you did not deal at arm's length with the previous owner in acquiring the asset.

There are exceptions to this market value substitution rule – for example, where shares in a company, or units in a unit trust, are issued or allotted to you but you don't pay anything for them.

See also:

- Market valuation for tax purposes

Recouped expenditure

You don't include expenditure you subsequently recoup – such as an insurance pay-out you receive or an amount paid for by someone else – in the cost base and reduced cost of a CGT asset except to the extent you include the recouped amount in your assessable income.

Example: Recouped expenditure

John bought a building in 2000 for $200,000 and incurred $10,000 in legal costs associated with the purchase. As part of the settlement, the vendor agreed to pay $4,000 of the legal costs. John did not claim any part of the $6,000 he paid in legal costs as a tax deduction.

He later sells the building. As he received reimbursement of $4,000 of the legal costs, he includes only the $6,000 he incurred in the cost base in working out his capital gain.

Apportionment

If you acquire a CGT asset and only part of the expenditure relates to the acquisition of the CGT asset, only that part of the expenditure that is reasonably attributable to the acquisition of the asset can be included in its cost base or reduced cost base.

Apportionment is also required if you incur expenditure and only part of that expenditure relates to another element of the cost base and reduced cost base.

Similarly, if a CGT event happens to only part of a CGT asset, the cost base or reduced cost base of the asset is generally apportioned to work out the capital gain or loss from the CGT event.

See also:

- Joint ownership
- Cost base
- Working out your capital gain

Depreciating assets and CGT

- https://www.ato.gov.au/General/Capital-gains-tax/Working-out-your-capital-gain-or-loss/Depreciating-assets-and-CGT/
- Last modified: 29 Jun 2018
- QC 17163

A capital gain or capital loss from the disposal of a depreciating asset will only arise to the extent that you have used the asset for a non-taxable purpose (for example, used for private purposes).

You calculate a capital gain or capital loss from a depreciating asset used for a non-taxable purpose using the concepts of cost and termination value under the uniform capital allowances system, not the concepts of cost base and capital proceeds under the capital gains tax (CGT) rules.

If a balancing adjustment event occurs for a depreciating asset you have at some time used for a non-taxable purpose, a CGT event happens. The most common balancing adjustment event for a depreciating asset occurs when you stop holding it (for example, you sell, lose or destroy it) or stop using it.

On this page:

Calculating a capital gain or capital loss

You make a capital gain if the termination value of your depreciating asset is greater than its cost. You make a capital loss if the reverse is the case, that is, the asset's cost is more than its termination value.

You use different formulas to calculate a capital gain or capital loss depending on whether the asset is a:

- depreciating asset not in a low-value pool
- depreciating asset in a low-value pool.

Depreciating asset not in a low-value pool

If your depreciating asset is not a pooled asset, you calculate a capital gain as follows:

$$(\text{Termination value} - \text{cost}) \times \frac{\text{Sum of reductions}}{\text{Total decline}}$$

You calculate the capital loss as follows:

$$(\text{Cost} - \text{termination value}) \times \frac{\text{Sum of reductions}}{\text{Total decline}}$$

In these formulas:

- 'sum of reductions' is the sum of the reductions in your deductions for the asset's decline in value that is attributable to your use of the asset, or you having it installed ready for use, for a non-taxable purpose
- 'total decline' is the decline in value of the depreciating asset since you started to hold it.

Example: Capital gain on depreciating asset

Larry bought a truck in August 2016 for $5,000 and sold it in June 2018 for $7,000. He used the truck 10% of the time for private purposes. The decline in value of the truck up to the date of sale was $2,000.

The sum of his reductions relating to his private use is $200 (10% of $2,000). Larry calculates his capital gain from CGT event K7 as follows:

- ($7,000 − $5,000) × (200 ÷ 2,000)
- = $2,000 × 0.1
- = $200

Capital gain from CGT event K7 = $200 (before applying any discount).

Larry isn't registered for GST, so the elements of the cost base are not reduced by the amount of any GST input tax credits included in the cost.

Depreciating asset in a low-value pool

You calculate a capital gain from a depreciating asset in a low-value pool as follows:

(termination value − cost) × (1 − taxable use fraction)

You calculate a capital loss as follows:

(cost − termination value) × (1 − taxable use fraction)

'Taxable use fraction' is the percentage of use of an asset that is for a taxable purpose (producing your assessable income), expressed as a fraction. This is the percentage you reasonably estimate for the asset at the time you allocated it to the low-value pool.

CGT concessions

A capital gain from a depreciating asset may qualify for the CGT discount if the relevant conditions are satisfied. If the CGT discount applies, there is no reduction of the capital gain under the indexation method.

The small business CGT concessions do not apply to a capital gain made from the disposal of a depreciating asset, because a capital gain only arises for the use of the depreciating asset for non-taxable purposes.

See also:

- The discount method of calculating your capital gain
- The indexation method of calculating your capital gain

CGT exemptions

The following exemptions apply to a capital gain or capital loss made from the disposal of a depreciating asset:

- Pre-CGT assets: you disregard a capital gain or capital loss from a depreciating asset if the asset was acquired before 20 September 1985.
- Assets of small business entities: you disregard a capital gain or capital loss from a depreciating asset if you are a small business entity and you can deduct an amount for the depreciating asset's decline in value under the small business entity capital allowance provisions for the income year in which the balancing adjustment event occurred.
- Personal use asset: if a depreciating asset is a personal use asset (that is, one used or kept mainly for personal use and enjoyment), you disregard any capital loss from CGT event K7. You also disregard a capital gain under CGT event K7 from a personal use asset costing $10,000 or less.
- Collectables: you disregard a capital gain or capital loss from a depreciating asset that is a collectable costing $500 or less.
- Balancing adjustment event and CGT event: you only include a balancing adjustment event that gives rise to a capital gain or capital loss under CGT event K7. However, capital proceeds received under other CGT events, such as CGT event D1, may still be relevant for a depreciating asset as CGT events are not the equivalent of balancing adjustment events.

Intellectual property

Under the capital allowance rules intellectual property is a depreciating asset.

If you grant or assign an interest in an item of intellectual property, you're treated as if you had stopped holding part of the item. You're also treated as if, just before you stop holding that part, you had split the original item of intellectual property into two parts, the part you stopped holding and the rest of the original item. You determine the first element of the cost for each part.

This treatment applies if a licence is granted over an item of intellectual property. To this extent, the treatment of intellectual property is different from other depreciating assets. The grant of a licence in respect of other depreciating assets would result in CGT event D1 happening

See also:

- Guide to depreciating assets
- Working out your capital gain or loss

Debt forgiveness and CGT

- https://www.ato.gov.au/General/Capital-gains-tax/Working-out-your-capital-

gain-or-loss/Debt-forgiveness-and-CGT/
- Last modified: 29 Jun 2018
- QC 17162

A debt is forgiven if you're freed from the obligation to pay it. Commercial debt forgiveness rules apply to debts forgiven after 27 June 1996. A debt is a commercial debt if part or all of the interest payable on the debt is, or would be, an allowable deduction.

Under the commercial debt forgiveness rules, a forgiven amount may reduce (in the following order) your:

- prior income year revenue losses
- net capital losses from earlier years
- deductible expenditure
- cost base and reduced cost base of assets.

These rules do not apply if the debt is forgiven:

- as a result of an action under bankruptcy law
- in a deceased person's will, or
- for reasons of natural love and affection.

Nor do the rules apply if:

- the debt is waived and the waiver constitutes a fringe benefit
- the amount of debt has been, or will be included in your assessable income in any income year
- the debt is a tax-related liability.

Example

On 1 July 2017, Josef had available net capital losses from earlier years of $9,000. On 3 January 2018, he sold shares he had owned for more than 12 months for $20,000. The shares had a cost base (no indexation) of $7,500. On 1 April 2018, a commercial debt of $15,000 that Josef owed to AZC Pty Ltd was forgiven. Josef had no prior income year revenue losses and no deductible capital expenditure.

Josef must use part of the forgiven commercial debt to wipe out his net capital losses from earlier years and the rest to reduce the cost base of his shares. He works out the amount of net capital gain to include in his assessable income as follows.

Adjust net capital losses from earlier years:

Available net capital losses from earlier years	$9,000
less debt forgiveness adjustment	$9,000
Adjusted net capital losses from earlier years	Nil

Adjust cost base:

Cost base of shares (no indexation)	$7,500
less debt forgiveness adjustment	$6,000
Adjusted cost base (no indexation)	$1,500

Calculate net capital gain:

Sale of shares	$20,000
less adjusted cost base (no indexation)	$1,500
less adjusted net capital losses from earlier years	Nil
Capital gain (eligible for discount)	$18,500
less discount percentage (50%)	$9,250
Net capital gain	$9,250

See also:

- Working out your capital gain or loss

Your home and other real estate

- https://www.ato.gov.au/General/Capital-gains-tax/Your-home-and-other-real-estate/
- Last modified: 17 Jul 2017
- QC 22166

Most real estate is subject to capital gains tax (CGT). This includes vacant land, business premises, rental properties, holiday houses and hobby farms.

Your main residence (your home) is generally exempt from CGT unless you've used

it to earn rent or run a business, or it's on more than two hectares of land.

It's important to:

- keep records of your real estate, including your own home (in case in the future you start renting it out or running a home business)
- remember that when you sell real estate, the time of the event (the time at which you make a capital gain or loss) is when you enter into the contract, not when you settle.

Find out about:

- Your main residence
- Sale of property and other CGT events
- Timing of a real estate CGT event
- Keeping records for real estate
- Subdividing and amalgamating land
- Capital improvements and separate assets
- Calculating the cost base for real estate

See also:

- Inherited dwellings

Your main residence

- https://www.ato.gov.au/General/Capital-gains-tax/Your-home-and-other-real-estate/Your-main-residence/
- Last modified: 31 May 2018
- QC 22168

Your 'main residence' (your home) is generally exempt from capital gains tax (CGT). To get the exemption, the property must have a dwelling on it and you must have lived in it. You're not entitled to the exemption for a vacant block.

If you were not a resident of Australia for tax purposes while you were living in the property, you are unlikely to satisfy the requirements for the main residence exemption.

If you are a foreign resident when a CGT event happens to your residential property in Australia you may no longer be entitled to claim the main residence exemption. There is a transitional period. To find out more, see Foreign residents and main residence exemption.

Generally, a dwelling is considered to be your main residence if:

- you and your family live in it

- your personal belongings are in it
- it's the address your mail is delivered to
- it's your address on the electoral roll,
- services such as gas and power are connected.

The main residence exemption is not based on one factor alone, and the weight given to each varies depending on individual circumstances. The length of time you stay there and your intention in occupying it may also be relevant.

You're eligible for a full main residence exemption if the dwelling:

- has been the home of you, your partner and other dependants for the whole period you've owned it
- has not been used to produce assessable income – that is, you've not run a business from it, rented it out or flipped it, and
- is on land of two hectares or less.

If the full exemption applies your capital gain or loss is disregarded – you don't pay tax on any capital gain, but nor can you use any capital loss to reduce your assessable income.

Alternatively, you may be entitled to a partial exemption.

Find out how the main residence exemption applies when you:

- move in – a dwelling is considered to be your main residence from the time you acquire it if you move in as soon as practicable after settlement
- move from one main residence to another – if you acquire a new home before you dispose of your old one, you may be able to treat both dwellings as your main residence for up to six months
- move out – you can continue treating your old home as your main residence
- live in a different home to your spouse or children – you need to choose which home will be your main residence
- use your home to produce income (such as renting it out, running a home business or flipping your home) – you don't get the full main residence exemption and may need to know your home's market value at the time you first used it to produce income
- build or renovate your home on land you own – you can treat the land as your main residence for up to four years before you move in, provided you move in as soon as practicable after it's finished.

See also:

- Capital gains tax property exemption tool – calculate the percentage of your property that's exempt from CGT
- Destruction or compulsory acquisition of your home
- Dwellings, structures and adjacent land
- Ownership interest and ownership period
- Calculating a partial exemption
- Keeping records for real estate

Moving in

- https://www.ato.gov.au/General/Capital-gains-tax/Your-home-and-other-real-estate/Your-main-residence/Moving-in/
- Last modified: 29 Jun 2018
- QC 52187

A dwelling is considered to be your main residence from the time you acquire your ownership interest in it if you move in as soon as practicable after that time. If you purchase the dwelling, this would generally be the date of settlement of the purchase contract.

If there's a delay in moving in because of illness or other unforeseen circumstances, the exemption still applies as long as you move into the dwelling as soon as the cause of the delay is removed – for example, when you recover from the illness.

If you can't move in because the dwelling is being rented to someone, you are not considered to have moved in as soon as practicable after you acquired your ownership interest.

A special rule allows you to treat more than one dwelling as your main residence for a limited time if you are changing main residences.

Example: Moving in as soon as practicable

Li Jing signed a contract to buy a townhouse in March. She took possession when settlement occurred in April.

During this period, Li Jing was directed by her employer to go overseas on an assignment for four months, leaving late in March. She moved into the townhouse on her return to Australia in late July.

Li Jing's overseas assignment was unforeseen at the time she bought the property. As she moved in as soon as practicable after settlement of the contract occurred, she can treat the townhouse as her main residence from the date of acquisition until she moved in.

If Li Jing treats the townhouse as her main residence for this period, she can't treat any other dwelling as her main residence (except for a limited time if she is moving house).

See also:

- Moving to another main residence
- Building or renovating your home
- Dwellings, structures and adjacent land

- Ownership interest and ownership period
- Calculating a partial exemption

Moving to another main residence

- https://www.ato.gov.au/General/Capital-gains-tax/Your-home-and-other-real-estate/Your-main-residence/Moving-to-another-main-residence/
- Last modified: 17 Jul 2017
- QC 52188

If you acquire a new home before you dispose of your old one, both dwellings are treated as your main residence for up to six months if:

- you lived in your old home and it was your main residence for a continuous period of at least three months in the 12 months before you disposed of it
- you did not use it to produce assessable income (such as rent) in any part of that 12 months when it was not your main residence
- the new dwelling becomes your main residence.

So if you sell your old home within six months of acquiring the new one, both dwellings are exempt for the whole period between when you acquire the new one and dispose of the old one.

Example: Exemption for both homes

Jill and Norman bought their new home under a contract that settled in January and they moved in immediately. They sold their old home under a contract that settled in April.

Both the old and new homes are treated as their main residence for the period January to April, even though they didn't live in the old home during that period.

Old home sold after six months

If it takes longer than six months to dispose of your old home, both homes are exempt only for the last six months before you dispose of the old one. If you decide to claim the main residence exemption for your new home from the time you first move in, then your old home will be only partially exempt from CGT.

Example: Partial exemption for old home

Jeneen and John bought their home under a contract that settled on 1 January 1999 and they moved in immediately. It was their main residence until they bought another home under a contract that was entered into on 2 November 2015 and settled on 1 January 2016.

They retained their old home after moving into the new one on 1 January 2016, but didn't use the old one to produce income. They sold the old home under a contract that settled on 1 October 2016. They owned this home for a total period of 6,484 days.

Both homes are treated as their main residence for the period 1 April 2016 to 1 October 2016, the last six months that Jeneen and John owned their old home. Therefore, their old home is treated as their main residence only for the period before settlement of their new home and during the last six months before settlement of the sale of the old home.

The 91 days from 1 January 2016 to 31 March 2016, when the old home is not their main residence, are taken into account in calculating the proportion of their capital gain that is assessable (91 ÷ 6,484).

If it takes longer than six months to dispose of your old home, you can get an exemption for the old home for the period in excess of the six months by choosing to treat it as your main residence for that period under the ‘continuing main residence status after moving out’ rule. If you do this, you get only a partial exemption when you dispose of your new home.

Example: Partial exemption for new home

The facts are the same as in the previous example, except that Jeneen and John choose to continue to treat their old home as their main residence for the period from 1 January 2016 to 31 March 2016 under the 'continuing main residence status after moving out' rule.

This means they get a full exemption when they sell it.

Because both homes can only be exempt for a maximum of six months when moving from one to the other, Jeneen and John will not get a full exemption for their new home when they sell it. The exemption will not be available for the new home for the 91 days from 1 January 2016 to 31 March 2016.

See also:

- Treating a dwelling as your main residence after you move out
- Using your home to produce income
- Dwellings, structures and adjacent land

- Ownership interest and ownership period
- Calculating a partial exemption

Treating a dwelling as your main residence after you move out

- https://www.ato.gov.au/General/Capital-gains-tax/Your-home-and-other-real-estate/Your-main-residence/Treating-a-dwelling-as-your-main-residence-after-you-move-out/
- Last modified: 30 Jul 2018
- QC 52189

As a general rule, a dwelling ceases being your main residence once you stop living in it. However, you can choose to continue treating a dwelling as your main residence for capital gains tax (CGT) purposes even though you no longer live in it.

Generally, you:

- can treat the dwelling as your main residence for:
  - up to six years if it is used to produce income
  - indefinitely if it is not used to produce income
- can't treat any other dwelling as your main residence for that period (except for a limited time if you're moving house).

You can't make this choice for a period before a dwelling first becomes your main residence.

If you are a foreign resident when a CGT event happens to your residential property in Australia you are no longer entitled to claim the main residence exemption. There is a transitional period. To find out more, see Foreign residents and main residence exemption.

When does a dwelling stop being your main residence?

Indicators that a dwelling has stopped being your main residence include:

- you and your family no longer live in it
- your personal belongings are not kept in it
- it is no longer the address your mail is delivered to
- it is no longer your address on the electoral roll
- services such as gas and power are no longer connected.

Whether a dwelling has stopped being your main residence is not determined based on one or more factors alone, and the weight given to each varies depending on individual circumstances. The length of time you are absent from the dwelling and

any intention you have to re-occupy it may also be relevant.

Example 1: Dwelling stopped being your main residence

Duc owns a house in which he has lived with his family for five years. It has been his main residence for the whole period he has owned it.

Duc accepts a two year posting overseas for work. Duc's family will travel and reside with him overseas. Duc cancels his utility connections and places all of his personal belongings in storage. He has his mail redirected to his overseas address, and updates his address on the electoral roll.

The house stops being Duc's main residence for the period of his absence. Depending on his other circumstances, he may choose to continue to treat the house as his main residence while he is absent.

Example 2: Dwelling does not stop being your main residence

Rajini bought a unit in which she has lived for two years. It has been her main residence for the whole period she has owned it.

Rajini goes on holiday to Bali for two weeks each year over the summer. Rajini leaves some of her more personal possessions, including her jewellery and laptop, with her parents while she is away.

The unit does not stop being Rajini's main residence while she is on holiday.

Example 3: Dwelling ceases to be your main residence

Eric and Lorraine bought their family home in 1992. They have both retired and for the past three years have enjoyed travelling the country for three to four months of each year in their caravan.

They take certain personal items that are important to them with them while they travel, and leave the rest in storage at their home.

While travelling, they divert their mail to their daughter who looks after anything which is urgent. They notify their utility providers and government agencies with which they deal of their travel plans and have set up

electronic correspondence channels to deal with any issues that may need their immediate attention. Although they turn off the mains gas and water to their house, they don't disconnect their utilities accounts. They leave their mains electric switched on as they have solar panels which generates a feed-in credit for them while they are away.

Eric and Lorraine are absent from their home for a significant part of the year. While they are absent, they make the caravan their home. The house stops being Eric and Lorraine's main residence for the period of their absence. Depending on their other circumstances, they may choose to continue to treat the house as their main residence while they are absent.

Example 4: Dwelling does not stop being your main residence

Harry bought his family home in 1998. He spends four to six months of the year travelling around the country for work. He bought a campervan to use to travel and stays in it while away for work purposes. His trips can last anywhere from a few days to a few weeks. He returns to his home between travels.

Harry takes certain personal items with him while travelling, but leaves most of his personal belongings in his home where his family remain. Harry's partner notifies him of any urgent correspondence that is received.

Although Harry is absent from his home for a significant part of the year, the home does not stop being his main residence.

See also:

- Capital gains tax property exemption tool – calculate the percentage of your property that's exempt from CGT

Where a dwelling does not stop being your main residence

Where a dwelling that was you main residence does not stop being your main residence and you use it to produce income, you will only receive a partial main residence exemption.

You will only get a partial exemption where, if you had incurred interest on money borrowed to purchase the dwelling, you could have deducted some or all of the interest. This is called the 'interest deductibility test'.

See also:

- [Using your home to produce income]

When to make the choice

You make the choice to treat a dwelling as your main residence when you prepare your tax return for the income year that a CGT event happens to the dwelling – for example, the year that you enter into a contract to sell it.

If you own both:

- the dwelling that you can choose to treat as your main residence after you no longer live in it, and
- the dwelling you actually lived in during that period

then you make the choice for the income year you enter into the contract to sell the first of those dwellings.

Former dwelling not used to produce income

If you don't use your former dwelling to produce income (for example, you leave it vacant, or use it as a holiday house) you can treat it as your main residence for an unlimited period after you stop living in it.

Example 5: Former dwelling not used to produce income

Bill bought a unit and lived in it for three years. He then moved out to live with a friend, while his son occupied the unit rent free. He did not treat any other dwelling as his main residence. 12 years later, he sold the unit and claimed the main residence exemption from CGT.

Former dwelling used to produce income

If you use the dwelling to produce income (for example, you rent it out or it is available for rent) you can choose to treat it as your main residence for up to six years after you stop living in it. If, as a result of you making this choice, the dwelling is fully exempt, the 'home first used to produce income' rule does not apply.

If you rent out the dwelling for more than six years, the ‘home first used to produce income’ rule may apply, which means you are taken to have acquired the dwelling at its market value at the time you first used it to produce income.

You can choose when you want to stop the period covered by this choice.

If you are absent more than once during the period you own the dwelling, the six-year maximum period that you can treat it as your main residence while you use it to produce income applies separately to each period of absence.

If you use any part of your dwelling to produce income before you stop living in it,

you can't apply the continuing main residence exemption to that part. This means you can't get the main residence exemption for that part of the dwelling either before or after you stop living in it.

See also:

- [If you use your home to produce income and then stop living in it]

Example 6: Choosing to stop the period covered by the choice early

James bought a house in Brisbane on 15 September 2010 and moved in immediately. On 10 October 2011 he moved to Perth and rented out his Brisbane house. On 3 October 2016 James bought and moved into a new house in Perth. He sold the house in Brisbane on 1 March 2018.

In completing his 2017–18 tax return, James decided to treat the Brisbane house as his main residence for the period after he moved out of it but only until the date he purchased his new main residence in Perth – that is, for the period of slightly less than five years from 10 October 2011 until 3 October 2016.

Example 7: One period of absence of 10 years

Dwelling ceases to be the main residence and is used to produce income for one period of six years

Lisa bought a house after 20 September 1985 but stopped using it as her main residence for the 10 years immediately before she sold it. During this period, she rented it out for six years and left it vacant for four years.

Lisa chooses to treat the house as her main residence for the period after she ceased living in it, so she disregards any capital gain or loss she made on the sale of the house. The maximum period the house can continue to be her main residence while it is used to produce income is six years. However, while the house is vacant, the period is unlimited, which means the exemption applies for the whole 10 years. It doesn’t matter whether the period during which the house is used to produce income is a single block of six years or several shorter periods, so long as the total period it is used to produce income is no more than six years.

Because the house is fully exempt as a result of Lisa making this choice, the home first used to produce income rule does not apply.

Dwelling used to produce income for more than one period totalling six years

In the 10-year period after Lisa stopped living in the house she rented it out for three years, left it vacant for two years, rented it out for the next three years, and then once more left it vacant for two years.

If she chooses to treat the house as her main residence for the period after she stopped living in it, she again disregards any capital gain or loss she makes on selling it. This is because the period she used the house to produce income during each absence was not more than six years.

Example 8 :

Dwelling ceases to be the main residence and is used to produce income for more than six years during a single period of absence

- 1 July 1993
  Rami settled a contract to buy an apartment in Sydney and used it as his main residence.
- 1 January 1995
  Rami was posted to Brisbane by his employer, and settled a contract to buy a house there.
- 1 January 1995 to 31 December 1999
  Rami rented out his Sydney apartment during the period he was posted to Brisbane.
- 31 December 1999
  Rami settled a contract to sell his Brisbane house and the tenant in his Sydney apartment left. Rami chose not to claim the main residence exemption on the sale of the Brisbane house, so he had to include the capital gain in his return for that year.

The period of five years from 1995 to 1999 was the first period the Sydney apartment was used to produce income for the purpose of the six-year test.

- 1 January 2000
  Rami was posted by his employer from Brisbane to Melbourne for three years and settled a contract to buy a townhouse in Melbourne. He did not return to his Sydney apartment at this time.
- 1 March 2000
  Rami again rented out his Sydney apartment – this time for two years.
- 28 February 2002
  The tenant of his Sydney apartment left.

The period of two years from 2000 to 2002 was the second period the Sydney apartment was used to produce income under the six-year test.

- 31 December 2002
  Rami sold his townhouse in Melbourne. He chose not to claim the main

residence exemption on the sale of this property.
- 31 December 2003
  Rami returned to his apartment in Sydney and it again became his main residence.
- 28 February 2018
  Rami settled a contract to sell his Sydney apartment.

As Rami did not claim the main residence exemption for either of his Brisbane or Melbourne properties he is able to choose to treat the Sydney apartment as his main residence for the period after he stopped living in it. Rami claims the exemption for this property.

Rami can't obtain the main residence exemption for the whole period of ownership of the Sydney apartment because the combined periods it was used to produce income (1 January 1995 to 31 December 1999 and 1 March 2000 to 28 February 2002) total more than six years.

As a result, the Sydney apartment is not exempt for the period it was used to produce income that exceeds the six-year period – that is, one year.

If the capital gain on the disposal of the Sydney apartment is $250,000, the amount of the gain that is assessable is calculated as follows:

Period of ownership of the Sydney apartment:

1 July 1993 to 28 February 2018 = 9,009 days

Periods the Sydney apartment was used to produce income after Rami ceased living in it:

1 January 1995 to 31 December 1999	1,826 days
1 March 2000 to 28 February 2002	730 days
Total	2,556 days

First six years the Sydney apartment was used to produce income:

1 January 1995 to 31 December 1999	1,826 days
1 March 2000 to 28 February 2001	365 days
Total	2,191 days

Income-producing period exceeding six years after Rami ceased living in it:

2,556 − 2,191 = 365 days

Proportion of capital gain assessable in 2017–18

$250,000 × (365 ÷ 9,009) = $10,129

Because Rami entered into the contract to acquire the property before 21 September 1999 and entered into the contract to sell it after that time, and owned it for at least 12 months, he can use either the indexation or discount method to calculate his capital gain.

The 'home first used to produce income rule' does not apply because the apartment was used by Rami to produce income before 21 August 1996.

See also:

- Using your home to produce income
- Moving to another main residence
- Dwellings, structures and adjacent land
- Ownership interest and ownership period
- Calculating a partial exemption

When your spouse or children live in a different home to you

- https://www.ato.gov.au/General/Capital-gains-tax/Your-home-and-other-real-estate/Your-main-residence/When-your-spouse-or-children-live-in-a-different-home-to-you/
- Last modified: 29 Jun 2018
- QC 52190

Having a different home from your dependent child

If you and a dependent child under 18 years of age have different homes for a period, you must choose one of the homes as the main residence for both of you for the period.

Having a different home from your spouse

If you and your spouse have different homes for a period, you and your spouse must either:

- choose one of the homes as the main residence for both of you for the period, or
- nominate the different homes as your main residences for the period.

If you nominate different homes for the period and you own 50% or less of the home

you have nominated, you qualify for an exemption for your share. If you own more than 50%, your share is exempt for half the period you and your spouse have different homes.

The same applies to your spouse. If your spouse owns 50% or less of the home they have nominated, they qualify for an exemption for their share. However, if your spouse owns more than 50% of the home, their share is exempt for only half the period you have different homes.

This rule applies to each home the spouses own, whether they have sole ownership or own the home jointly (either as joint tenants or tenants in common).

Your spouse includes another person (of any sex) who:

- you were in a relationship with that was registered under a prescribed state or territory law
- although not legally married to you, lived with you on a genuine domestic basis in a relationship as a couple.

This rule also applies if you choose to treat a dwelling as your main residence after you move out, and this choice results in your having a different main residence from your spouse or a dependent child for a period.

Example: Spouses with different main residences

Under a contract that settled on 1 July 1998, Kathy and her spouse Grahame purchased a townhouse where they lived together. Grahame owned 70% of the townhouse and Kathy owned the other 30%.

Under a contract that settled on 1 August 2000, they purchased a beach house which they owned in equal shares. From 1 May 2001, Kathy lived in their beach house while Grahame kept living in the townhouse. Grahame nominated the townhouse as his main residence and Kathy nominated the beach house as her main residence.

Kathy and Grahame sold the beach house under a contract that settled on 15 April 2018. As it was Kathy's main residence and she owned 50% of it, she disregards her share of any capital gain or loss for the period she and Grahame had different homes (1 May 2001 to 15 April 2018).

As Grahame did not live in the beach house or nominate it as his main residence when he and Kathy had different homes, he does not ignore his share of any capital gain or loss for any of the period he owned it.

Grahame and Kathy also sold the townhouse under a contract that settled on 15 April 2018.

Because Grahame owned more than 50% of the townhouse, it's taken to have been his main residence for half of the period when he and Kathy had different homes.

If the total capital gain on the sale of the townhouse was $100,000, Grahame's share of the capital gain is $70,000 (reflecting his 70% ownership interest). The portion of the gain that Grahame disregards under the main residence exemption is:

$$\text{Share of capital gain} \times \frac{\text{Days spouses have one main residence}}{\text{Total days property owned}} = \text{Gain disregarded for period that spouses have one main residence}$$

That is:

$70,000 × (1,036 days ÷ 7,229 days) = $10,032

Plus

$$\text{Share of capital gain} \times 50\% \times \frac{\text{Days spouses have separate main residences}}{\text{Total days property owned}} = \text{Gain disregarded for period that spouses have separate main residences}$$

That is:

$70,000 × 50% × (6,194 days ÷ 7,229 days) = $29,989

The total amount disregarded by Grahame is:

$10,032 + $29,989 = $40,021

As Grahame bought the townhouse before 21 September 1999 and entered into the contract to sell it after that time, and owned his share for at least 12 months, he can use either the indexation or discount method to calculate his capital gain.

Kathy's share of the $100,000 capital gain on the townhouse is $30,000, reflecting her 30% ownership interest. The portion she disregards is:

$$\text{Share of capital gain} \times 50\% \times \frac{\text{Days spouses have one main residence}}{\text{Total days property owned}} = \text{Gain disregarded for period that spouses have one main residence}$$

Therefore

$30,000 × (1,036 days ÷ 7,229 days) = $4,299

As Kathy entered into the contract to buy the townhouse before 21 September 1999 and entered into the contract to sell it after that time, and owned her share for at least 12 months, she can use either the indexation or discount method to calculate her capital gain.

Example: Different main residences

Anna and her spouse Mark jointly purchased a townhouse under a contract that settled on 5 February 1999. Both of them lived in it from that date until 29 April 2018, when the contract of sale settled. Anna owned more than 50% of the townhouse.

Before 5 February 1999, Anna had lived alone in her own flat which she rented out after moving to the townhouse. She then sold her flat and settled the sale on 11 March 2000. Anna chose to treat the flat as her main residence from 5 February 1999 until she sold it, under the 'continuing main residence status after moving out' rule.

Because of Anna's choice, Mark had a different main residence from Anna for the period 5 February 1999 to 11 March 2000. Therefore, Mark must either:

- treat Anna's flat as his main residence for that period, or
- nominate the townhouse as his main residence for that period.

If he chooses to treat Anna's flat as his main residence, a part of any gain Mark makes when he sells the townhouse will be taxable. He will not get an exemption for the townhouse for the period that he nominated Anna's flat as his main residence (that is, 5 February 1999 to 11 March 2000).

Assuming Mark nominates the townhouse as his main residence, he qualifies for a full exemption on any capital gain he makes when it is sold because he owns 50% or less of it. However, because Mark and Anna had different main residences as a result of Mark's choice, and Anna owned more than 50% of the flat, her gain on the flat will only qualify for a 50% exemption for the period from 5 February 1999 to 11 March 2000.

See also:

- Treating a dwelling as your main residence after you move out
- Moving to another main residence
- Dwellings, structures and adjacent land
- Ownership interest and ownership period
- Calculating a partial exemption

Using your home to produce income

- https://www.ato.gov.au/General/Capital-gains-tax/Your-home-and-other-real-estate/Your-main-residence/Using-your-home-to-produce-income/
- Last modified: 29 Jun 2018
- QC 52191

Your main residence (your home) is generally exempt from capital gains tax (CGT). However, you don't get the full main residence exemption if you use any part of the dwelling to produce income (such as renting out a room or running a business), and:

- you acquired your dwelling on or after 20 September 1985
- you would be allowed a deduction for interest (had you incurred it) on money borrowed to acquire the dwelling – this is the 'interest deductibility test'.

To work out your capital gain you generally need to know your home's market value at the time you first used it to produce income.

On this page:

See also:

- Capital gains tax property exemption tool to calculate the percentage of your property that's exempt from CGT

The interest deductibility test

The interest deductibility test applies regardless of whether you actually borrowed money to acquire your dwelling. You must apply it on the assumption that you did borrow money to acquire the dwelling.

If you rent out part of your home, you would be entitled to deduct part of the interest if you had borrowed money to acquire the dwelling.

If you run a business or professional practice in part of your home, you would be entitled to deduct part of the interest on money you borrowed to acquire the dwelling if:

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

You would not be entitled to deduct any interest expenses if, for convenience, you use a home study to undertake work usually done at your place of work. Similarly, you would not be entitled to deduct interest expenses if you do paid child-minding at home (unless a special part of the home was set aside exclusively for that purpose). In these situations, you could still get a full main residence exemption.

If you set aside and use part of your home exclusively as a place of business, you can't get a CGT exemption for that part of the dwelling by not claiming a deduction for interest on your home loan. Nor can you include interest in the cost base if you are entitled to a deduction but don't claim it.

You can still get a full main residence exemption if someone else uses part of your home to produce income and you receive no income from that person.

What proportion is exempt?

The proportion of the capital gain or loss that is assessable is an amount that is reasonable having regard to the extent to which you would have been able to deduct the interest on money borrowed to acquire the home.

In most cases, this is the proportion of the floor area of the home that is set aside to produce income and the period you use the home to produce income. This includes the period the dwelling is available (for example, advertised) for rent.

Example: Renting out part of a home

Thomas bought a house under a contract that settled on 1 July 1999 and sold it under a contract that settled on 30 June 2018. The house was his main residence for the entire time.

Throughout the period Thomas owned the house, a tenant rented one bedroom, which represented 20% of the house. Both Thomas and the tenant used the living room, bathroom, laundry and kitchen, which represented 30% of the house. Only Thomas used the remainder of the house. Therefore, Thomas would be entitled to a 35% deduction for interest (if he incurred it) on money borrowed to acquire his house.

Thomas made a capital gain of $400,000 when he sold the house. The following proportion of the gain is assessable:

Capital gain × Percentage of floor area = Assessable portion

That is:

$400,000 × 35% = $140,000

As Thomas entered into the contract to acquire the house before 21 September 1999 and entered into the contract to sell it after that time, and held it for at least 12 months, he can use either the indexation or discount method to calculate his capital gain.

The 'home first used to produce income' rule is irrelevant because Thomas used the house to produce income from the date he purchased it.

See also:

- Residential rental properties

Example: Running a business in part of a home for part of the period of ownership

Jana bought her house under a contract that settled on 1 January 1999 and sold it under a contract that settled on 31 December 2017. It was her main residence for the entire time.

For half the period Jana owned the house, she used part of it to operate her photographic business. She modified the rooms for that purpose and they were no longer suitable for private and domestic use. They represented 25% of the total floor area of the house.

Jana made a capital gain of $320,000 when she sold the house. The following proportion of the gain is assessable:

Capital gain × Percentage of floor area not used as main residence × Percentage of period of ownership that part of the house was not used as a main residence = Taxable portion

That is:

$320,000 × 25% × 50% = $40,000

As Jana entered into the contract to acquire the house before 21 September 1999 and entered into the contract to sell it after that time, and held it for at least 12 months, she can use either the indexation or discount method to calculate her capital gain.

The 'home first used to produce income' rule is irrelevant because Jana used the house to produce income from the date she purchased it.

Value of home when first used to produce income

If you start using your main residence to produce income after 20 August 1996, you're generally taken to have acquired it at the time you first used it for this purpose. This means when you sell the dwelling, you need to work out the capital gain or loss using its market value at the time you first used it to produce income. You don't have a choice.

This rule applies if all of the following are true:

- you acquired the dwelling on or after 20 September 1985
- you first used the dwelling to produce income after 20 August 1996
- when you sell the dwelling (or another CGT event happens to it), you would

get only a partial CGT exemption because you used it to produce assessable income during the period you owned it
- you would have been entitled to a full exemption if the sale or other CGT event happened to the dwelling immediately before you first used it to produce income.

A similar rule applies if you inherit a dwelling that was the deceased's main residence and you use it to produce income.

If the 'home first used to produce income' rule applies and the period between when you first use the dwelling to produce income and the CGT event happening is less than 12 months, you can't use the CGT discount method. If you use your home to produce income from the time you acquire it, the rule doesn't affect you. If you choose to continue treating a dwelling as your main residence after you move out, and the dwelling is fully exempt, the 'home first used to produce income' rule does not apply.

Example: Home becomes a rental property

Erin bought a house in July 2000 for $280,000. The house was her main residence until she moved into a new house on 1 August 2003. On 2 August 2003, she began renting out the old house. At that time, the market value of the old house was $450,000.

Erin did not want to treat the old house as her main residence under the 'continuing main residence status after moving out' rule as she wanted the new house to be treated as her main residence from the date she moved into it.

On 14 April 2018, Erin sold the old house for $696,000. Erin is taken to have acquired the old house for $450,000 on 2 August 2003 and calculates her taxable capital gain to be $246,000.

Because Erin is taken to have acquired the old house on 2 August 2003, and held it for more than 12 months, she can use the discount method to calculate her capital gain. As Erin has no capital losses she includes a capital gain of $123,000 ($246,000 × 50%) on her 2018 tax return.

Example: Part of home used to produce income

Fatima bought a house in December 1991 for $200,000. It was her main residence. On 1 November 2016 she started to use 40% of the house for a consultancy business. At that time the market value of the house was $520,000.

She decided to sell the house in August 2017 for $620,000. As Fatima was still living in the house and using part of it for business, she could not get a full exemption under the 'continuing main residence status after moving out' rule. She works out her assessable capital gain as follows:

Percentage of use × (proceeds − cost base) = capital gain

That is:

40% × ($620,000 − $520,000) = $40,000

Fatima is taken to have acquired the house on 1 November 2016, so she is taken to have owned it for less than 12 months and must use the 'other' method to calculate her capital gain.

Example: Dwelling used to produce income for more than six years

Roya purchased an apartment in Australia for $180,000 under a contract that settled on 15 September 1994, and immediately started using the apartment as her main residence.

On 29 September 1996 she moved overseas and rented out the apartment. At that time the market value of the apartment was $220,000.

During the time she was overseas she did not acquire another dwelling. She returned to Australia in July 2017 and sold the apartment for $555,000, under a contract that settled on 29 September 2017. She incurred $15,000 in agent’s and solicitor’s costs.

As Roya rented out the apartment, she can only treat it as her main residence during her absence for a maximum of six years; that is, for the period 29 September 1996 to 29 September 2002.

Roya must treat the apartment as having been acquired on 29 September 1996 at the market value at that time, which was $220,000.

Roya works out her assessable capital gain as follows:

Capital proceeds − Cost base = Total capital gain

That is:

$555,000 − ($220,000 + $15,000) = $320,000

Then:

Non-main residence days
5,479 (30 September 2002 to 29 September 2017)

Ownership period days
7,671 (29 September 1996 (new deemed acquisition date) to 29 September 2017)

$320,000 × (5,479 days ÷ 7.671 days) = $228,559

Roya chooses to use the discount method and, because she has no other capital gains or capital losses, she includes a net capital gain of $114,280 ($228,559 × 50%) on her 2018 tax return.

See also:

- Treating a dwelling as your main residence after you move out

If you inherited the home

If a person acquired their main residence on or after 20 September 1985 and they died and it passed to you as a beneficiary or as trustee of their estate after 20 August 1996, you are taken to have acquired the dwelling at its market value at the time you first used it to produce income if:

- you first used the dwelling to produce income after 20 August 1996
- when a CGT event happens to the dwelling, you would only get a partial exemption because you used the dwelling to produce assessable income during the period you owned it
- you would have been entitled to a full exemption if the CGT event happened to the dwelling immediately before you first used it to produce income
- the CGT event did not happen to the dwelling within two years of the person's date of death.

If all of the above apply, you must work out your capital gain or loss using the market value of the dwelling at the time you first used it to produce income. You don't have a choice.

See also:

- Inherited dwellings

If you use your home to produce income and then stop living in it

If you use any part of your home to produce income before you stop living in it, you can't apply the 'continuing main residence status after moving out' rule to that part. This means you can't get the main residence exemption for that part of the dwelling either before or after you stop living in it.

Example: Ceasing to live in a home after part of it is used to produce income

Helen purchased a house under a contract that settled on 1 July 1998 and she moved in immediately. She used 75% of the house as her main residence and the remaining 25% as a doctor's surgery, which she used until 30 June 2012.

On 1 July 2012, she moved out and rented out the house until it was sold under a contract that settled on 30 June 2018. She made a capital gain of $400,000 when the house was sold.

Helen chooses to treat the house as her main residence for the six years it was rented out.

As 25% of the house was not used as her main residence during the period before Helen stopped living in it, part of the capital gain is assessable:

$400,000 × 25% = $100,000

Because Helen entered into the contract to acquire the house before 21 September 1999 and sold it after that time, and owned it for at least 12 months, she can use either the indexation or discount method to calculate her capital gain.

The 'home first used to produce income' rule is irrelevant because she used it to produce income from the time she purchased it.

Small business CGT concessions

If you're not entitled to a full main residence exemption because you use your home for business purposes, you may be able to apply the small business CGT concessions to reduce your capital gain. The concessions are not available if the main use of the premises is to derive rent.

See also:

- Small business CGT concessions
- Dwellings, structures and adjacent land
- Ownership interest and ownership period
- Calculating a partial exemption

Building or renovating your home

- https://www.ato.gov.au/General/Capital-gains-tax/Your-home-and-other-real-estate/Your-main-residence/Building-or-renovating-your-home/
- Last modified: 17 Jul 2017
- QC 52192

If you build a dwelling on land you already own, the land normally isn't exempt from CGT until the dwelling becomes your main residence.

However, you can treat land as your main residence for up to four years before the dwelling becomes your main residence if you:

- have an ownership interest (other than a life interest) in the land
- build, repair or renovate a dwelling on the land (or finish a partly constructed dwelling), and
- move into the dwelling as soon as practicable after it's finished and continue to use it as your main residence for at least three months.

If you choose to do this, you can't treat any other dwelling as your main residence for the same period (except for a limited time if you're moving from one main residence to another).

Find out about:

- Period for which the land is exempt
- Replacing a demolished or destroyed dwelling
- Implications of your choice
- If the owner dies during construction

Period for which the land is exempt

The land, including the dwelling that is being built, renovated, repaired or finished on it, is exempt for the shorter of the following periods:

- the four years immediately before the dwelling becomes your main residence, or
- the period between the date you acquire the land and the date the dwelling becomes your main residence.

However, if after you acquired the land you or someone else occupied a dwelling that was already on the land, the period of exemption does not start until that dwelling is vacated.

Replacing a demolished or destroyed dwelling

If you build a new dwelling to replace a dwelling that was demolished or destroyed, you can get a full exemption when you dispose of the property if all of the following apply:

- you were eligible for the full main residence exemption for the original dwelling at the time it was demolished or destroyed
- the new dwelling:
  - becomes your main residence as soon as practicable after it is completed

  - continues to be your main residence until you dispose of it
  - is your main residence for at least three months
- you choose to treat the vacant land and new dwelling as your main residence for the period starting when you stopped occupying the previous dwelling and ending when the new dwelling becomes your main residence, and this period is four years or less
- you dispose of the land and new dwelling together.

Implications of your choice

If you choose to treat land as your main residence while you complete your dwelling, you can't treat any other dwelling as your main residence for the same period, except for a limited time if you're moving from one main residence to another.

This means if you have a dwelling you acquired on or after 20 September 1985 and you live in it while you build your new dwelling, you must decide whether to:

- maintain the exemption for your old home, or
- have the exemption apply to the land (including the new dwelling) for the shorter of:
  - the time from when you acquire the land until the new dwelling becomes your main residence, or
  - the four-year period immediately before the new dwelling becomes your main residence.

If you acquired your old main residence before 20 September 1985, it's generally exempt. In this case your best option is to treat the land and new dwelling as your main residence.

You can't choose to have a shorter period of exemption for the new dwelling in order to exempt the old home for part of the construction period.

Example

Ahmed built a new dwelling on a vacant block of land he bought, and moved from his old home into the new one. His key dates are:

- 3 November 1994 – contract settled to buy old home
- 3 September 2007 – contract settled to buy land for new dwelling
- 2 September 2016 – finished building new dwelling
- 1 October 2016 – contract settled to sell old home
- 7 October 2016 – moved into new dwelling (this was as soon as practicable after completion).

Ahmed can treat the new dwelling as his main residence from 7 October 2012 – that is, for the four years immediately before the new dwelling actually becomes his main residence.

Ahmed's old home is exempt:

- from 3 November 1994 (when he acquired it) until 6 October 2012 (just before he began treating the dwelling under construction as his main residence)
- for the six months before he disposed of it – that is, from 1 April 2016 to 1 October 2016 – because during this period he can treat both dwellings as his main residence under the rules for moving from one main residence to another.

See also:

- Moving to another main residence

If the owner dies during construction

If the owner of the dwelling under construction were to die at any time between entering into contracts for the construction work and the end of the first three months of residence in the new home, this exemption can still apply.

If the deceased owned the land as a joint tenant and died, the surviving joint tenant (or if none, the trustee of the deceased estate) can choose to treat the land and the dwelling as the deceased's main residence for the shorter of:

- four years before their death, or
- the period starting when they acquired the land and ending when they died.

If there was already a dwelling on the land when the deceased acquired it and someone else occupied it after that time, the surviving joint tenant (or if none, the trustee of the deceased estate) can choose to treat the land and the dwelling as the deceased's main residence for the shorter of:

- four years before their death, or
- the period starting when the dwelling stopped being occupied so that it could be repaired or renovated and ending when they died.

See also:

- Ownership interest and ownership period

Destruction or compulsory acquisition of your home

- https://www.ato.gov.au/General/Capital-gains-tax/Your-home-and-other-real-

estate/Your-main-residence/Destruction-or-compulsory-acquisition-of-your-home/
- Last modified: 29 Jun 2018
- QC 52193

On this page:

Destruction of dwelling and sale of land

If your home is accidentally destroyed and you then dispose of the vacant land on which it was built, you can choose to apply the main residence exemption as if the home had not been destroyed and continued to be your main residence.

You can get a full exemption for the land if you used it solely for private purposes in association with your home and it does not exceed two hectares. You can't claim the main residence exemption for this period for any other dwelling, except for a limited time if you are changing main residences.

See also:

- Moving to another main residence

Compulsory acquisition of your main residence

If your home is compulsorily acquired, the main residence rules apply as usual. If you're eligible for the full main residence exemption, you can ignore any capital gain or loss that results from the compulsory acquisition.

Compulsory acquisition of part of your main residence

The CGT main residence exemption also covers compulsory acquisition of part of your main residence, such as where land adjacent to your home or a structure associated with your flat or unit is compulsorily acquired without the dwelling itself being acquired.

You can ignore a capital gain or loss you make from a compulsory acquisition (or similar arrangement) that happens only to land that is adjacent to:

- a dwelling that is your main residence, or
- a dwelling that passed to you as a beneficiary or trustee of a deceased estate.

The main residence exemption will apply to the extent that the land was used primarily for private or domestic purposes in association with the dwelling.

The maximum area of land covered by the exemption is two hectares including the land underneath the dwelling.

The exemption applies to CGT events that happen on or after 29 June 2011.

You can also choose to apply it to CGT events that occurred between 1 July 2004 and 28 June 2011.

Example

Debbie and Geoff live in a three bedroom house on a two-hectare rural residential block close to a major city. The Department of Main Roads has begun negotiations with Debbie and Geoff, and several of their neighbours, to end ownership rights over parts of their land.

The affected area adjacent to Debbie and Geoff's dwelling is 50 square metres along the rear boundary of their block. When their ownership rights end, all affected parties will not be able to conduct any activities on that part of their land.

Debbie and Geoff satisfy all the requirements for the full main residence exemption. They can disregard any capital gain that results from the compulsory acquisition, which will end their ownership rights for this portion of their property.

If you are a foreign resident when a CGT event happens to your residential property in Australia under a compulsory acquisition arrangement you are no longer entitled to claim the main residence exemption. There is a transitional period. To find out how this affects you see Foreign resident capital gains withholding payments.

About compulsory acquisition

All levels of Australian government or entities acting on behalf of Government can compulsorily acquire land and associated structures or an interest in land for a public purpose.

Compulsory acquisition of part of your main residence, and similar arrangements, include:

- compulsorily acquiring part of the land adjacent to your residence, or a structure such as a garage or storeroom associated with your flat or home unit
- compulsorily ending an ownership right over your main residence – for example, removing your ownership right to further develop the main residence by restricting your ability to erect structures above a certain level (such as antennas) or to dig below the soil (inhibiting your ability to undertake any structural development of the property)
- compulsorily creating a right of access over part of land adjacent to your dwelling
- compulsorily negotiating a temporary right in relation to your main residence, such as government requiring temporary access through your property to improve property that is used for a public purpose
- not renewing a right that you hold over the land, such as a Crown lease.

Determining the extent of your main residence

The maximum area of land covered by the main residence exemption (including the land on which the dwelling is built) is two hectares. If the land used for private purposes is greater than two hectares, you can choose which two hectares are exempt.

You'll need to determine how much of the land being compulsorily acquired is associated with your main residence.

Example

Robyn's property is 10.35 hectares. It includes her main residence and associated structures, a dam, landscaped gardens and a 2000 square metre driveway.

In January 2017, the government advised Robyn that it would acquire 1.4 hectares of her land for the development of a freeway. The area of the acquisition included the dam and part of the landscaped gardens and driveway.

Robyn chose to apply the capital gains tax main residence exemption to the 1.4 hectares of land being acquired, which she identified as being associated with her main residence.

Maximum exempt area

The maximum area of land covered by the main residence exemption (including the land on which the dwelling is built) is two hectares.

If you disregard a capital gain or loss for a compulsory acquisition (or similar arrangement) of part of your main residence, your maximum exempt area must be reduced by that amount.

Example

After the compulsory acquisition, Robyn's property was reduced to 8.95 hectares. Robyn is able to revise which parts of the land and which structures are associated with her main residence, but the maximum area of land that can attract the main residence exemption in the future must be reduced by 1.4 hectares, and must include the land underneath her dwelling.

Robyn now has 0.6 hectares remaining of her main residence.

Changing the area defined as your main residence

The parts of your land that you treat as adjacent to your dwelling only become relevant when you are working out if you can apply the main residence exemption to a capital gain or loss. You can redefine the adjacent land when a subsequent CGT event happens to your main residence, but you must always include the land underneath the dwelling. However, you cannot apply the exemption to more than two hectares in total in relation to any one main residence, regardless of how many CGT events happen to the main residence.

Record keeping requirements

You need to keep records of any transactions or events that provide evidence of your assessment for how the main residence exemption applies to the part of your main residence that was compulsorily acquired. This includes a record of the calculations of your capital gain or loss, and whether your property is greater than two hectares.

See also:

- Keeping records
- Dwellings, structures and adjacent land
- Ownership interest and ownership period
- Calculating a partial exemption

Dwellings, structures and adjacent land

- https://www.ato.gov.au/General/Capital-gains-tax/Your-home-and-other-real-estate/Your-main-residence/Dwellings,-structures-and-adjacent-land/
- Last modified: 17 Jul 2017
- QC 22169

When selling your home, you can generally claim the main residence exemption for:

- the dwelling you live in and associated structures, such as a separate laundry or garage
- land adjacent to the dwelling, up to a maximum of two hectares.

Dwellings and associated structures

A dwelling is anything used wholly or mainly for residential accommodation, such as:

- a house or cottage
- an apartment or flat
- a strata title unit

- a unit in a retirement village
- a caravan, houseboat or other mobile home.

A flat or home unit often includes areas that are physically separate from the flat or unit (for example, a laundry, storeroom or garage).

As long as you use these areas primarily for private or domestic purposes in association with the flat or unit for the whole period you own it, they're exempt from CGT on the same basis as the flat or unit.

However, if you dispose of one of these structures separately from the flat or home unit (for example, you sell the garage), your capital gain or loss from the sale is not exempt from CGT (unless it involves compulsory acquisition).

Land adjacent to a dwelling

Land is adjacent to a dwelling if it is close to, near, adjoining or neighbouring the dwelling. The land a dwelling is actually on is included as part of the dwelling and is not part of adjacent land.

Land adjacent to a dwelling may also qualify for the main residence exemption if it and the dwelling are sold together and both of the following apply:

- during the period you owned it, you used the land mainly for private and domestic purposes in association with the dwelling, and
- the total area of the adjacent land and the land on which the dwelling stands is not more than two hectares (4.94 acres).

If the adjacent land is used for private purposes and is greater than two hectares, you can choose which two hectares are exempt. The remainder is subject to CGT.

If any part of the land around a dwelling is used to produce income, it is not exempt, even if the total land area is less than two hectares.

Example: Land used for private purposes

Mohammed bought a house with 15 hectares of land. He used 10 hectares for olive farming and five hectares for private purposes. Mohammed can get the main residence exemption for the house and two hectares of land he selects out of the five hectares that he uses for private purposes.

After nine years, Mohammed decided to sell. He obtained a valuation, which stated that the house and two hectares of land that he had selected were worth two-thirds of the total value of the property at the time he bought it, and this had not changed over the nine years. Mohammed can claim the main residence exemption on two-thirds of the capital gain on the entire property.

Land you sell separately from the dwelling is subject to CGT unless:

- the dwelling has been destroyed accidentally and you sell the vacant land, or
- the vacant land adjacent to your dwelling is compulsorily acquired.

If the dwelling is not sold with the land – for example, because the dwelling is a caravan and has been removed or sold separately – the sale of the land is subject to CGT.

See also:

- Destruction or compulsory acquisition of your home
- Subdividing and amalgamating land
- Capital improvements and separate assets

Ownership interest and ownership period

- https://www.ato.gov.au/General/Capital-gains-tax/Your-home-and-other-real-estate/Your-main-residence/Ownership-interest-and-ownership-period/
- Last modified: 29 Jun 2018
- QC 52194

To work out how the main residence exemption applies, you look at the period from when you acquire your 'ownership interest'. If you purchase the dwelling, this would generally be the date of settlement.

A dwelling is considered to be your main residence from the time you acquire your ownership interest in it if you move in as soon as practicable after that time. The period between entering and settling the contract of purchase is ignored for this purpose.

On this page:

The ownership period

For the purposes of the main residence exemption, you have an ownership interest in a dwelling or land you acquire under a contract from the time you obtain legal ownership (unless you have a right to occupy it at an earlier time).

You have legal ownership of a dwelling or land from the date of settlement of the contract of purchase (or if you have a right to occupy it at an earlier time, that time)

until the date of settlement of the contract of sale. This is called your 'ownership period'. If the dwelling is on two hectares of land or less, is your main residence for the whole of the ownership period and you don't use it to produce assessable income, the home is fully exempt.

Example: Full exemption

Min-jun signed a contract on 14 August 1999 to purchase 0.1 hectares of land from a developer and to have a house constructed on the land. Under the contract, settlement did not occur until construction was completed on 26 October 2000.

Min-jun moved into the house immediately upon settlement of the contract. He did not have a right to occupy the house at an earlier time under the purchase contract.

He signed a contract to sell the house on 25 May 2018 and settlement occurred on 20 July 2018.

The house was Min-jun's main residence for the full period he owned it and he did not use any part of it to produce income.

For CGT purposes, Min-jun is taken to have acquired the land on which the house was constructed on the date he entered into the contract – 14 August 1999. However, because the house was Min-jun's main residence for the whole period between settlement of the purchase contract and settlement of the sale contract, it is fully exempt.

The period between when Min-jun entered into the purchase contract and started to live in the house (14 August 1999 to 25 October 2000) is ignored. This is because the relevant dates for the main residence exemption are the settlement dates – or, if Min-jun had a right under the purchase contract to occupy the dwelling at an earlier time, that time until settlement of the sale contract.

Although settlement dates are used to calculate the period for which the main residence exemption applies, the dates you enter into the purchase and sale contracts are important:

- A CGT event occurs when you enter into the sale contract. You include any capital gain on your tax return for the year of income in which the CGT event occurs.
- The dates you enter into the purchase and sales contracts determine which method you can use to work out your capital gain.

Example: Partial exemption

The facts are the same as in the previous example except that Min-jun rented out the house from 26 October 2000 (the date of settlement of the purchase contract) until 2 March 2002.

Min-jun made a capital gain of $90,000 on the house. To work out the part of the capital gain that is not exempt, Min-jun must work out how many days in his ownership period the dwelling was not his main residence.

Min-jun had an ownership interest in the property from settlement of the purchase contract (26 October 2000) until settlement of the sale contract (20 July 2018), a total of 6,447 days.

The period between the dates the purchase contract was signed (14 August 1999) and settled (25 October 2000) is ignored. Because the house was not Min-jun's main residence from 26 October 2000 to 2 March 2002 (493 days), he does not get the exemption for this period.

Min-jun calculates his net taxable capital gain as follows:

Capital gain $90,000 x (493 days ÷ 6,447 days) = taxable portion $6,882

Because Min-jun entered into the purchase contract before 21 September 1999 and entered into the sale contract after owning the house for at least 12 months, he can choose either the indexation or discount method to calculate his capital gain. Min-jun decides to use the discount method to reduce his capital gain by the CGT discount of 50%.

Because Min-jun signed the sale contract on 25 May 2018, the CGT event occurred in the 2017–18 income year, even though settlement occurred in the next income year. Min-jun shows the capital gain on his 2017–18 income tax return.

Flats or home units

In the case of a flat or home unit, you have an ownership interest if you have a:

- legal or equitable interest in a strata title in the flat or home unit
- licence or right to occupy the flat or home unit, or
- share in a company that owns a legal or equitable interest in the land on which the flat or home unit is constructed, and that share gives you a right to occupy the flat or home unit.

Other dwellings

In the case of a dwelling that is not a flat or home unit, you have an ownership interest if you have a:

- legal or equitable interest in the land on which it is constructed, or
- licence or right to occupy it.

Land

In the case of land, you have an ownership interest if you have a:

- legal or equitable interest in it, or
- right to occupy it.

See also:

- Dwellings, structures and adjacent land
- Calculating a partial exemption

Calculating a partial exemption – main residence

- https://www.ato.gov.au/General/Capital-gains-tax/Your-home-and-other-real-estate/Your-main-residence/Calculating-a-partial-exemption---main-residence/
- Last modified: 17 Jul 2017
- QC 52195

If your home is only partially exempt under the main residence rules, you calculate the taxable part of the capital gain as follows:

$$\text{Total capital gain from the CGT event} \times \frac{\text{Number of days in your ownership period when the dwelling was not your main residence}}{\text{total number of days in your ownership period}}$$

You can use the Capital gains tax property exemption tool to calculate the percentage of your property that's exempt from CGT.

Example: Main residence for part of the ownership period

Andrew bought a house under a contract that settled on 1 July 1990 and moved in immediately. On 1 July 1993 he moved to a new house (which he treated as his main residence) and began to rent out his old house.

The home first used to produce income rule doesn't apply because Andrew used the house to produce income before 21 August 1996.

A contract for the sale of the house was signed on 1 July 2015 and settled on 31 August 2015. Andrew made a capital gain of $400,000. Andrew's assessable capital gain is:

$400,000 × (8,098 ÷ 9,194) = $352,316

Andrew can choose to use the discount method or the indexation method to calculate his capital gain.

- Ownership interest and ownership period
- Keeping records for real estate

Sale of property and other CGT events

- https://www.ato.gov.au/General/Capital-gains-tax/Your-home-and-other-real-estate/Sale-of-property-and-other-CGT-events/
- Last modified: 17 Jul 2017
- QC 52196

The most common capital gains tax (CGT) event that happens to real estate is its sale or disposal, but there are others, such as gifting property, events involving leases and granting of rights.

Find out about:

- Selling your rental property
- Transferring real estate to family or friends
- CGT events involving leases
- Other CGT events affecting real estate

See also:

- Timing of a real estate CGT event

Selling your rental property

- https://www.ato.gov.au/General/Capital-gains-tax/Your-home-and-other-real-estate/Sale-of-property-and-other-CGT-events/Selling-your-rental-property/
- Last modified: 17 Jul 2017
- QC 22172

You may make a capital gain or loss when you sell or otherwise dispose of a rental property, unless you acquired it before CGT started on 20 September 1985.

Even if you acquired the property before CGT started, you can still make a capital

gain or loss from some capital improvements made since that date.

You make a:

- capital gain to the extent that the capital proceeds you receive are more than the cost base of the property
- capital loss to the extent that the property’s reduced cost base exceeds those capital proceeds.

If you're a co-owner of the property, you'll make a capital gain or loss in accordance with your ownership interest in the property.

The cost base and reduced cost base of a property include the amount you paid for it together with some incidental costs associated with acquiring, holding and disposing of it (such as legal fees, stamp duty and real estate agent’s commissions). Amounts that you've claimed as a tax deduction or that you can claim as deductions are excluded from the property’s cost base and reduced cost base.

Your capital gain or loss may be disregarded if a rollover applies – for example, if your property was destroyed or compulsorily acquired, or you transferred it to your former spouse under a family law settlement.

Remember that when you sell your rental property, the time of the event (the time at which you make a capital gain or loss) is when you enter into the contract, not when you settle.

See also:

- Timing of a real estate CGT event
- Working out your capital gain or loss
- Rollovers
- Rental properties

Depreciating assets

If the sale of your rental property includes depreciating assets, you’ll need to apportion your capital proceeds between the property and the depreciating assets, and a ‘balancing adjustment event’ will happen to those assets.

See also:

- Depreciating assets and CGT

Transferring real estate to family or friends

- https://www.ato.gov.au/General/Capital-gains-tax/Your-home-and-other-real-

estate/Sale-of-property-and-other-CGT-events/Transferring-real-estate-to-family-or-friends/

- Last modified: 29 Jun 2018
- QC 52197

If you give a property to family or friends, or sell it to them for less than market value, and you're entitled to the main residence exemption, it will still apply.

However, if you're not entitled to the main residence exemption for the property – or you're entitled to only a partial exemption – CGT will apply. Even if you receive nothing for your property, you're taken to have received its market value at the time you disposed of it.

This means you would have to pay capital gains tax on any capital gain for the part of the property that was not exempt.

You may also be taken to have received the market value if:

- what you actually received (your capital proceeds) was more or less than the market value of the property, and
- you and the new owner were not dealing with each other at arm's length.

You should obtain a valuation from a professional valuer, or work out the market value yourself using reasonably objective and supportable data. This can include the price paid for very similar property that was sold at the same time in the same location.

You are said to be dealing at arm's length with someone if each party acts independently and neither party exercises influence or control over the other in connection with the transaction. The law looks at not only the relationship between the parties, but also the quality of the bargaining between them.

In these cases, the market value of the property on the day of the transfer replaces what you actually received for it.

Example: Selling a property for less than market value

Antoine owned a rental property. The lease on the rental property was due for renewal and he owed only $120,000 on the mortgage. Antoine offered to sell the rental property to his son for the balance owing on the mortgage. His son accepted the offer and purchased the property for $120,000.

Antoine obtained a market valuation from a professional valuer. It showed the value of the property at the time of transfer was $250,000.

Despite Antoine selling the property for $120,000, the $250,000 market value is his capital proceeds when calculating his capital gain or loss.

See also:

- [Market valuation for tax purposes]
- [Working out your capital gain or loss]
- [Selling your rental property]

Special rules

If you transfer real estate to:

- your former spouse on the breakdown of your marriage or relationship, the rules above may not apply – see [Relationship breakdown]
- the trustee of a special disability trust for no consideration, any capital gain or loss is disregarded.

CGT events involving leases

- https://www.ato.gov.au/General/Capital-gains-tax/Your-home-and-other-real-estate/Sale-of-property-and-other-CGT-events/CGT-events-involving-leases/
- Last modified: 29 Jun 2018
- QC 52198

There are a number of capital gains tax (CGT) events that apply to the lease of land.

- [Grant, extend or renew a lease]
- [Vary a lease]

Grant, extend or renew a lease

CGT event F1 happens if you grant a lease to someone, or if you extend or renew a lease that you had previously granted. In the case of a long-term lease (one that may be expected to continue for at least 50 years) you can choose to treat the grant (renewal or extension) of the lease as a part disposal of the underlying leased property.

Example: Receiving an amount for granting a lease

Elisabeth operated a footwear retailing business and wished to lease some shop space in a prestigious location in the Sydney CBD. There was considerable demand for shop space in the locality and competition between prospective tenants was fierce. To secure the lease of the particular shop space she wanted, Elisabeth paid Jean Paul (the owner of the shop space) a premium of $6,000 for the grant of that particular lease.

She entered into the lease on 6 September 2016, and Jean Paul incurred stamp duty of $300 and solicitor's fees of $500 on the grant of the lease.

Jean Paul made a capital gain of $5,200 from CGT event F1:

Capital proceeds:	$6,000
Incidental costs (stamp duty and solicitor's fees):	$800

For Elisabeth, this transaction results in CGT event C2 (cancellation, surrender and similar endings) when the lease expires.

The amount of your capital gain or loss from CGT event F1 is the difference between any premium you got for granting the lease and the expenditure you incurred in granting it. The CGT discount does not apply to CGT event F1. The market value substitution rule for capital proceeds that generally applies if you receive no consideration for a CGT event does not apply if CGT event F1 happens.

You can choose to apply CGT event F2 (rather than CGT event F1) when you grant, renew or extend a long-term lease. It can apply if you are the owner of the underlying land or if you grant a sub-lease. The CGT discount does not apply to CGT event F2.

Your capital proceeds if CGT event F2 happens are the greatest of:

- the market value of the freehold or head lease (at the time you grant, renew or extend the lease)
- the market value if you had not granted, renewed or extended the lease
- any premium from the grant, renewal or extension.

There are special cost base rules that apply if you choose to apply CGT event F2.

For any later CGT event that happens to the land or the lessor's lease of it, its cost base and reduced cost base (including the cost base and reduced cost base of any building, part of a building, structure or improvement that is treated as a separate CGT asset) excludes:

- any expenditure incurred before CGT event F2 happens
- the cost of any depreciating asset for which the lessor has deducted or can deduct an amount for its decline in value.

The fourth element of the property's cost base and reduced cost base includes any payment by the lessor to the lessee to vary or waive a term of the lease or for the forfeiture or surrender of the lease, reduced by the amount of any input tax credit to which the lessor is entitled for the variation or waiver.

See also:

- Cost base

Vary a lease

CGT event F3 happens if you are the lessor and make a payment to the lessee to vary a lease. You can only make a capital loss from this CGT event. Your capital loss is equal to the expenditure you incurred to change the lease.

CGT event F4 happens if you are the lessee and receive a payment from the lessor for agreeing to vary or waive a term of the lease.

You can't make a capital loss from this CGT event. You will only make a capital gain from CGT event F4 if the amount of the payment you received exceeds the cost base of your lease at the time when the term is varied. In other cases, you will be required to adjust the cost base of your lease.

The market value substitution rule for capital proceeds (which normally applies if you don't receive market value for a CGT event) does not apply if CGT event F4 happens.

Example: Payment to lessee for change in lease

Sam is the lessor of a commercial property. His tenant, Caitlin, currently holds a three-year lease over the property, which has another 26 months to run. A business associate of Sam's wishes to lease the property from Sam for a 10-year period, beginning in six months' time, for twice the rent that Caitlin is currently paying. Sam approaches Caitlin with an offer of $5,000 cash for her to agree to vary the terms of the lease so that the lease will expire in six months' time. Caitlin agrees to vary the terms.

Sam will make a capital loss of $5,000 from CGT event F3 happening:

Capital proceeds	$0
Incidental costs divided by expenditure incurred	$5,000
Capital loss	$5,000

For Caitlin this transaction results in CGT event F4 happening. The cost base of Caitlin's lease at the time of the variation was $500. She makes a capital gain of $4,500 ($5,000 – $500).

Caitlin's capital gain:

Capital proceeds	$5,000
Cost base of the lease	$500
Capital gain	$4,500

You disregard any capital loss you make from the expiry, forfeiture, surrender or assignment of a lease (except one granted for 99 years or more) if you did not use it solely or mainly for the purpose of producing assessable income – for example, if you used it for private purposes.

CGT event F5 happens if you as lessor receive a payment for changing a lease.

The amount of your capital gain or loss from CGT event F5 is the difference between what you receive for changing the lease and any expenditure you incurred on it. The CGT discount does not apply to CGT event F5.

See also:

- Working out your capital gain or loss
- Other CGT events affecting real estate

Other CGT events affecting real estate

- https://www.ato.gov.au/General/Capital-gains-tax/Your-home-and-other-real-estate/Sale-of-property-and-other-CGT-events/Other-CGT-events-affecting-real-estate/
- Last modified: 29 Jun 2018
- QC 52199

The most common capital gains tax (CGT) event that happens to real estate is its sale or disposal. Certain events apply only where real estate is leased.

Other CGT events affecting real estate are:

- Entering into a terms contract
- If an asset is lost or destroyed
- Granting a right to reside
- Granting, renewing or extending an option
- Exercise of an option
- Entering into a conservation covenant

See also:

- Selling your rental property
- Transferring real estate to family or friends
- CGT events involving leases

Entering into a terms contract

CGT event B1 happens to real estate if you enter into an agreement where the new owner is entitled to possession of the land or the receipt of rents and profits before becoming entitled to a transfer or conveyance of the land.

Where this happens under a contract, it is known as a terms contract and the new owner usually completes the purchase by paying the balance of the purchase price and receiving the instrument of transfer and title deeds.

It may also happen where an agreement is made with a relative or other party to use and enjoy the property for a specified period, after which the title to the property passes to them. It will not happen where, under an arrangement, title to a property may pass at an unspecified time in the future.

CGT event B1 happens when use and enjoyment of the land is first obtained by the new owner. Use and enjoyment of the land from a practical point of view takes place at the time the new owner gets possession of the land or the date the new owner becomes entitled to the receipt of rents and profits.

If the agreement falls through before completion, and title to the land does not pass to the new owner, you may be entitled to amend your assessment for the year in which CGT event B1 happened.

If an asset is lost or destroyed

CGT event C1 happens if an asset is lost or destroyed. This event may happen if, for example, a building on your land is destroyed by fire. Your capital proceeds for CGT event C1 happening include any insurance proceeds you may receive for the loss or destruction. The market value substitution rule for capital proceeds that generally applies if you receive no capital proceeds does not apply if CGT event C1 happens.

See also:

- Involuntary disposal of a CGT asset
- Destruction or compulsory acquisition of your home

Granting a right to reside

CGT event D1 happens if you give someone a right to reside in a dwelling. The capital proceeds include money (but not rent) and the value of any property you receive. The CGT discount does not apply to CGT event D1.

The market value substitution rule for capital proceeds applies if:

- the amount of capital proceeds you receive is more or less than the market value of the right, and
- you and the person you granted the right to were not dealing with each other at arm’s length.

Granting, renewing or extending an option

CGT event D2 happens if you grant an option to someone, or renew or extend an option that you had granted.

The amount of your capital gain or loss from CGT event D2 is the difference between what you receive for granting the right and any expenditure you incur on it. The CGT discount does not apply to CGT event D2.

Example: Granting of an option

Barry was approached by Colleen, who was interested in buying his land. On 30 June 2017, Barry granted her an option to purchase his land within 12 months for $200,000. Colleen paid Barry $10,000 for the grant of the option. Barry incurred legal fees of $500.

Barry made a capital gain in the 2016–17 income year of $9,500.

Exercise of an option

If an option you grant is later exercised, you ignore any capital gain or loss you made from the grant, renewal or extension. You may have to amend your income tax assessment for an earlier income year.

Similarly, any capital gain or loss that the grantee would otherwise make from the exercise of the option is disregarded.

The effect of the exercise of an option depends on whether the option was a call option or a put option. A call option is one that binds the grantor to dispose of an asset. A put option binds the grantor to acquire an asset.

Example: Granting of an option (continued)

On 1 February 2018, Colleen exercised the option Barry granted her. Barry disregarded the capital gain that he made in the 2016–17 income year and requested an amendment of his income tax assessment to exclude that amount. The $10,000 he received for the grant of the option is considered to be part of the capital proceeds for the sale of his property in the 2017–18 income year.

Barry's capital gain or loss from the property is the difference between its cost base or reduced cost base and $210,000.

Entering into a conservation covenant

A 'conservation covenant' is a covenant that:

- restricts or prohibits certain activities on the land that could degrade the environmental value of the land
- is permanent and binding on current and future land owners (by way of registration on the title to the land where possible)
- is approved by the Environment Minister (including those entered into under a program approved by that Minister).

CGT event D4 happens if you enter into a conservation covenant after 15 June 2000 over land that you own and you receive capital proceeds for entering into the covenant.

From 1 July 2002, CGT event D4 also happens if you receive no capital proceeds for entering into the covenant and you can claim a tax deduction for entering into the covenant. One of the conditions for a tax deduction is that the covenant is entered into with a deductible gift recipient or an Australian government agency (that is, the Commonwealth, a state, a territory or one of their authorities).

If CGT event D4 happens, you calculate your capital gain by comparing your capital proceeds from entering into the covenant with the portion of the cost base of the land that is attributable to the covenant.

Similarly, you calculate your capital loss by comparing your capital proceeds from entering into the covenant with the portion of the reduced cost base of the entire land that is attributable to the covenant.

The market value substitution rule for capital proceeds that generally applies if you receive no consideration for a CGT event does not apply if CGT event D4 happens. Instead, the capital proceeds are equal to the amount you can claim as a tax deduction for entering into the covenant.

Calculate the relevant portion of the cost base or reduced cost base attributable to the covenant using this formula:

$$\begin{array}{c}\text{Cost base}\\\text{(or reduced}\\\text{cost base)}\end{array} \times \frac{\text{Capital proceeds from entering into the covenant over land}}{\begin{array}{c}\text{Those capital proceeds plus the market value of the land}\\\text{just after entering into the covenant}\end{array}}$$

As the conservation covenant will affect the value of the entire land, you must use the cost base of the entire land in calculating the cost base apportioned to the covenant. This is the case even if the covenant specifically states within its terms that the restrictions on use only apply to part of the land.

CGT event D4 will not happen if you receive no capital proceeds and the conditions for a tax deduction for entering into the covenant are not satisfied. In that case, CGT event D1 will apply.

See also:

- Working out your capital gain or loss
- Timing of a real estate CGT event
- Keeping records for real estate

- [Subdividing and amalgamating land]
- [Capital improvements and separate assets]
- [Calculating the cost base for real estate]

Timing of a real estate CGT event

- https://www.ato.gov.au/General/Capital-gains-tax/Your-home-and-other-real-estate/Timing-of-a-real-estate-CGT-event/
- Last modified: 17 Jul 2017
- QC 22167

When you sell or otherwise dispose of real estate, the time of the event (when you make a capital gain or loss) is usually:

- when you enter into the contract (generally the date on the contract), not when you settle – the fact that a contract is subject to a condition, such as finance approval, generally doesn't affect this date
- when the change of ownership occurs if there is no contract (such as when a property passes to a beneficiary), or
- if the real estate is compulsorily acquired – the earliest of:
  - when you receive compensation from the acquiring entity
  - when the entity became the property's owner
  - when the entity enters the property under a power of compulsory acquisition or takes possession under that power.

Example: Sale contract

Aiko entered into a contract to sell land in June, the last month of the income year. The contract was settled in October, in the next income year.

Aiko made the capital gain in the income year she entered into the contract, not the next income year when settlement took place.

Although you report your capital gain or loss in the tax return for the income year in which the contract is entered into, you're not required to do this until settlement occurs. If settlement occurs after you've lodged your tax return and been assessed for the relevant income year, you'll have to request an amendment.

You may be liable for shortfall interest charge because of an amended assessment for a capital gain. We generally remit it in full if the request for amendment is lodged within a reasonable time after settlement (considered to be one month in most

cases). However, remission is not automatic – you must request it and we consider each request on a case-by-case basis. If you consider that the shortfall interest charge should be remitted, you should provide your reasons when you request the amendment to your assessment.

See also:

- Shortfall interest charge
- Keeping records for real estate
- Working out your capital gain or loss

Keeping records for real estate

- https://www.ato.gov.au/General/Capital-gains-tax/Your-home-and-other-real-estate/Keeping-records-for-real-estate/
- Last modified: 29 Jun 2018
- QC 22170

For real estate you need to keep:

- a copy of the purchase contract and all receipts for expenses relating to the purchase – such as stamp duty, legal fees, survey and valuation fees
- all records relating to the capital gains tax (CGT) event and all relevant expenses – for example, the sale contract and records of legal fees and stamp duty
- records of your costs of owning the property including interest, rates and land taxes, insurance premiums and the cost of repairs (you will only be able to include these costs in the cost base if you acquired your home after 20 August 1991, and have not and can't claim a tax deduction for them)
- records of capital expenditure on improvements (such as extensions, additions or improvements, including initial repairs) and maintaining the title or right to the title during your period of ownership.

These costs form part of the cost base, which you use to work out whether you've made a capital gain when the CGT event happens. A 'reduced' cost base – which excludes costs of ownership such as interest and rates – is used to work out if you've made a capital loss.

Find out about:

- Records for your home
- Records held by former spouse
- Records for an inherited main residence

Records for your home

Even though your family home is usually exempt, you should keep all records relating to it, just as you would for other properties.

If your home stops being fully exempt at some time in the future, you may need to know its full cost so that you don't pay more CGT than necessary. If you don't have sufficient records, reconstructing them later could be difficult.

If you use your home to produce income (such as renting out a room or running a business) and:

- you acquired your home on or after 20 September 1985 – you should keep records of expenses during the income-producing period and the proportion of the property used to produce income
- you start using your home to produce income for the first time after 20 August 1996 – you generally need to know your home's market value at the time you first used it to produce income (it's best to value your home at the time, but if necessary you can have a valuation done retrospectively).

See also:

- Your main residence

Records held by former spouse

If the CGT rollover applies to a property transferred to you because your marriage or relationship breaks down, make sure you get copies of any records you need from your former spouse (or the company or trust that owned it), including records that show:

- how and when they acquired it
- its cost base when they transferred it to you.

If the marriage or relationship breakdown rollover applies to the transfer of a property that was your former spouse’s home and it was transferred to you under a CGT event that happened after 12 December 2006, make sure you also get a copy of records from them that show:

- the extent (if any) to which they used it to produce income during their ownership period – for example, the periods it was rented out or available for rent, and the proportion of the dwelling that was used for that purpose
- the number of days (if any) it was their main residence during their ownership period.

You'll need these records to show you're entitled to the main residence exemption for the whole period (starting from when your former spouse became owner of the property). If you can’t show this, you may be liable for CGT on periods for which the property may have qualified for exemption.

See also:

- Relationship breakdown

Records for an inherited main residence

If you inherit a dwelling that was the main residence of the person who left it to you, any capital gain on its subsequent disposal may be exempt. However, until you're sure of the circumstances, you should keep records of relevant costs incurred by you and the previous owner, or their trustee or executor.

You won't need to keep records of the previous owner’s costs if:

- you inherited the dwelling after 20 August 1996
- the dwelling was their main residence just before they died, and
- they were not using the dwelling to produce income at the time of their death.

In these circumstances, you'll be taken to have acquired the dwelling at its market value at the date of death. If the executor or trustee has had it valued, get a copy of that valuation report. Otherwise, you'll need to get your own valuation.

If you are a beneficiary of a deceased estate and a CGT event happens to your residential property in Australia that you inherited from a foreign resident, you are no longer entitled to claim the main residence exemption for the deceased’s ownership period. There is a transitional period. To find out how this affects you see Foreign residents and main residence exemption.

See also:

- Inherited dwellings
- Calculating the cost base for real estate
- Working out your capital gain or loss

Subdividing and amalgamating land

- https://www.ato.gov.au/General/Capital-gains-tax/Your-home-and-other-real-estate/Subdividing-and-amalgamating-land/
- Last modified: 29 Jun 2018
- QC 52202

On this page:

Subdividing land

If you subdivide a block of land, each resulting block is registered with a separate title. For capital gains tax (CGT) purposes, the original land parcel is divided into two or more separate assets.

Subdividing land is not a CGT event if you retain ownership of the subdivided blocks, so you don't make a capital gain or loss at the time of the subdivision. However, you may make a capital gain or loss when you sell the subdivided blocks.

The date you acquired the subdivided blocks is the date you acquired the original parcel of land. The cost base of the original land is divided between the subdivided blocks on a reasonable basis.

See also:

- Taxation determination TD 97/3 on what is considered 'a reasonable basis'

Example: Land purchased before 20 September 1985 and later subdivided

In 1983 Mike bought a block of land that was less than two hectares. He subdivided the land into two blocks in May 2017 and began building a house on the rear block, with the intention of using it as his home. The house was finished in August 2017, at a construction cost of $170,000, but he didn't use it as his main residence. He sold the rear block (including the house) in October 2017 for $500,000.

Mike got a valuation from a qualified valuer, who valued the rear block at $300,000 and the house at $200,000.

Mike acquired the rear block before 20 September 1985, so it is not subject to CGT. As the new house was constructed after 20 September 1985 on land purchased before that date, the house is taken to be a separate asset from the land. Mike is taken to have acquired the house in May 2017 when he began building it. Mike made a capital gain of $30,000 ($200,000 − $170,000) when he sold the house because he did not use it as his main residence.

As Mike had owned the house for less than 12 months, he used the 'other' method to calculate his capital gain.

Example: Dwelling purchased on or after 20 September 1985 and land later subdivided

Kym bought a house on a 0.2 hectare block of land in June 2016 for $700,000. The house was valued at $240,000 and the land at $460,000. Kym lived in the house as her main residence. She incurred $24,000 in stamp duty and legal fees purchasing the property.

In January 2018 Kym subdivided the land into two blocks of equal size. She incurred costs of $20,000 in survey, legal and subdivision application fees, and $2,000 to connect water and drainage to the rear block. In March 2018, she sold the rear block for $260,000 and incurred $6,000 legal fees on the sale.

As Kym sold the rear block of land separately, the main residence exemption

does not apply to that land. She contacted several local real estate agents who advised her that the value of the front block was $30,000 higher than the rear block. Kym apportioned the $460,000 original cost base into $215,000 for the rear block (46.7%) and $245,000 for the front block (53.3%).

The cost base of the rear block is calculated as follows:

Cost of land	$215,000
46.7% of the $24,000 stamp duty and legal fees on the purchase	$11,208
46.7% of the $20,000 cost of survey, legal and application fees	$9,340
Cost of connecting water and drainage	$2,000
Legal fees on sale	$6,000
Total	$243,548

The capital gain on the sale of the rear block was $16,452 (sale price of $260,000 less cost base of $243,548). As Kym owned the land for less than 12 months, she uses the 'other' method to calculate her capital gain.

Kym will get the full exemption for her house and the front block if they are used as her main residence for the full period she owns them.

When the profit is ordinary income

You may make a profit from the subdivision and sale of land that occurs in the ordinary course of your business or involves a commercial transaction or business operation entered into with the purpose of making a profit. In this case, the profit is ordinary income. You reduce any capital gain from the land by the amount otherwise included in your assessable income.

See also:

- Taxation Ruling TR 92/3 – Income tax: whether profits on isolated transactions are income

Amalgamating two or more titles

The amalgamation of the titles to various blocks of land that you own does not result in a CGT event happening.

Land that you acquired before 20 September 1985 that is amalgamated with land

acquired on or after that date retains its pre-CGT status.

Example: Amalgamation of title

Wang Cheng bought a block of land on 1 April 1984. On 1 June 2008 he bought another block adjacent to the first one. Wang Cheng amalgamated the titles to the two blocks into one title.

Wang Cheng is taken to have two separate assets. The first block continues to be treated as a pre-CGT asset.

See also:

- Separate assets for CGT purposes

Capital improvements and separate assets

- https://www.ato.gov.au/General/Capital-gains-tax/Your-home-and-other-real-estate/Capital-improvements-and-separate-assets/
- Last modified: 29 Jun 2018
- QC 52203

If you acquired a dwelling before 20 September 1985 (when CGT came into effect) and make major capital improvements after that date, part of any capital gain you make when a CGT event happens to the dwelling could be taxable.

Even though you acquired the dwelling before CGT started, major capital improvements are considered to be separate CGT assets from the original asset and may therefore be subject to CGT in their own right.

If the dwelling is your main residence and you use the improvements as part of your home, they are still exempt. This includes improvements on land adjacent to the dwelling (for example, installing a swimming pool) if the total land, including the land on which the dwelling stands, is two hectares or less.

However, if the dwelling is not your main residence or you use the improvements to produce income for any period, the part of any gain that is attributable to the improvements for that period is taxable.

In addition, there are other circumstances where a building or structure is considered to be a CGT asset separate from land – for example, if the land is acquired before 20 September 1985 and the building is constructed on or after that date.

Find out about:

- [What is a major capital improvement?]
- [Calculating your capital gain or loss on major improvements]
- [Separate assets for CGT purposes]

What is a major capital improvement?

If you make a capital improvement to an asset you acquired before 20 September 1985 (such as renovating a house), it's considered a 'major capital improvement' if its original cost (indexed for inflation if the improvements were made under a contract entered into before 11:5am on 21 September 1999) is:

- more than 5% of the amount you receive when you dispose of the asset
- more than the improvement threshold for the income year in which you dispose of the asset.

In this case, the improvement is treated as a separate asset that is subject to CGT, unless the main residence exemption applies.

Improvement thresholds

The improvement threshold takes inflation into account.

Income year	Threshold
1985–86	$50,000
1986–87	$53,950
1987–88	$58,859
1988–89	$63,450
1989–90	$68,018
1990–91	$73,459
1991–92	$78,160
1992–93	$80,036
1993–94	$80,756
1994–95	$82,290
1995–96	$84,347

1996–97	$88,227
1997–98	$89,992
1998–99	$89,992
1999–2000	$91,072
2000–01	$92,802
2001–02	$97,721
2002–03	$101,239
2003–04	$104,377
2004–05	$106,882
2005–06	$109,447
2006–07	$112,512
2007–08	$116,337
2008–09	$119,594
2009–10	$124,258
2010–11	$126,619
2011–12	$130,418
2012–13	$134,200
2013–14	$136,884
2014–15	$140,443
2015–16	$143,392
2016–17	$145,401
2017-18	$147,582

Calculating your capital gain or loss on major improvements

When you dispose of the dwelling, you calculate the capital gain or loss on the

major improvements by taking away the cost base of the improvements from the proceeds of the sale that are reasonably attributable to the improvements.

Proceeds of sale attributable to improvements − Cost base of improvements = Capital gain on major improvements

In calculating the amount of capital proceeds to be attributed to the improvements, you must take whatever steps are appropriate to work out their value. If you make an estimate of this amount, it must be reasonable and you must be able to show how you arrived at the estimated amount.

The method you can use for the calculation depends on the date you entered into the contract for the improvements.

Example: Improvements to a dwelling acquired before 20 September 1985

Martin bought a home in 1984. On 1 December 1993, he undertook major renovations to his home, costing $150,000. He sold the home for $500,000 under a contract that settled on 1 December 2017. At the date of sale, the indexed cost base of the improvements was $168,450.

Of the $500,000 he received for the home, $200,000 could be attributed to the improvements. Martin used the improvements to produce income from the time they were finished until the time he sold them with the home.

The 'home first used to produce income' does not apply because the improvements were first used to produce income before 21 August 1996.

Test 1

Is the cost base of the improvements more than 5% of $500,000 (that is, $25,000)? Answer: Yes

Test 2

Is the cost base of the improvements more than the 2017–18 threshold of $145,582? Answer: Yes Because the improvements were made under a contract entered into before 11.45am on 21 September 1999, the indexed cost base is used for the purpose of these tests.

As the answer to both questions is 'yes' and the improvements were used to produce income, the capital gain on the improvements is assessable.

As Martin acquired the improvements before 21 September 1999 and sold the home after that time, and had held the improvements for at least 12 months, he could use either the indexation method or the discount method to calculate his capital gain on the improvements.

Indexation method

Martin calculates his capital gain using the indexation method as follows:

Amount of proceeds attributable to the improvements	$200,000
less cost base of improvements indexed for inflation	$168,450
Taxable capital gain	$31,550

Discount method

Martin's capital gain using the discount method (assuming he has no other capital losses or capital gains in the 2017–18 income year and does not have any unapplied net capital losses from earlier years) is:

Amount of proceeds attributable to the improvements	$200,000
less cost base of improvements (without indexation)	$150,000
Capital gain	$50,000
less 50% discount	$25,000
Net capital gain	$25,000

Therefore, Martin would choose the discount method because this gives him a lower capital gain.

If the improvements had been used as part of Martin's main residence, this gain would be exempt. However, if the home (including the improvements) had been rented out for one-third of the period, one-third of the capital gain made on the improvements would have been taxable.

If construction of the improvements started after 13 May 1997 and they were used to produce income, Martin would also reduce the cost base by the amount of any capital works deductions he claimed or can claim. If Martin makes a capital loss, the reduced cost base of the improvements is reduced by the amount of any capital works deductions, irrespective of when construction started.

Separate assets for CGT purposes

The common law principle is that anything attached to land becomes part of the land. Therefore, a building affixed to land will be considered a single asset at common law. There are exceptions to the common law principle for CGT purposes.

Exceptions for CGT purposes

In some circumstances, a building or structure is considered to be a CGT asset separate from the land.

Major capital improvements to an asset (including land) acquired before 20 September 1985 may also be treated as a separate CGT asset.

Assets subject to a balancing adjustment

A building, structure or other capital improvement on land that you acquired on or after 20 September 1985 is a separate CGT asset, not part of the land, if a balancing adjustment provision applies to it. For example, a timber mill building is subject to a balancing adjustment if it is sold or destroyed, so it is treated as a separate asset from the land it is on.

See also:

- Guide to depreciating assets

Buildings and structures on land acquired before 20 September 1985

A building or structure on land that you acquired before 20 September 1985 is a separate asset if:

- you entered into a contract for the construction of the building or structure on or after that date, or
- there is no contract for its construction and construction began on or after that date.

Buildings and structures on land treated as a single asset

Excluding where the exceptions above apply, land acquired before 20 September 1985 which had a building on it will be treated as a single asset.

If that building is subsequently removed from that land and placed on new land which was acquired after 20 September 1985, it will be treated as part of the land asset acquired after 20 September 1985. The relocation of the building will result in it becoming part of a combined, single 'post-CGT asset'. The cost base and reduced cost base of the building would be added to the cost base and reduced cost base of the new land to which it is affixed.

Depreciating asset that is part of a building

A depreciating asset that is part of a building or structure is taken to be a separate CGT asset from the building or structure.

Adjacent land

If you acquire land on or after 20 September 1985 that is adjacent to land that you already owned as at 20 September 1985, it is taken to be a separate CGT asset from the original land, even if you amalgamate the two titles.

Example

On 1 April 1984 Dani bought a block of land. On 1 June 2018 she bought an adjacent block. Dani amalgamated the titles to the two blocks into one title.

The second block is treated as a separate CGT asset acquired on or after 20 September 1985 and is, therefore, subject to CGT.

See also:

- Calculating the cost base for real estate
- Working out your capital gain or loss

Calculating the cost base for real estate

- https://www.ato.gov.au/General/Capital-gains-tax/Your-home-and-other-real-estate/Calculating-the-cost-base-for-real-estate/
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- QC 52204

To calculate a capital gain or loss, you need to know the asset's:

- cost base to calculate a capital gain
- reduced cost base to calculate a capital loss.

The basic rules are the same for all assets, but for real estate there are some additional rules for:

- costs of owning
- cost base adjustments for capital works deductions.

Costs of owning

When working out the reduced cost base for real estate you do not include:

- rates
- insurance
- land tax
- maintenance costs
- interest on money you borrowed to buy or improve the property.

You include these in the cost base only if:

- you acquired the property under a contract entered into after 20 August 1991 (or, if you didn't acquire it under a contract, you became the owner after that

date), and

- you couldn't claim a deduction for the costs because you didn't use the property to produce assessable income – for example, it was vacant land, your main residence or a holiday house during the period.

Example

On 1 July 2013, Kris bought a block of land for $240,000 (including legal fees, stamp duty and related expenses). He sold it on 30 June 2018. During the five years he owned the block, he paid $25,000 for rates, land tax and interest.

As he did not use the land to generate any income, he could not claim a deduction for any of these expenses.

The cost base of the block of land is $265,000.

Cost base adjustments for capital works deductions

In working out the cost base and reduced cost base for property that you've used to produce assessable income, such as a rental property or business premises, you may need to exclude any capital works deductions you've claimed in any income year (or omitted to claim but can still claim because the period for amending the relevant income tax assessment has not expired).

You exclude the amount of these capital works deductions from:

- the reduced cost base of the asset
- the cost base of the asset (including a building, structure or other capital improvement that is treated as a separate asset for CGT purposes) if:
  - you acquired the asset after 7:30pm (by legal time in the ACT) on 13 May 1997, or
  - you acquired the asset before that time and the expenditure that gave rise to the capital works deductions was incurred after 30 June 1999.

However, if you omitted to claim capital works deductions because you didn't have sufficient information to determine the amount and nature of the construction expenditure, you don't need to exclude the amount of such deductions from the cost base or reduced cost base of the CGT asset.

Example: Sale of a rental property

Brett travelled interstate in February 1997 to inspect a number of properties and incurred travel and accommodation costs. He purchased one of the properties, a residential rental property, on 1 July 1997. He paid $150,000 for the property, of which $6,000 was attributable to depreciating assets. He

also paid $20,000 in total for pest and building inspections, stamp duty and solicitor's fees.

In the next few years, Brett incurred the following expenses on the property:

Interest on money borrowed	$10,000
Rates and land tax	$8,000
Deductible (non-capital) repairs	$15,000
Total	$33,000

Brett can't include the expenses of $33,000 in the cost base as he was able to claim deductions for them. Nor can he include the travel and accommodation costs incurred before he acquired the property as they do not come within any of the five elements of the cost base.

Brett decided to sell the property, and a real estate agent advised him that if he spent around $30,000 on major structural repairs, the property would be valued at around $500,000. The major structural improvements were completed on 1 October 2017 at a cost of $30,000.

On 1 February 2018, he sold the property for $500,000 (of which $4,000 was attributable to depreciating assets).

Brett's real estate agent's fees and solicitor's fees for the sale of the property totalled $12,500.

Brett can claim a capital works deduction of $255 ($30,000 × 2.5% × 124 ÷ 365) for the major structural improvements.

This is Brett's only capital gain for the year and he has no capital losses to offset from this year or previous years.

Brett works out his cost base as follows:

Purchase price of property (not including depreciating assets)	$144,000
Plus pest and building inspections, stamp duty and solicitor's fees on purchase of the property	$20,000
Capital expenditure (major structural improvements) $30,000 less capital works deduction ($255)	$29,745
Real estate agent's fees and solicitor's fees on sale of the property	$12,500

Cost base unindexed	$206,245

Brett deducts his cost base from his capital proceeds (sale price):

Proceeds from selling the house (not including depreciating assets)	$496,000
Less cost base unindexed calculated above	$206,245
Cost base unindexed	$289,755

He decides the discount method will give him the best result, so he uses this method to calculate his capital gain:

$289,755 × 50% = $144,877

Brett shows $144,877 at Net capital gain on his tax return (supplementary section).

Brett shows $289,755 at Total current year capital gains on his tax return (supplementary section). Brett must also make balancing adjustment calculations for his depreciating assets. Because he used the property 100% for taxable purposes he will not make a capital gain or capital loss from the depreciating assets.

See also:

- Rental properties
- Working out your capital gain or loss
- Cost base

Shares, units and similar investments

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/
- Last modified: 17 Jul 2017
- QC 22173

Shares in a company or units in a unit trust (including a managed fund) are treated in the same way as any other asset for capital gains (CGT) tax purposes.

For an investor, CGT applies to capital gains on shares or units when a CGT event

happens, such as when you sell them (unless you acquired them before CGT started on 20 September 1985). However, profits on the sale of shares made as part of a business of share trading are taxed as ordinary income rather than as capital gains.

Find out about:

- CGT events affecting shares and units
- Keeping records of shares and units
- Shareholding as investor or share trading as business?
- Identifying when shares or units are acquired
- Capital losses on shares and units

Special rules apply to the CGT treatment of some types of securities and transactions.

See also:

- Managed investment fund (trust) distributions
- Non-assessable payments in relation to shares and units
- Bonus shares
- Bonus units
- Rights and options to acquire shares or units
- Takeovers and mergers, scrip-for-scrip rollover
- Share buy-backs
- Demergers and CGT rollovers
- Demutualisation of insurance companies
- Convertible notes
- Stapled securities
- Dividend reinvestment plans
- Early stage innovation companies
- Investments in a company in liquidation or administration
- CGT listed investment companies concession
- You and your shares – for information on how dividend income is taxed
- Employee share schemes and capital gains tax

CGT events affecting shares and units

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/CGT-events-affecting-shares-and-units/
- Last modified: 17 Jul 2017
- QC 22174

You may have to pay tax on any capital gain you make on shares or units when a CGT event happens, such as when you sell them.

A CGT event can happen to shares even if a change in their ownership is involuntary – for example, if a company in which you hold shares is taken over by or merges with another company. This may result in a capital gain or loss for you.

A CGT event may also occur where you:

- redeem units in a managed fund by switching them from one fund to another
- receive a distribution (other than a dividend) from a unit trust or managed fund
- receive non-assessable payments from a company
- own shares in a company that has been placed in liquidation or administration and the liquidator or administrator has declared the shares (or other financial instruments) worthless.

See also:

- Types of CGT events
- When a specific corporate group restructures, we often publish a class ruling or fact sheet detailing the tax consequences (see Events affecting shareholders)

Keeping records of shares and units

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Keeping-records-of-shares-and-units/
- Last modified: 17 Jul 2017
- QC 22175

Make sure you keep detailed records of all share and unit transactions, not only for CGT purposes but also to meet your other income tax obligations.

Having complete records of your transactions, including dividend payments, will also help ensure you don't pay more tax than you should.

Most of the records you need to work out your CGT when you dispose of shares in companies or units in unit trusts (including managed funds) will be given to you by the company, the unit trust manager or your stockbroker.

Such records will generally include:

- the date of purchase
- the purchase amount
- details of any non-assessable payments to you
- the date and amount of any calls (if shares were partly paid)
- the sale price (if you sell them)
- any commissions paid to brokers when you buy or sell
- details of events such as share splits, share consolidations, returns of capital,

takeovers, mergers, demergers and bonus share issues.

As you may have purchased parcels of shares in the same company at different times, you need to keep full details for each parcel as they are separate CGT assets.

Special CGT rules affect the records you need to keep for some types of shares and units, including bonus shares and units, rights and options, and employee shares.

For any bonus shares issued before 1 July 1987, you need to know when the original shares were acquired. If you've acquired them since 20 September 1985, you'll also need to know what they cost.

See also:

- Bonus shares
- Bonus units
- Rights and options to acquire shares or units
- Employee share schemes – record keeping

Shareholding as investor or share trading as business?

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Shareholding-as-investor-or-share-trading-as-business-/
- Last modified: 17 Jul 2017
- QC 52205

The tax treatment of shares depends on whether you're considered to be holding shares as an investor or carrying on a business as a share trader.

On this page:

- Shareholding as investment
- Share trading as business
- How to determine whether you're carrying on a business of share trading
- Examples

Shareholding as investment

A shareholder is a person who holds shares for the purpose of earning income from dividends and similar receipts. For a shareholder:

- the cost of purchase of shares is not an allowable deduction against current year income, but is a capital cost

- receipts from the sale of shares are not assessable income – but any capital gain on the shares is subject to capital gains tax
- a net capital loss from the sale of shares can't be offset against income from other sources, but can be offset against another capital gain or carried forward to offset against future capital gains
- the transaction costs of buying or selling shares is not an allowable deduction against income, but are taken into account in determining the amount of any capital gain
- dividends and other similar receipts from the shares are included in assessable income
- costs (such as interest on borrowed money) incurred in earning dividend income are an allowable deduction against current year income.

Share trading as business

A share trader is a person who carries out business activities for the purpose of earning income from buying and selling shares. For a share trader:

- receipts from the sale of shares constitute assessable income
- purchased shares are regarded as trading stock
- costs incurred in buying or selling shares – including the cost of the shares – are an allowable deduction in the year in which they are incurred
- dividends and other similar receipts are included in assessable income.

How to determine whether you're carrying on a business of share trading

Whether or not you're carrying on a business of share trading depends on much the same factors as apply to determining whether any other undertaking is considered a business for tax purposes.

Under the tax law, a 'business' includes 'any profession, trade, employment, vocation or calling, but does not include occupation as an employee'.

The question of whether a person is a share trader or a shareholder is determined by considering the following factors that have been taken into account in court cases:

- the nature of the activities, particularly whether they have the purpose of profit making
- the repetition, volume and regularity of the activities, and the similarity to other businesses in your industry
- organisation in a business-like way, including keeping accounts and records of trading stock, business premises, licences or qualifications, a registered business name and an Australian business number
- the amount of capital invested.

Nature of activity and purpose of profit making

The intention to make a profit is not, on its own, sufficient to establish that a

business is being carried on.

A share trader is someone who carries out business activities for the purpose of earning income from buying and selling shares.

Shares may be held for either investment or trading purposes, and profits on sale are earned in either case. A person who invests in shares as a shareholder (rather than a share trader) does so with the intention of earning income from dividends and receipts, but is not carrying on business activities.

It is necessary for you to consider not only your intention to make a profit, but also the facts of your situation. This includes details of how the activity has actually been carried out or a business plan of how the activities will be conducted.

A business plan might show, for example:

- an analysis of each potential investment
- analysis of the current market
- research to show when or where a profit may arise
- the basis of your decision-making on when to hold or sell shares.

Repetition, volume and regularity

Repetition – that is, the frequency of transactions or the number of similar transactions – is a significant characteristic of business activities.

The higher the volume of your purchases and sales of shares, the more likely it is that you are carrying on a business.

A business of share trading could also be expected to involve the purchase of shares on a regular basis through a regular or routine method.

Organisation in a business-like way and keeping records

Business-like: A share-trading business could reasonably be expected to involve study of daily and longer-term trends, analysis of a company's prospectus and annual reports, and seeking of advice from experts. Your qualifications, expertise, training, or skills in this area are relevant to determining whether your activities constitute a business.

Keeping records: Failure to keep records of purchases and sales of shares would make it difficult for a taxpayer to establish that a business of share-trading was being carried on.

Amount of capital invested

The amount of capital that you invest in buying shares is not considered to be a crucial factor in determining whether you're carrying on a business of share trading.

This is an area in which it is possible to carry out business activities with a relatively small amount of capital. Conversely, you may also invest a substantial amount of capital and not be considered to be a share trader.

Examples

Example: Share trader

Molly is an electrical engineer. After seeing a television program, she decided to become involved in share-trading activities.

Molly set up an office in one of the rooms in her house. She has a computer and access to the internet.

Molly has $100,000 of her own funds available to purchase shares and, in addition, she has access to a $50,000 borrowing facility through her bank.

Molly conducts daily analysis and assessment of developments in equity markets, using financial newspapers, investment magazines, stock market reports, charts and trend lines. Molly's objective is to identify stocks that will increase in value in the short term to enable her to sell at a profit after holding them for a brief period.

In the last income year, Molly conducted 60 share transactions: 35 buying and 25 selling. The average buying transaction involved 500 shares and the average cost was $1,000. The average selling transaction involved 750 shares and the average selling price was $1,800. All the transactions were conducted through stockbroking facilities on the internet. The average time that Molly held shares before selling them was twelve weeks. Molly's activities resulted in a loss of $5,000 after expenses.

Molly's activities show all the factors that would be expected from a person carrying on a business. Her share-trading operation demonstrates a profit-making intention even though a loss has resulted. Molly's activities are regular and repetitive, and they are organised in a business-like manner. The volume of shares turned over is high and Molly has injected a large amount of capital into the operation.

Example: Shareholder

George is an accountant. He has bought 200,000 shares in twenty 'blue chip' companies over several years. His total portfolio cost $1.5 million. George bought the shares because of consistently high dividends. He would not consider selling shares unless their price appreciated markedly. In the last income year, he sold 20,000 shares over the year for a gain of $50,000.

Although George has made a large gain on the sale of shares, he would not

be considered to be carrying on a business of share trading. He has purchased his shares for the purpose of earning dividend income rather than making a profit from buying and selling shares.

Identifying when shares or units are acquired

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Identifying-when-shares-or-units-are-acquired/
- Last modified: 29 Jun 2018
- QC 52206

When disposing of only part of an investment in shares or units, you need to be able to identify which ones you've disposed of – as shares or units bought at different times may have different cost bases and this will affect the amount of your gain or loss.

If you increase your investment in a particular company or unit trust, the parcels of shares or units you bought at different times may need to be treated in different ways. For example, when you dispose of any shares or units you acquired before 20 September 1985, any capital gain or loss you make is generally disregarded.

If you have the relevant records from your CHESS holding statement or your issuer sponsored statement you'll be able to nominate which shares you have sold. Alternatively, you can use a 'first in, first out' basis where you treat the first shares or units you bought as being the first you disposed of.

Example: Identifying when shares or units were acquired

Boris bought 1,000 shares in WOA Ltd on 1 July 2007. He bought another 3,000 shares in the company on 1 July 2012.

In December 2012, WOA Ltd issued Boris with a CHESS statement for his 4,000 shares. When he sold 1,500 of the shares on 1 January 2018, he wasn't sure whether they were the shares he bought in 2012 or whether they included the shares bought in 2007.

Because Boris could not identify when he bought the particular shares he sold, he decided to use the 'first in, first out' method and nominated the 1,000 shares bought in 2007 plus 500 of the shares bought in 2012.

We'll also accept an average cost method to determine the cost of the shares disposed of if:

- the shares are in the same company
- the shares were acquired on the same day
- the shares have identical rights and obligations
- you're not required to use market value for cost base purposes.

Capital losses on shares and units

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Capital-losses-on-shares-and-units/
- Last modified: 29 Jun 2018
- QC 52207

If you've realised a loss from the disposal of investments, such as shares, and your loss is a:

- capital loss (that is, made as a result of holding shares as an investor)
    - it can be offset against capital gains
    - it can't be offset against your income including income from other sources
    - it can be carried forward to offset against future capital gains
    - it can't be converted to revenue losses in future years, even if you haven't been able to offset it against a capital gain

- revenue loss (that is, made in carrying on a business of share trading)
    - it can be offset against income from other sources – losses incurred in the business of share trading are treated the same as any other losses from business.

Note that this only applies to a loss you get from disposing of investments – not where you have made a 'paper loss' on investments you continue to hold. For tax purposes, a loss isn't a loss until it is realised.

When looking at whether your loss is a capital loss or revenue loss, you need to consider:

- how your investments have been taxed in the past – relevant when working out how to treat them when you dispose of them in the current year. If there has been minimal change in the nature of your investment activity, it's likely the same tax treatment applies in the current year.
- whether you're a shareholder or share trader.

See also:

- [Working out your capital loss]

Re-classifying your activities

If you re-classify your activities, we may ask you to provide evidence that there has been a change in their nature or that you have reported your income incorrectly in the past.

If we review your tax returns and find that you have incorrectly claimed losses, you may be subject to penalties.

Re-classifying from investor to trader

If your activities change from investor to trader, your investment changes from a CGT asset to trading stock. This can trigger CGT event K4. However, you're unable to convert any prior capital losses you have made as an investor into revenue losses. You should continue to carry forward those capital losses until you have a capital gain to offset them against. If you don't make any capital gains the capital loss can never be used.

See also:

- TA 2009/12 *Re-characterising capital losses as revenue losses*
- Devi v. Federal Commissioner of Taxation [2016] AATA 67
- Types of CGT events

Re-classifying from trader to investor

If your activities change from trader to investor, your investments are no longer trading stock.

If you stop holding an item as trading stock but still own it, it is treated as if:

- just before it stopped being trading stock you sold it to someone else (at arm's length and in the ordinary course of business) for its cost
- you had immediately bought it back for the same amount.

Managed investment fund (trust) distributions

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Managed-investment-fund-(trust)-distributions/
- Last modified: 17 Jul 2017
- QC 52208

If you're a unit holder in a managed investment fund (in legal terms a trust) and have received a distribution that includes a net capital gain, you need to take your share

of the net capital gain into account in working out your own net capital gain for the year – to the extent that your share doesn't exceed the overall net amount of your distribution from the trust. The examples below show how this works.

Your statement of distribution or advice should show your share of the trust net capital gain. If the only capital gains you've made are from your unit trust investments, your net capital gain is the amount you received from those investments.

If your statement shows that your share of the trust's net capital gain is more than the overall net amount of your distribution, there is a limit on the amount of the capital gain component you exclude from L item 13 Partnerships and trusts on your tax return (supplementary section). In this situation, you can't exclude an amount greater than the overall net amount of your distribution from the trust (see examples below). The amount of your share of the trust's net capital gain you exclude from the amount at L item 13 Partnerships and trusts is used in working out your capital gain. If you receive a distribution from more than one trust, this applies to each distribution.

Trust distributions where the CGT discount or the small business 50% active asset reduction applies

Your managed fund statement should also show whether any discounts or reductions were applied by the trustee in determining the amount of the capital gain. You'll need to know this in order to work out the correct amount to include in your own net capital gain calculation.

How you do this depends on whether you have any other capital gains or capital losses, or carried forward capital losses. If you'll be deducting a capital loss (or previous year capital loss) from your managed fund capital gains, you'll need to gross up your share of any discounted capital gains from your managed fund first. If you don't have capital losses, you don't need to calculate the grossed up capital gain.

Some managed funds show the grossed up amount of the discounted capital gain on your statement. If this is the case, you use that grossed up amount when you work out your net capital gain.

If the managed fund has not shown the grossed up amount of your discounted capital gain, you need gross it up as follows, before deducting any losses:

Gain reduced by:	To gross up your share of gain:
CGT discount	Multiply by 2
Small business 50% active asset reduction	Multiply by 2
Both the CGT discount and the small business 50% active asset reduction	Multiply by 4

You include these grossed-up amounts in your own net capital gain calculation, along with any other capital gains or losses you've made as a result of other CGT events not related to your interest in the trust.

See also:

- Trust non-assessable payments (CGT event E4)
- Trusts – CGT

Example: Capital gain greater than share of trust net income and capital gain was discounted

Daniel's statement of distribution from a managed fund (a trust) shows that his share of the net income of the trust for tax purposes was $7,000.

This is made up of his $3,000 proportionate share of the trust's non-primary production loss and his $10,000 proportionate share of the trust's net capital gain to which the trust applied the 50% CGT discount. Daniel also made a $2,000 capital loss during the year on the sale of some shares. He doesn't have any other trust distributions for the year.

Daniel will need to write a zero at item 13 Partnerships and Trusts on his tax return. He takes $14,000 (that is, the $7,000 remaining of his share of the capital gain from the trust grossed up) into account in working out his net capital gain at item 18 Capital gains. Therefore, after deducting the capital losses from the grossed up capital gain he is taken to have made ($14,000 − $2,000 = $12,000), he applies the 50% CGT discount ($12,000 × 50% = $6,000) and writes $6,000 at A item 18 Capital gains on his tax return (supplementary section). He also writes $14,000 ($7,000 grossed up) at H item 18.

Example: Capital gain greater than share of trust net income, and capital gain not discounted

Debra's statement of distribution or advice from a managed fund (a trust) shows her share of the net income of the trust for tax purposes was $2,000.

This is made up of Debra's $5,000 proportionate share of the trust's primary production loss, her $2,000 proportionate share of the trust's non-primary production income and her $5,000 proportionate share of the trust's net capital gain. (The trust's net capital gain doesn't include any discounted gains.)

At item 13 Partnerships and Trusts on her tax return (supplementary section), Debra will include the $5,000 loss from primary production at L and the $5,000 non-primary production income at U (that is, $2,000 non-primary production income plus sufficient net capital gain [$3,000] to offset the loss from primary production).

Assuming Debra has no other capital gains or losses, she will write $2,000 ($5,000 − $3,000) at H and A item 18 Capital gains on her tax return (supplementary section).

Non-assessable payments in relation to shares and units

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Non-assessable-payments-in-relation-to-shares-and-units/
- Last modified: 17 Jul 2017
- QC 52213

A non-assessable payment is a payment you receive from a company or trust in relation to your shares or units that is not included as part of your income in your tax return.

If you receive a non-assessable payment or distribution, you may need to adjust the cost base of your shares or units for CGT purposes.

If the non-assessable payment or distribution exceeds the cost base of your shares or units, the excess is a capital gain and the cost base of your shares or units is reduced to zero.

You must keep accurate records of the amounts and dates of any non-assessable payments.

Find out about:

- Company non-assessable payments (CGT event G1)
- Trust non-assessable payments (CGT event E4)
- AMIT non-assessable payments (CGT event E10)

See also:

- Stapled securities

Company non-assessable payments (CGT event G1)

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Non-assessable-payments-in-relation-to-shares-and-units/Company-non-assessable-payments-(CGT-event-G1)/
- Last modified: 17 Jul 2017
- QC 52214

Non-assessable payments to shareholders are generally made only where a company has shareholder approval to reduce its share capital.

If you receive a non-assessable payment from a company (that is, a payment that is not a dividend or an amount that is taken to be a dividend for tax purposes), CGT event G1 occurs at the time of the payment. Under CGT event G1, you need to adjust the cost base of the shares. These payments are often referred to as a 'return of capital'.

If the amount of the non-assessable payment is less than the cost base of the shares at the time of payment, you reduce the cost base and reduced cost base by the amount of the payment.

If the non-assessable payment exceeds the cost base of your shares, the excess is a capital gain and the cost base of your shares is reduced to zero.

You can't make a capital loss from the receipt of a non-assessable payment.

Interim liquidation distributions that are not dividends are generally treated in the same way as other non-assessable payments under CGT event G1.

Example: Non-assessable payments

Rob bought 1,500 shares in RAP Ltd on 1 July 1994 for $5 each, including brokerage and stamp duty. On 30 November 2007, as part of a shareholder-approved scheme for the reduction of RAP's share capital, he received a non-assessable payment of 50 cents per share. Just before Rob received the payment, the cost base of each share (without indexation) was $5.

As the amount of the payment is not more than the cost base (without indexation), he reduces the cost base of each share at 30 November 2007 by the amount of the payment to $4.50 ($5 minus 50 cents). As Rob has chosen not to index the cost base, he can claim the CGT discount if he disposes of the shares in the future.

Non-assessable payments under a demerger

If you receive a non-assessable payment under an eligible demerger, you don't deduct the payment from the cost base and the reduced cost base of your units or trust interest. Instead, you adjust your cost base and reduced cost base according to the demerger rules.

You may make a capital gain on the non-assessable payment if it exceeds the cost base of your original unit or trust interest, although you'll be able to choose the CGT rollover.

An eligible demerger is one that happens on or after 1 July 2002 and satisfies certain tests. The trust making the non-assessable payment will normally advise unit or trust interest holders if this is the case.

See also:

- Demergers and CGT rollovers

Trust non-assessable payments (CGT event E4)

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Non-assessable-payments-in-relation-to-shares-and-units/Trust-non-assessable-payments-(CGT-event-E4)/
- Last modified: 29 Jun 2018
- QC 52215

Trusts often make non-assessable payments to beneficiaries. If you receive a non-assessable payment from a trust, CGT event E4 may occur and you may need to make cost base adjustments to your units or trust interest. Those adjustments will affect the amount of any capital gain or loss you make on the unit or interest, for example, when you sell it.

(If your unit or interest is in an attribution managed investment trust (AMIT), CGT event E4 doesn't apply, but CGT event E10 may apply – see AMIT non-assessable payments (CGT event E10).

Non-assessable payments may be made over a number of years. In this case, you will make a capital gain in the year in which the cumulative total of the non-assessable payments over all years exceeds the cost base of your units or interests.

You can't make a capital loss from a non-assessable payment.

Non-assessable payments may be shown on your statement from the trustee as:

- tax-free amounts
- CGT-concession amounts
- tax-exempted amounts
- tax-deferred amounts.

You may need to adjust the cost base and reduced cost base of your units depending on the kind of non-assessable payment you received.

Your statement of distribution or advice should show amounts and other information relevant to your cost base or reduced cost base.

Tax-free amounts relate to certain tax concessions received by the fund which enable it to pay greater distributions to its unit holders. If your statement shows any tax-free amounts, you adjust the reduced cost base (but not the cost base) of your units by these amounts. Payments of amounts associated with building allowances that were made before 1 July 2001 were treated as tax-free amounts.

CGT-concession amounts relate to the CGT discount component of any actual distribution. Such amounts don't affect your cost base and reduced cost base if they were received after 30 June 2001. A CGT-concession amount received before 1 July 2001 is taken off the cost base and reduced cost base.

Tax-exempted amounts are generally:

- exempt income of the fund
- amounts on which the fund has already paid tax
- income you had to repay to the fund.

Such amounts don't affect your cost base and reduced cost base.

Tax-deferred amounts are other non-assessable amounts, including indexation received by the fund on its capital gains and accounting differences in income. You adjust the cost base and reduced cost base of your units by these amounts. Payments associated with building allowances made on or after 1 July 2001 are treated as tax-deferred amounts.

If the tax-deferred amount is greater than the cost base of your units or trust interest, you include the excess as a capital gain. You can use the indexation method if you bought your units or trust interest before 11:45am (by legal time in the ACT) on 21 September 1999. However, if you do so, you can't use the discount method to work out your capital gain when you later sell the units or trust interest.

Cost base adjustments

Generally, you make any adjustment to the cost base and reduced cost base of your unit or trust interest at the end of the income year. However, if some other CGT event happens to the unit or trust interest during the year (for example, you sell your units), you must adjust the cost base and reduced cost base just before the time of that CGT event. The amount of the adjustment is based on the amount of non-assessable payments to you up to the date of sale. You use the adjusted cost base and reduced cost base to work out your capital gain or loss.

See also:

- Working out your capital gain or loss

Example: Mario has received a non-assessable amount

Mario owns units in OZ Investments Fund (a managed fund that is not an AMIT and has not elected to apply the 2011 changes to the rules relating to capital gains made by trusts), which distributed income to him for the 2017–18 income year. The fund gave him a statement showing his distribution meant that his share of the trust's net capital gain included:

- $100 calculated using the discount method (grossed-up amount $200)
- $75 calculated using the indexation method
- $28 calculated using the 'other' method.

These capital gains add up to $203.

The statement shows Mario's distribution did not include a tax-free amount, but it did include:

- $105 tax-deferred amount.

From his records, Mario knows that the cost base and reduced cost base of his units are $1,200 and $1,050 respectively.

Mario has no other capital gains or capital losses for the 2017–18 income year and no unapplied net capital losses from earlier years.

The following steps show how Mario works out the amounts to write on his tax return.

Step 1

As Mario has a share of a capital gain which the fund reduced under the CGT discount of 50% (so that his share was $100), he includes the grossed-up amount of his share ($200) in his total current year capital gains.

Step 2

Mario adds the grossed-up amount to his share of the trust's capital gains calculated using the indexation method and 'other' method to work out his total current year capital gains:

$200 + $75 + $28 = $303

Step 3

As Mario has no other capital gains or losses, and he must use the discount method for the capital gains calculated using the discount method from the trust, his net capital gain is equal to his share of the trust's net capital gain

for tax purposes ($203).

Step 4

Mario completes item 18 in his tax return (supplementary section) as follows:

- label G (Did you have a capital gains tax event during the year?): indicate yes
- label M (Have you applied an exemption or rollover?): indicate no and leave the code blank
- label A (Net capital gain): enter 203
- label H (Total current year capital gains): enter 303
- label V (Net capital losses carried forward to later income years): leave blank
- label X (Credit for foreign resident capital gains withholding amounts): leave blank.

Records Mario needs to keep

The tax-deferred amount Mario received is not included in his income or his capital gains, but it affects the cost base and reduced cost base of his units in OZ Investments Fund for future income years.

Cost base	$1,200
less tax-deferred amount	$105
New cost base	$1,095
Reduced cost base	$1,050
less tax-deferred amount	$105
New reduced cost base	$945

Example: Ilena's capital loss is greater than her non-discounted capital gain

Ilena invested in XYZ Managed Fund (a managed fund that is not an AMIT and has not elected to apply the 2011 changes to the rules relating to capital gains made by trusts). The fund made a distribution to Ilena for the year ending 30 June 2018 and gave her a statement that shows her distribution meant that her share of the trust's net capital gain included:

- $65 discounted capital gain, and
- $90 non-discounted capital gain.

The statement shows Ilena's distribution also included:

- $30 tax-deferred amount
- $35 tax-free amount.

Ilena has no other capital gains, but made a capital loss of $100 on some shares she sold during the year. Ilena has no unapplied net capital losses from earlier years.

From her records, Ilena knows the cost base and reduced cost base of her units are $5,000 and $4,700 respectively.

Ilena has to treat the capital gain component of her share of the fund's net income for tax purposes as if she made the capital gain. To complete her tax return, Ilena must identify this capital gain component and work out her net capital gain.

The following steps show how Ilena works out the amount to write at H item 18 on her tax return (supplementary section).

Step 1

As Ilena has a share of a capital gain which the fund reduced by the CGT discount of 50% (her discounted share being $65), she must gross up her share of this capital gain. She does this by multiplying the amount of her share of the discounted capital gain by two:

$65 × 2 = $130

Step 2

Ilena adds her share of the trust's grossed-up and non-discounted capital gains to work out her total current year capital gains:

$130 + $90 = $220

She writes her total current year capital gains ($220) at H item 18 on her tax return (supplementary section).

Step 3

After Ilena has grossed up her share of the fund's discounted capital gain, she subtracts her capital losses from her capital gains.

Ilena can choose which capital gains she first subtracts the capital losses from. In her case, she gets the better result if she:

- subtracts as much as possible of her capital losses (which were $100) from her non-discounted capital gains ($90):

$90 − $90 = $0 (non-discounted capital gains)
- subtracts her remaining capital losses after step 1 ($10) from her discounted capital gains ($130):
  $130 − $10 = $120 (discounted capital gains)
- applies the CGT discount to her remaining discounted capital gains:
  ($120 × 50%) = $60 (discounted capital gains)

Step 4

Finally, Ilena adds up the capital gains remaining to arrive at her net capital gain:

$0 (non-discounted) + $60 (discounted) = $60 net capital gain.

Ilena completes item 18 on her tax return (supplementary section) as follows:

- label G (Did you have a capital gains tax event during the year?): indicate yes
- label M (Have you applied an exemption or rollover?): indicate no and leave the code blank. The trust applied the exemption or rollover and will need to report that on its trust return.
- label A (Net capital gain): enter 60
- label H (Total current year capital gains): enter 220
- label V (Net capital losses carried forward to later income years): leave blank
- label X (Credit for foreign resident capital gains withholding amounts): leave blank.

Records Ilena needs to keep

The tax-deferred and tax-free amounts Ilena received are not included in her income or her capital gain, but the tax-deferred amount affects the cost base and reduced cost base of her units in XYZ Managed Fund for future income years. The tax-free amount affects her reduced cost base.

Ilena reduces the cost base and reduced cost base of her units as follows:

Cost base	$5,000
less tax-deferred amount	$30
New cost base	$4,970
Reduced cost base	$4,700
less (tax-deferred amount + tax-free amount) ($30 + $35)	$65
New reduced cost base	$4,635

AMIT non-assessable payments (CGT event E10)

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Non-assessable-payments-in-relation-to-shares-and-units/AMIT-non-assessable-payments-(CGT-event-E10)/
- Last modified: 17 Jul 2017
- QC 52216

Like other unit trusts, an attribution managed investment trust (AMIT) can make non-assessable payments to members (unit holders), which can affect the cost base or reduced cost base of their membership interests.

Managed funds are only classed as AMITs if they're eligible managed investment trusts (MITs) and have elected into the attribution regime. CGT event E10 applies to CGT assets that are membership interests in an AMIT, while CGT event E4 applies to other trusts – see Trust non-assessable payments (CGT event E4).

If you receive non-assessable payments from an AMIT, the cost base and reduced cost base of your membership interests will need to be adjusted both upward and downward.

If you own membership interests in an AMIT, your fund manager will calculate a 'cost base net amount', which will be specified in your AMIT member annual (AMMA) statement. This amount is the balance of your cost base reduction amount and your cost base increase amount.

Calculating the 'cost base net amount'

A cost base reduction reflects the actual payments received (or which you have a right to receive) from the AMIT and any tax offsets that you have as a result of amounts attributed to you by the AMIT.

A cost base increase reflects the amounts included in your assessable income (including capital gains), as well as any non-assessable non-exempt income related to your membership interests in the AMIT. This is calculated on the assumption that that you are an Australian resident.

The reduction and the increase amounts are netted off against each other to arrive at your 'cost base net amount', which you will then apply to your asset cost base.

CGT event E10

Where the cost base reduction amount exceeds the cost base increase amount, the resulting cost base net amount reduces your asset's cost base or reduced cost base. If the net amount is greater than your cost base, it will reduce your cost base to nil, and any remaining excess will give rise to a capital gain as a result of CGT event E10.

Where the cost base increase amount exceeds the cost base reduction amount, the resulting cost base net amount increases your asset's cost base and reduced cost base. This will not trigger a CGT event; however, it may result in a reduced capital gain or increased capital loss in the future if you dispose of your CGT asset.

See also:

- Cost-base adjustments for AMIT members
- Managed investment trusts – overview
- Law Companion Guideline LCR 2015/11 *Attribution Managed Investment Trusts: annual cost base adjustments for units in an AMIT and associated transitional rules*

Example: AMIT cost base net adjustment

Miriam owns units in the Exponential Growth Fund, which has elected in to the new tax system for managed investment trusts in 2016–17 and is therefore an AMIT.

The fund attributes $13 per unit to Miriam for the income year but pays a cash amount of $3 per unit. The balance of $10 is retained by Exponential Growth Fund for reinvestment, rather than paid as a cash distribution. Miriam includes the $13 attributed amount in her assessable income as 'Share of net income from trusts' at 13 Partnerships and trusts.

Cost base consequences

The $13 attributed to Miriam is added to her cost base of $55, while the actual payment of $3 is taken away from her cost base. In this way, the cost base increase is netted off against the cost base reduction, resulting in a cost base net increase of $10 per unit. The cost base increase and cost base reduction are shown in Miriam's AMMA statement, along with a cost base net amount of $10.

The $10 cost base net amount is not included in Miriam's assessable income or capital gains because it represents amounts that have already been taxed to her on attribution, but is used to increase the cost base of her units in Exponential Growth Fund for future years. Miriam will need to include it in her cost base calculations when she eventually sells her units in the fund, to ensure that the undistributed amount attributed to her is not double taxed as a capital gain.

Cost base per unit	$55
plus taxable income attributed in 2016–17	$13
less cash dividend for 2016–17	$3
New cost base per unit	$65

Bonus shares

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Bonus-shares/
- Last modified: 29 Jun 2018
- QC 52217

Bonus shares are additional shares a shareholder receives for an existing holding of shares in a company.

The treatment of bonus shares for CGT purposes depends on whether they are assessable as a dividend or not (see table below).

Period in which bonus shares were issued	Tax treatment
Before 20 September 1985	Pre-CGT assets – no CGT implications.
From 20 September 1985 to 30 June 1987 inclusive.	Many bonus shares issued were paid out of a company's asset revaluation reserve or from a share premium account. These bonus shares are not usually assessable dividends.
From 1 July 1987 to 30 June 1998	The paid-up value of bonus shares issued is assessed as a dividend unless paid from a share premium account.

inclusive.	
From 1 July 1998	The paid-up value of bonus shares issued is generally not assessed as a dividend unless you have the choice of being paid a dividend or of being issued shares and you chose to be issued with shares. Bonus shares may also be assessed as a dividend where: • the bonus shares are being substituted for a dividend to give a tax advantage, or • the company directs bonus shares to some shareholders and dividends to others to give them a tax benefit.

On this page:

- Where no amount is assessed as a dividend
- Where the paid-up value is assessed as a dividend
- Work out the correct treatment of your bonus shares

Where no amount is assessed as a dividend

If you dispose of bonus shares that were not assessable as a dividend when you received them, you may make a capital gain, and you may also have to adjust the cost base and the reduced cost base of your existing shares in the company.

Original shares acquired on or after 20 September 1985

If your bonus shares relate to other shares that you acquired on or after 20 September 1985 (referred to as your original shares), your bonus shares are taken to have been acquired on the date you acquired your original shares. If you acquired your original shares at different times, you'll have to work out how many of your bonus shares are taken to have been acquired at each of those times.

Calculate the cost base and reduced cost base of the bonus shares by apportioning the cost base and reduced cost base of the original shares over both the original and the bonus shares. Effectively, this results in a reduction of the cost base and reduced cost base of the original shares.

You also include any calls paid on partly paid bonus shares as part of the cost base and reduced cost base that is apportioned between the original and the bonus shares.

Original shares acquired before 20 September 1985

Your capital gains tax (CGT) obligations depend on when the bonus shares were issued and whether they are fully or partly paid.

Example: Fully paid bonus shares

Chris bought 100 shares in MAC Ltd for $1 each on 1 June 1985. He bought 300 more shares for $1 each on 27 May 1986. On 15 November 1986, MAC Ltd issued Chris with 400 bonus shares from its capital profits reserve, fully paid to $1. Chris didn't pay anything to acquire the bonus shares and no part of the value of the bonus shares was assessed as a dividend.

For CGT purposes, the acquisition date of 100 of the bonus shares is 1 June 1985 (pre-CGT). Therefore, those bonus shares are not subject to CGT.

The acquisition date of the other 300 bonus shares is 27 May 1986. Their cost base is worked out by spreading the cost of the 300 shares Chris bought on that date over both those original shares and the remaining 300 bonus shares. As the 300 original shares cost $300, the cost base of each share will now be 50 cents.

Example: Partly paid bonus shares

Klaus owns 200 shares in MAC Ltd, which he bought on 31 October 1984, and 200 shares in PUP Ltd bought on 31 January 1985.

On 1 January 1987, both MAC Ltd and PUP Ltd made their shareholders a one-for-one bonus share offer of $1 shares partly paid to 50 cents. Klaus elected to accept the offer and acquired 200 new partly paid shares in each company. No part of the value of the bonus shares was taxed as a dividend.

On 1 April 1989, PUP Ltd made a call for the balance of 50 cents outstanding on the partly paid shares, payable on 30 June 1989. Klaus paid the call payment on that date. MAC Ltd has not yet made any calls on its partly paid shares.

For CGT purposes, Klaus is treated as having acquired his bonus PUP Ltd shares on the date he became liable to pay the call (1 April 1989). The cost base of the bonus shares in PUP Ltd includes the amount of the call payment (50 cents) plus the market value of the shares immediately before the call was made.

The MAC Ltd bonus shares will continue to have the same acquisition date as the original shares (31 October 1984) and are therefore not subject to CGT. However, this will not be the case if Klaus makes any further payments to the company on calls made by the company for any part of the unpaid amount on the bonus shares. In this case, the acquisition date of the bonus shares will be when the liability to pay the call arises and the bonus shares will then be subject to CGT.

Where the paid-up value is assessed as a dividend

If the paid-up value of bonus shares issued on or after 20 September 1985 is assessed as a dividend, you may have to pay capital gains tax (CGT) when you dispose of the bonus shares, regardless of when you acquired the original shares.

Original shares acquired on or after 20 September 1985

If your bonus shares relate to original shares that you acquired on or after 20 September 1985, the acquisition date of the bonus shares is the date they were issued. Their cost base and reduced cost base includes the amount of the dividend, plus any call payments you made to the company if they were only partly paid.

The exception to this rule is bonus shares you received before 1 July 1987. They are taken to be acquired on the date you acquired your original shares. Their cost base is calculated as if the amount was not taxed as a dividend (see Where no amount is assessed as a dividend).

Original shares acquired before 20 September 1985

The rules that apply where you acquired your original shares before 20 September 1985 depend on when the bonus shares were issued and whether they were partly paid or fully paid.

Example: Cost base of bonus shares

Mark owns 1,000 shares in RIM Ltd, which he bought on 30 September 1984 for $1 each.

On 1 February 1997, the company issued him with 500 bonus shares partly paid to 50 cents. The paid-up value of bonus shares ($250) is an assessable dividend to Mark.

On 1 May 1997, the company made a call for the 50 cents outstanding on each bonus share, which Mark paid on 1 July 1997.

The total cost base of the bonus shares is $500, consisting of the $250 dividend received on the issue of the bonus shares on 1 February 1997 plus the $250 call payment made on 1 July 1997.

The bonus shares have an acquisition date of 1 February 1997.

If Mark held the bonus shares for more than 12 months when he sold them, he can use the indexation method to calculate his capital gain.

Amounts payable to a company on shares in the company can be indexed only from the date of actual payment. In Mark's case, he can only index the $250 call payment from the date he paid it (1 July 1997).

However, indexation on the $250 dividend included in his assessable income on the issue of the bonus shares was available from 1 February 1997. This is different from the indexation treatment of amounts paid to acquire assets in other circumstances where indexation is available from the time the liability to make the payment arises.

If Mark disposes of the shares after 11.45 am (by legal time in the ACT) on 21 September 1999, he can calculate his capital gain using either the indexation method or the discount method.

Work out the correct treatment of your bonus shares

To work out the correct treatment of your shares, work through the following questions:

1. Did you acquire the original shares on or after 20 September 1985?

Yes: Go to question 2

No: Go to question 4

2. Is any part of the bonus shares a dividend or treated as a dividend?

Yes: Go to question 3

No: See answer 1

3. Were the bonus shares issued before 1 July 1987?

Yes: See answer 1

No: See answer 2

4. Is any part of the bonus shares a dividend or treated as a dividend?

Yes: Go to question 5

No: Go to question 6

5. Were the bonus shares issued before 1 July 1987?

Yes: Go to question 6

No: See answer 2

6. Are the bonus shares partly paid?

Yes: Go to question 7

No: See answer 3

7. Were the bonus shares issued before 10 December 1986?

Yes: See answer 3

No: Go to question 8

8. Before the sale of the bonus shares, were any further call payments made to the company?

Yes: See answer 4

No: See answer 3

Answer 1

- The bonus shares are subject to capital gains tax if they were issued on or after 20 September 1985.
- The bonus shares are acquired when the original shares were acquired.
- The cost base of each original and bonus share is equal to:
    - the cost base of the original shares divided by the total number of original and bonus shares, *plus*
    - any calls on partly paid bonus shares.

Answer 2

- The bonus shares are subject to capital gains tax.
- The acquisition date of the bonus shares is their date of issue.
- The cost base is the amount of the dividend, *plus* any calls on partly paid bonus shares.

Answer 3

You are taken to have acquired the bonus shares before 20 September 1985 and they are not subject to capital gains tax.

Answer 4

- The bonus shares are subject to capital gains tax.
- The acquisition date of the bonus shares is the date when the liability to pay the first call arises.
- The cost base is the market value of the bonus shares just before the liability to pay the first call arises, *plus* the amount of call payments made.

See also:

- Market valuation for tax purposes

Bonus units

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Bonus-units/
- Last modified: 29 Jun 2018
- QC 52218

If you've received bonus units on or after 20 September 1985, you may make a capital gain when you dispose of them.

The capital gains tax (CGT) rules for bonus units in managed funds are very similar to those for bonus shares.

When the unit trust issues the bonus units, they will generally tell you what amount (if any) you have to include in your assessable income for that year. You also need to keep this information to work out your CGT obligation when you dispose of the shares.

On this page:

Where no amount is included in assessable income

Original units acquired on or after 20 September 1985

If your bonus units relate to other units that you acquired on or after 20 September 1985, your bonus units are taken to have been acquired on the date you acquired your original units. If you have original units that you acquired at different times, you will have to work out how many of your bonus units are taken to have been acquired at each of those times.

Calculate the cost base and reduced cost base of the bonus units by apportioning the cost base and reduced cost base of the original units over the original units and the bonus units. Effectively, this results in a reduction of the cost base and reduced cost base of the original units. You also apportion any calls paid on partly paid bonus units between the cost bases (and reduced cost bases) of the original units and the bonus units.

Original units acquired before 20 September 1985

The rules that apply if you acquired your original units before 20 September 1985 depend on when the bonus units were issued and whether they were partly paid or fully paid.

Fully paid units

If the bonus units are fully paid, the acquisition date of the bonus units is the date you acquired the original units. Therefore, if you acquired the original units before 20 September 1985, any capital gain or loss you make from the sale of the bonus units is disregarded.

Partly paid units

- For partly paid up bonus units issued on or after 10 December 1986
  - if you've made a call payment, the acquisition date for the bonus units is the date when the liability to pay the amount arose. The cost of acquiring them includes their market value just before that date plus the amount of call payments
  - if you haven't paid any amount subsequently for the bonus shares, the date of acquisition is also the date you acquired the original units.

- For partly paid up bonus units issued before 10 December 1986, the date of acquisition is the date you acquired the original units, irrespective of whether you've paid any amount subsequently.

Example: Unit trusts

Sarah is a unit holder in the CPA Unit Trust. She bought 1,000 units on 1 September 1985 for $1 each and 1,000 units on 1 July 1996 for $2 each.

On 1 March 1997, the unit trust made a one-for-one bonus unit issue to all unit holders. Sarah received 2,000 new units. She didn't include any amount in her assessable income as a result.

The 1,000 new units issued for the original units she acquired on 1 September 1985 are also treated as having been acquired on that date and are therefore not subject to CGT.

However, the 1,000 new units issued for the original units she acquired on 1 July 1996 are subject to CGT. Their cost base is worked out by spreading the cost of the original units ($2,000) acquired on that date over both the original units and the bonus units. Each of the units therefore has a cost base of $1.

Where an amount is included in assessable income

If you include any amount in your assessable income as a result of the issue of bonus units, their acquisition date is the date they were issued, regardless of when you acquired the original units.

The cost base and reduced cost base of the bonus units is the amount included in your assessable income as a result of the issue of those units, plus any calls you made if they were only partly paid.

If the bonus units were issued before 20 September 1985, any capital gain or loss is disregarded as they are pre-CGT assets.

Work out the correct treatment of your bonus units

To work out the correct treatment of your bonus units, work through the following questions.

1. Did you acquire the original units on or after 20 September 1985?

Yes: Go to question 2

No: Go to question 3

2. Is any part of the bonus units included in your assessable income?

Yes: See answer 1

No: See answer 2

3. Is any part of the bonus units included in your assessable income?

Yes: Go to question 4

No: Go to question 5

4. Were the bonus units issued on or after 20 September 1985?

Yes: See answer 1

No: See answer 4

5. Are the bonus units partly paid?

Yes: Go to question 6

No: See answer 4

6. Were the bonus units issued before 10 December 1986?

Yes: See answer 4

No: Go to question 7

7. Before the sale of the bonus units were any further call payments made to the trust?

Yes: See answer 3

No: See answer 4

Answer 1

- The bonus units are subject to CGT.
- The acquisition date of the bonus units is their date of issue.
- The cost base includes the amount included in assessable income, *plus* any calls on partly paid bonus units.

Answer 2

- The bonus units are subject to CGT.

- The bonus units are acquired when the original units were acquired.
- The cost base of each original and bonus unit is equal to the cost of the original units divided by the total number of original and bonus units *plus* any calls on partly paid bonus units.

Answer 3

- The bonus units are subject to CGT.
- The acquisition date of the bonus units is the date when the liability to pay the first call arises.
- The cost base is the market value of the bonus units just before the liability to pay the first call arises, *plus* the amount of call payments made.

Answer 4

You are taken to have acquired the bonus shares before 20 September 1985 and they are not subject to CGT.

See also:

- Market valuation for tax purposes

Rights and options to acquire shares or units

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Rights-and-options-to-acquire-shares-or-units/
- Last modified: 29 Jun 2018
- QC 52219

A company or trust you own shares or units in may issue you rights or options to acquire additional shares or units at a specified price.

While the issue or exercise of rights or options doesn't generally give rise to a capital gain, you make a capital gain or loss when a CGT event happens to the rights or options (other than as a result of exercising them) or the shares or units acquired as a result of exercising the rights or options.

Find out about:

- Acquiring rights or options
- Exercising rights or options
- Work out the correct treatment of rights or options

Acquiring rights or options

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Rights-and-options-to-acquire-shares-or-units/Acquiring-rights-or-options/
- Last modified: 17 Jul 2017
- QC 52220

The market value of the rights or options at the time the company or trust issues them to you is treated as non-assessable, non-exempt income if all of the following apply:

- you already own shares/units
- the company issues the right to you because you own the shares/units
- your shares/units and the rights are not revenue assets or trading stock at the time the company or trust issues them
- you don't acquire the rights under an employee share scheme
- your shares/units and the rights are not traditional securities
- your shares/units are not convertible interests.

On this page:

No-cost rights and options

A company or trust you are a shareholder or unit holder of may issue rights or options directly to you for no cost. If this happens, you are taken to have acquired the rights and options at the same time as you acquired the original shares or units.

So if you acquired the original shares or units before 20 September 1985, you disregard any capital gain or loss you make when you sell the rights or options, or they expire. This is because they are pre-CGT assets.

If you acquired the original shares or units on or after 20 September 1985, you may make a capital gain when you sell the rights or options or they expire. You make a:

- capital gain on these if the capital proceeds on the sale or expiry of the rights or options are more than their cost base
- capital loss if the reduced cost base of the rights or options is more than those capital proceeds.

Rights and options you paid for

If you paid to acquire rights and options from a company or trust, or you acquired them from another person on or after 20 September 1985, you treat them in the same way as any other CGT asset and they are subject to CGT.

Rights or entitlements you don't exercise

You may receive a payment if:

- you didn't exercise some or all of your right or entitlement, either by choice or otherwise
- you weren't eligible to exercise some or all of your right or entitlement.

Such a payment is considered a retail premium if the following occurs:

- A company you own shares in offers shareholders a right or entitlement to subscribe for additional shares in proportion to their existing shareholding at a set amount, often called the offer price.
- You don't participate – that is
  - you choose not to take up some or all of your right or entitlement
  - you're ineligible to receive some or all of a right or entitlement, or
  - you're not permitted to take up some or all of your right or entitlement.

- The company that issued the right or entitlement arranges to issue a number of shares, equivalent to those which would have been issued to you had you exercised the right or entitlement for which you did not participate, to other subscribers, such as institutional investors. The amount offered by the subscribers for the equivalent shares is often called the clearing price.
- The clearing price is the basis of a payment to you, generally because it is more than the offer price.

The retail premium will be the amount paid to you, generally worked out on a pro rata basis by the company because you're a shareholder or unit holder and you don't participate. The retail premium will generally be some or all of the difference between the clearing price of the shares and the offer price.

Retail premiums are treated as:

- unfranked dividends when paid to resident shareholders
- non-assessable and non-exempt income when the payment is subject to withholding tax.

Shareholders who receive the premiums are not eligible to claim the CGT discount.

See also:

- Taxing retail premiums
- Exercising rights or options
- Work out the correct treatment of rights or options

Exercising rights or options

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Rights-and-options-to-acquire-shares-or-units/Exercising-rights-or-options/
- Last modified: 17 Jul 2017
- QC 52223

The date you exercise the rights or options to acquire shares or units is the acquisition date for the shares or units.

If you exercise the rights or options on or after 20 September 1985, some special rules apply for working out the cost base and reduced cost base of the shares or units you acquire.

These rules don't apply to rights or options to acquire shares under an employee share scheme.

On this page:

No-cost rights or options

If a company or trust you hold shares or units in issues rights or options directly to you for no cost, the amount included in the cost base and reduced cost base of the shares or units you acquire when you exercise the rights or options depends on when you acquired your original shares or units.

The following rules do not apply to rights or options to acquire units they issued before 29 January 1988.

Original shares or units you acquired before 20 September 1985

The first element of the cost base and reduced cost base for the shares or units you acquire when you exercise your rights or options is the sum of:

- the market value of the rights or options at the time you exercised them
- the amount you paid to exercise the rights or options
- any amount included in your assessable income because you exercised the rights or options on or after 1 July 2001.

Original shares or units you acquired on or after 20 September 1985

The first element of the cost base and reduced cost base for the shares or units you acquire when you exercise your rights or options is the sum of:

- the cost base of the rights or options at the time you exercised them
- the amount you paid to exercise the rights or options (except any amount represented in the cost base of the rights or options at the time you exercised them)

- any amount included in your assessable income because you exercised the rights or options on or after 1 July 2001.

Rights or options you acquire indirectly

If you acquire rights or options from another individual or entity who received them as a shareholder or unit holder, the amount included in the cost base and reduced cost base of the shares or units you acquire depends on when you acquired your rights or options.

The following rules don't apply to rights or options to acquire units issued before 29 January 1988.

Rights or options you acquired before 20 September 1985

If the rights or options were exercised on or after 20 September 1985, the first element of the cost base and reduced cost base for the shares is the sum of:

- the market value of the rights or options at the time you exercised them
- the amount you paid to exercise the rights or options
- any amount included in your assessable income because you exercised the rights or options on or after 1 July 2001.

Rights or options acquired on or after 20 September 1985

The first element of the cost base and reduced cost base for the shares or units you acquire when you exercise your rights or options is the sum of:

- the cost base for the rights or options (including any amount you paid for them)
- the amount you paid for the shares or units when you exercised the rights or options (except to the extent that amount is represented in the cost base of the rights or options at the time of exercise)
- any amount included in your assessable income because you exercised the rights or options on or after 1 July 2001.

Rights or options you paid for

You may pay for rights or options:

- issued directly to you from a company or trust
- from an individual or entity that was not a shareholder or unit holder.

For rights or options to acquire units, these rules apply to rights or options you exercised on or after 27 May 2005.

The amount included in the cost base and reduced cost base of the shares or units you acquire depends on when you acquired your rights or options.

Rights or options you acquired before 20 September 1985

This includes rights or options last renewed or extended after that date if you exercised them before 27 May 2005.

If you exercised the rights or options on or after 20 September 1985, the first element of the cost base and reduced cost base for the shares or units is the sum of the:

- market value of the rights or options at the time you exercised them
- amount you paid for the shares or units when you exercised the rights or options.

Rights or options you acquired on or after 20 September 1985

This includes rights or options you acquired before 20 September 1985 but which were last renewed or extended after that date and that you exercised before 27 May 2005.

The first element of the cost base and reduced cost base for the shares or units you acquire when you exercise your rights or options is the sum of the amount you paid for:

- the rights or options
- the shares or units when you exercised the rights or options.

Example: Sale of rights

Shanti owns 2,000 shares in ZAC Ltd, bought in two equal size parcels on 1 June 1985 and 1 December 1996 respectively.

On 1 July 1998, ZAC Ltd granted each of its shareholders one right to acquire shares in the company for $1.80 each for every four shares they owned. So, Shanti received 500 rights in total. At that time, shares in ZAC Ltd were worth $2, so each right was worth 20 cents.

Shanti decided that she does not want to buy any more shares in ZAC Ltd, so she sold all her rights for 20 cents each: a total amount of $100.

Only those rights issued for the shares she bought on 1 December 1996 are subject to CGT. As Shanti did not pay anything for the rights, she has made a $50 taxable capital gain on their sale.

The $50 Shanti received on the sale of her rights for the shares she bought on 1 June 1985 is not subject to CGT as those rights are taken to have been acquired at the same time as the shares, that is, before 20 September 1985.

Example: Rights exercised

Assume that, in the previous example, Shanti wanted to acquire more shares in ZAC Ltd. So, she exercises all 500 rights on 1 August 1998 when they were still worth 20 cents each.

There are no CGT consequences arising from Shanti exercising the rights.

However, the 500 shares Shanti acquires on 1 August 1998 when she exercises the rights are subject to CGT and acquired at the time of the exercise.

When Shanti exercises the rights issued for the shares she bought on 1 December 1996, the cost base of the 250 shares Shanti acquired is the amount she paid to exercise each right: that is, $1.80 for each share.

When she exercises the rights for the shares she bought before 20 September 1985, Shanti's cost base for each of the 250 shares she acquired includes both the exercise price of the right ($1.80) and the market value of the right at that time (20 cents).

So, the cost base of each share is $2.

CGT discount on shares or units you acquired from exercising rights or options

You can only use the discount method to calculate your capital gain from an asset if you own it for at least 12 months. In working out any capital gain on shares or units you acquire when you exercise a right or option, the 12-month period applies from the date you acquire the shares or units (not the date you acquired the right or option).

See also:

- [Acquiring rights or options]
- [Work out the correct treatment of rights or options]

Work out the correct treatment of rights or options

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Rights-and-options-to-acquire-shares-or-units/Work-out-the-correct-treatment-of-rights-or-options/
- Last modified: 17 Jul 2017

- QC 52224

On this page:

- No-cost rights or options
- Rights or options you paid for

No-cost rights or options

The following steps apply to:

- acquiring shares where the rights or options were issued directly to you by a company (but not under an employee share scheme) for no payment because you were a shareholder
- acquiring units where the rights or options were issued directly to you after 28 January 1988 by a trust for no payment because you were a unit holder.

1. Did you acquire the original shares or units before 20 September 1985?

Yes:	Go to question 2
No:	The acquisition date of the rights or options is the date you acquired the original shares or units. Go to question 3

2. Did you exercise the rights or options on or after 20 September 1985?

Yes:	See answer 1
No:	See answer 2

3. Did you exercise the rights or options?

Yes:	See answer 3
No:	See answer 4

Answer 1

- The shares or units you acquired when you exercised the rights or options are subject to capital gains tax (CGT).
- The acquisition date of the shares or units is the date you exercised the rights or options to acquire the shares or units.
- The first element of the cost base and the reduced cost base of the shares or units is the sum of
  - the market value of the rights or options at the time you exercise them
  - the amount you pay for the shares or units when you exercise the rights or options

    - any amount included in your assessable income because you exercised the rights or options on or after 1 July 2001.

Note: Disregard any capital gain or loss you make from exercising the rights or options to acquire those shares or units.

Answer 2

- If you did not exercise the rights or options, you disregard any capital gain or loss on the sale or expiry of the rights or options.
- If you exercised the rights or options before that date, you disregard any capital gain or loss you make when you dispose of the shares or units that you acquired.

Answer 3

- The shares or units you acquired when you exercised the rights or options are subject to CGT.
- The acquisition date of the shares or units is the date you exercised the rights or options.
- The first element of the cost base and the reduced cost base of the shares or units is the sum of
    - the cost base of the rights or options at the time of exercise
    - the amount you pay for the shares or units when you exercise the rights or options
    - any amount included in your assessable income because you exercised the rights or options on or after 1 July 2001.

Note: Disregard any capital gain or loss you make from exercising the rights or options to acquire those shares or units.

Answer 4

If the capital proceeds on the sale or expiry of the rights or options are more than their cost base, you make a capital gain.

If the capital proceeds are less than their reduced cost base, you make a capital loss.

Rights or options you paid for

The following steps apply to rights or options to acquire shares or units that you:

- paid for and which were issued directly to you from the company (but not under an employee share scheme) or trust
- acquired from an individual or entity that was not a shareholder or unit holder.

Note: These steps don't apply to rights or options for the issue of units if they were exercised before 27 May 2005.

1. Did you acquire the rights or options before 20 September 1985?

Yes: Go to question 2

No: Go to question 4

2. Did you exercise the rights or options?

Yes: Go to question 3

No: See answer 1

3. Did you exercise the rights or options on or after 20 September 1985?

Yes: Go to question 5

No: See answer 4

4. Did you exercise the rights or options?

Yes: See answer 3

No: See answer 2

5. Were the rights or options renewed or extended after 20 September 1985?

Yes: Go to question 6

No: See answer 5

6. Were they exercised before 27 May 2005?

Yes: See answer 5

No: See answer 3

Answer 1

You disregard any capital gain or loss you make on the sale or expiry of the rights or options.

Answer 2

If the capital proceeds on the sale or expiry of the rights or options are more than their cost base, you make a capital gain.

If the capital proceeds are less than their reduced cost base, you make a capital loss.

Answer 3

- The shares or units you acquired when you exercised the rights or options are

subject to CGT.
- The acquisition date of the shares or units is the date you exercised the rights or options.
- The first element of the cost base and reduced cost base of the shares or units is the sum of the amount you paid for the
  - rights or options
  - shares or units when you exercised the rights or options.

Note: Disregard any capital gain or loss you make from exercising the rights or options to acquire those shares or units.

Answer 4

You disregard any capital gain or loss on the shares or units you acquired when you exercised the rights or options because you acquired the shares or units before 20 September 1985.

Answer 5

- The shares or units you acquired when you exercised the rights or options are subject to CGT.
- The acquisition date of the shares or units is the date you exercised the rights or options.
- The first element of the cost base and the reduced cost base of the shares or units includes the sum of the
  - market value of the rights or options when you exercised them
  - amount you paid for the shares when you exercised the rights or options.

Note: Disregard any capital gain or loss you make from exercising the rights or options to acquire those shares or units.

See also:

- Market valuation for tax purposes
- Acquiring rights or options
- Exercising rights or options

Takeovers and mergers, scrip-for-scrip rollover

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Takeovers-and-mergers,-scrip-for-scrip-rollover/
- Last modified: 29 Jun 2018
- QC 52225

If a company in which you own shares is taken over or merges with another company, you may have a capital gains tax (CGT) obligation.

When a company launches a takeover bid by buying shares in the market, they offer money in return for shares. If a company launches an off-market takeover bid, they don't always offer cash in return for shares – they can either offer money or scrip (shares), or a combination of these.

The CGT implications for investors depend on the way the takeover or merger is carried out and whether special rules (scrip-for-scrip rollover) apply. When a takeover involves you receiving shares (or a mixture of shares and cash), you may be able to defer paying CGT until a later CGT event happens under the scrip-for-scrip rollover.

On this page:

CGT treatment when scrip-for-scrip rollover doesn't apply

When scrip-for-scrip rollover does not apply, you have a CGT event when you exchange (dispose of) your existing shares.

To correctly calculate the capital gain or loss for your original shares, you'll need to keep records (in addition to the usual records) showing the parties to the arrangement, the conditions of the arrangement, and the capital proceeds. As each takeover or merger arrangement is different, you need to obtain full details of the arrangement from the parties involved.

Your capital proceeds for your original shares are the total of:

- the market value of the shares you received at the time of disposal of the original shares, and
- the money you received (if any).

The cost of acquiring the shares in the takeover or merged company is the market value of your original shares at the time you acquire the other shares, reduced by any cash proceeds.

See also:

- Market valuation for tax purposes
- Where a takeover or merger affects a large number of people, we may publish specific guidance on the tax implications (see Events affecting shareholders)

Example: Takeover where shares were exchanged for shares with a cash proceed and the scrip-for-scrip rollover doesn't apply

In October 2010, Desiree bought 500 shares in DEF Ltd. These shares are

currently worth $2 each. Their cost base is $1.50.

XYZ Ltd offers to acquire each share in DEF Ltd for one share in XYZ Ltd and 75 cents cash. The shares in XYZ Ltd are valued at $1.25 each. Accepting the offer, Desiree receives 500 shares in XYZ Ltd and $375 cash.

The capital proceeds received for each share in DEF Ltd is $2 ($1.25 market value of each XYZ Ltd share plus 75 cents cash). Therefore, as the cost base of each DEF Ltd share is $1.50, Desiree will make a capital gain of 50 cents ($2 − $1.50) on each share – a total of $250.

The cost base of the newly acquired XYZ Ltd shares is the market value of the shares in DEF Ltd ($2) less the cash amount received ($0.75); that is, $1.25 each or a total of $625 (500 × $1.25).

Scrip-for-scrip rollover

If a company in which you owned shares was taken over and you received new shares in exchange for your original shares, you may be entitled to a scrip-for-scrip rollover. The rollover allows you to defer paying CGT until a later CGT event happens (for example you later dispose of the shares you acquired in the takeover). The rollover doesn't apply if you made a capital loss.

The rollover can be a full rollover, or a partial rollover if you received a combination of shares and money in exchange for your original shares.

You may also be eligible for this rollover if you exchange a unit or other interest in a fixed trust for a similar interest in another fixed trust. However, the rollover is not available if a share is exchanged for a unit or other interest in a fixed trust, or if a unit or other interest in a fixed trust is exchanged for a share.

The rollover is only available if the exchange is a consequence of an arrangement that results in the acquiring entity (or the wholly owned group of which it is a member) becoming the owner of 80% or more of the original company or trust.

For companies, the arrangement may qualify for the scrip-for-scrip rollover if:

- holders of voting interests in the target entity can participate in the merger or takeover on substantially the same terms
- it includes a takeover bid that does not contravene key provisions in Chapter 6 of the *Corporations Act 2001*, or
- if the target entity is a company – it includes a scheme of arrangement approved by a court under Part 5.1 of the Corporations Act.

For trusts, an arrangement may qualify if:

- all owners of trust voting interests in the original entity or, where there are no voting interests, all owners of units or other fixed interests can participate, or
- it includes a takeover bid that does not contravene the Corporations Act.

There are special rules if a company or trust has a small number of shareholders or beneficiaries or there is a significant common stakeholder. If the company or trust doesn't let you know, you will need to ask them whether these conditions have been met.

The rollover allows you to disregard the capital gain made from the original shares, units or other interest. You are taken to have acquired the replacement shares, units or other interest for the cost base of the original interest.

You can apply the CGT discount when you dispose of new shares, providing the combined period in which you owned the original shares and the new shares is at least 12 months. The same applies to units in a trust. Note that you have to deduct any capital losses (including unapplied net capital losses from earlier years) from your capital gains before applying the CGT discount.

Example: Scrip-for-scrip rollover

Stephanie owns ordinary shares in Reef Ltd. On 28 February 2018, she accepted a takeover offer from Starfish Ltd of one ordinary share and one preference share for each Reef Ltd share. The market value of the Starfish Ltd shares just after Stephanie acquired them was $20 for each ordinary share and $10 for each preference share.

The cost base of each Reef Ltd share just before Stephanie ceased to own them was $15.

The offer made by Starfish Ltd satisfied all the requirements for scrip-for-scrip rollover.

If the rollover didn't apply, Stephanie would have made a capital gain per share of:

$30 capital proceeds minus $15 cost base = $15 capital gain

The scrip-for-scrip rollover allows Stephanie to disregard the capital gain. The cost base of the Starfish Ltd shares is the cost base of the Reef Ltd shares.

Note: Apportioning the cost base

As the exchange is one share in Reef Ltd for two shares in Starfish Ltd, the cost base of the Reef Ltd share needs to be apportioned between the ordinary share and the preference share.

Cost base of ordinary share:
$20 ÷ $30 × $15 = $10

Cost base of preference share:
$10 ÷ $30 × $15 = $5

Partial rollover

You may only be eligible for a partial rollover if you exchange shares, units or interests for similar interests in another entity (replacement interest) plus something else, usually cash.

This is because the rollover applies only to the replacement interest. You'll need to apportion the cost base of the original interest between the replacement interest and the cash (or other proceeds not eligible for rollover).

If your original shares, units or other interests were acquired before 20 September 1985 (pre-CGT), you're not eligible for scrip-for-scrip rollover. Instead, you acquire the replacement interest at the time of the exchange and the replacement interest is no longer a pre-CGT asset. However, if the arrangement is one that would otherwise qualify for scrip-for-scrip rollover, the cost base of the replacement interest is its market value just after the acquisition.

Example: Partial scrip-for-scrip rollover

Gunther owns 100 shares in Windsor Ltd, each with a cost base of $9. He accepts a takeover offer from Regal Ltd of one Regal share plus $10 cash for each share in Windsor. Gunther receives 100 shares in Regal and $1,000 cash. Just after he is issued shares in Regal, each share is worth $20.

Gunther has received $10 cash for each of his 100 Windsor shares and so has $1,000 to which the rollover doesn't apply.

In this case, it's reasonable to allocate a portion of the cost base of the original shares having regard to the proportion that the cash bears to the total proceeds (cash plus value of shares received). That is:

Cash	$1,000
Divided by total proceeds: cash and value of shares received	$3,000
Multiplied by the cost base of original share	$900
Equals proportion of cost base for which cash was received	$300

Gunther's capital gain is as follows:

$1,000 cash − $300 cost base = $700 capital gain

Gunther calculates the cost base of each of his Regal shares as follows:

($900 − $300) ÷ 100 = $6

Share buy-backs

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Share-buy-backs/
- Last modified: 29 Jun 2018
- QC 52226

As a shareholder, you may receive an offer from a company to buy back some or all of your shares in the company. If you dispose of shares back to the company under a share buy-back arrangement, you may make a capital gain or loss.

To work out whether you've made a capital gain or loss, you compare the capital proceeds with your cost base and reduced cost base.

When you make the capital gain or loss will depend on the conditions of the particular buy-back offer. For example, it may be the time you lodge your application to participate in the buy-back, or, if it is a conditional offer of buy-back, the time you accept the offer.

The capital proceeds are taken to be what the share's market value would have been if the buy-back hadn't occurred and was never proposed, less the amount of any dividend paid under the buy-back – if both of the following conditions apply:

- the shares are not bought back by the company in the ordinary course of business of a stock exchange – for example, the company writes to shareholders offering to buy their shares (commonly referred to as 'off-market share buy-back'), and
- the buy-back price is less than what the market value of the share would have been if the buy-back hadn't occurred and was never proposed.

In this situation, the company may provide you with the market value or may have obtained a class ruling from us.

If the buy-back price is what the market value of the share would have been if the buy-back hadn't occurred and was never proposed, the capital proceeds is the amount paid, excluding any dividend paid.

See also:

- Market valuation for tax purposes
- For class rulings and specific guidance for some share buy-backs, see Events affecting shareholders

Example: Buy-back offer

Sam bought 4,500 shares in Company A in January 1994 at a cost of $5 per share. In February 2018, Sam applied to participate in a buy-back offer to dispose of 675 shares (15%). Company A approved a buy-back of 10% (450) of the shares on 15 June 2018. The company sent Sam a cheque on 5 July 2018 for $4,050 (450 shares × $9). No part of the payment is a dividend.

Sam works out his capital gain for 2017–18 as follows.

If he chooses the indexation method:

Capital proceeds	$4,050
Cost base 450 shares × $5 ($2,250 × 1.117 including indexation)	$2,513
Capital gain	$1,537

If he chooses the discount method:

Capital proceeds	$4,050
Cost base	$2,250
Capital gain (before applying any discount)	$1,800

Sam has no capital losses to apply against this capital gain and decides that the discount method will provide him with the better result. He takes $900 ($1,800 × 50%) into account in working out his net capital gain for the year.

Example: Off-market buy-back including dividend

Ranjini bought 10,000 shares in Company M in January 2003 at a cost of $6 per share, including brokerage.

In January 2018, the company wrote to its shareholders advising them it was offering to buy back 10% of their shares for $9.60 each. The buy-back price was to include a franked dividend of $1.40 per share (and each dividend was to carry a franking credit of $0.60).

Ranjini applied to participate in the buy-back to sell 1,000 of her shares.

Company M approved the buy-back on 1 May 2018, on the terms anticipated in its earlier letter to shareholders.

The market value of Company M shares at the time of the buy-back (if the buy-back didn't occur and was never proposed) was $10.20.

Ranjini received a cheque for $9,600 (1,000 shares × $9.60) on 8 June 2018.

Because it was an off-market share buy-back and the buy-back price was less than what the market value of the share would have been if the buy-back hadn't occurred, Ranjini works out her capital gain for the 2017–18 year as follows.

Capital proceeds

Calculations	Per share	For 1,000 shares
Market value	$10.20	$10,200
Dividend	$1.40	$1,400
Market value minus dividend	$8.80	$8,800
less cost base	$6.00	$6,000
Capital gain (before applying any discount)	$2.80	$2,800

Ranjini takes her capital gain into account in completing item 18 on her tax return (supplementary section). She also includes her dividend at item 11 ($1,400 at T and $600 at U).

See also:

- Where a share buy-back affects a large number of people, we may publish guidance on the tax implications (see Events affecting shareholders)
- TD 2004/22: *Income tax: for off-market share buy-backs of listed shares, whether the buy-back price is set by tender process or not, what is the market value of the share for the purposes of subsection 159GZZZQ(2) of the Income Tax Assessment Act 1936?*
- PS LA 2007/9: *Share buy-backs*

Demergers and CGT

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Demergers-and-CGT/
- Last modified: 29 Jun 2018
- QC 52227

A demerger involves the restructuring of a corporate or fixed trust group by splitting its operations into two or more entities or groups. Under a demerger, the owners of the head entity of the group (that is, the shareholders of the company or unit holders of the trust) acquire a direct interest (shares or units) in an entity that was formerly part of the group (the demerged entity).

While a demerger may give rise to a capital gain or loss, you:

- can choose a rollover for any capital gain or loss you make under the demerger
- must calculate the cost base and reduced cost base of your interests in the head entity and your new interests in the demerged entity immediately after the demerger.

Foreign residents can only choose a rollover if the new interest acquired under the demerger in exchange for the original interest is taxable Australian property just after the foreign resident acquired it.

If you choose a rollover:

- you disregard any capital gain or loss made under the demerger
- your new interests in the demerged entity are acquired on the date of the demerger. However, if a proportion of your original interests was acquired before 20 September 1985 (pre-CGT), the same proportion of your new interests in the demerged entity is treated as pre-CGT assets.

If you don't choose a rollover:

- you can't disregard any capital gain or loss made under the demerger
- all your new interests in the demerged entity are acquired on the date of the demerger.

Whether or not you choose a rollover, you must recalculate the cost base of your remaining original interests in the head entity and your new interests in the demerged entity.

In addition, a dividend paid under the demerger is generally not subject to tax if at least 50% of the CGT assets (by market value) owned by the demerged entity or its demerger subsidiaries are used by the demerged entity or its demerger subsidiaries in carrying on a business. This concession is automatic unless the head entity elects that it not apply.

Generally the head entity undertaking the demerger will advise shareholders or unit holders that CGT relief is available. Or the ATO may have provided advice in the

form of a class ruling confirming that CGT relief is available.

Find out about:

- Demergers where CGT relief is available
- Cost base calculations
- Using the discount method if you sell your shares after the demerger
- Impact on members of the demerger group

See also:

- Demergers - supporting information
- Non-assessable payments under a demerger
- Demergers calculator can help you to work out the capital gains consequences of certain large demergers
- Where a demerger affects a large number of people, we may publish specific guidance on the tax implications (see Events affecting shareholders)
- Market valuation for tax purposes
- New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002 which introduces Division 125 into the *Income Tax Assessment Act 1997* and amends certain dividend provisions in the *Income Tax Assessment Act 1936* (principally sections 44 and 45B)

Availability of CGT demerger relief

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Demergers-and-CGT/Availability-of-CGT-demerger-relief/
- Last modified: 15 Feb 2018
- QC 54546

Generally the head entity undertaking the demerger will advise owners whether the CGT relief is available, but you should seek our advice if in any doubt. We may have provided advice in the form of a class ruling confirming that CGT relief is available.

CGT rollover is available to a demerger if it:

- involves a demerger group
- satisfies the demerger tests
- is undertaken for commercial reasons.

The following transactions are not eligible for demerger relief:

- share buy-backs (that is, off-market purchases under Division 16K of Part III of the *Income Tax Assessment Act 1936*)
- situations where any owner of the head entity can get rollover relief from other

provisions of the tax law for all capital gains tax (CGT) events that happen to their ownership interests under the demerger.

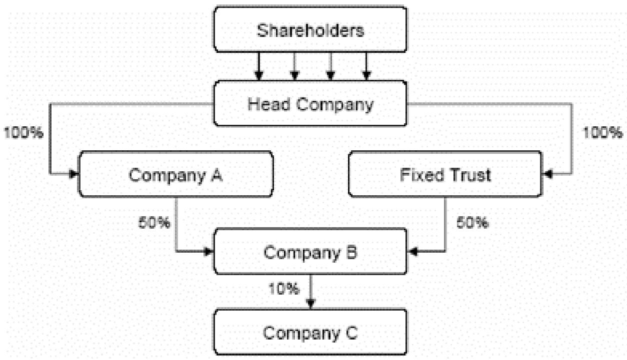
Demerger group

A demerger group consists of a head entity and one or more entities known as demerger subsidiaries. These entities can be companies or fixed trusts. A discretionary trust can't be a member of a demerger group, but it may be one of the owners of the head entity.

The head entity of a demerger group is a company or fixed trust at the top of the group structure. No other entity in the group can have ownership interests in the head entity. However, where the head entity owns more than 20% and less than 80% of a listed company or widely held trust, the listed company or widely held trust can choose for the head entity not to be a member of the demerger group. In this case, the listed company or widely held trust would usually become the head entity.

A demerger subsidiary is a company or fixed trust in which members of the demerger group, either alone or with other members of the demerger group, own or have the right to acquire ownership interests of more than 20% of that entity (generally measured by rights to income or capital and voting rights).

Example: Demerger group



In the example above the demerger group consists of:

- Head Company
- Company A
- Fixed Trust, and
- Company B.

Where:

- Head Company is the head entity
- Company A, Fixed Trust and Company B are demerger subsidiaries.

Company C is not a member of the demerger group because the group members have less than 20% interest in it.

Although Fixed Trust from the example above is a member of the demerger group, it can't be demerged (see Same entity type test). Head Company can demerge either Company A or Company B.

Demerger tests

For a demerger to qualify for tax relief there are a number of basic tests that need to be satisfied; including the:

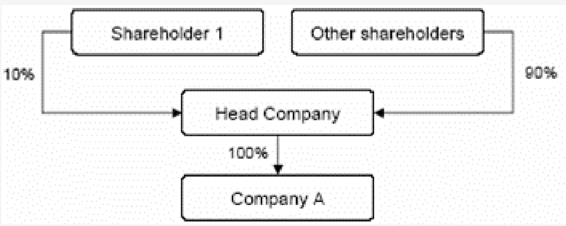
- [80% test]
- [Nothing else test]
- [Same entity type test]
- [Maintenance of ownership test]

Other eligibility requirements may apply to certain demergers.

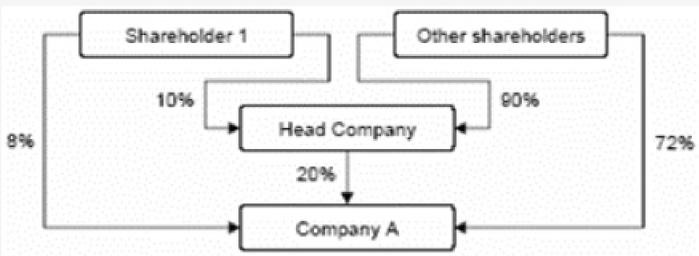
80% test

This test requires that the demerger group must effectively cease to own at least 80% of the interests it holds in the demerged entity. This can occur by disposal of interests, interests ending, swamping or a combination of methods.

Example: Before demerger



Example: After demerger



Head Company demerges 80% of its interests in Company A and retains 20%.

Nothing else test

This test requires that the owners of the head entity must acquire a new interest in the demerged entity and nothing else (for example, they cannot also receive cash). The mere existence of a sale facility for new or original interests will not normally breach this rule.

Same entity type test

This test requires that the new interests must be in the same kind of entity as the original interests. This means that if the head entity is:

- a company, the demerged entity must be a company
- a trust, the demerged entity must be a trust.

For example, demerging a fixed trust to unit-holders of a fixed trust would satisfy the test. Demerging shares in a company to unit-holders of a fixed trust would not satisfy the test.

Maintenance of ownership test

This test requires that after the demerger:

- each owner of the head entity must own the same proportion of new interests in the demerged entity as they previously owned in the head entity (ignoring any other direct interests they hold in the demerged entity)
- each owner must have the same proportionate total market value of ownership interest in the head entity and in the demerged entity as they owned in the head entity before the demerger. Market value can be a reasonable approximation and can be anticipated by the head entity before the demerger.

In working out whether the proportional ownership tests have been satisfied, the following types of interests may be ignored:

- certain qualifying partly paid shares or rights acquired under an employee share scheme if they total no more than 3% of the ownership interests in the head entity
- certain adjusting instruments in listed entities (for example, reset preference shares or convertible notes) if they total no more than 10% of the ownership interests in the head entity.

Commercial reasons

Detailed examples of how the ATO would assess whether a demerger is undertaken for commercial reasons are provided in Examples of how section 45B of the ITAA 1936 applies to demergers.

Examples of how section 45B of the ITAA 1936 applies to demergers

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Demergers-and-CGT/Availability-of-CGT-demerger-relief/Examples-of-how-section-45B-of-the-ITAA-1936-applies-to-demergers/
- Last modified: 15 Feb 2018

- QC 22770

These examples provide further guidance on how section 45B of the *Income Tax Assessment Act 1936* (ITAA 1936) may apply to various demerger situations.

Detailed advice on the application of section 45B to demergers is contained in ATO Practice Statement Law Administration PS LA 2005/21.

The examples, summarised in the following table, discuss demerger factors and circumstances that are particularly relevant for small to medium enterprises. :

	Example no.								
Category	1	2	3	4	5	6	7	8	9
Plans to dispose of interests in either demerged or head entity at time of demerger				Yes	Yes	Yes	Yes	Yes	Yes
Succession and estate planning		Yes				Yes		Yes	Yes
Different types of businesses operated within a corporate group	Yes	Yes	Yes					Yes	Yes
Shares acquired after 20 Sept 1985	Yes			Yes	Yes	Yes	Yes	Yes	Yes
Shares acquired before 20 September 1985		Yes	Yes						
Shares subject to CGT discount or other concession				Yes	Yes	Yes	Yes	Yes	Yes
Profit accumulations and pattern of distributions				Yes	Yes		Yes	Yes	Yes
Separating family					Yes	Yes	Yes	Yes	

arrangements or closely held groups where demergers done for specific shareholders									
Asset protection	Yes	Yes	Yes	Yes				Yes	
Employee share schemes	Yes			Yes	Yes				Yes
Management issues	Yes	Yes		Yes		Yes	Yes	Yes	Yes
Equity raising	Yes		Yes						Yes

Example 1: Company wishing to acquire a rival business

The facts

Jellyco Pty Ltd, an Australian resident company, operates two businesses: an importing/wholesaling business in electrical components and a business of manufacturing lamps. The shareholders of Jellyco are made up of Australian resident individuals and one company. Fred, Sally, Cameron and Simon are all directors of Jellyco. Fred and his wife Sally own the majority of shares in Jellyco.

Jellyco owns all the issued capital in Zapco Pty Ltd. Zapco owns real property currently valued at $1,000,000. Shares in both Jellyco and Zapco were acquired after 20 September 1985.

Jellyco decides to undertake a corporate restructure so it can solely focus and expand its core business of importation and distribution rather than its manufacturing business. Accordingly, Jellyco transfers its manufacturing business (including plant, equipment, key intellectual property and staff) to Zapco at market value, with the intention that Zapco operate an independent business of manufacturing lamps.

Jellyco also wishes to expand its importation/distribution business by acquiring the business of a rival which it has been negotiating with. Part of the purchase price Jellyco is offering to acquire the rival business is granting the owners of the rival business an equity stake in Jellyco via a new issue of shares. Certain venture capitalists will also be provided an equity stake in Jellyco for providing funds to help acquire the rival business.

If the takeover of the rival business is successful, key employees in both Jellyco and the rival business will also be given the opportunity to buy shares in Jellyco.

To help effect its corporate restructure and business expansion, Jellyco wishes to conduct a demerger of Zapco, which it claims will facilitate the takeover of the rival

business and enhance the long term business prospects of both Jellyco and Zapco.

Currently, Jellyco has paid up share capital of $45,000 and a net market value of $4,300,000. The net market value of Zapco is $2,000,000 ($1,000,000 of this value relating to its real property). Zapco's real property is used 50% for its business operations and the other 50% is rented to Jellyco for its business. Fred is Zapco's sole director.

Jellyco shareholders have no plans to dispose of any of their shares in Jellyco or a demerged Zapco after the demerger.

Applicant's stated reasons for demerger

Jellyco states a demerger would provide the following commercial benefits:

- A demerger would help facilitate Jellyco taking over the rival business. Currently, the pre-demerger price of Jellyco is unduly high due to its ownership of Zapco. This hinders the owners of the rival business, their key employees and venture capitalists acquiring an interest in Jellyco, as they would be required to pay a premium to acquire an indirect stake in Zapco. A demerger would allow these parties to acquire an interest in the business of Jellyco only. This is important as offering equity in Jellyco to the above parties is a key factor to help the company take over the rival business;
- A demerger would assist key employees in both Jellyco and the rival business to acquire an equity interest in Jellyco. This should assist the profitability of Jellyco, as these employees have extensive experience and skills in importing and wholesaling electrical products. Without the demerger it would be difficult to grant employees an equity stake, as it would mean giving employees an indirect interest in Zapco's real property and business; and
- Asset protection – as Zapco is a wholly owned subsidiary of Jellyco, its real property and other assets are indirectly exposed to Jellyco's creditors in the event that Jellyco is subject to liquidation.

Commissioner's analysis and decision

On examining the proposed demerger together with the relevant circumstances in subsection 45B(8), the Commissioner accepts the applicant's stated reasons above are positive relevant circumstances that are likely to improve the business structures of both Jellyco and Zapco. The applicant's statement that the shareholders of Jellyco have no current intention of disposing of any of their interests in either Jellyco or Zapco after the demerger is also a relevant factor (paragraphs 73 to 78 of PS LA 2005/21).

Accordingly, in the absence of any evidence that is inconsistent with the above, the Commissioner would not make a determination under subsection 45B(3) that sections 45BA or 45C of the ITAA 1936 apply to the proposed demerger.

Example 2: Corporate group merging with another business

The facts

Lammat Pty Ltd owns and operates a grain broking business. It also owns 100% of the issued capital in two subsidiaries, Landco Pty Ltd and Grainbrok Pty Ltd. Grainbrok is also involved in grain broking and is affiliated with Lammat's grain broking business, while Landco owns and operates a separate farming business.

Han owns 100% of the issued capital in Lammat. All shares in Lammat were acquired by him before 20 September 1985. Lammat's shares in Landco were also acquired before 20 September 1985. Han is a director of both Lammat and Landco.

Management and staff in Lammat have dual roles. They manage both a broking business (Lammat) and a farming business (Landco). Until recently, it was common for Lammat to fund activities and capital improvements to the property of Landco.

Lammat is currently negotiating with another grain company to do a merger with their grain broking business. Part of this merger plan involves demerging Landco, so that Lammat and Grainbrok can form a pure grain broking corporate group.

Applicant's stated reasons for demerger

Lammat states a demerger would provide the following commercial benefits:

- separating the two businesses (grain broking and farming), which have different commercial drivers
- facilitating the merger negotiations with the other grain company, who do not want to be involved indirectly with the farming business operated by Landco
- enabling flexible financing arrangements for the new grain broking group. After the demerger, finance will be secured over the trading inventory of the grain broking group business, rather than using Landco's farm property as part of the security
- providing asset protection for the farming property. Currently the property is at risk should Lammat run into financial difficulties;
- the net profit of Lammat will no longer support Landco's farming business, enabling accurate reporting of Landco's financial viability
- enabling the allocation of staff and management to the separate businesses of the demerged entities enabling focus on business outcomes without conflicting priorities
- Han does not intend to sell his shares in either of the demerged businesses at the time the demerger is proposed
- allowing Han to take direct interests in Landco for Han's estate planning purposes.

Commissioner's analysis and decision

In examining the current demerger proposal in relation to the relevant circumstances stated in subsection 45B(8), the Commissioner took into account the following factors:

- The taxpayer's reasons for demerger, including 'separating the two businesses

as they have different commercial drivers', to enable more 'flexible financing arrangements' and separating management, are very common reasons given in demerger cases. While these factors are relevant, the Commissioner does not automatically accept or dismiss these reasons, but requires proper details to establish what weight should be accorded these factors.

- In this particular case, the Commissioner accepts that the applicants stated reasons above except the last point, are likely to improve the business operations of both Lammat and Landco, with any tax benefits being incidental.
- Another important positive factor is Han's assertion that he has no intention to dispose of his interests in Lammat or Landco after the demerger (paragraphs 73 to 78 of PS LA 2005/21).
- Regarding Han's estate planning however, the Commissioner would not consider this a relevant factor in supporting the business efficiency merits of a demerger of Landco from Lammat (paragraphs 22 & 23 of PS LA 2005/21).

Accordingly, the Commissioner would not make a determination under subsection 45B(3) that sections 45BA or 45C of the ITAA 1936 apply to the proposed demerger.

Example 3: Demerger of subsidiary to promote its business development

The facts

Realco Pty Ltd owns 100% of the issued capital in Keljo Pty Ltd, which operates a substantial pizza business and also owns passive investments in companies on the Australian Stock Exchange. During the relevant income year, the estimated market value of Keljo is approximately $3,000,000.

Realco operates a successful property development business and owns land originally acquired as an investment. The land has a current value of approximately $2,000,000.

All shares in both Realco and Keljo were acquired before 20 September 1985.

Realco now wishes to develop the land it owns into a luxury hotel resort. The hotel project will cost approximately $10,000,000, which Realco intends to raise by issuing new shares in Realco via a public listing.

However the current owners of Realco don't want any new shareholders in Realco (via the public listing) having any indirect interest in Keljo. Commercial research has also indicated that Realco's proposed public listing would not be viewed favourably by the market, if Realco indirectly owns Keljo's pizza business.

Accordingly, as part of the hotel project scheme, Realco proposes to demerge Keljo. Realco also affirms that none of its shareholders intend to dispose or otherwise deal with their shares in either Realco or Keljo after the demerger.

Applicant's stated reasons for demerger

Realco states a demerger would provide the following commercial benefits:

- A demerger will assist in the public listing of Realco, as new investors will not have to pay an extra premium to pay for the assets of Keljo.
- A demerger will allow the totally different businesses of Realco and Keljo to develop independently of each other.
- Asset protection – a demerger will ensure Keljo's established business and passive investments are protected from the financial risks associated with Realco's hotel resort development.

Commissioner's analysis and decision

The Commissioner accepts that the demerger was being undertaken to create two distinct companies operating significantly different businesses, a property development business and a pizza business.

The Commissioner accepts the applicant's stated reasons above constitute positive relevant circumstances, as provided for in subsection 45B(8), that are likely to improve the business structures of both Realco and Keljo. The applicant's statement that the shareholders of Realco have no current intention of disposing of any of their interests in either Realco or Keljo after the demerger is relevant (paragraphs 73 to 78 of PS LA 2005/21).

Accordingly, in the absence of any evidence that is inconsistent with the above, the Commissioner would not make a determination under subsection 45B(3) that sections 45BA or 45C of the ITAA 1936 apply to the proposed demerger.

Example 4: Scheme involving pre-arranged disposal of ownership interests

The facts

Sam owns 100% of the issued capital in Engin Pty Ltd and is its sole director. Engin owns 50% of the issued capital in Subang Pty Ltd. The other 50% of issued capital in Subang is owned by Amanda.

Both Engin and Subang operate successful engineering businesses, although both companies operate in different localities and have different segments of the engineering market.

Sam paid $1,000 for his shares in Engin, and Engin paid $2,000 for its 50% stake in Subang. All the shares in both Engin and Subang were acquired after 20 September 1985.

Although both Engin and Subang have paid dividends to their shareholders in previous years, considerable profits have been retained resulting in increased share value. Engin has a current market value of $1.9 million (with $1.4 million of this value relating to Engin's holdings in Subang).

Sam acknowledges he was negotiating to dispose of Engin's shares in Subang to a third party (an employee of Subang). These negotiations fell through however due to a failure of Sam and the employee agreeing on the sale price. The negotiations were not conditional upon a demerger.

Applicant's stated reasons for demerger

Sam states a demerger would provide the following commercial benefits:

- Sam is conducting negotiations to sell 50% of his shares in Engin to Lucy, an employee of Engin. The proposed sale is conditional on a demerger occurring, as there has been an established history of conflict between Lucy and the half owner of Subang, Amanda. For the last 10 years, Lucy and Amanda have taken legal action against each other over various commercial and civil disputes. Accordingly, Lucy doesn't want to acquire an indirect interest in Subang, due to the high risk of disputes occurring with Amanda. Any disputes may affect the business performance of both Subang and Engin.
- Admission of new equity participants into the business of Engin will enhance its performance, as these new equity participants will have a stake in the business.
- A demerger will allow a separation of risk should either business fail.

Commissioner's analysis and decision

In examining the current demerger proposal in relation to the relevant circumstances in subsection 45B(8), the Commissioner took into account the following factors:

- The significant profit accumulations in both Engin and Subang. This is of particular importance given that the investment in Subang had a cost of only $2000 and the company now has a market value of $1.4 million (paragraphs 57 to 58 of PS LA 2005/21).
- A demerger would deliver significant tax concessions to Sam in that due to the large profit accumulations in Subang, a large tax free demerger dividend of $1.4 million would be paid to him (paragraphs 94 to 95 of PS LA 2005/21).
- The proposed subsequent sale of Sam's 50% stake in Engin is significant as it indicates the tax effective disposal of the Engin shares is a significant factor of the scheme (as this sale would be entitled to the CGT discount). Therefore a significant purpose of the demerger is arguably the tax concessions granted to Sam (paragraphs 73 to 78 of PS LA 2005/21).
- A demerger would not enhance the effectiveness of asset protection for Engin should Subang's business fail, as Engin is a separate legal entity from Subang.
- While a demerger would provide some asset protection for Subang should Engin's business fail, this factor alone does not preclude the application of section 45B.
- While Lucy's conflict with Amanda may be a factor, where there exists more than one purpose for a demerger, the tax purpose must be incidental and subordinate to the other substantial purpose or purposes. It is the Commissioner's view that a substantial purpose in this case is to obtain a tax benefit for Sam (paragraphs 43 to 45 of PS LA 2005/21).
- It is acknowledged that the introduction of an experienced employee as an equity owner in Engin is a relevant factor and may increase productivity and profit. However where there exists more than one purpose for a demerger, the tax purpose must be incidental and subordinate to the other substantial purpose or purposes. It is the Commissioner's view that the substantial

purpose is to obtain a tax benefit (paragraphs 43 to 45 of PS LA 2005/21).

Based on the above facts, the Commissioner would exercise his discretion to make a determination under paragraph 45B(3)(a) of the ITAA 1936 that section 45BA of the ITAA 1936 applies to the demerger benefit provided to Sam under the scheme.

Example 5: Scheme involving pre-arranged disposal of ownership interests after demerger

The facts

Sally, Mandy and Anne each own a third of the total shares in Chowder Pty Ltd (Chowder) which operates the Chowgood restaurant. Chowder also owns 100% of the issued capital in Vegan Pty Ltd (Vegan). Vegan operates the Vege Delight Restaurant. Both the share capital of Chowder and Vegan can be precisely identified as $80,000 and $30,000 respectively. All shares in Chowder and Vegan were acquired after 20 September 1985.

Both Chowder and Vegan operate successful restaurants. The estimated market value of Chowder is $1.5 million (this includes its indirect interest in Vegan) and the estimated market value of Vegan is $500,000.

In previous income years both Chowder and Vegan paid regular large dividends to their shareholders. In 2004, Chowder paid $300,000 in dividends and in 2005 paid $350,000.

In the 2006 income year Chowder did not distribute its net profit. Instead, although Chowder had an operating profit of $250,000 and received a dividend of $200,000 from Vegan, it only declared dividends of $40,000.

In August 2007, Sally, Mandy and Anne decide to demerge Vegan from Chowder. However, the demerger benefit of Vegan shares to Sally, Mandy and Anne does not reflect a correct attribution between capital and profits.

It was agreed that the following would happen once the demerger was completed:

- Sally will sell some of her shares in Chowder to Phillip, who is the restaurant manager of Chowgood
- Sally would sell the remainder of her shares in Chowder to Mandy and Anne, and
- Sally would retain her shares in Vegan.

Applicants stated reasons for demerger

The following reasons were provided by Sally, Mandy and Anne for the demerger:

- The demerger would allow the owners of Chowder to separate their equity interests in both Chowder and Vegan and deal with these interests separately. This is not possible under the current structure where Vegan is a wholly-owned subsidiary.
- Although Sally would like to dispose of her interests in Chowder, she wishes to

retain her shareholding in Vegan. This is not possible under the current structure.
- A demerger would allow persons wishing to acquire an equity stake in one restaurant but not the other to acquire shares in either Chowder or Vegan. This is not possible under the current structure.
- A demerger would facilitate Phillip, the manager of the Chowgood restaurant, acquiring shares in Chowder.
- The above factors would facilitate a more efficient running of the businesses, by having separate equity ownership for both companies.

Commissioner's analysis and decision

In examining the current demerger proposal in relation to the relevant circumstances in subsection 45B(8), the Commissioner took into account the following factors:

- There was a clear interruption of the pattern of profit distribution by Chowder in the 2006 income year. There was no apparent business purpose for the concentration of these profits in Chowder before the demerger and this interruption was also inconsistent with past dividend practice (paragraphs 57 and 84 to 95 of PS LA 2005/21).
- The clear interruption of the pattern of profit distribution in Chowder before the demerger clearly benefits Sally, as it effectively converts what would otherwise be dividend income into a tax beneficial capital amount. This is significant as Sally would be entitled to the CGT discount on any subsequent sale of the Chowder shares, as she has held these shares for more than 12 months. This would provide Sally with a significant tax benefit (paragraphs 84 to 95 and 107 to 108 of PS LA 2005/21).
- The demerger allocation of Vegan shares to Sally, Mandy and Anne did not reflect a correct attribution of capital and profits (paragraphs 49 to 56 of PS LA 2005/21).
- The prearranged disposal of Chowder after the demerger suggests that it was undertaken to transfer corporate assets to shareholders rather than restructure the businesses of the respective companies (paragraphs 73 to 78 of PS LA 2005/21). It is also clear on the facts provided that the demerger was conducted for a more than incidental purpose to facilitate the tax effective disposal of Sally's shares in Chowder.
- After the demerger there were no alterations to the business operations of either Chowder or Vegan, other than the sale of shares to the manager of the Chowgood restaurant.
- While Sally wishing to retain her interests in a demerged Vegan is a relevant factor, where there exists more than one purpose for a demerger, the tax purpose must be incidental and subordinate to the other substantial purpose or purposes. The Commissioner's view is that the substantial purpose in this case is to obtain a tax benefit for Sally and the other shareholders of Chowder.
- While it is acknowledged that the manager of the Chowgood restaurant taking an equity stake in Chowgood may promote some business efficiencies, this factor does not result in the purpose of obtaining a tax benefit being reduced to an insignificant purpose (paragraphs 43 to 45 of PS LA 2005/21).

Based on the above facts, it is clear that a significant purpose of the proposed

demerger and subsequent sale was to obtain a tax benefit. The tax benefits were to provide Chowder's shareholders with a tax free demerger dividend and entitle Sally to reduce her assessable income by applying the discount capital gain to the sale of her shares. The demerger also resulted in profits in Vegan being distributed as preferentially taxed capital to Sally, Mandy and Anne. The facts also do not disclose the intention to substantially improve business efficiency.

Accordingly, the Commissioner would make a determination under paragraph 45B(3)(a) of the ITAA 1936 that section 45BA would apply to treat the demerger dividend as assessable income to the shareholders of Chowder.

Example 6: Scheme involving later disposal of ownership interests after demerger

The facts

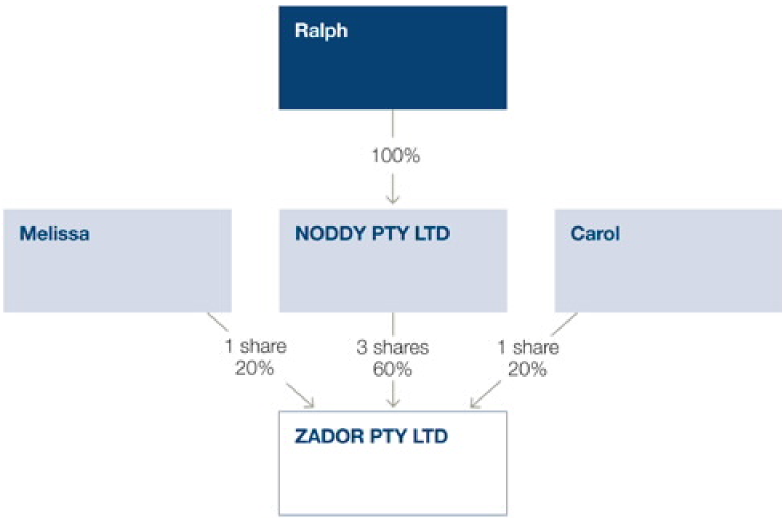
Zador Pty Ltd (Zador) conducts a business of importing, wholesaling and distributing widgets and other products.

Zador has three shareholders, Noddy Pty Ltd (holding three shares), Carol (holding one share) and Melissa (holding one share). Noddy is wholly owned by Ralph. Ralph is also the managing director of both Noddy and Zador. The shares in both Noddy and Zador were acquired post 20 September 1985.

Ralph is married to Carol and is Melissa's brother.

The corporate structure of Zador and its shareholders is shown below.

Zador and its shareholders pre-demerger

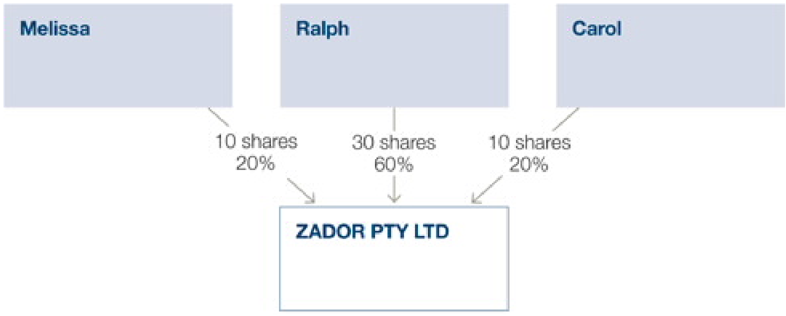


In the relevant income year, Noddy proposes a demerger of Zador. As a step just before demerger, Zador undertakes a one for ten share split in proportion to each shareholder's holding in the company. Accordingly after the share split, Noddy will hold 30 Zador shares and Carol and Melissa will hold 10 Zador shares each.

A day after the share split, Zador is demerged from Noddy. Ralph now holds the

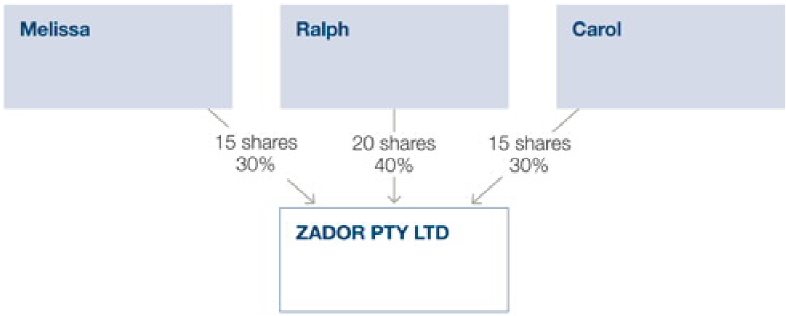
Zador shares previously held by Noddy as shown below:

Zador and its shareholders post-demerger



It was agreed between the parties that following the demerger, Ralph will sell five Zador shares each to Carol and Melissa. The consideration for the sale will be the current market value of the shares, being $500,000 per Zador share. Accordingly after the sale, Ralph's shareholding in Zador decreases to 20 shares and Melissa and Carol hold 15 Zador shares each.

Zador and its shareholders post Ralph's sale of shares



Applicant's stated reasons for demerger

The following reasons were provided by Noddy for the demerger:

- it would simplify the shareholding structure of Zador for Ralph – by removing Noddy as a shareholder
- Ralph's asset portfolio would be simplified
- it would remove one layer of ownership and thereby reduce the administrative costs for the relevant entities
- the management and shareholding decisions regarding Zador could be done directly through Ralph, rather than through Noddy
- As Ralph is intending to take a less active role in the management of Zador, the share sale to both Carol and Melissa was designed to reflect their taking a more active management interest in the business.

Commissioner's analysis and decision

In examining the current demerger proposal in relation to the relevant circumstances in subsection 45B(8), the Commissioner took into account the following factors:

- The facts indicated that the demerger was done to facilitate Ralph disposing of

20% of his total shares in Zador as soon as practicable after the demerger, rather than to promote any business efficiencies in either Noddy or Zador (paragraphs 73 to 78 and 89 of PS LA 2005/21).

- The disposal (at market value) of the Zador shares by Ralph would be to related parties (paragraphs 81 to 98 of PS LA 2005/21).
- The substance and effect of the scheme involves Ralph obtaining significant tax and financial benefits from the demerger and subsequent sale of 10 of his Zador shares. Ralph would be entitled to the CGT discount concession on the sale of these shares (paragraphs 94 to 95 of PS LA 2005/21).
- The purposes mentioned by Noddy did not disclose any change or improvement to the businesses of the demerger group, apart from managerial changes which were not dependent on undertaking a demerger.
- Some of the reasons for the demerger describe the effect of the demerger (that is, reducing administration costs, simplification of the NFT structure, management decisions being made by Ralph rather than Noddy) and these appear relatively insignificant.
- In the absence of substantial business reasons for the demerger, the significant tax benefits obtained by Ralph assume greater significance (paragraphs 22 to 23 of PS LA 2005/21).

Based on the above facts the Commissioner would make a determination under paragraph 45B(3)(a) of the ITAA 1936 that section 45BA of the ITAA 1936 applies to the demerger benefit provided under the scheme.

Example 7: Scheme involving family arrangement and later disposal of ownership interests after demerger

The facts

In the relevant income year PEP Pty Ltd owned 100% of Sabu Products Pty Ltd. Sabu operates a business of manufacturing and marketing various commercial products. All shares in Sabu were acquired after 20 September 1985.

All shares in PEP are owned by six members of the Butcher family – Fred and Wendy Butcher and their four children, Al, Mark, Karen and Judy. Each family member has 10 ordinary shares in PEP which were acquired after 20 September 1985.

During the relevant income year, Sabu's managing director was Fred Butcher, with his son Al Butcher as technical manager. However bitter management disagreements between Al and Fred on how Sabu should be run occurred, which led to discord within the entire Butcher family.

The ongoing and continual feuds between Al and Fred encouraged the Butcher family members to agree to sell Sabu to Al's company, Al Butcher Pty Ltd. It was agreed between the family, that Sabu should be demerged from PEP before the sale.

Accordingly, on the same day the demerger occurred, Fred, Wendy and their children sold their demerged interests in Sabu to Al's company ABP and Fred

resigned as Sabu's managing director. Al became Sabu's sole director and manager.

Applicant's stated reasons for demerger

PEP provided the following reasons for the demerger:

- It was necessary for commercial reasons as Sabu's business future was in jeopardy due to the family disputes over its management.
- Due to the disputes, it was crucial that changes were made to the ownership and management of Sabu to ensure no further disputes arose.

Commissioner's analysis and decision

In examining the current demerger proposal in relation to the relevant circumstances in subsection 45B(8), the Commissioner took into account the following factors:

- The demerger was conditional on the subsequent sale of Sabu. They occurred on the same day. The facts indicate that the demerger was undertaken for a more than incidental purpose in moving the ownership interests in Sabu to the owners of PEP in a tax effective way, rather than facilitating a restructure of the Sabu business (paragraphs 73 to 78 and 89 of PS LA 2005/21).
- While there is a genuine commercial reason for Al's company acquiring the shares in Sabu, where there exists more than one purpose for a demerger, the tax purpose must be incidental and subordinate to the other substantial purpose or purposes. The Commissioner's view is that a substantial purpose in this case is to obtain a tax benefit for the Butcher family members who sold their interests in Sabu. Although there is a significant non-tax reason to sell Sabu, there is no objective commercial explanation for the demerger discernible from the facts.

The Commissioner would take the view that the manner, form, substance and timeframe of the scheme all indicate that there was a significant purpose for the shareholders of PEP to obtain a tax benefit. Accordingly, the Commissioner would make a determination under paragraph 45B(3)(b) of the ITAA 1936 that section 45C of the ITAA 1936 applies to the demerger benefit provided under the scheme.

Example 8: Scheme involving family arrangement and later disposal of ownership interests

The facts

SOC Pty Ltd owns 100% of the issued capital in Mode Pty Ltd.

SOC's business largely consists of investing activities and holding passive real estate investments. Mode carries on an aquaculture business. All shares in Mode were acquired after 20 September 1985.

Previously, SOC had carried on a manufacturing business. However it had received a damages claim against it in respect of one of its products that was later settled. As a result of the product liability claim it ceased its manufacturing business nine years

ago.

On 30 June 2004, SOC was owned by James and his wife Heidi. All shares were acquired before 20 September 1985. At this time SOC had a market value of approximately $6 million. James is sole director and manager of both SOC and Mode.

For some years SOC has built up retained profits from dividend income received from Mode. At 30 June 2005, Mode had share capital of $20,000 and a market value of approximately $1.2 million.

In September 2004 James decides to demerge Mode from SOC, with all Mode shares distributed to SOC shareholders in proportion to their holdings. James's accountants also advised that a demerger would facilitate any future sale of Mode.

Both before and after demerger, James remained manager and director of both SOC and Mode. Both before and after the demerger Heidi continued in her role as bookkeeper of both SOC and Mode. The rest of the structure and management of both companies also remained the same.

In September 2005, the business of Mode was sold to an unrelated third party.

Applicant's stated reasons for demerger

The stated reasons for the demerger were to:

- separate Mode from the potential of future product liability claims being made against SOC in respect of its now ceased manufacturing activities
- allow the management of Mode to focus not only on its existing customer base but also to expand this base
- allow management to focus on Mode's trading activities and invest the necessary time to grow the business without hindrance from the potential for future claims to be made against SOC
- allow SOC to focus on its real estate investment business
- facilitate any future sale of Mode.

Commissioner's analysis and decision

In examining the current demerger proposal in relation to the relevant circumstances in subsection 45B(8), the Commissioner took into account the following factors:

- The facts indicated that the demerger was undertaken to dispose of Mode in a tax effective manner, rather than protect Mode from any potential liability claims made against SOC for its past manufacturing activities (particularly as the product liability claim against SOC occurred many years ago).
- The management structure of both SOC and Mode has remained the same (with James acting as manager and director of both companies) both before and after demerger. The demerger did not bring about a separation of control in the decision making activities of either SOC or Mode.
- With the management structure being the same both pre and post demerger, it's not apparent how a demerger allows management to focus more on the

passive real estate business of SOC or assists the business activities of Mode.

- The essential nature of the scheme allowed Mode shares to be received by SOC shareholders in a tax free form. In addition there has been a transformation of profits into a capital asset in the hands of SOC shareholders, who were then able to utilise the small business CGT concessions on the later disposal of the Mode business (paragraphs 43 to 45 and 84 to 95 of PS LA 2005/21).
- The contemporaneous documentation suggests that the demerger was also done with a view to a future possible sale of the Mode business (paragraphs 73 to 78 of PS LA 2005/21).

Based on the above, it is not apparent that the demerger was entered into for commercial reasons. Therefore the tax benefits to the relevant shareholders of SOC have greater significance (paragraphs 22 and 23 of PS LA 2005/21). Due to the above facts, the Commissioner would make a determination under paragraph 45B(3)(a) of the ITAA 1936 that section 45BA of the ITAA 1936 applies to the demerger benefits provided under the scheme.

Example 9: Demerger of subsidiary due to several problems with current corporate structure

The facts

ACMORE Pty Ltd, which operates a legal practice, is owned equally by Larry, Jill and Gwen, each of whom owns 100,000 $1 dollar shares in the company. All ACMORE shares were acquired after 20 September 1985. While Larry, Jill and Gwen are the senior partners in the law practice, ACMORE also employs eight other senior and junior lawyers.

ACMORE also owns 100% of the issued capital (made up of 50,000 $1 dollar shares) in Malachi Mortgages Ltd. All of Malachi's shares were acquired after 20 September 1985. Malachi operates a mortgage business. Although Malachi has a share capital of only $50,000, it has approximately $2.3 million in retained earnings due to the success of its business. Larry, Jill and Gwen are directors of Malachi, along with four other independent directors.

Currently, both ACMORE and Malachi operate out of the same premises.

Applicant's stated reasons for demerger

Larry, Jill and Gwen now propose demerging Malachi from ACMORE for the following reasons:

- The two companies have distinct separate businesses, with different management protocols, regulatory requirements, IT systems, employees, etc.
- Immediately after the demerger of Malachi, the company will issue shares to new investors, who will provide additional capital that will be used to expand Malachi's mortgage business. These new shareholders, (who have extensive experience in the mortgage business) will also be appointed as directors of Malachi and are expected to improve its commercial performance.

- A demerger will allow the separate board of directors to focus on their respective company's direction independently of the other company's regulatory and business requirements.
- A demerger will facilitate employee share schemes that both companies wish to implement immediately after the demerger. It is asserted that the current corporate structure impedes implementation of effective employee share schemes, as any legal employee of ACMORE would have to pay a premium to buy an equity stake in ACMORE due to the company's ownership of Malachi. ACMORE states that its legal employees are not interested in investing or being involved in Malachi's mortgage business. It is also asserted that Malachi's employees are not interested in being linked to the incorporated law practice of ACMORE.
- It is stated that employee share schemes (by the issue of new shares in the respective company) will encourage key staff to remain in both companies and will assist both businesses to grow and become more efficient.
- As Larry and Jill are of retirement age, they intend to sell part of their interests in ACMORE to key employees over the next 5 to 10 years as part of succession planning for the business. This plan will allow the legal practice to continue smoothly, with new lawyers gradually taking over the business over the coming years. Gwen, who is 45, has no intention of selling her shares in ACMORE and will remain a senior partner in the business. However, Larry, Jill and Gwen have no immediate intention to sell their shares in either ACMORE or Malachi after the demerger.
- Larry, Jill and Gwen also believe that the current corporate structure of ACMORE owning Malachi potentially breaches their legal regulatory body's rules, that forbids a legal incorporated practice or a related entity (which Malachi is) from conducting a managed investment scheme. As Malachi's mortgage business conducts managed investment schemes, Larry, Jill and Gwen state that ACMORE's ownership of Malachi may breach these rules. The partners also state that the penalty for breaching the legal regulatory body's rules could lead to deregistration of ACMORE's incorporated legal practice.

Commissioner's analysis and decision

In examining the current demerger proposal in relation to the relevant circumstances in subsection 45B(8), the Commissioner took into account the following factors:

- Both ACMORE and Malachi operate distinct independent businesses. Malachi has its own independent directors and the companies are financially independent of each other both before and after demerger.
- A demerger will allow both businesses to pursue independent growth strategies. Malachi will also have new shareholder/directors whose capital and experience should improve the business performance of the company.
- Employee share schemes will be implemented immediately after the demerger by both ACMORE and Malachi so that key staff will maintain their employment with the companies and have a vested financial interest in improving the operational performance of the two businesses.
- Although Larry and Jill have an intention to sell some of their interests in

ACMORE to new equity partners over several years in the future, they assert that they have no immediate intention of selling their holdings in ACMORE after the demerger (paragraphs 73 to 78 of PS LA 2005/21).
- Regarding ACMORE's potential breach of the legal regulatory body's rules, it is the Commissioner's position that contravention of an existing rule, regulation or law does not by itself, justify a demerger for section 45B purposes. Rather, it is a relevant factor to consider amongst other relevant factors of the particular case.
- If succession planning is a purpose for the demerger, it is likely that the Commissioner will closely examine the issue in relation to section 45B. However, section 45B may not apply in situations where the demerger is being driven by proper commercial considerations that require a demerger and the succession planning will occur at a much later time in the future. In this case the demerger is being driven by those proper commercial purposes, namely the need for additional equity capital for the business of Malachi and the implementation of employee share acquisition arrangements in both ACMORE and Malachi.
- It is also significant that the existing ACMORE shareholders will retain the same proportion of their ownership in Malachi as they own in ACMORE before the demerger for a significant period of time after Malachi has been demerged from ACMORE.

In examining the current demerger proposal in relation to the factors mentioned above, the Commissioner accepts that a demerger will improve the business operations of both ACMORE and Malachi (paragraphs 6 to 9 and 22 of PS LA 2005/21). Accordingly, the Commissioner would not make a determination under subsection 45B(3) that sections 45BA or 45C of the ITAA 1936 apply to the proposed demerger.

Cost base calculations

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Demergers-and-CGT/Cost-base-calculations/
- Last modified: 15 Feb 2018
- QC 52228

If you receive new interests in a demerged entity, you must recalculate the first element of the cost base and reduced cost base of any remaining original interests in the head entity you continue to hold and of your new interests in the demerged entity. This applies whether or not you choose a CGT rollover.

If the cost bases have been adjusted under the demerger provisions, no other adjustments are to be made as a result of the demerger (for example, under the general value shifting rules).

The calculation varies depending on whether or not you have pre-CGT original interests in the head entity.

On this page:

- Cost base calculations where you don't have pre-CGT interests
- Cost base calculations where you do have pre-CGT interests

Cost base calculations where you don't have pre-CGT interests

You work out the cost base and reduced cost base of your remaining post-CGT original interests and your post-CGT new interests immediately after the demerger. You do this by spreading the total cost base of your original interests (immediately before the demerger) over both your remaining original interests and your new interests. The following steps explain how to do this.

The steps and example use the relative market value method (also known as the averaging method). You may be able to use other methods if they are reasonable.

Step 1	Add the cost bases of your original interests immediately before the demerger. (Don't reduce your total cost base by any capital amounts returned to you under the demerger and don't include indexation.)
Step 2	Use the relevant percentages to apportion the step 1 amount between: • your original interests in the head entity, and • your new interests in the demerged entity. The head entity should advise you of the relevant percentages to use.
Step 3	Divide the cost base apportioned to the head entity interests (from step 2) by the number of remaining post-CGT original interests you own.
Step 4	Divide the cost base apportioned to the demerged entity interests (from step 2) by the number of post-CGT new interests you own.

These amounts will form the first element of the cost base and reduced cost base of your post-CGT original interests and post-CGT new interests.

While capital gains and capital losses on the sale of pre-CGT shares are generally ignored, a capital gain may be made under CGT event K6 on the sale of pre-CGT shares if the market value of the post-CGT property in the company equals or exceeds 75% of the entity's net assets.

See also:

- Taxation Determination TD 2006/73 – sets out the cost base calculation methods that can be used depending on the circumstances of the demerger

Example: No pre-CGT interests

Under the BHP Billiton Ltd demerger of BHP Steel Ltd, shareholders received one BHP Steel share for every five BHP Billiton shares they owned on the date of the demerger.

Anita owned 280 BHP Billiton shares (all post-CGT) with a cost base of \$2,500 immediately before the demerger. Under the demerger, Anita received 56 BHP Steel shares. Anita works out the cost base and reduced cost base of her BHP Billiton shares and BHP Steel shares as follows:

Step 1	The total cost base of the BHP Billiton shares immediately before the demerger was \$2,500.
Step 2	BHP Billiton advised shareholders to apportion 94.937% of the total cost base from step 1 to BHP Billiton shares and 5.063% to BHP Steel shares: (a) BHP Billiton: 94.937% \$2,500= \$2,373.43 (b) BHP Steel: 5.063% \$2,500= \$126.58
Step 3	Divide the step 2(a) amount by the 280 BHP Billiton shares: \$2,373.43 ÷ 280 = \$8.48 per share
Step 4	Divide the step 2(b) amount by the 56 BHP Steel shares: \$126.58 ÷ 56 = \$2.26 per share

Cost base calculations where you do have pre-CGT interests

If you choose a rollover

If you choose a rollover and a proportion of your original interests are pre-CGT, the same proportion of your new interests will be treated as pre-CGT interests. It's not necessary to calculate the cost base and reduced cost base for your pre-CGT interests.

You calculate the cost base and reduced cost base of your remaining post-CGT original interests and your post-CGT new interests in the same way – as shown in the example below.

There is no change to the acquisition date of your original interests.

If you don't choose a rollover

If you don't or can't choose a rollover (for example, because a CGT event did not

happen to your original interests), the new interests that you receive for your pre-CGT original interests are treated as post-CGT interests. You work out the cost base of the new interests under the ordinary cost base rules (this will generally be equal to the capital return and dividend distributed from the head entity that is applied to acquire the new interests).

Note: It may be to your advantage not to choose a rollover for new interests you receive for your pre-CGT original interests – for example, where the reduced cost bases of those new interests calculated under the ordinary cost base rules mean you will make a capital loss when you dispose of them.

You calculate the cost base and reduced cost base of your remaining post-CGT original interests and your post-CGT new interests (other than those received for pre-CGT original interests) in the same way as shown in the example above – except that you ignore the new interests received for pre-CGT original interests in the calculation.

There is no change to the acquisition date of your original interests.

Example: With pre-CGT interests

Anita owned 400 BHP Billiton shares immediately before the demerger:

- 120 pre-CGT shares
- 280 post-CGT shares (the cost base of which, immediately before the demerger, was $2,500).

If Anita chose a rollover, the 24 BHP Steel shares she received for the 120 pre-CGT BHP Billiton shares will also be pre-CGT. It's not necessary to work out the cost base and reduced cost base for pre-CGT interests.

Immediately after the demerger, she calculates the cost base and reduced cost base of her 280 post-CGT BHP Billiton shares and the 56 BHP Steel shares she received for those BHP Billiton shares, in the same way as shown in the previous example.

If Anita did not choose a rollover, the 24 BHP Steel shares she received for the 120 pre-CGT BHP shares are post-CGT shares acquired on the date of the demerger. Immediately after the demerger, the cost base and reduced cost base of the 24 BHP Steel shares are $3.45 per share (the capital return of $0.69 per share 5).

Immediately after the demerger, she calculates the cost base and reduced cost base of her 280 post-CGT BHP Billiton shares and the 56 BHP Steel shares she received for those BHP Billiton shares, in the same way as shown in the previous example.

In either case, there is no change to the pre-CGT status of Anita’s 120 BHP Billiton shares.

See also:

- [Demergers: Sale of pre-CGT shares in a demerged entity]
- [Using the discount method if you sell your shares after the demerger]

Demergers: Sale of pre-CGT shares in a demerged entity

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Demergers-and-CGT/Cost-base-calculations/Demergers--Sale-of-pre-CGT-shares-in-a-demerged-entity/
- Last modified: 15 Feb 2018
- QC 17556

While capital gains and capital losses on the sale of pre-CGT shares or units are generally ignored, a capital gain may be made under CGT event K6 on the sale of pre-CGT shares or units if the market value of the post-CGT property in the company equals or exceeds 75% of the entity's net assets.

This information explains how to treat the effect of CGT event K6 on the sale of your demerged entity shares when working out your net capital gain or net capital loss carried forward to later income years in your tax return for 2003 and later years.

Head entity was listed on a stock exchange at time of demerger

From 1 July 2002, if you sell your pre-CGT shares in a demerged entity, CGT event K6 doesn't apply to the sale if:

- the demerged entity is listed on a stock exchange at the time of sale
- the period in which the demerged entity has been continuously listed, and the period in which the head entity was continuously listed before the demerged entity was listed, totals five years or more, and
- the demerger happened not more than five years before the time of the sale.

Therefore, these conditions are met and CGT event K6 doesn't apply if you sell your pre-CGT shares in:

- BHP Steel Ltd (renamed BlueScope Steel Ltd)
- WMC Resources Ltd, or
- Rinker Group Ltd.

Example

You owned 100 pre-CGT shares in BHP Billiton Ltd and received 20 shares in BHP Steel Ltd (renamed BlueScope Steel Ltd) under the demerger in July 2002. You chose rollover relief under the demergers measure which means your 20 BHP Steel shares are taken to be pre-CGT shares.

If you sell your 20 BHP Steel shares, there is no capital gain from CGT event K6. This is because the period that BHP Steel Ltd has been listed on the stock exchange since the demerger, and the period that BHP Billiton Ltd was listed prior to BHP Steel Ltd being listed, totals more than five years.

Head entity was not listed on a stock exchange at time of demerger

If the head entity was not listed on a stock exchange at the time of the demerger, CGT event K6 may apply to the sale of your pre-CGT shares in the demerged entity unless the demerged entity was listed on a stock exchange at all times in the five years before the time of the sale.

CGT event K6 applies to the sale of pre-CGT shares in the demerged entity if the market value of the entity's post-CGT property is equal to or exceeds 75% of the entity's net assets. You may need to contact the entity to obtain information to help you calculate your capital gain.

See also:

- *Income Tax Assessment Act 1997,* subsections 104-230(9) and (9A)

Using the discount method if you sell your shares after the demerger

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Demergers-and-CGT/Using-the-discount-method-if-you-sell-your-shares-after-the-demerger/
- Last modified: 15 Feb 2018
- QC 52229

If you sell your new interests in the demerged entity after the demerger, you must have owned corresponding original interests in the head entity for at least 12 months in order to use the discount method.

Example

You received BHP Steel Ltd shares under the demerger on 22 July 2002. They related to shares you acquired in BHP Billiton Ltd on 15 August 2001. You can only use the discount method to work out your capital gain on these shares if you dispose of them after 15 August 2002 – that is 12 months or more after the date you acquired the BHP Billiton shares.

However, you calculate the 12 months from the date of demerger if you:

- did not choose the rollover and you received new interests in the demerged entity which relate to pre-CGT interests in the head entity, or
- acquired your new interests without a CGT event happening to your original interests.

You received BHP Steel Ltd shares under the demerger where you calculated the cost base as $3.45 per share (because they related to pre-CGT shares you owned in BHP Billiton Ltd and you did not choose a rollover). You can only use the discount method to work out your capital gain on these shares if you disposed of them after 22 July 2003 – that is 12 months or more after the demerger.

See also:

- Cost base calculations

Impact on members of the demerger group

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Demergers-and-CGT/Impact-on-members-of-the-demerger-group/
- Last modified: 15 Feb 2018
- QC 54547

The consequence for members of a demerger group that undertakes a demerger is:

- Capital gains or capital losses are disregarded if they arise under the following CGT events happening to the group's interests in the demerged entity:
  - disposal (CGT event A1)
  - cancellation (CGT event C2)
  - ending of an option to acquire a share (CGT event C3), or
  - capital gain made on certain pre-CGT shares or trust interests (CGT event K6).

No other cost base adjustments

If the cost bases have been adjusted under the demerger provisions, no other adjustments are to be made as a result of the demerger (for example, under the general value shifting rules).

GST and demergers

If your corporate group undertakes a demerger which involved making financial supplies for goods and services tax (GST) purposes, you may be subject to a denial of input tax credits on acquisitions to the extent that they relate to the making of those financial supplies. A financial supply for GST purposes in the context of a demerger includes the provision, acquisition or disposal of securities or units in a unit trust.

If you are denied input tax credits on acquisitions that relate to making financial supplies you may still be entitled to a reduced input tax credit on certain acquisitions which are identified as reduced credit acquisitions under the GST regulations.

Information on GST financial supplies is available in a number of GST public rulings located on the ATO Legal Database including:

- GSTR 2003/9 – financial acquisitions threshold
- GSTR 2004/1 – reduced credit acquisitions
- by requesting a GST private ruling.

Demutualisation of insurance companies

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Demutualisation-of-insurance-companies/
- Last modified: 29 Jun 2018
- QC 52230

If you held a policy in a life insurance company or general insurance company that demutualised, you may be subject to capital gains tax (CGT) either at the time of the demutualisation or when you sell your shares (or another CGT event happens).

A company demutualises when it changes its membership interests to shares.

The insurance company may have given you an option to either keep your share entitlement or take cash by selling the shares under contract through an entity set up by the company.

If it is an Australian insurance company and you chose to keep the shares, you're not subject to CGT until you eventually sell them or another CGT event happens. However, if you chose to sell your share entitlement to the company, you need to

include any capital gain on your tax return in the income year in which you entered into the contract to sell the shares, even though you may not have received the cash until a later income year.

The demutualising company will have written to all potential shareholders to advise them of the acquisition cost (sometimes referred to as the embedded value). Even though you didn't pay anything to acquire the shares, they have a value that is used as the cost base and reduced cost base for CGT purposes.

If you sold your shares before the insurance company listed on the stock exchange and you made a capital loss, you disregard the loss.

If you hold a policy in an overseas insurance company that demutualises, you may be subject to CGT at the time of the demutualisation. Phone us for advice (on 13 28 61) if this applies to you.

On this page:

Demutualisation of private health insurers

The law relating to the CGT treatment of policy holders of health insurers who receive cash or shares when their health insurer demutualises changed with effect from 1 July 2007.

If you held a policy of a private health insurer that converted from a not-for-profit insurer to a profit insurer by demutualising, you disregard capital gains and losses you make from a CGT event happening to your interest or other right you have or had in the insurer.

If you received shares or rights to acquire shares as a result of the demutualisation, you will be taken (for CGT purposes) to have acquired each share or right at the time it was issued. The first element of the cost base or reduced cost base is equal to the market value of that share or right on the day they were issued.

Any sale of the shares or rights will be a CGT event that may give rise to a capital gain or loss in the income year in which you enter into the contract of sale. This includes when the shares are sold through the sale facility.

If you received a cash payment under the demutualisation that was not as a result of the sale of the shares or rights, you will not have made a capital gain or loss.

Demutualisation of friendly societies

The law relating to the CGT treatment of policy holders of friendly societies who receive cash or shares when their friendly society demutualises changed with effect from 1 July 2008.

If you held a policy of a friendly society that demutualised from a not-for-profit

friendly society to a profit friendly society, you may be able to disregard your capital gain or loss from the CGT event. You can disregard capital gains and losses you make from a CGT event happening to your interest or other right you had in the friendly society except where you received cash. Your friendly society should have advised whether you realised a capital gain or loss.

If you received only shares, or rights to acquire shares, as a result of the demutualisation of your friendly society, we consider for CGT purposes that you acquired each share or right at the time it was issued.

Your friendly society should have advised you of the cost base of the shares or rights to acquire shares. The cost base, or reduced cost base, will be a proportion of the total of the:

- market value of the health insurance business, and
- embedded value of the life insurance business and any other business of the friendly society.

Selling the shares or rights (through the sale facility or otherwise) will be a CGT event that may give rise to a capital gain or loss in the income year in which you enter into the contract of sale.

Convertible notes

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Convertible-notes/
- Last modified: 29 Jun 2018
- QC 52231

A convertible note earns interest on the amount you pay to acquire the note until the note's expiry date. On expiry, you can either ask for the return of the money paid or convert the note to new shares or units.

Convertible notes you acquire after 10 May 1989 are generally not subject to capital gains tax (CGT) if you sell or dispose of them before they are converted into shares. Instead, you include any gain you make on your tax return as ordinary income, and any loss as a deduction (see You and your shares).

If the taxation of financial arrangements (TOFA) rules apply to you, gains and losses from your convertible notes may be taxed under the TOFA rules.

On this page:

- Conversion of notes to shares
- Conversion of notes to units

Conversion of notes to shares

Shares acquired by the conversion of convertible notes on or after 20 September 1985 are subject to CGT when they are sold or disposed of as the shares are taken to be acquired when the conversion happens.

You may have acquired the convertible note on or after 20 September 1985 and, as a traditional security or qualifying security, you have already included the gain you made on the conversion of the notes on your tax return as income (or as a deduction, if you made a loss). The way you calculate the cost base of the shares varies depending on whether the notes converted to shares before 1 July 2001 or on or after that date.

If you have convertible notes that are traditional securities and were issued by a company after 14 May 2002:

- any gains you make when these notes are converted or exchanged for ordinary shares in a company are not be ordinary income at the time of conversion or exchange, and any losses you make are not deductible
- instead, any gains or losses you make on the later sale or disposal of the shares (incorporating any gain or loss that would have been made on the conversion or exchange of the notes) are
  - subject to CGT if you are an ordinary investor, or
  - ordinary income (or deductible, in the case of a loss) if you are in the business of trading in shares and other securities.

Conversion of notes to units

If your convertible notes are traditional securities, the first element of the cost base and reduced cost base of the units includes:

- the cost base of the convertible notes, plus
- any amount paid on conversion, plus
- any amount included in your assessable income on conversion.

You disregard any capital gain or loss made on their conversion to units in the unit trust.

Similarly, if the convertible notes are not traditional securities and were issued by the unit trust after 28 January 1988, the first element of the cost base and reduced cost base of the units includes:

- the cost base of the convertible notes, plus
- any amount paid on conversion, plus
- any amount included in your assessable income on conversion.

You disregard any capital gain or loss made on their conversion to units in the unit trust.

Example: Converting notes to shares

David bought 1,000 convertible notes in DCS Ltd on 1 July 1997 (that is, notes were issued before 15 May 2002) at a cost of $5 each. Each convertible note is convertible into one DCS Ltd share. On expiry of the notes on 1 July 2000, shares in the company were worth $7 each. David converted the notes to shares, which are subject to CGT. No further amount was payable on conversion. David sold the shares on 4 December 2017 for $10 each.

The $2 ($7 minus $5) gain that David made on the conversion of each of the notes to shares was assessable as ordinary income at the time of conversion – that is, in 2000–01 income year. As such, David had no capital gain in that year.

The $3 ($10 minus $7) gain David made on the sale of each of the shares is subject to CGT. The $7 cost base is the market value per share on the date the notes converted to shares. Because he sold the shares after 11.45am (by legal time in the ACT) on 21 September 1999, and owned them for at least 12 months, David can claim the CGT discount. He calculates his capital gain as follows:

$3 per share × 1,000 shares =	$3,000
Less: CGT discount of 50% =	$1,500
Net capital gain =	$1,500

David includes the capital gain on his 2017–18 income tax return.

See also:

- Market valuation for tax purposes

Stapled securities

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Stapled-securities/
- Last modified: 29 Jun 2018
- QC 52232

Stapled securities are created when two or more different securities are legally bound together so that they can't be sold separately. Many types of securities can be stapled together. For example, many property trusts have their units stapled to the shares of companies with which they are closely associated.

Although the stapled security must be dealt with as a whole, the individual securities that are stapled are treated separately for tax purposes. For example, if a share in a company and a unit in a unit trust are stapled:

- the owner continues to include dividends from the company and trust distributions from the trust separately in their income tax return
- the share is a separate capital gains tax (CGT) asset from the unit, so capital gains and losses are determined separately for each asset.

The rules set out here don't apply to stapled securities acquired under an employee share scheme.

On this page:

- Cost base calculations
- Disposing of a stapled security
- Scrip for scrip rollover and stapled securities

Cost base calculations

Because each security that makes up a stapled security is a separate CGT asset, you must work out a cost base and reduced cost base for each of them. If you acquired the securities after they were stapled (for example, you bought the stapled securities on the Australian Securities Exchange), you do this by apportioning, on a reasonable basis, the amount you paid to acquire the stapled security (and any other relevant costs) between the various securities that are stapled.

One reasonable basis of apportionment is to base it on the portion of the value of the stapled security that each security represented. The issuer of the stapled security may help you to determine these amounts.

Example

On 1 September 2002 Cathy acquired 100 JKL stapled securities, which comprised a share in JKL Ltd and a unit in the JKL Unit Trust. She paid $4.00 for each stapled security and, on the basis of the information provided to her by the issuer of the stapled securities, she determined that 60% of the amount paid was attributable to the value of the share and 40% to the value of the unit. On this basis, the first element of the cost base and reduced cost base of each of Cathy's shares in JKL Ltd is $2.40 ($4.00 × 60%). The first element of the cost base and reduced cost base of each of Cathy's units in JKL Unit Trust is $1.60 ($4.00 × 40%).

If you acquired your stapled securities as part of a corporate reorganisation, you will, during the restructure, have owned individual securities that were not stapled. The cost base and reduced cost base of each of these securities depends on the specific terms of the stapling arrangement.

The stapling does not result in any CGT consequences for you, because the individual securities are always treated as separate securities. However, as the example below demonstrates, there may be other aspects of the whole restructure arrangement that will result in CGT consequences.

Example

Jamie acquired 100 units in the Westfield America Trust (WFA) in January 2003. Immediately before the merger of WFA with Westfield Holdings Ltd (WSF) and Westfield Trust (WFT) in July 2004, the cost base of each of his units was $2.12 (total cost base = $212 ($2.12 × 100)).

Under the arrangement Jamie's original units in WFA were firstly consolidated in the ratio of 0.15 consolidated WFA unit for each original WFA unit. After the consolidation, Jamie held 15 consolidated WFA units with a cost base of $14.13 ($212 ÷ 15) each. There are no CGT consequences for Jamie as a result of the consolidation of his units in WFA.

Jamie then received a capital distribution of $1.01 for each consolidated unit he held.

CGT event E4 happens as a result of the capital distribution. Consequently, Jamie must reduce the cost base of each of his consolidated WFA units by $1.01 to $13.12.

The capital distribution was compulsorily applied to acquire a share in WSF and a unit in WFT. The first element of the cost base and reduced cost base of Jamie's new units in WFT is $1.00 and $0.01 for each new WSF share.

The units and shares were then stapled to form a Westfield Group security. There are no CGT consequences for Jamie as a result of the stapling of each consolidated WFA unit to each new WFT unit and WSF share.

Jamie holds 15 Westfield Group Securities each with a total cost base of $14.13, calculated as follows:

Element	Cost base (initial)
WFA unit	$13.12
WFT unit	$1.00

WSF share	$0.01
Total	$14.13

Disposing of a stapled security

When you dispose of a stapled security, you must apportion the capital proceeds across the individual securities in the stapled security and then work out whether you have made a capital gain or loss on each security.

Note: Specific rules apply to the disposal of certain types of securities such as traditional securities.

Example

On 1 August 1983 Kelley purchased 100 shares in XYZ Ltd for $4.00 per share. In August 2002, Kelley was allocated 100 units in XYZ Unit Trust under a corporate reorganisation of the XYZ Group. The units were acquired for $1.00 each, with the funds to acquire the units coming from a capital reduction made to her shares. At that same time, Kelley's shares in XYZ Ltd and units in XYZ Unit Trust were stapled and became known as XYZ stapled securities.

Kelley disposed of all of her XYZ stapled securities on 1 March 2018 for $8.00 per security. On the basis of the information provided by the issuer of the stapled securities, Kelley determined that of this amount 70% or $5.60 per share ($8.00 × 70%) was attributable to the value of her XYZ Ltd shares and 30% or $2.40 per unit ($8.00 × 30%) to the value of her units in the XYZ Unit Trust.

Kelley must account for the sale of each of the elements (shares and units) of the stapled securities separately.

As Kelley acquired her XYZ Ltd shares before 20 September 1985, any capital gain or loss she makes on the disposal of these shares is disregarded.

Kelley made a capital gain of $1.40 per unit ($2.40 − $1.00) on the disposal of her units in the XYZ Unit Trust. As Kelley owned those units for more than 12 months, she may choose to apply the CGT discount to further reduce her capital gain after applying any capital losses.

Scrip for scrip rollover and stapled securities

Scrip for scrip rollover relief enables a shareholder to disregard a capital gain they make from a share that is disposed of as part of a corporate takeover or merger if the shareholder receives a replacement share in exchange. However, scrip for scrip rollover is only available when the original and replacement interests being exchanged are of the same type.

If shares are exchanged for stapled securities comprising shares and units, scrip for scrip rollover is only available to the extent that the shareholder received replacement shares (provided all the other conditions for rollover have been satisfied).

See also:

- Takeovers and mergers, scrip-for-scrip rollover

Dividend reinvestment plans

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Dividend-reinvestment-plans/
- Last modified: 29 Jun 2018
- QC 52233

Under a dividend reinvestment plan, shareholders are offered the choice of using their dividend to acquire additional shares in the company instead of receiving a cash payment. These shares are usually issued at a discount on the current market price of the company's shares.

For capital gains tax (CGT) purposes, if you participate in a dividend reinvestment plan you are treated as if you had received a cash dividend and then used the cash to buy additional shares.

Each share (or parcel of shares) acquired in this way – on or after 20 September 1985 – is subject to CGT. The cost base of the new shares includes the price you paid to acquire them – that is, the amount of the dividend.

Example: Dividend reinvestment plans

Natalie owns 1,440 shares in PHB Ltd. The shares are currently worth $8 each. In November 2017, the company declared a dividend of 25 cents per share.

Natalie could either take the $360 dividend as cash (1,440 × 25 cents) or

receive 45 additional shares in the company (360 ÷ 8).

Natalie decided to participate in the dividend reinvestment plan and received 45 new shares on 20 December 2017. She included the $360 dividend in her 2017–18 assessable income.

For CGT purposes, she acquired the 45 new shares for $360 on 20 December 2017.

Early stage innovation companies

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Early-stage-innovation-companies/
- Last modified: 17 Jul 2017
- QC 52501

From 1 July 2016, if you invest in a qualifying early stage innovation company you may be eligible for modified capital gains tax (CGT) treatment, under which you may disregard capital gains on qualifying shares that are continuously held for at least 12 months and less than ten years.

If you acquired newly issued shares in a qualifying early stage innovation company and made capital gains on those shares from a CGT event that took place in 2016–17, that gain is subject to ordinary CGT treatment.

You must disregard capital losses made on an investment in a qualifying early stage innovation company that is held for less than ten years.

Investments in a company in liquidation or administration

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/Investments-in-a-company-in-liquidation-or-administration/
- Last modified: 29 Jun 2018
- QC 52234

You may be able to realise a capital loss on worthless shares before a company is dissolved if a liquidator or administrator declares in writing that there is no likelihood

you will receive any further distribution in the course of winding up a company.

Financial instruments relating to a company can also be declared worthless by a liquidator or administrator.

On this page:

Shareholders and investors

You may be able to claim a capital loss if you're:

- a shareholder, and a liquidator or an administrator of a company declares in writing that they have reasonable grounds to believe there is no likelihood that shareholders will receive any further distribution for their shares
- an investor who holds a financial instrument in a company, and the liquidator or administrator of the company makes a declaration in writing that the financial instrument has no value or negligible value. Such financial instruments may include
  - convertible notes
  - debentures
  - bonds
  - promissory notes
  - loans to the company
  - futures contracts
  - forward contracts and currency swap contracts relating to the company
  - rights or options to acquire any of these, including rights or options to acquire shares in a company.

Liquidator or administrator's role

The decision about whether or not to make a declaration, and the time at which to make it, rests solely with the liquidator or administrator. They can make written declarations in relation to shares and financial instruments in the same statement – for example, a declaration in relation to a share and an option to acquire a share.

You can't claim a capital loss for a financial instrument, such as a right or option to acquire a share, if a liquidator or an administrator declares they consider the shares are worthless but does not make a declaration that they consider the financial instrument is of no value or has only negligible value.

When you can't choose to make a capital loss

You can't choose to make a capital loss for:

- a financial instrument where any profit made on the disposal or redemption of it would be included in your assessable income or any loss would be deductible – such as a traditional security or qualifying security
- a unit in a unit trust or a financial instrument relating to a trust
- certain interests acquired under employee share schemes.

Employee share schemes

If your shares or rights were acquired under an employee share scheme (ESS), these CGT rules do not apply to:

- a right acquired before 1 July 2009
- a share acquired if
  - it is a qualifying share
  - you did not make a section 139E election in relation to the share under the employee share rules
  - the declaration by the liquidator or administrator was made no later than 30 days after the ‘cessation time’ for the share
- an ESS interest or an ESS interest that is a beneficial interest in a right that is forfeited and is taken to have been acquired.

This ensures the tax consequences for shares you acquire for less than their market value are dealt with under the ESS tax rules before any potential capital gains tax rules apply.

See also:

- Employee share schemes

Conditions that must be satisfied

You may choose to make a capital loss if all the following conditions apply:

- You are an Australian resident for income tax purposes.
- You hold a share or financial instrument relating to a company that went into liquidation or administration.
- You acquired the share or financial instrument after 19 September 1985.
- A liquidator or administrator of the company made a written declaration that they believed the shares were worthless or the financial instruments had no value or negligible value.
- Any gain or loss you would make on the share or financial instrument is a capital gain or capital loss – that is, you hold the share or financial instrument as an investment asset and
  - not as trading stock (see Share trading as business)
  - not as part of carrying on a business
  - not to make a short-term or ‘one-off’ commercial gain.

Working out the capital loss

If you choose to make the capital loss when the declaration is made, your capital loss is equal to the reduced cost base of the shares (or financial instruments) at the time of the declaration by the liquidator or administrator. 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 liquidator or administrator makes the declaration. This is relevant for working out if you make a capital gain from any later capital gains tax (CGT) event happening to the shares (or financial instruments).

You indicate that you have chosen to make the capital loss by the amounts you show at the capital gains tax question on your tax return for that year.

See also:

- Cost base

Receiving further payments after the declaration

You may receive a further payment in respect of your shares if, for example, court action was successful in recovering money for the company or its shareholders.

- Company dissolved more than 18 months after a payment: If you receive a payment after the date of the declaration and the payment is not assessable to you as a dividend, you may make a capital gain at the time you receive the payment.
- Company dissolved within 18 months of a payment: If the payment is made to you by a liquidator after the declaration and the company is dissolved within 18 months of a payment, the payment is included as capital proceeds on the cancellation of your shares (rather than you making a capital gain at the time of the payment). In preparing your tax return you may delay declaring any capital gain until your shares are cancelled, unless you are advised by the liquidator in writing that the company will not cease to exist within 18 months of you receiving the payment.

Example

On 31 March 2018, the administrators of Company Ltd made a written declaration that they had reasonable grounds to believe there was no likelihood that shareholders would receive any distribution for their shares.

At the time of the declaration, Dave owned 1,000 Company Ltd shares. Following the declaration by the administrators, he chose to claim a capital loss for his Company Ltd shares in his 2017–18 tax return.

Dave acquired his Company Ltd shares in March 2008 for $1.70 each, including brokerage costs. Therefore, the reduced cost base of Dave's Company Ltd shares and his capital loss in respect of those shares is $1,700 – that is, 1,000 multiplied by $1.70.

In working out his net capital gain or net capital loss for the 2017–18 year, Dave takes the capital loss of $1,700 from his Company Ltd shares into account.

Example: Liquidator's declaration that shares are worthless

The administrators of Company Ltd made a written declaration on 31 March 2018 that they had reasonable grounds to believe that there was no likelihood that the shareholders of Company Ltd would receive any distribution from their shares.

Hillary purchased shares in Company Ltd in March 2008 for $1.70, including brokerage costs. Following the administrators' declaration, Hillary can choose to make capital losses equal to the reduced cost bases of her shares as at 31 March 2018. She claims the capital losses in her 2018 tax return.

See also:

- Where a company liquidation affects a large number of people, we may provide specific guidance on the tax implications (see Events affecting shareholders).

CGT listed investment companies concession

- https://www.ato.gov.au/General/Capital-gains-tax/Shares,-units-and-similar-investments/CGT-listed-investment-companies-concession/
- Last modified: 29 Jun 2018
- QC 52236

If a listed investment company (LIC) pays a dividend that includes a LIC capital gain amount, a shareholder who is an Australian resident at the time will be entitled to an income tax deduction.

A LIC paying a dividend will advise its shareholders how much of the dividend is attributable to a LIC capital gain (the attributable part).

On this page:

- Individual taxpayer
- Complying superannuation entity or life insurance company
- Trust or partnership
- Beneficiary of a trust or partner in partnership

Individual taxpayer

An individual can deduct 50% of the attributable part advised by the LIC.

Example: Resident individual

Ben, an Australian resident, is a shareholder in XYZ Ltd, a LIC. For the 2017–18 income year, Ben received a fully franked dividend from XYZ Ltd of $70, with an eligible capital gain amount (attributable part) of $50. Ben includes in his tax return the following amounts:

Franked dividend	$70
plus franking credit	$30
Assessable income	$100
less 50% deduction for LIC capital gain	$25
Taxable income	$75

Note: Ben may be entitled to a franking tax offset equal to his franking credit.

Complying superannuation entity or life insurance company

A complying superannuation entity or life insurance company can deduct 33 ⅓% of the attributable part advised by the LIC.

Trust or partnership

A trust or partnership can deduct 50% of the attributable part advised by the LIC.

Beneficiary of a trust or partner in partnership

If a shareholder in a LIC is a trust or partnership, a beneficiary of the trust or a partner in the partnership has no share of the attributable part.

To allow for this, the beneficiary or partner (other than an individual) includes an amount in their assessable income in the income year in which a LIC capital gain dividend is paid if the trust or partnership is allowed a deduction and their income is

reduced by an amount because of that deduction.

The amount included in the beneficiary or partner's assessable income is equivalent to that part of the deduction that reflects their share of the net income of the trust or partnership (the reduction amount).

A beneficiary or partner that is a complying superannuation entity or life insurance company trust must include in their assessable income one-third of that part of a deduction allowed to the trust, company or partnership that is reflected in the beneficiary or partner's share of the net income.

Example

The Robbie Partnership received from a LIC a $210 fully franked dividend that included an attributable part of $180. The partnership has three equal partners – Joe Robbie, Robbie Limited, and the Robbie Superannuation Fund (a complying superannuation entity).

The partnership claimed a deduction of $90 in respect of the attributable part in working out its net income of $12,000 (including the $210 dividend). Each partner's share of the net income is $4,000 and their reduction amount is $30 (one-third of $90).

Each partner includes $4,000 in their assessable income. The partners must also include the following additional amounts in their assessable income:

- Joe Robbie, $0 (Joe is an individual partner in the partnership)
- Robbie Limited, $30 (the reduction amount)
- Robbie Superannuation Fund, $10 (one-third of the reduction amount).

Trusts

- https://www.ato.gov.au/General/Capital-gains-tax/Trusts/
- Last modified: 29 Jun 2018
- QC 52235

Disposal of a trust asset (or another CGT event) is likely to result in a capital gain or loss for the trust (unless a beneficiary is absolutely entitled to the asset).

Capital gains and losses are taken into account in working out the trust's net capital gain or net capital loss for an income year. As part of the net income of a trust, the net capital gain for the year is then allocated proportionately to beneficiaries based on their entitlements to trust income – unless:

- there is a beneficiary who has been made specifically entitled to the capital gain (in which case they're generally assessed on the gain), or
- the trustee (of a resident trust) chooses to be taxed on a capital gain.

If there is no beneficiary presently entitled to income (or specifically entitled to the capital gain) the trustee is generally taxed on the capital gain at a special rate (equivalent to the highest marginal rate) and is not entitled to the CGT discount (under section 99A of the ITAA 1936). However, in certain circumstances, such as deceased estates, the Commissioner can apply the normal resident individual tax rates (and the CGT discount will also apply) where it would be unreasonable to apply the special rate.

Capital losses made by a trust can't be distributed to the trust’s beneficiaries but they can be carried forward and applied against the trust's capital gains in future years.

Find out about:

- Trust distributions
- Determining a beneficiary's share of a trust's capital gain
- Attribution managed investment trusts

See also:

- Trust capital gains and losses
- Shares, units and similar investments

Trust distributions

- https://www.ato.gov.au/General/Capital-gains-tax/Trusts/Trust-distributions/
- Last modified: 17 Jul 2017
- QC 52237

Distributions from trusts (including managed funds) that are relevant for CGT purposes include:

- distributions of all or a part of the trust's income where the trust’s net income for tax purposes includes a net capital gain
- distributions or other entitlements described as being referable to a specific capital gain or gains
- distributions of non-assessable amounts.

You're treated as having made a capital gain if you're specifically entitled to all or part of a trust's capital gain and the gain is reflected in the trust's net income for tax purposes.

If there is an amount of a capital gain reflected in the net income of a trust to which

no entity is specifically entitled, the amount is proportionately assessed to beneficiaries in accordance with their adjusted Division 6 percentage. This is the percentage of the income of the trust estate (disregarding any amount of a capital gain or a franked distribution to which any beneficiary or the trustee is specifically entitled) to which they're presently entitled (see Determining a beneficiary's share of a trust's capital gain).

In certain circumstances where you would be treated as having made a capital gain but are unable to benefit from it, the trustee may choose to be assessed on the capital gain on your behalf. The trustee can choose to be assessed on a capital gain provided no beneficiary has received or benefited from any amount relating to the gain during the income year or within two months of the end of the income year.

Trustees of managed investment trusts (MITs) have had a choice to apply the rules described above for the 2010–11 and later years. That choice will continue to be available for 2015–16 and 2016–17, but will not be available to MITs after 2016–17.

If you receive a distribution from a MIT that has not applied these rules, you will be treated as having made a capital gain if the trust's net income for tax purposes includes a net capital gain. You must include as assessable income your share of the MIT's net income for tax purposes at L Share of net income from trusts item 13 Partnerships and trusts on your tax return (supplementary section).

See also:

- Managed investment fund (trust) distributions

Streaming of capital gains

A trust's capital gains and franked distributions can, if not prevented by the trust deed, be streamed to beneficiaries for tax purposes by making them specifically entitled to the amounts.

If you are a beneficiary in a trust that is subject to the trust provisions relating to 'streaming' of capital gains and franked distributions, even if you are distributed an amount that is described as the CGT concession amount, you may be taken to have made a capital gain. You will need to include this in your own net capital gain calculation.

See also:

- Streaming trust capital gains and franked distributions

Non-assessable payments from a trust

If you receive non-assessable payments from a trust, you need to make cost base adjustments to your units or trust interest. Those adjustments will affect the amount of any capital gain or loss you make on the unit or interest (for example, when you sell it). If non-assessable payments exceed your cost base, you may also make a capital gain equal to that excess in the year it is paid to you.

Note that the non-assessable payments may be over a number of years and once the cost base is reduced to zero the excess is a capital gain in the year the excess arises.

Non-assessable payments to beneficiaries of a discretionary trust don't give rise to capital gains.

You can't make a capital loss from a non-assessable payment.

See also:

- Non-assessable payments in relation to shares and units
- Determining a beneficiary's share of a trust's capital gain
- Attribution managed investment trusts

Determining a beneficiary's share of a trust's capital gain

- https://www.ato.gov.au/General/Capital-gains-tax/Trusts/Determining-a-beneficiary-s-share-of-a-trust-s-capital-gain/
- Last modified: 17 Jul 2017
- QC 52242

You will need to determine whether you have a share of each capital gain made by the trust that has been included in the trust's net income for tax purposes. For every capital gain you have a share of, your statement of distribution or advice from the trust should advise you of:

- your share of the gain
- how much of the net income of the trust for tax purposes relates to each gain (or what is the attributable gain to which your share relates)
- the type of capital gain to which your share relates and the method used by the trustee to calculate it (including any CGT discount or small business concessions applied).

Your share of a capital gain is any amount of the capital gain to which you are specifically entitled plus your 'adjusted Division 6 percentage' share of any amount of the capital gain to which no beneficiary is specifically entitled (see Trust distributions).

These rules do not apply to a distribution of a capital gain by an attribution managed investment trust (AMIT).

On this page:

- Divide by the total capital gain

- [Multiply your fraction of the capital gain by the trust's taxable income relating to the capital gain]
- [Extra capital gains you are taken to have made]
- [Trust distributions to which the CGT discount or the small business 50% active asset reduction apply]
- [No double taxation]
- [Applying the concessions]

Divide by the total capital gain

That amount is then divided by the total capital gain to give you your fraction of the total capital gain.

Multiply your fraction of the capital gain by the trust's taxable income relating to the capital gain

Your fraction is then multiplied by the net income for tax purposes of the trust that relates to the capital gain. The result is your attributable gain.

In certain circumstances where the trust's net capital gain and total net franked distributions exceed the net income of the trust for tax purposes, the amount of the trust's taxable income relating to the capital gain is rateably reduced. This ensures that beneficiaries and the trustee can't be assessed on more than the total net income of the trust.

Extra capital gains you are taken to have made

If you are a beneficiary who is taken to have an attributable gain (your share of a trust’s capital gain included in its net income for tax purposes), you're taken to have made extra capital gains in addition to any other capital gains you may have made from your own CGT events.

These extra capital gains are taken into account in working out your net capital gain for the income year.

In order to work out the amount of extra capital gains that are taken into account in working out your own net capital gain, you will need to know the method used by the trustee in calculating the trust’s capital gains that were included in the trust’s net capital gain. Your statement of distribution or advice should show this information.

If you are a unit holder in a managed fund, the trustee or manager will generally advise you of your share of the trust’s net capital gain, together with details of your share of any other income distributed to you.

In other cases, the trustee may have advised you what your share is or you may need to contact them to obtain details.

Trust distributions to which the CGT discount or the small business 50% active asset reduction apply

Your 'attributable gain' is then grossed up as appropriate for any CGT concessions (the general CGT discount or the small business 50 per cent reduction) applied by the trustee to that capital gain. You have an extra capital gain equal to the grossed-up amount.

Where the trustee reduced the capital gain by the CGT discount or the small business 50% active asset reduction, you need to gross up your attributable gain by multiplying it by two. This grossed-up amount is an extra capital gain.

You multiply by four your share of any capital gain that the trust has reduced by both the CGT discount and the small business 50% active asset reduction. This grossed-up amount is an extra capital gain.

If the capital gain has not been reduced by either the CGT discount or the small business 50% active asset reduction, your attributable gain is an extra capital gain.

You're then able to reduce your extra capital gains by any current or prior year capital losses that you have, and then apply any relevant discounts to work out your own net capital gain.

No double taxation

You are not taxed twice on these extra capital gains because you did not include your capital gains from trusts at item 13 on your tax return (supplementary section).

Example: Applying the trust provisions

Step 1: determine the beneficiary's share of the capital gain of the trust

The Cropper Trust generated $100 of rent and a $500 capital gain (which was a discount capital gain). The trust also had a capital loss of $100. The trust deed does not define 'income' and therefore capital gains don't form part of the trust income. As a result, the income of the trust estate is $100 (being an amount equal to the rent), whereas the net income of the trust for tax purposes is $300. The $300 net income for tax purposes comprises the $200 net capital gain (which is the $500 capital gain less the $100 capital loss, reduced by the 50 per cent CGT discount) plus the $100 rent income.

The trustee resolves to distribute $200 related to the capital gain (after absorbing the capital loss) to Shane and the $100 of rent to Andrea.

Shane is specifically entitled to 50 per cent of the $500 capital gain because he can reasonably be expected to receive the economic benefit of 50 per cent ($200) of the $400 capital gain remaining after accounting for the $100 capital loss. Shane's share of the capital gain equals the amount to which he is specifically entitled namely $250 (50 per cent of the $500 capital gain).

Andrea's share of the capital gain is also $250 because, being entitled to all of the $100 income of the trust (none of the capital gain being treated as trust income), she has an adjusted Division 6 percentage of 100 per cent

and there is $250 of the $500 capital gain to which no one is specifically entitled.

Step 2: Divide by the total capital gain

Shane divides his share of the capital gain ($250) by the total capital gain ($500) and therefore has a fraction share of half of the capital gain.

Andrea divides her share of the capital gain ($250) by the total capital gain ($500) and therefore also has a fraction share of half of the capital gain.

Step 3: Multiply the beneficiary's fraction of the capital gain by the trust's taxable income relating to the gain

The net income of the trust for tax purposes relating to the capital gain is $200.

Shane's attributable gain is $100 ($200 × 50%).

Andrea's attributable gain is $100 ($200 × 50%).

Step 4: Gross up the amount for CGT discounts applied by the trustee

Shane is required to double his attributable gain of $100 to an extra capital gain of $200 because the trustee had applied the 50% CGT discount.

Andrea similarly doubles her attributable gain to $200 which is her extra capital gain.

Both Shane and Andrea will take their extra capital gain of $200 into account in working out their own net capital gain at item 18 Capital gains on their tax returns (supplementary section). Shane and Andrea are individuals entitled to claim the 50% CGT discount. Neither have other capital gains or capital losses of their own to apply against their extra capital gains. Therefore, after applying the 50% CGT discount to their $200 extra capital gain, they will have made a net capital gain of $100 ($200 extra capital gain × 50% = $100). They will write $100 at A item 18 Capital gains. They also write $200 (which is $100 grossed up) at H item 18.

Note that Shane and Andrea's statement of distribution or advice from the trust advised each of them that the trust had made a capital gain of $500, that only $200 of this had been included in the net income of the trust estate for tax purposes, that the 50% discount had been applied and that their share of the gain was $250. Alternatively, it could have advised them that they each had an extra capital gain of $200 that was a discount capital gain.

Example: Distribution where the trust claimed concessions

Serge is the sole beneficiary in the Shadows Unit Trust. His statement of distribution or advice from the trust shows that his 100% share of the net income of the Shadows Unit Trust for income tax purposes was $2,000. The $2,000 includes a net capital gain of $250 (made of a $1,000 capital gain that was reduced by the CGT discount and the small business 50% active asset reduction).

His statement advises that he has a $1,000 (100%) share of the $1,000 capital gain.

Because he has a 100% share of the capital gain, Serge will have an attributable gain of $250 (that is, the whole of the net income of the trust estate for tax purposes that relates to the gain).

Due to the application of the CGT discount and the small business 50% active asset reduction, Serge then grosses up his attributable gain of $250 by multiplying it by 4 to $1,000 which is his extra capital gain.

Serge has also made a capital loss of $100 from the sale of shares.

He calculates his own net capital gain as follows:

Serge's extra capital gain (that is, his $250 attributable gain × 4)	$1,000
Deduct capital losses	$100
Capital gains before applying discounts	$900
Apply the CGT discount of 50%	$450
Apply the 50% active asset reduction	$225
Net capital gain	$225

Serge will write $1,000 at H item 18 on his tax return (supplementary section), which is his total current year capital gain. His net capital gain to be written at A item 18 on his tax return (supplementary section) is $225. He will write a trust distribution of $1,750 ($2,000 − $250) at U item 13 on his tax return (supplementary section).

Applying the concessions

You must use the same method as the trust to calculate your capital gain.

This means you can't apply the CGT discount to capital gains distributed to you from the trust calculated using the indexation method or 'other' method.

You can only apply the small business 50% active asset reduction to grossed-up capital gains to which the trust applied that concession.

See also:

- Trust distributions
- Attribution managed investment trusts

Attribution managed investment trusts

- https://www.ato.gov.au/General/Capital-gains-tax/Trusts/Attribution-managed-investment-trusts/
- Last modified: 17 Jul 2017
- QC 52243

A managed investment trust (MIT), also known as a managed investment fund, is a type of unit trust in which members of the public collectively invest in passive income activities, such as shares, property or fixed interest assets.

For 2015–16 and later years, a MIT may choose to apply the attribution rules in Division 276 of the *Income Tax Assessment Act 1936*. Where that choice is made, the MIT becomes an attribution managed investment trust (AMIT).

Generally, those rules apply to attribute amounts to each member based on their interest in the AMIT, rather than a present entitlement to the net income of the trust or the amount actually paid.

The attribution rules ensure that amounts from the trust retain their tax character as they flow through to you, so that for taxation purposes the amount is treated as if you had earned the income directly in your own right. In relation to capital gains, those rules mean you will treat the capital gains component of your trust income as your own capital gain.

These rules also mean that the cost base of your units in an AMIT may have annual upward or downward adjustments.

Your share of trust amounts attributed to you is shown on your member statement,

See also:

- Managed investment trusts – overview
- Shares, units and similar investments
- Trust distributions

- [Determining a beneficiary's share of a trust's capital gain]()

Deceased estates and inheritances

- https://www.ato.gov.au/General/Capital-gains-tax/Deceased-estates-and-inheritances/
- Last modified: 17 Jul 2017
- QC 52244

Generally capital gains tax (CGT) doesn't apply when you inherit an asset. However, it may apply when you later sell or otherwise dispose of the asset.

If you sell an inherited dwelling, there are special rules – for example, the main residence exemption may apply in part or full.

Unless the asset you inherit is fully exempt, you'll need to know the cost base of the asset to work out your capital gain when you sell it. The cost base may be based on the value of the asset when the deceased acquired it or the value when they died, depending on the circumstances.

Find out about:

- [Deceased estates and capital gains tax]()
- [Inherited dwellings]()

Deceased estates and capital gains tax

- https://www.ato.gov.au/General/Capital-gains-tax/Deceased-estates-and-inheritances/Deceased-estates-and-capital-gains-tax/
- Last modified: 29 Jun 2018
- QC 52245

When a person dies, an asset in their estate can pass:

- directly to beneficiaries (that is, people entitled to the assets of the deceased estate)
- directly to their legal personal representative (their executor or an administrator appointed to wind up the estate)
- from a legal personal representative to a beneficiary.

If you're a beneficiary or legal personal representative, you are taken to have

acquired the asset on the day the person died, but CGT does not apply when you acquire the asset. CGT may apply if you later dispose of the asset. The date of the person's death may be relevant when you calculate the capital gain.

If the asset is transferred to a tax-advantaged entity (such as a charity) or to a foreign resident under the terms of the will, CGT will apply to the transfer and must be accounted for in the person's date of death tax return.

If the deceased person acquired their asset before 20 September 1985, the first element of your cost base and reduced cost base is the market value of the asset on the day the person died, unless they made major improvements to it after that date.

If the deceased had any unapplied net capital losses when they died, these are not passed on to you as the beneficiary or legal personal representative – that is, you can't use any such losses to offset against any net capital gains.

Find out about:

- Keeping records of inherited assets
- Assets passing to tax-advantaged entities and foreign residents
- Disposing of assets from a deceased estate

See also:

- Inherited dwellings

Keeping records of inherited assets

When you inherit an asset you must keep special records.

If it was a pre-CGT asset for the person you inherited it from (that is, they acquired it before 20 September 1985), you need to know its market value at the date they died, and any related costs incurred by the legal personal representative. The total of this is the amount the asset is taken to have cost you.

If the legal personal representative has had the asset valued, ask for a copy of the valuation report. If not, you'll need to get your own valuation.

If the deceased acquired the asset on or after 20 September 1985, you need details of all related costs they incurred as well as those incurred by the legal personal representative. They should be able to give you these details.

See also:

- Records for an inherited main residence

Assets passing to tax-advantaged entities and foreign residents

Normally a capital gain or loss is disregarded when a CGT asset passes from the deceased to a beneficiary or legal personal representative.

However, a capital gain or loss is not disregarded if a post-CGT asset passes from the deceased to a tax-advantaged entity or foreign resident.

In these cases, a CGT event is taken to have happened to the asset just before the person died. The CGT event will result in a:

- capital gain if the market value of the asset on the day the person died was more than the cost base of the asset
- capital loss if the market value was less than the asset's reduced cost base.

These capital gains and losses should be taken into account in the deceased person's 'date of death return' (the tax return for the period from the start of the income year to the date of the person's death).

Any capital gain or loss from a testamentary gift of property can be disregarded if the gift is made to a deductible gift recipient and the gift would have been income tax deductible if it had not been a testamentary gift.

Tax-advantaged entity

A tax-advantaged entity is either:

- a tax-exempt entity (for example, a church or charity)
- the trustee of a:
  - complying super fund
  - complying approved deposit fund, or
  - pooled super trust.

Foreign resident beneficiary

If a foreign resident is a beneficiary of a deceased's post-CGT asset, any capital gain or loss is taken into account in preparing the deceased person's date of death return if both of the following apply:

- the deceased was an Australian resident when they died
- the asset is not 'taxable Australian property' in the hands of the beneficiary.

See also:

- [Work out your tax residency]

Disposing of assets from a deceased estate

If you sell an asset you've inherited – other than a dwelling – the normal CGT rules apply. Similarly, the normal CGT rules apply if a legal personal representative sells an asset from a deceased estate.

If the asset is a dwelling, special rules apply – for example, the main residence exemption may apply in part of full. See [Inherited dwellings].

If the asset is a collectable or personal-use asset, it continues to be treated as one

when you receive it.

Find out about:

- [Winding up a deceased estate]
- [Cost base of asset]
- [Choosing a calculation method]
- [Life and remainder interests]

Winding up a deceased estate

In administering and winding up a deceased estate, a legal personal representative may need to dispose of some or all of the assets of the estate. Assets disposed of in this way are subject to the normal rules and any capital gain the legal personal representative makes on the disposal is subject to CGT.

Similarly, it may be necessary for the legal personal representative to acquire an asset – for example, to satisfy a specific legacy made. Any capital gain or loss they make when they dispose of that asset to the beneficiary is subject to the normal CGT rules.

Cost base of asset

Assets acquired by the deceased before 20 September 1985

If the deceased acquired the asset before 20 September 1985, the first element of your cost base and reduced cost base (that is, the amount taken to have been paid for the asset) is the market value of the asset on the day the person died.

If, before they died, a person made a major improvement to a pre-CGT asset on or after 20 September 1985, the improvement is not treated as a separate asset by the legal personal representative or beneficiary. They are taken to have acquired a single asset. The cost base of this asset is equal to the cost base of the major improvement on the day the person died plus the market value of the pre-CGT asset (excluding the improvement) on the day the person died.

Assets acquired by the deceased on or after 20 September 1985

If the deceased acquired the asset on or after 20 September 1985, the first element of your cost base and reduced cost base is taken to be the deceased's cost base and reduced cost base for the asset on the day they died.

There is an exception if the asset is a dwelling and certain conditions are met.

If the deceased died before 21 September 1999, and you choose the indexation method to work out the capital gain when you dispose of the asset (or when another CGT event happens), you index the first element of the cost base from the date the deceased person acquired it up until 21 September 1999.

If the deceased died on or after 21 September 1999, you can't use the indexation method and, when you dispose of the asset, you must recalculate the first element of your cost base to leave out any indexation that was included in the deceased's

cost base.

If you're the trustee of a special disability trust, the first element of your cost base and reduced cost base is the market value of the asset on the day the person died.

Expenditure incurred by a legal personal representative

As a beneficiary, you can include in your cost base (and reduced cost base) any expenditure the legal personal representative would have been able to include in their cost base if they had sold the asset instead of distributing it to you. You can include the expenditure on the date they incurred it.

For example, if an executor incurs costs in confirming the validity of the deceased's will, these costs form part of the cost base of the estate's assets.

Example: Transfer of an asset from the executor to a beneficiary

Maria died on 13 October 2000 leaving two assets – a parcel of 2,000 shares in Bounderby Ltd and a vacant block of land. Giovanni was appointed executor of the estate (the legal personal representative).

When the assets were transferred to Giovanni as legal personal representative, he disregarded any capital gain or loss. Giovanni sold the shares to pay Maria's outstanding debts. As the shares were not transferred to a beneficiary, any capital gain or loss on this disposal must be included in the tax return for Maria's deceased estate.

When all debts and tax had been paid, Giovanni transferred the land to Maria's beneficiary, Antonio, and paid the conveyancing fee of $5,000. As the land was transferred to a beneficiary, any capital gain or loss to date is disregarded. The first element of Antonio's cost base is taken as Maria's cost base on the date of her death. Antonio is also entitled to include in his cost base the $5,000 Giovanni spent on the conveyancing.

Choosing a calculation method

There are three methods of calculating a capital gain: the indexation, discount and 'other' methods.

The method you can use depends on when the asset was acquired and whether you are disposing of it as an individual, trust, complying super fund or other entity.

When applying the 12-month ownership test for the indexation method, you're taken to have acquired the asset when the deceased acquired it, not on the date of their death.

For the discount method, you're taken to have acquired the asset:

- on the date the deceased died, if they acquired the asset before 20 September 1985
- on the date they acquired the asset, if they acquired it on or after 20 September 1985.

See also:

- Working out your capital gain
- CGT discount for foreign resident individuals

Example: Indexation and CGT discount

Leonard acquired a property on 14 November 1998. He died on 6 August 1999, leaving the property to Gladys. She sold the property on 6 July 2017. The property was not the main residence of either Leonard or Gladys.

Although Gladys acquired the property on 6 August 1999, for the purpose of determining whether she had owned the property for at least 12 months she is taken to have acquired it on 14 November 1998 – the day Leonard acquired it.

At the time of disposal, Gladys had owned the property for more than 12 months. As she is taken to have acquired it before 11.45am (by legal time in the ACT) on 21 September 1999 and disposed of it after that date, Gladys could choose to index the cost base. However, if the discount method gave her a better result, she could choose to claim the CGT discount.

If Gladys chooses the discount method, she will have to exclude from the first element of her cost base the amount representing indexation that had accrued to Leonard up until the time he died.

Life and remainder interests

There may be CGT consequences on the creation, surrender, expiry or disposal of a life interest or remainder interest.

A life interest is an interest in the income of a trust for life or an estate for life in real property not held on trust.

A remainder interest is an interest in the capital of a trust or an estate in remainder in real property not held on trust.

See also:

- Taxation Ruling TR 2006/14 – *Income tax: capital gains tax: consequences of creating life and remainder interests in property and of later events affecting those interests*
- Inherited dwellings

Inherited dwellings

- https://www.ato.gov.au/General/Capital-gains-tax/Deceased-estates-and-inheritances/Inherited-dwellings/
- Last modified: 29 Jun 2018
- QC 52246

If you inherit a dwelling and later sell or otherwise dispose of it, you may be exempt from capital gains tax (CGT), depending on:

- when the deceased acquired the property
- when they died
- whether the property has been used to produce income (such as rent)
- whether the deceased was an Australian resident at the time of death.

If you're not exempt, or only partly exempt, you need to know the cost base of the dwelling to work out your capital gain. The cost base may be the value of the dwelling when the deceased acquired it or the value when they died, depending on the circumstances above.

The same exemptions apply if a CGT event happens to a deceased estate of which you're the trustee.

These rules don't apply to land or a structure you sell separately from the dwelling – they are subject to CGT.

Find out about:

- CGT exemptions for inherited dwellings
- Calculating a partial exemption
- Cost base of an inherited dwelling

See also:

- Joint tenants
- Extensions to the two-year ownership period
- Records for an inherited main residence
- Deceased estates and capital gains tax
- Foreign residents and main residence exemption

CGT exemptions for inherited dwellings

- https://www.ato.gov.au/General/Capital-gains-tax/Deceased-estates-and-inheritances/Inherited-dwellings/CGT-exemptions-for-inherited-dwellings/
- Last modified: 29 Jun 2018

- QC 52247

If you inherit a dwelling and later sell or otherwise dispose of it, you may be fully or partly exempt from capital gains tax (CGT).

Use the flowchart below to work out if your inherited dwelling is exempt.

Alternatively you can check the scenario that applies to your situation:

- the deceased died before 20 September 1985
- the deceased died on or after 20 September 1985 and acquired the dwelling before 20 September 1985
- the deceased acquired the dwelling on or after 20 September 1985.

Work out if your inherited dwelling is exempt

To determine if your inherited dwelling qualifies for the main residence exemption, work through the following flowchart questions. Note that:

- This flowchart does not apply to a dwelling that passed to you before 21 August 1996 – for the rules in that situation, see Deceased acquired the dwelling on or after 20 September 1985.
- If the deceased person died before 20 September 1985, the dwelling is fully exempt unless you made a major capital improvement to the dwelling on or after 20 September 1985 and used it to produce assessable income – see Capital improvements and separate assets.

1. Did the deceased person acquire the dwelling before 20 September 1985?

- Yes: Read question 2.
- No: Read question 3.

2. Did settlement of your contract to sell the dwelling happen within two years of the person dying (or did we allow you more time)?

- Yes: Dwelling is fully exempt.
- No: Read question 5.

3. Was the dwelling the deceased person's main residence just before they died?

- Yes: Read question 4.
- No: Dwelling is not fully exempt but you may qualify for a part exemption.

4. Just before they died, was the dwelling being used to produce income?

- Yes: Dwelling is not fully exempt but you may qualify for a part exemption.
- No: Read question 2.

5. From the deceased person's death until settlement of your contract to sell the inherited dwelling, was it your main residence (or the main residence of an individual who had a right to occupy it under the will or the spouse of the deceased person)?

- Yes: Read question 6

- No: Dwelling is not fully exempt but you may qualify for a part exemption.

6. From the deceased person's death until settlement of your contract to sell the inherited dwelling, was any part of the dwelling used to produce income?

- Yes: Dwelling is not fully exempt but you may qualify for a part exemption.
- No: Dwelling is fully exempt.

Deceased died before 20 September 1985

If you inherited the dwelling before 20 September 1985, any capital gain you make when you dispose of it is exempt.

Any major capital improvements you make to the dwelling on or after 20 September 1985 may be taxable.

See also:

- Capital improvements and separate assets

Deceased acquired the dwelling before 20 September 1985 and died on or after 20 September 1985

In this situation, the dwelling need not have been the main residence (home) of the deceased person.

CGT does not apply to the dwelling if either of the following conditions is met:

- Condition 1 (disposal within two years):
  You dispose of your ownership interest within two years of the person's death – that is, if the dwelling is sold under a contract and settlement occurs within two years. This exemption applies whether or not you use the dwelling as your main residence or to produce income during the two-year period. (You can apply to extend the two-year period.)
- Condition 2 (main residence while you own it)
  From the deceased's death until you dispose of your ownership interest, the dwelling is not used to produce income and is the main residence of one or more of:
  - a person who was the spouse of the deceased immediately before the deceased's death (but not a spouse who was permanently separated from the deceased)
  - an individual who had a right to occupy the dwelling under the deceased's will
  - you, as a beneficiary, if you dispose of the dwelling as a beneficiary.

The dwelling can be the main residence of one of the above people, even though they may have stopped living in it, if they choose to continue treating it as their main residence – see Treating a dwelling as your main residence after you move out.

A dwelling is considered to be your main residence from the time you acquire your

ownership interest in it if you move in as soon as practicable after that time.

Example: moving in as soon as practicable

Peter bought a house prior to 20 September 1985. He died in February 1992 and the house passed to his beneficiary, Bob.

Under Peter’s will, Patti had a right to occupy the house. However, Patti couldn't move in until probate and administration of the estate was granted. During this period the house was vacant. Probate and administration of the estate was granted in September 1992 and Patti moved in immediately.

Patti used the house as her main residence until Bob disposed of it in March 2018. Patti did not have an ownership interest in any other dwelling from the date of Peter’s death.

As Patti moved into the house when it was first practicable to do so, it is treated as Patti’s main residence from the time of Peter’s death until Bob sold it.

Bob is entitled to a full main residence exemption.

Deceased acquired the dwelling on or after 20 September 1985

You disregard any capital gain or loss you make when a CGT event happens to the dwelling (such as selling it) if either of the following applies:

- the dwelling passed to you on or before 20 August 1996, and:
  - Condition 2 (main residence while you own it) above is met, and
  - the deceased used the dwelling as their main residence from the date they acquired it until their death and did not use it to produce income
- the dwelling passed to you after 20 August 1996, and:
  - Condition 1 (disposal within two years) or Condition 2 (main residence while you own it) above is met, and
  - just before the deceased died it was their main residence and was not being used to produce income.

A dwelling passes to you when you became its owner or, if you became absolutely entitled to it before or without becoming its owner, at that time. (The trustee or executor should be able to tell you whether or not you became absolutely entitled to it and, if so, when).

Example: Full exemption

Rodrigo was the sole occupant of a flat he bought in April 1990. He did not live in or own another dwelling.

Rodrigo died in January 2017 and left the flat to his son, Petro. Petro rented out the flat and then disposed of it 15 months after his father died.

Petro is entitled to a full exemption from CGT as he acquired the flat after 20 August 1996 and disposed of it within two years of his father's death.

Next steps:

- Calculating a partial exemption
- Cost base of an inherited dwelling

See also:

- Joint tenants
- Extensions to the two-year ownership period

Calculating a partial exemption – inherited dwelling

- https://www.ato.gov.au/General/Capital-gains-tax/Deceased-estates-and-inheritances/Inherited-dwellings/Calculating-a-partial-exemption---inherited-dwelling/
- Last modified: 17 Jul 2017
- QC 52258

If you don't qualify for a full exemption from capital gains tax (CGT) for an inherited dwelling, you may be entitled to a partial exemption.

You calculate your capital gain or loss as follows:

Capital gain or loss amount	×	Non-main residence days	÷	Total days

On this page:

- Non-main residence days
- Total days
- Continuing main residence status
- Inheriting a dwelling from someone who inherited it themselves
- Death during construction

Non-main residence days

If the deceased acquired the dwelling:

- before 20 September 1985, 'non-main residence days' is the number of days, in the period from their death until settlement of the sale of the dwelling, when it was not the main residence of one of the following:
  - a person who was the spouse of the deceased (except a spouse who was permanently separated from the deceased)
  - an individual who had a right to occupy the dwelling under the deceased's will
  - you, as a beneficiary, if you disposed of the dwelling as a beneficiary

- on or after 20 September 1985, 'non-main residence days' is the number of days calculated above plus the number of days in the deceased's period of ownership when the dwelling was not their main residence.

Total days

If the deceased acquired their ownership interest:

- before 20 September 1985, 'total days' is the number of days from their death until you disposed of your ownership interest
- on or after 20 September 1985, 'total days' is the number of days in the period from when the deceased acquired the dwelling until you disposed of your ownership interest.

A further adjustment may be required if the dwelling was a main residence but was partly used to produce income – for example, if part of it was rented out or used as a place of business for a period.

Example: Part exemption

Vicki bought a house under a contract that settled on 12 February 1995 and used it solely as a rental property. When she died on 17 November 1998, the house became the main residence of her beneficiary, Lesley. Lesley sold the property under a contract that settled on 27 November 2016.

As Vicki had never used the property as her main residence, Lesley can't claim a full exemption from CGT. However, as Lesley used the house as her main residence, she's entitled to a part exemption from CGT.

Vicki owned the house for 1,375 days and Lesley then lived in the house for 6,586 days, a total of 7,961 days. Assuming Lesley made a capital gain of $200,000, the taxable portion is:

$200,000 × (1,375 ÷ 7,961) = $34,544

As Lesley is taken to have acquired the property before 21 September 1999

and entered into the contract to sell it after that time, and held the property for at least 12 months, she can use either the indexation or discount method to calculate her capital gain.

If you dispose of your ownership interest in the dwelling within two years of the person's death, you can ignore the main residence days and total days during your period of ownership.

You ignore any non-main residence days before the deceased's death if:

- the dwelling passed to you after 20 August 1996, and
- just before the deceased died it was their main residence and was not being used to produce income.

Continuing main residence status

If the deceased was not living in the dwelling at the date of their death, they or their trustee may have chosen to continue to treat it as their main residence. This may happen if, for example, the person moved to a nursing home. You may need to contact the trustee or the deceased's tax adviser to find out whether this choice was made. If it was, the dwelling can still be regarded as the deceased's main residence:

- for an indefinite period, if the dwelling was not used to produce income after the deceased stopped living in it
- for up to six years after they ceased living in it, if it was used to produce income after they stopped living in it.

Example: Continuing main residence status

Aldo bought a house in March 1995 and lived in it. He moved into a nursing home in December 2010 and left the house vacant. He chose to treat the house as his main residence after he ceased living in it, under the 'continuing main residence status after moving out' rule.

Aldo died in February 2016 and the house passed to his beneficiary, Con, who used the house as a rental property.

As the house was Aldo's main residence immediately before his death and was not being used to produce income at that time, Con can obtain a full exemption for the period Aldo owned it.

If:

- Con rented out the house and sold it more than two years after Aldo's death, the capital gain for the period from the date of Aldo's death until Con sells it is taxable
- Con sold the house within two years of Aldo's death, he can ignore the main residence days and total days between Aldo's death and him

selling it, which would give him exemption for this period
- Aldo had rented out the house after he stopped living in it he could still have chosen to treat it as his main residence – the house would be treated as his main residence until his death because he would have rented it out for less than six years – in which case Con would still get an exemption for the period Aldo owned the house.

See also:

- Treating a dwelling as your main residence after you move out
- Extensions to the two-year ownership period

Inheriting a dwelling from someone who inherited it themselves

The formula for calculating the partial main residence exemption is adjusted if the deceased also acquired the dwelling on or after 20 September 1985 as a beneficiary (or trustee) of a deceased estate. The main residence exemption is calculated according to the number of days the dwelling was the main residence of you and the previous beneficiaries.

Example: inheriting a dwelling that was previously inherited

Ahmed acquired a dwelling after 20 September 1985. The dwelling was his main residence from the time he acquired it until he died, a period of 3,700 days.

Ahmed left the dwelling to his son, Fayez.

Some years later, Fayez died. He had owned the dwelling for 2,600 days and it wasn't his main residence at any time during this period.

The dwelling was left to Mardianah under Fayez's will.

Mardianah sold the dwelling in 2016–17 and made a capital gain of $100,000. She owned the dwelling for 750 days and it wasn't her main residence at any time during that period.

The assessable proportion of Mardianah's capital gain is the number of days that the dwelling was not a main residence divided by the total number of days from when Ahmed first acquired the dwelling until Mardianah sold it:

$100,000 × ((2,600 + 750) ÷ (2,600 + 750 + 3,700)) = $47,518

Because the combined period Ahmed, Fayez and Mardianah owned the dwelling was more than 12 months, Mardianah can reduce her $47,518 capital gain by the 50% discount (after deducting any capital losses).

Death during construction

If the deceased entered into a contract to construct, repair or renovate a dwelling on land they already owned, and died before the dwelling was finished or before they had lived in it for three months, the trustee can choose that the dwelling and land be treated as the deceased's main residence for up to four years before the person died.

If the trustee makes this choice, no other dwelling can be treated as the deceased's main residence during that time.

See also:

- If the owner dies during construction

Next steps:

- Cost base of an inherited dwelling

Cost base of an inherited dwelling

- https://www.ato.gov.au/General/Capital-gains-tax/Deceased-estates-and-inheritances/Inherited-dwellings/Cost-base-of-an-inherited-dwelling/
- Last modified: 17 Jul 2017
- QC 52248

If you inherit a dwelling there are special rules for calculating your cost base.

The first element of the cost base or reduced cost base of a dwelling – its acquisition cost – is its market value at the date of death if any of the following apply:

- the dwelling was acquired by the deceased before 20 September 1985
- the dwelling passed to you after 20 August 1996 (but not as a joint tenant), and just before the deceased died it was their main residence and was not being used to produce income, or
- the dwelling passed to you as the trustee of a special disability trust.

In any other case, the acquisition cost is the deceased's cost base or reduced cost base on the day they died. You may need to contact the trustee or the deceased's tax adviser to obtain the details. If that cost base includes indexation, you must recalculate it to exclude the indexation component if you prefer to use the discount method to work out your capital gain from the property.

If you're a beneficiary, the cost base or reduced cost base also includes amounts

that the trustee of the deceased's estate would have been able to include in the cost base or reduced cost base.

See also:

- [CGT exemptions for inherited dwellings]
- [Calculating a partial exemption]
- [Cost base]

Joint tenants

- https://www.ato.gov.au/General/Capital-gains-tax/Deceased-estates-and-inheritances/Inherited-dwellings/Joint-tenants/
- Last modified: 17 Jul 2017
- QC 52249

If two or more people acquire a property together, it can be either as tenants in common or as joint tenants.

If a tenant in common dies, their interest in the property is an asset of their deceased estate. This means it can be transferred only to a beneficiary of the estate or be sold (or otherwise dealt with) by the legal personal representative of the estate.

If a joint tenant dies, their interest in the property passes to the surviving joint tenant or tenants. It's not an asset of the deceased estate.

For capital gains tax (CGT) purposes, joint tenants are treated as if they are tenants in common owning equal shares in the asset.

However, if you are a joint tenant and another joint tenant dies, their interest in the asset is taken to pass in equal shares to you and any other surviving joint tenants, as if their interest is an asset of their deceased estate and you are beneficiaries.

This means if the dwelling was the deceased's main residence, you may be entitled to the main residence exemption for the interest you acquired from them.

If the joint tenant who dies acquired their interest in the asset on or after 20 September 1985, the first element of the cost base of the interest you acquire from them is the cost base of their interest on the day they died, divided by the number of joint tenants (including you) who acquire it. The first element of the reduced cost base of the interest you acquire from them is worked out similarly.

Example Surviving joint tenant

In 1999, Ming and Lee bought a residential property for $250,000 as joint tenants and lived in it as their main residence. Each one is taken to have a 50% interest in it.

On 1 May 2001, Lee died. Ming is taken to have acquired Lee’s interest for an amount equal to Lee’s cost base on that day.

If Ming used the property as his main residence after Lee died, he is entitled to the main residence exemption for the interest he acquired from Lee, as well as for his original interest.

If the joint tenant who dies acquired their interest in the asset before 20 September 1985, the first element of the cost base of the interest you acquire from them is the market value of their interest on the day they died, divided by the number of joint tenants (including you) who acquire it. The first element of the reduced cost base of the interest you acquire from them is worked out similarly.

For the indexation and discount methods to apply, you must have owned the asset (or your share of it) for at least 12 months. As a surviving joint tenant, for the purposes of this 12-month test, you are taken to have acquired the deceased's interest in the asset (or your share of it) at the time the deceased person acquired it.

Example: CGT and joint tenants

Trevor and Kylie acquired land as joint tenants before 20 September 1985. Trevor died in October 2011. For CGT purposes, Kylie is taken to have acquired Trevor's interest in the land at its market value at the date of his death.

Kylie holds her original 50% interest as a pre-CGT asset, and the inherited 50% interest as a post-CGT asset that she is taken to have acquired at its market value at the date of Trevor's death.

Even if Kylie sold the land within 12 months of Trevor's death, she would qualify for the CGT discount on any capital gain she makes on her post-CGT interest. She qualifies for the CGT discount because, for the purposes of the 12-month ownership test, she is taken to have acquired Trevor's interest at the time he acquired it.

See also:

- CGT exemptions for inherited dwellings
- Calculating a partial exemption
- Cost base of an inherited dwelling

Extensions to the two-year ownership period

- https://www.ato.gov.au/General/Capital-gains-tax/Deceased-estates-and-inheritances/Inherited-dwellings/Extensions-to-the-two-year-ownership-period/
- Last modified: 17 Jul 2017
- QC 52250

In certain circumstances you're exempted from capital gains tax (CGT) on an inherited dwelling if you dispose of your ownership interest within two years of the person's death.

You can apply to us to extend the two-year period. Generally, we would grant the extension if the delay is due to circumstances outside your control, such as:

- the ownership of a dwelling or a will is challenged
- the complexity of a deceased estate delays the completion of administration of the estate
- a trustee or beneficiary is unable to attend to the deceased estate due to unforeseen or serious personal circumstances arising during the two-year period (for example, the taxpayer or a family member has a severe illness or injury)
- settlement of a contract of sale over the dwelling is unexpectedly delayed or falls through for circumstances outside the beneficiary's or trustee’s control.

These examples are not exhaustive.

We'll also take into account the extent to which the dwelling is used to produce assessable income and the length of time you held your ownership interest.

You can only apply for an extension if the relevant CGT event (such as disposing of the dwelling) happens in the 2008–09 or later income years.

See also:

- CGT exemptions for inherited dwellings

Relationship breakdown

- https://www.ato.gov.au/General/Capital-gains-tax/Relationship-breakdown/
- Last modified: 29 Jun 2018
- QC 52251

Normally capital gains tax (CGT) applies to any change of ownership of an asset. However, if you transfer an asset to your spouse because of the breakdown of your marriage or relationship, there is usually an automatic rollover of the asset.

'Rollover' means the transferor spouse disregards the capital gain or loss that would otherwise arise. In effect, the person who receives the asset (the transferee spouse) will make the capital gain or loss when they subsequently dispose of the asset. The cost base of the asset is also transferred to the transferee spouse.

Generally the rollover applies if:

- your marriage or relationship ended on or after 20 September 1985
- ownership of an asset, or a share in a jointly-owned asset, is transferred between you and your spouse, or from a company or trust to one of you
- the transfer of ownership is because of a court order, formal agreement or award.

You can't choose whether or not the rollover applies.

Find out about:

- Agreements the rollover applies to
- CGT events the rollover applies to
- Consequences of rollover applying or not applying
- Calculating your capital gain or loss
- Treatment of real estate
- Treatment of other assets

Agreements the rollover applies to

- https://www.ato.gov.au/General/Capital-gains-tax/Relationship-breakdown/Agreements-the-rollover-applies-to/
- Last modified: 17 Jul 2017
- QC 52252

The rollover doesn't apply if you and your spouse divide your property under a private or informal agreement (that is, not one of the court orders, formal agreements or awards described below).

The rollover applies to CGT events that happen because of either:

- an order of a court or a court order made by consent under the *Family Law Act 1975*, or a similar law of a foreign country
- a court order under a state, territory or foreign law relating to breakdown of relationship between spouses.

The rollover also applies to CGT events that happen after 12 December 2006 because of one of the following:

- a financial agreement that is binding under section 90G of the *Family Law*

Act 1975 (known as a ‘binding financial agreement’) or a corresponding written agreement that is binding because of a corresponding foreign law
  - from 1 March 2009 the rollover also applies where a financial agreement is binding because of section 90UJ of the *Family Law Act 1975* (which relates to agreements between de facto partners) or a corresponding written agreement that is binding because of a corresponding foreign law

- an award made in an arbitration referred to in section 13H of the *Family Law Act 1975* (known as an ‘arbitral award’) or a similar award under a corresponding state, territory or foreign law – such as an award made under the Western Australian *Family Court Act 1997*
- a written agreement that is binding because of a state, territory or foreign law relating to breakdown of relationship between spouses and that, because of such a law, prevents a court from making an order:
  - about matters to which the agreement applies
  - that is inconsistent with the terms of the agreement, in relation to those matters, unless the agreement is varied or set aside.

These are referred to as ‘binding agreements used by separating couples'. The following agreements meet these requirements:

- a domestic relationship agreement or termination agreement that complies with subsection 47(1) of the New South Wales *Property (Relationships) Act 1984*
- a recognised agreement within the meaning of the Queensland *Property Law Act 1974*
- a cohabitation agreement that is a certificated agreement within the meaning of the *South Australian's Domestic Partner Property Act 1996*
- a personal relationship agreement or separation agreement that complies with subsection 62(1) of the Tasmanian *Relationships Act 2003*
- a financial agreement that complies with subsection 205ZS(1) of the Western Australian *Family Court Act 1997*
- a domestic relationship agreement or termination agreement that complies with subsection 33(1) of the Australian Capital Territory’s *Domestic Relationships Act 1994*
- a cohabitation agreement or separation agreement that complies with subsection 45(2) of the Northern Territory’s *De Facto Relationships Act*
- a relationship agreement that complies with subsections 59(1) and (2) of the Victorian *Relationships Act 2008* (which came into effect on 1 December 2008).

From 1 July 2009 the marriage or relationship breakdown rollover is extended to same-sex couples.

Agreements that do not require court intervention

For transfers that happen because of a binding financial agreement or a binding agreement used by a separating couple, rollover only applies if at the time of the transfer:

- the spouses involved are separated
- there is no reasonable likelihood of cohabitation being resumed
- the transfer happened for reasons directly connected with the breakdown of the marriage or relationship.

The transfer may not be 'directly connected with the breakdown' if, for example:

- the spouses had an agreement before the breakdown of their marriage or relationship stating that the particular property was to be transferred between them for other reasons not directly related to the marriage or relationship breakdown, or
- the agreement provided for the transfer of non-specific property, the transfer does not occur for a considerable time (say, more than 12 months) after the agreement, and there are factors that suggest the transfer was not directly connected to the marriage or relationship breakdown.

Next steps:

- CGT events the rollover applies to
- Consequences of rollover applying or not applying
- Calculating your capital gain or loss

CGT events the rollover applies to

- https://www.ato.gov.au/General/Capital-gains-tax/Relationship-breakdown/CGT-events-the-rollover-applies-to/
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- QC 52253

The rollover applies to a range of capital gains tax (CGT) events involving the transfer of ownership of assets, where those events occur as a result of a court order, formal agreement or award.

The rollover applies to CGT events where the transferor:

- disposes of an asset to the transferee spouse (CGT event A1)
- enters into an agreement with the transferee spouse under which:
  - the right to use and enjoy a CGT asset passes to the transferee spouse
  - title in the asset will, or may, pass to the transferee spouse at the end of the agreement (CGT event B1) – note that there is no rollover if title in the asset does not pass to the transferee spouse when the agreement ends

- creates a contractual or other right in favour of the transferee spouse (CGT event D1)
- grants an option to the transferee spouse or renews or extends an option granted to them (CGT event D2)

- owns a prospecting or mining entitlement, or an interest in one, and grants the transferee spouse a right to receive income from operations carried on by the entitlement (CGT event D3)
- is a lessor and grants, renews or extends a lease to the transferee spouse (CGT event F1).

There is no rollover for the transfer of trading stock.

See also:

- Agreements the rollover applies to
- Treatment of other assets

Timing of the CGT event

It's important to know when the CGT event happens because some of the marriage or relationship breakdown rollover rules apply to CGT events that happen after particular dates.

If an asset is transferred under a contract, the CGT event happens when the contract is entered into.

- A binding financial agreement may be a contract. The time at which a contract is entered into depends on the terms and conditions of the agreement and the relevant legislation being satisfied such that the agreement can take effect. In the case of a binding financial agreement, a separation declaration has to be made under section 90DA of the *Family Law Act 1975* before the agreement can take effect.
- A binding agreement used by a separating couple may be a contract. The time at which a contract is entered into depends on the terms and conditions of the agreement and the relevant legislation being satisfied such that the agreement can take effect.

If there is no contract, the CGT event happens when the change of ownership of the asset occurs.

Transfers made because of a court order or arbitral award are not made under a contract. Therefore, no CGT event happens until the asset is transferred under the order or award.

If the asset is transferred under an agreement to which CGT event B1 applies, the event happens when use of the asset passes to the transferee spouse.

Binding financial agreements can be entered into before, during or after the marriage or relationship. Arbitral awards allow property and financial matters of separating couples to be settled using arbitration. These arrangements allow separating couples to settle their affairs without having to go through court processes.

Next steps:

- Consequences of rollover applying or not applying

- Calculating your capital gain or loss

See also:

- Treatment of real estate
- Types of CGT events

Consequences of rollover applying or not applying

- https://www.ato.gov.au/General/Capital-gains-tax/Relationship-breakdown/Consequences-of-rollover-applying-or-not-applying/
- Last modified: 17 Jul 2017
- QC 52260

Find out about the capital gains tax (CGT) consequences for you if:

- the rollover applies
- the rollover doesn't apply.

If the rollover applies

If the marriage or relationship breakdown rollover applies, then:

- if you transfer an asset you disregard any capital gain or loss you make from the capital gains tax (CGT) event
- if an asset (including a share of a jointly owned asset) is transferred to you, and the transferor acquired the asset on or after 20 September 1985, you're taken to have acquired the asset (or share of the asset), and the transferor's cost base for the asset, at the time it was transferred from your spouse (or a company or trustee).

If the asset transferred to you was acquired by the transferor before 20 September 1985, you're also taken to have acquired the asset before that date. This means it's a pre-CGT asset and you disregard any capital gain or loss you make when you later dispose of the asset.

However, if you make a major capital improvement to such an asset on or after 20 September 1985, you may be subject to CGT when you later dispose of it.

See also:

- Capital improvements and separate assets

If the rollover doesn't apply

The rollover doesn't apply if you and your spouse divide your property under a private or informal agreement (that is, not one of the court orders, formal agreements or awards).

In this case:

- if you transfer an asset, you must take into account any capital gain or loss you make when completing your tax return for that year
- if an asset is transferred to you, you're taken to have acquired it at the time of transfer.

Special rules may apply if the amount paid by one spouse for property owned by the other is greater or less than the market value of the property and they are not dealing at arm's length. In these cases, the transferee is taken to have paid the market value of the property and the transferor is taken to have received the market value of the property.

You're said to be dealing 'at arm’s length' with someone if each of you acts independently and neither of you exercises influence or control over the other in connection with the transaction. It depends not only on the nature of your relationship, but also the quality of the bargaining between you.

Example: Not dealing at arm's length

Laurie and Jennie separated after living in a relationship for four years. To avoid legal costs, they decide to divide their assets without involving solicitors.

During their relationship they occupied a townhouse owned by Laurie. As part of their informal arrangement, they decided Laurie would keep it.

They also agreed that Laurie would transfer his half share of their rental property to Jennie in return for $6,000. Under the arrangement, Jennie would also become liable for the whole of the mortgage after the date of transfer.

Little or no bargaining took place between Laurie and Jennie and no other assets were transferred.

Jennie is taken to have paid the market value of Laurie’s share of the rental property. (The $6,000 she actually paid and the mortgage liability she assumed from Laurie are ignored.) This is because:

- CGT rollover does not apply (as the transfer did not happen because of a court order or a relevant agreement or award)
- Jennie and Laurie did not deal with each other at arm’s length in connection with the transfer.

Laurie is taken to have received the market value of his share of the rental property at the time it was transferred to Jennie. This means, in working out

his net capital gain for the year he transferred the property to Jennie, he takes into account a capital gain or loss based on the market value of his half share at that time.

Next steps:

- Calculating your capital gain or loss

Calculating your capital gain or loss – marriage or relationship breakdown

- https://www.ato.gov.au/General/Capital-gains-tax/Relationship-breakdown/Calculating-your-capital-gain-or-loss---marriage-or-relationship-breakdown/
- Last modified: 17 Jul 2017
- QC 52261

If an asset is transferred to you under the marriage or relationship breakdown rollover, and you later dispose of the asset (or another CGT event happens), you need to know the asset's cost base to calculate your capital gain or loss.

The first element of your cost base and reduced cost base will be the same as the cost base and reduced cost base of your spouse (or the company or trustee, if the asset was transferred from a company or trust) at the time of the transfer. Your cost base and reduced cost base also includes any costs incurred by you or the previous owner in transferring the particular asset on the breakdown of your marriage or relationship (such as conveyancing costs and stamp duty). General legal costs relating to the breakdown or incurred in seeking a property settlement are not included.

If the transferor's cost base includes an amount of indexation, you may later have to recalculate the first element of your cost base to exclude that amount if you want to apply the CGT discount to your capital gain.

If you acquired the asset from your spouse (or the company or trustee) before 21 September 1999, you may be able to use the indexation method when calculating your capital gain. To do this, you and your spouse’s combined period of ownership must be 12 months or more (or your and the company’s or trustee’s combined period of ownership).

If you acquired the asset after 11.45am (by legal time in the ACT) on 21 September 1999, you can't use the indexation method when calculating your capital gain, but you may be able to use the discount method. You can use the discount method to

calculate your capital gain if you and your spouse’s combined period of ownership is 12 months or more.

If the period of ownership is less than 12 months, you use the 'other' method.

Example: Transfer of assets from a marriage or relationship

Danny and Claudia jointly owned the following assets immediately before their marriage breakdown:

Asset	When purchased	Cost
Family home	January 1985	$75,000
Holiday house	December 1988	$65,000
Shares in a company	March 1999	$35,000

After their permanent separation in October 2016, the Family Court approved the couple's agreement and made an appropriate court order by consent.

Danny transferred his interest in the family home to Claudia in March 2017 under the court order. Because it was acquired by the couple before 20 September 1985 and CGT rollover applied, she is taken to have acquired Danny's interest in the home before that date. Therefore, Claudia will not have to pay tax on any capital gains when she sells the home, either on her original interest in the home or the interest Danny transferred to her.

Danny has no CGT obligation for the transfer of the family home.

Claudia’s interests in the shares and the holiday house were transferred to Danny in March 2017 under the court order. The holiday house did not become his home.

Although the couple acquired these assets after 20 September 1985, Claudia's capital gains from the transfer of her interests in these assets to Danny are disregarded under the marriage breakdown rollover.

Danny is taken to have acquired Claudia's interests in these assets, including her cost bases, at the time of transfer. If he were to sell the holiday house or the shares, he would separately calculate his capital gain or loss for his original interest and the interest he acquired from Claudia.

When he sells the assets, Danny can choose to apply the indexation method or discount method to work out the amount of any capital gain from his original interests because they were acquired before 21 September 1999.

Because he acquired Claudia's interests after that date, he can only choose the discount method to work out any capital gain on them. However, in applying the 12-month ownership test for the purposes of the CGT discount, he can take into account the period that Claudia owned the interest.

Danny will have to ensure that the cost bases of the interests he acquired from Claudia do not include any amount of indexation.

See also:

- Treatment of real estate
- Treatment of other assets
- Working out your capital gain or loss

Treatment of real estate

- https://www.ato.gov.au/General/Capital-gains-tax/Relationship-breakdown/Treatment-of-real-estate/
- Last modified: 17 Jul 2017
- QC 52262

If a dwelling (or an interest in a dwelling) is transferred to you under the marriage or relationship breakdown rollover, your eligibility for the main residence exemption from capital gains tax (CGT) generally takes into account the way in which both of you used the dwelling during your combined period of ownership.

On this page:

- Transfers from your spouse on or before 12 December 2006
- Transfers from your spouse after 12 December 2006
- The 'home first used to produce income' rule
- Choices made under the CGT main residence rules
- Dwellings transferred from a company or trust

Transfers from your spouse on or before 12 December 2006

If a dwelling (or an interest in a dwelling) acquired by your spouse on or after 20 September 1985 was transferred to you under a CGT event that happened on or before 12 December 2006, and the marriage or relationship breakdown rollover applies, you're entitled to an exemption from CGT (when you dispose of it) for the period it was your main residence after it was transferred to you.

You may only qualify for a partial exemption if:

- it was your main residence for only part of the period after it was transferred to you
- you used it to produce assessable income
- the land on which the dwelling is situated is more than two hectares.

Keep all relevant records – make sure you get any records you need from your spouse if you don’t already have a copy.

See also:

- Records held by former spouse

Transfers from your spouse after 12 December 2006

If an ownership interest in a dwelling acquired by your spouse on or after 20 September 1985 is transferred to you under a CGT event that happens after 12 December 2006, and the marriage or relationship breakdown rollover applies, you take into account the way in which each of you used the dwelling during your respective periods of ownership when determining your eligibility for the main residence exemption on that interest.

This means you're entitled to a full exemption from CGT (when you dispose of the dwelling) if the land on which the dwelling is situated is two hectares or less, and:

- during the period your spouse owned the dwelling, it was their main residence and was not being used by them to produce assessable income
- during the period you owned the dwelling it was your main residence and was not being used by you to produce assessable income.

If any of these conditions are not met, you may qualify for a partial exemption.

To work out any partial main residence exemption you calculate your capital gain or loss using the formula:

$$\text{Capital gain or loss on the transferred interest} \times \frac{\text{Number of days the dwelling was not your spouse's main residence during their ownership of the transferred interest} + \text{Number of days the dwelling was not your main residence during your ownership of the transferred interest}}{\text{Number of days in your combined ownership period for the transferred interest}}$$

The marriage or relationship breakdown rollover applies only to a transferred ownership interest. If you own an interest that was not transferred – for example, because you had joint ownership of the dwelling prior to the breakdown – you treat that interest under the usual rules for determining the main residence exemption.

Keep all relevant records – make sure you get any records you need from your spouse if you don’t already have a copy.

See also:

- Your main residence

- [Records held by former spouse]

Example: Dwelling transferred to you under a CGT event that happened after 12 December 2006 becomes your home

George and Natalie jointly bought a holiday house on 0.1 hectares of land. Settlement of the purchase contract happened on 13 March 2012. On 13 March 2014, George transferred his half interest to Natalie under the terms of an arbitral award.

Natalie used the dwelling as her main residence for three years from the date of the CGT event until she sold it. Settlement of the sale contract happened on 13 March 2017. The sale price was $600,000.

Natalie's original half interest

The capital gain on Natalie's original half interest is $100,000 ($200,000 x 50%). Because the dwelling was Natalie’s main residence for three years out of the five years she owned her original half interest, she's entitled to a partial exemption on that interest under the usual formula for a main residence exemption:

$$\text{Capital gain or loss} \times \frac{\text{Number of days in your ownership period when the dwelling was not your main residence}}{\text{Total number of days in your ownership period}}$$

That is:

$100,000 × (730 ÷ 1825) = $40,000

Transferred interest

The marriage or relationship breakdown rollover applies only to the half interest transferred from George to Natalie.

The capital gain on this interest is $100,000 ($200,000 x 50%). In calculating her entitlement to the main residence exemption, Natalie must consider how she and George used that interest during their respective periods of ownership:

$$\text{Capital gain or loss on the transferred interest} \times \frac{\text{Number of days the dwelling was not your spouse's main residence during their ownership of the transferred interest} + \text{Number of days the dwelling was not your main residence during your ownership of the transferred interest}}{\text{Number of days in your combined ownership period for the transferred interest}}$$

That is:

730 (George) + 0 (Natalie) ÷ 1825 (combined period) = 0.4

$100,000 × 0.4 = $40,000

Natalie's total assessable capital gain for her original interest and the transferred interest is $80,000 ($40,000 + $40,000).

The above calculations do not take into account any additions to the cost base. In working out the cost base of the interest George transferred to her, Natalie adds any relevant costs she incurred after George transferred it to her to the cost base of his interest at the time of the transfer.

The ‘home first used to produce income’ rule

If a dwelling is used as a main residence from the time it's acquired and is later used to produce income sometime after 20 August 1996 (such as renting it out), the home first used to produce income rule may apply.

This means the owner is taken to have acquired the dwelling at its market value at the time it was first used to produce income.

If the dwelling (or an interest in the dwelling) is transferred to you under a CGT event that happens after 12 December 2006, and the CGT marriage or relationship breakdown rollover applies to the transfer, you're taken to have acquired it at the time it was first used to produce income for its market value at that time. The first income-producing use may be during your or your spouse’s ownership period.

Example: Transfer after 12 December 2006 and ‘home first used to produce income’ rule applies

Harry bought a house for $200,000 on 17 November 1999. It was his main residence and was not used by him to produce income.

On 1 June 2012, he and Anita started living together as husband and wife. Harry moved into Anita’s townhouse and rented out his house. It was valued at $365,000 at the time.

Harry and Anita's relationship broke down in 2016. Harry gave notice to the tenants that the lease on the house wouldn't be renewed.

On 1 June 2017, Anita moved into the house. Under a binding agreement entered into on the same day, Harry transferred the house to Anita. The CGT rollover applies. (Anita also transferred her townhouse to Harry under the agreement).

Anita is taken to have acquired the house on 1 June 2012 for the market value at that time ($365,000) because:

- Harry acquired the house after 19 September 1985
- it was Harry's main residence from the time he became the owner

- the house was first rented out after 20 August 1996
- the CGT event under which the house was transferred to Anita happened after 12 December 2006 and CGT rollover applied
- Anita would be entitled to a part main residence exemption on the sale of the house
- Harry would have obtained a full main residence exemption had he sold it just before he began renting it out on 1 June 2012.

If Anita sells the house under a contract that is settled on 1 June 2022 and it is her main residence until that time, she would obtain a 50% exemption – because it would have been her main residence for five years (1 June 2017 to 1 June 2022) out of the 10 years after she is taken to have acquired it.

Choices made under the CGT main residence rules

In certain circumstances you can choose to treat a dwelling as your main residence for a period even though you no longer live in it or you are yet to live in it.

Such choices are not required to be made by a transferor spouse where rollover applies, because the capital gain or loss is disregarded. However, there is nothing to prevent the transferor spouse making a choice – for example, as part of the negotiations with the transferee spouse about the transfer of a dwelling.

If there was a period when the transferor spouse and transferee spouse had different main residences before they separated, they need to choose to:

- treat one of the dwellings as the main residence of both of them for the period, or
- nominate the different dwellings as their main residences (and obtain a part exemption on both).

See also:

- Treating a dwelling as your main residence after you move out
- When your spouse or children live in a different home to you

Choices relating to the main residence exemption generally need to be made by the day the person lodges their tax return for the income year they transfer or enter into the contract to sell the dwelling (or their interest in it) or another CGT event happens to it. In most cases, the way in which the tax return is prepared is sufficient evidence of that choice.

For the practical purpose of negotiating a property settlement, any choices the transferor spouse decides to make would generally be expected to be made before they transfer the dwelling (or their interest in it) to the transferee spouse.

A signed statement could be provided by the transferor spouse to the transferee spouse at the time of the property settlement as evidence of making a choice. The transferee spouse could use such a statement to support the calculation of any capital gain or loss they make when the dwelling is later disposed of or another

CGT event happens to the dwelling.

Where appropriate we can allow further time for a choice to be made after the time it is normally required.

Once a choice is made, it is binding and can't be changed.

Example: Choice made by transferor spouse to treat dwelling as their main residence

Denise bought a townhouse under a contract that settled on 1 August 1998. She lived in it for three years.

On 14 August 2001, Denise and Calvin rented a flat and started living together as husband and wife. At that time, Denise began renting out her townhouse. After living together for two years in the flat, Denise and Calvin bought a house. They moved in on 25 September 2003, the date of settlement of the purchase contract.

Denise continued to rent out the townhouse.

In 2017, their relationship broke down.

Denise and Calvin decided that Calvin would transfer his half share in the house to Denise (where she would continue to live) and she would transfer the townhouse to Calvin (for him to live in) under a binding financial agreement.

Because the townhouse had been Denise's main residence, she could choose to continue to treat it as such for up to six years after moving out.

In negotiating their binding financial agreement, Denise provided Calvin with a signed statement that she had chosen to treat the townhouse as her main residence for the two years between the time she moved out and the time they bought the house together.

Because the 'home first used to produce income' rule applies, Calvin is taken to have acquired the townhouse for its market value on 14 August 2001 and will qualify for a partial main residence exemption when he sells it (the period from 1998 to 2001 is ignored from their combined period of ownership).

The effect of Denise's choice is that the townhouse is exempt from CGT for the period between 14 August 2001 (when she moved out) and 25 September 2003 (when she and Calvin bought the house together). So when Calvin sells it, he will get an exemption for that period as well as the period he lived in it after the marriage broke down.

If Denise had not made the choice, Calvin would not get the exemption for the period from 14 August 2001 to 25 September 2003.

Dwellings transferred from a company or trust

If a dwelling (or an interest in a dwelling) is transferred to you from a company or the trustee of a trust, and the marriage or relationship breakdown rollover applies to the transfer, you're treated as having owned the dwelling while it was owned by the company or trustee. However, you can't get the main residence exemption during any part of the period the company or trustee owned it (even if you lived in the dwelling during that time).

Therefore, if a dwelling is transferred to you by a company or trustee as a result of your marriage or relationship breakdown, you'll be entitled to the exemption only for the period after it was transferred when it was your main residence. You work out the proportion of your capital gain or loss that is exempt by dividing the period after the transfer that it was your main residence by the combined period you and the company or trustee owned it.

See also:

- Calculating your capital gain or loss
- Treatment of other assets

Treatment of other assets

- https://www.ato.gov.au/General/Capital-gains-tax/Relationship-breakdown/Treatment-of-other-assets/
- Last modified: 17 Jul 2017
- QC 52263

On this page:

Cash settlements

No capital gains tax (CGT) liability arises for the ending of spouses' rights that directly relate to the breakdown of their marriage or relationship, including if they receive cash as part of a breakdown settlement, provided the spouses separate and there is no reasonable likelihood of cohabitation being resumed.

Rights that are created

Your spouse (or a company or trustee) may create an asset in your favour. The table below shows how to calculate the first element of your cost base or reduced cost base.

CGT event	First element of cost base and reduced cost base
Creating contractual or other rights (D1)	Incidental costs incurred by the transferor that relate to the event
Granting an option (D2)	Expenditure incurred by the transferor to grant the option
Granting a right to income from mining (D3)	Expenditure incurred by the transferor to grant the right
Granting a lease (F1)	Expenditure incurred by the transferor on the grant renewal or extension of the lease

You're taken to have acquired the asset at the time specified by the CGT event. For example, for CGT event D1, you acquire the asset at the time you enter into the contract or, if there is no contract, the time the right is created.

See also:

- CGT events the rollover applies to
- Types of CGT events
- Cost base

Superannuation interests

Payment splits

The CGT rollover may apply if an interest in a small super fund is subject to a payment split on the breakdown of a relationship between spouses, and a CGT asset of a small super fund is transferred to another complying super fund.

A small super fund is one that is a complying fund and has fewer than five members.

The consequences of rollover are the same as for transfers between spouses.

Transfer of own interest in a small super fund

A trustee of a small super fund may also qualify for the CGT rollover when the trustee transfers an asset or assets reflecting the entire personal interest of one of the spouses or former spouses to the trustee of another complying super fund for the benefit of that spouse. For the rollover to apply, both spouses must hold an interest in the small super fund before the transfer. This allows spouses in a small super fund to separate their super arrangements on the breakdown of their marriage or relationship without any CGT liability.

Assets transferred by a company or trust

If a company or a trustee of a trust transfers a CGT asset to a spouse, adjustments are required to the relevant cost base and reduced cost base of interests in the company or trust. These interests may be shares (or indirect interests in shares) in the company, units in a unit trust and other interests in the trust. They are reduced in value by an amount that reasonably reflects the fall in their market value as a result of the transfer of the CGT asset.

In certain circumstances, the transfer of an asset from a company to a spouse who is a shareholder or an associate of a shareholder may be a dividend.

If the transferor is a controlled foreign corporation or a foreign trust, there are special rules for working out the capital gain or loss for a subsequent CGT event.

See also:

- Division 7A

Small business CGT concessions

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/
- Last modified: 17 Jul 2017
- QC 22165

In addition to the capital gains tax (CGT) exemptions and rollovers available more widely, there are four concessions that allow you to disregard or defer some or all of a capital gain from an active asset used in a small business:

- 15-year exemption – If your business has continuously owned an active asset for 15 years and you're aged 55 or over and are retiring or permanently incapacitated, you won’t have an assessable capital gain when you sell the asset.
- 50% active asset reduction – You can reduce the capital gain on an active asset by 50% (in addition to the 50% CGT discount if you've owned it for 12 months or more).
- Retirement exemption – Capital gains from the sale of active assets are exempt up to a lifetime limit of $500,000. If you're under 55, the exempt amount must be paid into a complying super fund or a retirement savings account.
- Rollover – If you sell an active asset, you can defer all or part of a capital gain for two years, or longer if you acquire a replacement asset or incur expenditure on making capital improvements to an existing asset.

These concessions are available when you dispose of an active asset and any of the following apply:

- you're a small business with an aggregated annual turnover of less than $2 million
- your asset was used in a closely connected small business
- you have net assets of no more than $6 million (excluding personal use assets such as your home, to the extent that it has not been used to produce income).

The concessions can also apply when you dispose of shares in a company or units in a trust that meet certain criteria.

You can apply as many concessions as you're entitled to until the capital gain is reduced to nil. There are rules about the order in which you apply the concessions, any current year or prior year capital losses, and the CGT discount.

In addition to the four small business CGT concessions, there is a small business restructure rollover allowing the transfer of active assets – including CGT assets – from one entity to another, on or after 1 July 2016, without incurring an income tax liability. You can access this concession if your aggregated turnover is less than $10 million.

Find out about:

- Basic eligibility conditions
- Choosing and applying the concessions

See also:

- Death and small business CGT concessions
- Keeping records for CGT small business concessions
- Small business concessions in prior years

Basic conditions for the small business CGT concessions

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Basic-conditions-for-the-small-business-CGT-concessions/
- Last modified: 17 Jul 2017
- QC 52266

To qualify for the four small business capital gains tax (CGT) concessions, you must satisfy several conditions that are common to all the concessions. These are called the 'basic conditions'.

Most of the concessions also have further requirements that you must satisfy for the specific concession to apply.

Follow the steps below to determine whether you satisfy the basic conditions.

These conditions do not apply to the small business restructure rollover, which is not one of the four CGT concessions and has different eligibility criteria – for example, it has a higher turnover limit.

Step 1

You must first satisfy one of the following:

- you're a small business entity with an aggregated turnover of less than $2 million
- you don't carry on business (other than as a partner) but your CGT asset is used in a business carried on by a small business entity that is your affiliate or an entity connected with you (passively-held assets)
- you're a partner in a partnership that is a small business entity, and the CGT asset is:
  - an interest in a partnership asset (partnership assets), or
  - an asset you own that is not an interest in a partnership asset (partner's assets) but is used in the business of the partnership
- you satisfy the maximum net asset value test.

Step 2

The asset in question must satisfy the active asset test.

Step 3

This step is only applicable if the CGT asset is a share in a company or interest in a trust.

Where this is the case, one of these additional basic conditions must be satisfied just before the CGT event:

- the entity claiming the concession must be a CGT concession stakeholder in the company or trust
- CGT concession stakeholders in the company or trust together have a small business participation percentage in the entity claiming the concession of at least 90% (the 90% test).

See also:

- Affiliates
- Connected entities
- *Income Tax Assessment Act 1997* Subdivision 152-A
- Choosing and applying the concessions

Small business entity

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Basic-conditions-for-the-small-business-CGT-concessions/Small-business-entity/
- Last modified: 17 Jul 2017
- QC 52267

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

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

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

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

- choose a calculation method
- calculate your aggregated turnover.

Choose a calculation method

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

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

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

Method 1 – Use your previous year's aggregated turnover

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

Method 2 – Estimate your current year aggregated turnover

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

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

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

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

Method 3 – Use your actual current year turnover

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

Calculate your aggregated turnover

To calculate your aggregated turnover you need to:

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

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

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

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

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

Include these amounts:

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

Do not include these amounts:

- GST you charged on a transaction
- amounts borrowed for the business
- proceeds from the sale of business capital assets

- insurance proceeds for the loss or destruction of a business asset
- amounts received from repayments of farm management deposits.

Special rules for calculating annual turnover

Business operated for part of the year

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

Retail fuel sales

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

Non-arm’s length business transactions

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

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

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

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

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

See also:

- *Income Tax Assessment Act 1936* Section 318

Step 2 – consider the aggregation rules

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

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

See also:

- [Small business entity concessions – Aggregation]

Step 3 – work out your aggregated turnover

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

Do not include income:

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

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

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

Example: Aggregated turnover

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

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

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

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

Next steps:

- Choosing and applying the concessions

See also:

- Affiliates
- Connected entities

Passively-held assets

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Basic-conditions-for-the-small-business-CGT-concessions/Passively-held-assets/
- Last modified: 17 Jul 2017
- QC 52268

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

- your affiliate, or entity connected with you, is a small business entity for the income year (that is, the income year in which the CGT event happens to your asset)
- you don't carry on a business in the income year other than in partnership
  - if you carry on a business in partnership, the CGT asset is not an interest in an asset of the partnership

- your affiliate or entity that is connected with you at a time in the income year is the same small business entity that carries on the business and uses the asset at that time, and the asset is the same asset that also meets the active asset test at that time.

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

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

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

Example

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

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

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

Concessions not available for super funds

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

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

See also:

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

Partner in a partnership – using the small business entity test

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Basic-conditions-for-the-small-business-CGT-concessions/Partner-in-a-partnership---using-the-small-business-entity-test/
- Last modified: 17 Jul 2017
- QC 52269

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

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

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

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

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

Partnership assets

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

You're eligible for the concessions if:

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

Partner’s assets

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

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

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

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

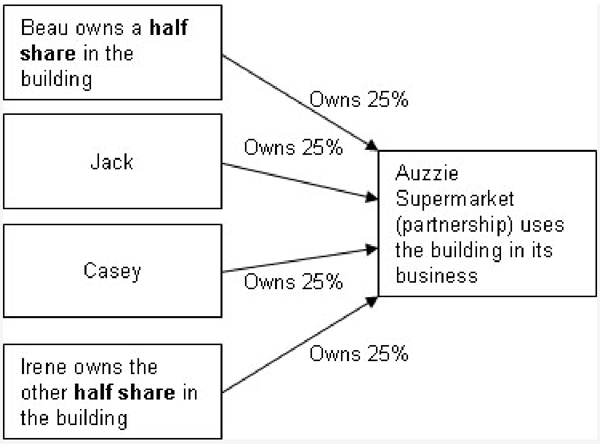
There's another special rule for working out aggregated turnover where:

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

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

Example

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



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

Next steps:

- Choosing and applying the concessions

See also:

- Calculate your aggregated turnover
- Affiliates
- Connected entities

Maximum net asset value test

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Basic-conditions-for-the-small-business-CGT-concessions/Maximum-net-asset-value-test/
- Last modified: 17 Jul 2017
- QC 52270

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

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

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

Find out about:

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

See also:

- Affiliates and Connected entities

Example

Colin operates a newsagency as a sole trader.

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

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

Meaning of 'net value'

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

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

The net value can be positive, negative or nil.

Partner in a partnership

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

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

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

Assets to include

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

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

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

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

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

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

Although gains from depreciating assets may be treated as income rather than capital gains, depreciating assets are still CGT assets and are included when

calculating the net asset value.

Example

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

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

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

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

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

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

Liabilities to include

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

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

See also:

- Taxation Determination TD 2007/14

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

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

Provisions for annual leave, long service leave, unearned income and tax liabilities

are not within the meaning of the term 'liabilities' but are separately taken into account in determining the net value of CGT assets.

Liabilities related to assets

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

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

Example

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

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

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

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

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

- provision for possible damages payout
- provision for rebates.

Assets to exclude

Some interests in connected entities

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

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

Non-business assets of affiliates or entities connected with affiliates

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

Personal use and super assets

If you're an individual, you should disregard the following assets when working out

the net value of your CGT assets:

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

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

Example: Personal use assets

The market value of Lana's CGT assets is:

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

Lana borrowed $20,000 to buy the boat.

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

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

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

Therefore, the net value of her CGT assets is:

$1,050,000 − $350,000 = $700,000

Effect of look-through earnout rights

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

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

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

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

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

Next steps:

- Choosing and applying the concessions

See also:

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

Active asset test

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Basic-conditions-for-the-small-business-CGT-concessions/Active-asset-test/
- Last modified: 17 Jul 2017
- QC 52271

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

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

business you carry on (whether alone or in partnership).

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

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

The test period:

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

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

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

Example

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

Find out about:

- Meaning of active asset
- Spouses and children under 18 years
- Land subdivision and active asset test
- Businesses that are winding up
- Death and the active asset test
- Continuing time periods for active asset test for involuntary disposals
- Modified active asset test for CGT event D1
- When shares and trust interests are active assets

See also:

- Requesting an extension of time

Meaning of active asset

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Basic-conditions-for-the-small-business-CGT-concessions/Active-asset-test/Meaning-of-active-asset/
- Last modified: 17 Jul 2017
- QC 52272

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

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

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

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

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

On this page:

- When an asset is ‘held ready for use’
- Assets that cannot be active assets

When an asset is ‘held ready for use’

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

Example

Margaret carried on business at various customer on-site locations. She acquired some land with the intention of constructing premises in which to carry on her business. Soon after Margaret acquired the land she was approached by another party that was keen to acquire the land. Margaret

sold the land and made a capital gain. She was only part way through the construction of the premises at that time.

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

Assets that cannot be active assets

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

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

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

Where asset's main use is to derive rent

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

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

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

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

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

Example

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

Example

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

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

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

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

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

This means, if the relevant entity uses the asset:

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

Example

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

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

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

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

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

Example: Mixed use

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

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

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

buildings.

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

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

See also:

- Active asset test

Spouses and children under 18 years

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Basic-conditions-for-the-small-business-CGT-concessions/Active-asset-test/Spouses-and-children-under-18-years/
- Last modified: 17 Jul 2017
- QC 52274

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

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

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

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

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

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

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

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

This may allow your asset to be an active asset.

See also:

- Active asset test

Land subdivision and active asset test

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Basic-conditions-for-the-small-business-CGT-concessions/Active-asset-test/Land-subdivision-and-active-asset-test/
- Last modified: 17 Jul 2017
- QC 52276

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

Example

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

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

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

and reduced cost base of each new asset using the method statement set out for split, changed or merged assets.

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

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

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

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

See also:

- Active asset test

Businesses that are winding up

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Basic-conditions-for-the-small-business-CGT-concessions/Active-asset-test/Businesses-that-are-winding-up/
- Last modified: 17 Jul 2017
- QC 52277

On this page:

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

Passively-held assets and partner's assets

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

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

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

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

Test period when business ceases

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

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

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

- when the CGT event happens, or
- when the business ceased, if the ATO grants you an extension of time.

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

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

Example

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

See also:

- [Active asset test]
- [Making choices and requesting extensions]

Death and the active asset test

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Basic-conditions-for-the-small-business-CGT-concessions/Active-asset-test/Death-and-the-active-asset-test/
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- QC 52278

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

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

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

The ATO can extend this two-year period.

See also:

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

Continuing time periods for active asset test for involuntary disposals

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Basic-conditions-for-the-small-business-CGT-concessions/Active-asset-test/Continuing-time-periods-for-active-asset-test-for-involuntary-

disposals/
- Last modified: 17 Jul 2017
- QC 52279

There are modified rules to determine if the active asset test is satisfied for CGT assets acquired or transferred under the rollover provisions relating to assets compulsorily acquired, lost or destroyed, or to marriage and relationship breakdown.

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

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

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

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

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

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

See also:

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

Modified active asset test for CGT event D1

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Basic-conditions-for-the-small-business-CGT-concessions/Active-asset-test/Modified-active-asset-test-for-CGT-event-D1/
- Last modified: 17 Jul 2017
- QC 52281

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

The active asset test requires you to own the CGT asset before the CGT event

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

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

See also:

- Active asset test

When shares and trust interests are active assets

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Basic-conditions-for-the-small-business-CGT-concessions/Active-asset-test/When-shares-and-trust-interests-are-active-assets/
- Last modified: 17 Jul 2017
- QC 52282

A CGT asset is also an active asset at a given time if you own it and:

- it is either a share in a company that is an Australian resident at that time or an interest in a trust that is a resident trust for CGT purposes for the income year in which that time occurs, and
- the total of the following is 80% or more of the market value of all of the assets of the company or trust
  - the market values of the active assets of the company or trust
  - the market value of any financial instruments of the company or trust that are inherently connected with a business that the company or trust carries on, and
  - any cash of the company or trust that is inherently connected with such a business.

This means a share in a company or an interest in a trust is an active asset if the company or trust itself has active assets (and inherently connected financial instruments and cash) with a market value of at least 80% of the market value of all its assets.

Cash and financial instruments are not active assets, but they count towards the satisfaction of the 80% test provided they are inherently connected with the business.

On this page:

- Inherent connection
- Interests in holding entities

Inherent connection

Inherent connection necessarily requires something more than just some form of connection between the financial instrument and the business. A thing might be regarded as inherently connected to a business when it is a permanent or characteristic attribute of the business, for example, goodwill, or trade debtors. Where a business is holding excess funds arising from a temporary spike in trading activity or the sale of a business asset, the excess funds might also reasonably be regarded as inherently connected with the business. A financial instrument must be inherently connected with a business that the owner of the financial instrument carries on, rather than any business a related entity carries on.

Example

Archimedes Pty Ltd carries on a manufacturing business. It lends $300,000 to a related company, Galileo Pty Ltd, to acquire various assets to be used in the businesses of both companies. However, a loan (being a financial instrument) a company makes to a related entity to fund the acquisition of assets is not considered to be a permanent or characteristic attribute of the business the company carries on. As such, loans made between members of a corporate group as part of the overall financing of the group are not considered to be inherently connected with the business the lender carries on. Accordingly, the loan by Archimedes Pty Ltd to Galileo Pty Ltd is not included in the numerator (but is still included in the denominator) of the 80% test calculation in determining whether the shares in Archimedes Pty Ltd are active assets. If the market value of Archimedes Pty Ltd's active assets is $700,000 such that the market value of all its assets (including the loan) is $1,000,000, the relevant calculation is:

$700,000 ÷ $1,000,000 = 70%

Therefore the 80% test is not satisfied and the shares in Archimedes Pty Ltd are not active assets.

The active asset test requires a CGT asset to have been an active asset for at least half of a particular period. For example, for a share in an Australian resident company to meet this requirement, the company must satisfy the 80% test for that same period.

The 80% test will be taken to have been met:

- where breaches of the threshold are only temporary in nature, and
- in circumstances where it is reasonable to conclude that the 80% threshold

has been passed.

Example

John sells an active asset that meets the basic conditions and makes a capital gain of $500,000. He acquired shares in Fruit and Veg Co, which runs his family business, as replacement assets. The shares in Fruit and Veg Co meet the 80% test and, as a result, they are active assets.

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

Example

Jack and Jill are the only shareholders of Hill Water Supplies Pty Ltd, an Australian resident company that carries on a water supply business. The market values of the company's CGT assets are as follows:

Business premises	$400,000
Goodwill	$100,000
Trading stock	$100,000
Plant and equipment	$300,000
Rental property (not an active asset)	$100,000
Total	$1,000,000

The total market value of the company's active assets is $900,000, which is more than 80% of the total market value of all the company's assets. Therefore, Jack and Jill's shares in the company are active assets.

The company sells its water filtration plant (for its market value of $200,000) and then immediately contracts to purchase new plant, which is delivered and installed two months later. The funds from the sale are held in the company's bank account before being used to pay for the new plant.

In this situation, although the market value of the company's active assets has dropped below the 80% mark, the company's bank account holding the

$200,000 is a financial instrument inherently connected with the company's business and is therefore included in the calculation. This means the 80% test remains satisfied.

Although gains from depreciating assets may be treated as income rather than capital gains, depreciating assets, such as plant, are still CGT assets and may, therefore, be active assets and included in the 80% test.

Interests in holding entities

An interest in an entity that itself holds interests in another entity that operates a business may be an active asset, depending on the successive application of the 80% test at each level.

Example

Ben owns 100% of the shares in Holding Co, which, in turn, owns 100% of the shares in Operating Co (both are resident companies). The only assets of Holding Co are the shares in Operating Co, and all of Operating Co's assets are active assets.

As Operating Co satisfies the 80% test, the shares owned by Holding Co in Operating Co are active assets. As those shares are the only assets owned by Holding Co, then Holding Co also satisfies the 80% test. As a result, the shares owned by Ben in Holding Co are also active assets.

If Ben sold the shares in Holding Co, all the small business concessions may potentially apply to any gains made.

If Holding Co sold its shares in Operating Co, the small business concessions may apply because Ben is a CGT concessional stakeholder in Operating Co as well as having a small business participation percentage in Holding Co of at least 90%.

If Operating Co sold its active assets, Operating Co may be entitled to the small business concessions because Ben is a significant individual and CGT concessional stakeholder in Operating Co as a result of his direct and indirect small business participation percentage. For more information, see the significant individual test.

See also:

- Active asset test
- Extra conditions if the CGT asset is a share or trust interest

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

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Basic-conditions-for-the-small-business-CGT-concessions/Extra-conditions-if-the-CGT-asset-is-a-share-or-trust-interest/
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- QC 52283

If the CGT asset is a share in a company or an interest in a trust, one of these additional basic conditions must be satisfied just before the CGT event:

- the entity claiming the concession must be a CGT concession stakeholder in the company or trust, or
- CGT concession stakeholders in the company or trust together have a small business participation percentage in the entity claiming the concession of at least 90% (the 90% test).

CGT concession stakeholder

An individual is a CGT concession stakeholder of a company or trust if they are a significant individual or the spouse of a significant individual where the spouse has a small business participation percentage in the company or trust at that time that is greater than zero.

This participation percentage can be held directly or indirectly through one or more interposed entities.

The percentages are worked out in the same way as for the significant individual test.

Example

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

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

Significant individual test

An individual is a significant individual in a company or trust if they have a small business participation percentage in the company or trust of at least 20% – this 20% can be made up of direct and indirect percentages.

A company or trust satisfies the significant individual test if it had at least one significant individual just before the CGT event. The small business 15-year exemption further requires a company or trust to have a significant individual for periods totalling at least 15 of the years of ownership of the CGT asset.

The significant individual test is not the same as the control tests used to determine if an entity is 'connected with' another entity for the purposes of the $6 million maximum net asset value test or the $2 million aggregated turnover test.

An entity's small business participation percentage in another entity at a time is the percentage that is the sum of:

- the entity's direct small business participation percentage in the other entity at that time, and
- the entity's Indirect small business participation percentage in the other entity at that time.

Direct small business participation percentage

Companies

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

- voting power that the entity is entitled to exercise (except for jointly owned shares) or
- any dividend payment that the entity is entitled to receive, or
- any capital distribution that the entity is entitled to receive, or
- if they are different, the smallest of the three percentages above.

All classes of shares (other than redeemable shares) are taken into account in determining an entity's participation percentage in a company.

Example

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

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

Example

A company has two different classes of shares, A and B, which have equal voting and distribution rights. Isaac holds 20% of the shares of each class. The directors can decide to make a distribution of income or capital to either class of shares to the exclusion of the other class of shares.

In this situation, the company does have a significant individual. Isaac holds 20% of the voting power and, regardless of how the directors' discretion is exercised, Isaac will always receive 20% of any distribution made by the company.

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

Jointly owned shares

The voting power calculation is ignored where the shares are jointly owned, as neither owner would individually control the voting power on the jointly owned shares.

Trusts

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

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

An entity's direct small business participation percentage in a trust (where entities do not have entitlements to all the income and capital of the trust, and the trust makes a distribution of income or capital) is the percentage of:

- distributions of income that the entity is beneficially entitled to during the income year
- distributions of capital that the entity is beneficially entitled to during the income year, or
- if two different percentages apply, then the smaller of the two.

Discretionary trusts with tax losses or no net income

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

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

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

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

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

Example

XYZ trust is a trust where entities do not have entitlements to all of the income and capital of the trust. The objects of the trust are Evan, Mario, Denise and Katrina.

After a bad trading year XYZ trust sells an asset and makes a capital gain. The trustee wants to exempt the capital gain under the small business 15 year exemption. One of the requirements is that the trust must have a significant individual (not necessarily the same individual) for at least 15 years.

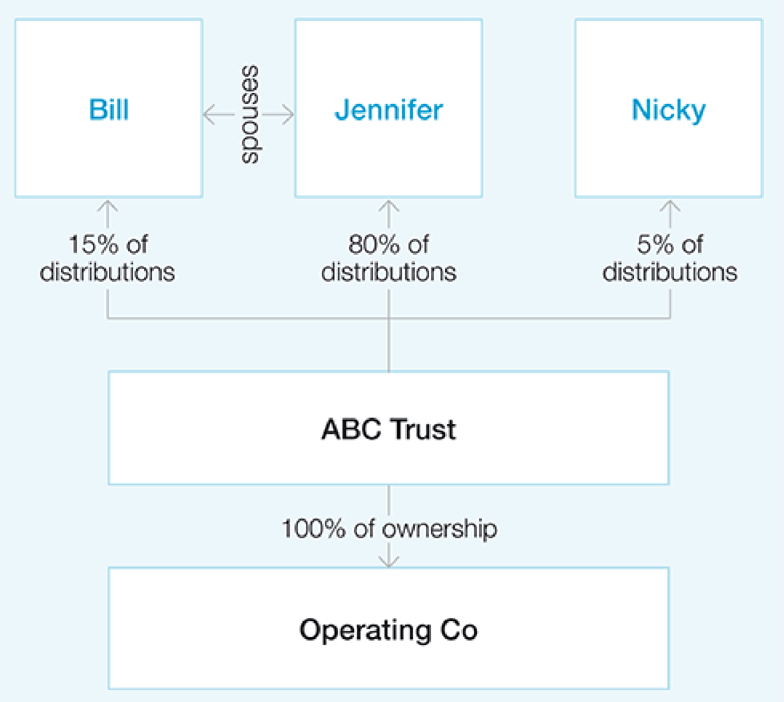
XYZ trust has a tax loss and has made no distributions in the CGT event year. The trustee made a distribution of income in the year prior to the CGT event year, and in all the previous years except the income year 14 years before the CGT event year. The distributions made in that immediate prior year can be used to work out the small business participation percentages of Evan, Mario, Denise and Katrina for the CGT event year, and for the earlier year that the trustee was not able to make any distributions because the trust had no net income. These amendments allow the XYZ trust to satisfy the significant individual requirement, and if the other conditions are met, the trustee can disregard the capital gain under the small business 15 year exemption.

Indirect small business participation percentage

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

Example

ABC Trust owns 100% of the shares in Operating Co, therefore, ABC Trust has a 100% direct interest (and no indirect interest) in Operating Co.



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

To find Jennifer's participation percentage in Operating Co, multiply Jennifer's direct participation percentage in ABC Trust and ABC Trust's total participation percentage in Operating Co.

80% × 100% = 80%

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

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

To find Bill's participation percentage in Operating Co, multiply Bill's direct participation percentage in ABC Trust and ABC Trust's total participation percentage in Operating Co.

15% × 100% = 15%

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

(As a spouse of a significant individual with a participation percentage

greater than zero in the entity, Bill will be a CGT concession stakeholder).

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

To find Nicky's participation percentage in Operating Co, multiply Nicky's direct participation percentage in ABC Trust and ABC Trust's total participation percentage in Operating Co.

5% × 100% = 5%

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

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

An object of a discretionary trust (where entities do not have entitlements to all of the income and capital of the trust) may calculate their indirect small business participation percentage to be more than zero, where the trust had a tax loss or no net income for the income year.

For more information, see Discretionary trusts with tax losses or no net income.

The 90% test

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

The interposed entity satisfies the test if small business participation percentages in that entity totalling at least 90% are held by CGT concession stakeholders of the company or trust in which the shares or interests are held.

As with the significant individual test, the participation percentage can be held directly or indirectly through multiple interposed entities.

Example

Catherine owns 80% of a private company.

- The private company provides 90% of its distributions to a discretionary trust.
- The discretionary trust owns 60% of a unit trust.

The discretionary trust sells the units in the unit trust.

Catherine, a significant individual and a CGT concession stakeholder of the

unit trust, has a 72% participation percentage in discretionary trust.

80% × 90% = 72%

If the other interests in Discretionary Trust are held by people who are not CGT concession stakeholders, Discretionary Trust will not satisfy the ownership requirement and will not be able to access the concessions.

Example

Based on the ABC Trust example:

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

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

Example

A discretionary trust sells shares in an operating company. Anna receives 90% of the distributions from the trust, and the trust has a 50% interest in the company.

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

However, Anna will be a CGT concession stakeholder in the company if she (or her spouse) has a direct or indirect interest in the company of at least 20%. She, together with other CGT concession stakeholders, must also have a combined interest in the trust of at least 90%.

The 90% test is satisfied because Anna's indirect interest in the company is

45% (50% of 90%). Therefore, she is a CGT concession stakeholder in the company and her interest in the trust is 90%.

Next step:

- Choosing and applying the concessions

See also:

- Active asset test
- Affiliates
- Connected entities

Affiliates

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Basic-conditions-for-the-small-business-CGT-concessions/Affiliates/
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An affiliate is an individual or company that, in relation to their business affairs, acts or could reasonably be expected to act:

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

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

Find out about:

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

Example: Affiliates

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

Bob acts in accordance with Shirley's wishes because he values her consultancy and business expertise. As a result, Bob is Shirley's affiliate

because he acts in accordance with her directions and wishes in relation to his business. Shirley will need to count Bob's turnover in working out her aggregated turnover.

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

Example: Not affiliates

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

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

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

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

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

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

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

Acting in accordance or in concert

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

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

Whether a person acts, or could reasonably be expected to act, in accordance with your directions or wishes, or in concert with you, is a question of fact dependent on

all the circumstances of the particular case. Relevant factors include:

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

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

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

Spouses and children

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

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

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

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

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

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

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

This rule only applies in relation to eligibility for the small business CGT

concessions, and not the other small business entity concessions.

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

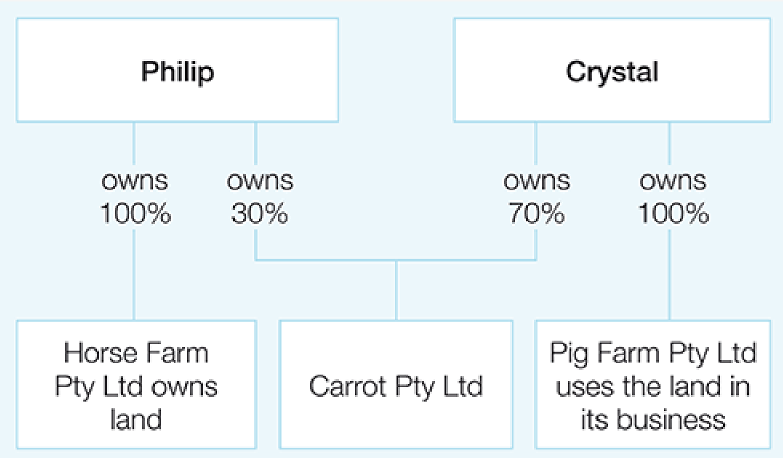
- the person is their spouse or the child is under 18 years, and
- any asset is being passively held.

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

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

Example: Passively-held assets

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



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

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

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

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

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

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

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

Franchisees and franchisors

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

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

See also:

- Passively-held assets
- Partner's assets

Connected entities

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Basic-conditions-for-the-small-business-CGT-concessions/Connected-entities/
- Last modified: 17 Jul 2017
- QC 52286

An entity is connected with another entity if:

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

Find out about:

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

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

Control of a partnership, company or trust (except a discretionary trust)

An entity controls another entity if it or its affiliate (or all of them together):

- owns, or has the right to acquire ownership of, interests in the other entity that give the right to receive at least 40% (the control percentage) of
  - any distribution of income or capital by the other entity, or
  - if the other entity is a partnership, the net income of the partnership or
- if the other entity is a company, owns, or has the right to acquire ownership of, equity interests in the company that give at least 40% of the voting power in the company.

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

Example

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

Example

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

Between 40% and 50% control

If an entity's control percentage in another entity is at least 40% but less than 50%, the Commissioner may determine that the first entity does not control the other entity if he is satisfied that a third entity (not including any affiliates of the first entity) controls the other entity.

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

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

Example

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

Control of a discretionary trust

Control by entity with influence over trustee

An entity controls a discretionary trust if the trustee either acts, or might reasonably be expected to act, in accordance with the directions or wishes of the entity and/or the entity’s affiliates.

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

Some factors that might be considered include:

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

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

Control by beneficiary

The level of actual distributions made by a discretionary trust is used to determine who controls the trust. A beneficiary is taken to control a discretionary trust only if, for any of the four income years before the year for which relief is sought for a CGT event:

- the trustee paid to, or applied for the benefit of, the beneficiary or their affiliates, or both the beneficiary and any of its affiliates, any of the income or capital of the trust, and
- the amounts paid or applied were at least 40% (the control percentage) of the total amount of income or capital paid or applied for that income year (subject to the Commissioner's discretion where the control percentage is between 40% and 50%).

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

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

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

the 40% threshold.

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

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

Example

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

Previous year distributions

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

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

Example

The Z discretionary trust sold a business asset during the year ended 30 June 2016 and made a capital gain. None of the Z family members are affiliates of each other. The trust made percentage distributions of income

for the previous four years as follows (there were no distributions of capital and no tax losses for any year):

Four-year distributions

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

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

Control of trust

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

Accordingly, Mrs Z and each child control the trust.

Nominating a beneficiary as controller of the trust

The trustee of a discretionary trust may nominate up to four beneficiaries as being controllers of the trust for an income year in which the trust had a tax loss or no net

income and in which the trustee did not make a distribution of income or capital of the trust.

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

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

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

Indirect control of an entity

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

For example, consider the following situation:

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

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

Exception where interposed entity is a public entity

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

Example

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

Next step:

- Choosing and applying the concessions

Choosing and applying the concessions

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Choosing-and-applying-the-concessions/
- Last modified: 17 Jul 2017
- QC 52287

On this page:

Applying capital losses

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

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

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

Example: Capital losses

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

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

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

$17,000 − $3,000 = $14,000

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

Order to apply the discount and concessions

The small business 15-year exemption takes priority over the other small business concessions and the CGT discount. If the small business 15-year exemption

applies, you entirely disregard the capital gain so there's no need to apply any further concessions.

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

Example: CGT discount

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

$14,000 × 50% = $7,000

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

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

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

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

Example

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

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

Apply 50% small business active asset reduction ($8,000 × 50%)	$4,000
Reduced capital gain	$4,000

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

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

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

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

- Step 1: Do you satisfy the basic conditions for the small business CGT concessions?
  - Yes: Go to step 2.
  - No: You don't qualify for any of the small business CGT concessions. You may be eligible for the CGT discount.

- Step 2: Do you qualify for the small business 15-year exemption? (Not relevant to capital gains from depreciating assets.)
  - Yes: Disregard the entire capital gain. You don't need to apply any of the other CGT concessions.
  - No: Go to step 3.

- Step 3: Offset any capital losses against the capital gain.
- Step 4: If you are eligible for the CGT discount, reduce the remaining capital gain.
- Step 5: Is the capital gain from a depreciating asset (used at least partly for a non-taxable purpose)?
  - Yes: You're not eligible for any other concessions and can't reduce your capital gain any further.
  - No: Go to step 6.

- Step 6: Apply the 50% active asset reduction to reduce the remaining capital gain. (You can choose not to apply the reduction and go straight to the small business retirement exemption or rollover at step 7.)
- Step 7: If you qualify for the small business retirement exemption or rollover, reduce the remaining capital gain.

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

Choosing small business concessions

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

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

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

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

See also:

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

Small business 15-year exemption

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Small-business-15-year-exemption/
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If your business has continuously owned an active asset for 15 years and you're aged 55 or over and are retiring or permanently incapacitated, you won't have an assessable capital gain when you sell the asset (assuming the basic conditions for the small business concessions are satisfied).

Find out about:

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

See also:

- Basic conditions for the small business CGT concessions

- Subdivision 152-B *Income Tax Assessment Act 1997*

Interaction with other concessions

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

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

Conditions you must meet

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

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

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

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

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

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

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

Example

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

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

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

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

Death and the 15-year exemption

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

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

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

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

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

We can extend the two-year period.

See also:

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

Discretionary trusts with tax losses or no net income

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

See also:

- Discretionary trusts with tax losses or no net income

Event in connection with retirement

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

Example: Sale of business connected with retirement

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

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

Example: Sale of business not connected with retirement

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

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

If, on the other hand, one spouse stopped working altogether, there would

be a significant reduction in the number of hours that spouse was engaged in the business activities. Therefore, the sale would be in connection with the retirement of that spouse.

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

Example: Sale of assets prior to retirement

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

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

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

Example: Sale of assets after retirement

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

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

Permanent incapacity

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

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

Example: Permanent incapacity

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

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

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

Example: Incapacity not permanent

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

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

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

Example: Incapacity expected to be permanent

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

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

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

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

Involuntary disposals

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

See also:

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

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

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

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

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

Example: Relationship breakdown rollover

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

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

Separate interests in the same CGT asset

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

Example: Separate interests in asset

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

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

Consequences of applying the exemption

Distributions of the exemption amount

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

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

  and
- not deductible to the company or trust

if certain conditions are satisfied.

The conditions are:

- the company or trust must make a payment before the later of
  - two years after the relevant CGT event that resulted in the capital gain
  - six months after the latest time a possible financial benefit becomes or could become due under the look-through earnout right relating to the CGT asset and the disposal
  - in appropriate circumstances, such further time as allowed by us

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

The CGT concession stakeholder's participation percentage is:

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

Example: Exempt distribution from a company

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

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

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

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

Example: Exempt distribution from a discretionary trust

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

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

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

Impact on super

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

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

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

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

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

See also:

- 50% active asset reduction
- Retirement exemption

- Rollover
- Small business restructure rollover

Small business 50% active asset reduction

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Small-business-50--active-asset-reduction/
- Last modified: 17 Jul 2017
- QC 52289

You can reduce the capital gain on an active asset by 50% (in addition to the 50% CGT discount if you've owned it for 12 months or more).

Find out about:

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

See also:

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

Interaction with other concessions

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

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

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

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

Conditions you must meet

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

See also:

- [Basic conditions for the small business CGT concessions]

Example: Small business 50% active asset reduction

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

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

$14,000 × 50% = $7,000

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

$7,000 − (50% × $7,000) = $3,500

Lana may be able to disregard her capital gain further using the small business retirement exemption or defer it using the small business rollover.

Consequences of applying the reduction

If you satisfy the basic conditions, the capital gain that remains after applying any current year capital losses and any unapplied prior year net capital losses, and the CGT discount (if applicable), is reduced by 50%.

This means if you're an individual or a trust and you've applied the CGT discount and the small business 50% active asset reduction, the capital gain (after being reduced by any capital losses applied against it) is effectively reduced by 75% (that is, 50% then 50% of the remainder).

Beneficiaries of trusts

If a trust makes a capital gain, its net capital gain for the income year is generally calculated in the same way as for other entities – that is, by reducing any capital gains by any capital losses and then by any relevant concessions.

The net capital gain is included in the net income of the trust. A beneficiary who is 'specifically entitled' to a capital gain will generally be assessed on that gain, regardless of whether the benefit they receive or are expected to receive is income or capital of the trust.

Capital gains to which no beneficiary is specifically entitled will be allocated proportionately to beneficiaries based on their present entitlement to income of the trust estate (excluding capital gains and franked distributions to which any entity is specifically entitled). This is called the adjusted Division 6 percentage.

There are special rules that enable concessions obtained by a trust to be passed on to the beneficiaries of the trust who are entitled to a share of the trust's net capital gain.

A beneficiary must 'gross up' their share of any capital gain received from a trust by:

- multiplying that amount by two, if the trust has applied either the CGT discount or the small business 50% active asset reduction, or
- multiplying that amount by four, if the trust has applied both the CGT discount and the small business 50% active asset reduction.

The beneficiary's share of the trust capital gains (grossed up if required) is then taken into account in the method statement for calculating the beneficiary's net capital gain to be included in their assessable income by:

- the trust capital gains being firstly reduced by any capital losses of the beneficiary, and
- any trust capital gain remaining being reduced by the CGT discount (unless the beneficiary is a company – see below) and the small business 50% active asset reduction, if the trust's capital gain was reduced by these two concessions to arrive at the beneficiary's net capital gain.

A corporate beneficiary of a trust must gross up (as above) their share of any net capital gains received from a trust that have been reduced (by the trust) by the CGT discount. They are not entitled to reduce this grossed-up amount by the CGT discount because companies are ineligible for the CGT discount.

Example: Beneficiary of trust

The LemInvest unit trust makes a capital gain of $100,000 when it disposes of an active asset. LemInvest has no capital losses and satisfies all the conditions for the CGT discount and the small business 50% active asset reduction. The trust's net capital gain is $25,000 (no other concessions apply).

LemInvest has one individual beneficiary, Gert, who is presently entitled to the net income of the trust. She has a separate capital loss of $10,000.

Gert works out her net capital gain as follows:

Share of trust net capital gain	$25,000
Gross up this amount by multiplying by 4 ($25,000 × 4)	$100,000

Deduct capital losses ($10,000)	$90,000
Apply 50% CGT discount ($90,000 × 50%)	$45,000
Apply 50% reduction ($45,000 × 50%)	$22,500
Net capital gain	$22,500

See also:

- *Income Tax Assessment Act 1997* Subdivision 115-C

Fixed trust distributions and 50% active asset reduction

If a beneficiary's interest in a trust is fixed (for example, an interest in a unit trust), there are rules to deal with the situation where the trust distributes to the beneficiary an amount of capital gain that was excluded from the trust's net income because it claimed the small business 50% active asset reduction.

The distribution of the small business 50% active asset reduction amount is a non-assessable amount under CGT event E4.

The payment of the amount will firstly reduce the cost base of the beneficiary's interest in the trust. If the cost base is reduced to nil, a capital gain may arise in respect of the beneficiary's interest in the trust. This capital gain may qualify for the CGT discount (after applying any capital losses) if the interest in the trust has been owned by the beneficiary for at least 12 months.

If a beneficiary's interest in a trust is not fixed (for example, the trust is a discretionary trust) there are no CGT consequences for the beneficiary.

See also:

- *Income Tax Assessment Act 1997* Section 104-70
- 15-year exemption
- Retirement exemption
- Rollover
- Small business restructure rollover

Small business retirement exemption

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Small-business-retirement-exemption/
- Last modified: 17 Jul 2017
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You may choose to disregard all or part of a capital gain under the small business retirement exemption if you satisfy certain conditions. If you're an individual who chooses the retirement exemption, you don't need to terminate any activity or cease business. This concession allows you to provide for your retirement. If you're a CGT concession stakeholder and receive payments under the retirement exemption, you're not required to terminate your employment.

Find out about:

- Interaction with other concessions
- Conditions you must meet
- Termination of employment not required
- Deemed dividends
- Capital proceeds received in instalments
- Receiving actual capital proceeds not required
- CGT retirement exemption limit
- Consequences of choosing the exemption

See also:

- Subdivision 152-D *Income Tax Assessment Act 1997*

Interaction with other concessions

You may choose to apply the small business retirement exemption (if you're not eligible for the 15-year exemption):

- after the small business 50% active asset reduction, that is, to the remaining 50% (or if the CGT discount has also applied, the remaining 25%) of the capital gain after capital losses have been applied
- instead of the small business 50% active asset reduction, that is, to the capital gain that remains after you have applied any CGT discount and capital losses (this choice might allow a company or trust to make larger tax-free payments under the small business retirement exemption)
- where there has been a change in status of a CGT asset that was a replacement or capital improved asset in a rollover under subdivision 152-E (CGT event J2) where a change happens in circumstances where a share in a company or an interest in a trust was a replacement asset in a rollover under subdivision 152-E (CGT event J2)
- where you chose the rollover under subdivision 152-E and by the end of the relevant period you had not acquired a replacement asset, or made any capital improvements (CGT event J5), or
- where you chose the rollover under subdivision 152-E and by the end of the relevant period the amount you incurred on a replacement asset was less than

the amount chosen for the rollover (CGT event J6).

Unless the capital gain arises from CGT event J5 or J6, you may choose the small business rollover instead of the retirement exemption (if the conditions are satisfied) or you may choose both concessions for different parts of the remaining capital gain.

See also:

- Types of CGT events

Conditions you must meet

Individual

If you're an individual, you can choose to disregard all or part of a capital gain if:

- you satisfy the basic conditions for the small business CGT concessions
- you keep a written record of the amount you chose to disregard (the CGT exempt amount), and
- if you're under 55 years old just before you choose to use the retirement exemption, you make a personal contribution equal to the exempt amount to a complying super fund or retirement savings account (RSA).

You must make the contribution:

- when you made the choice to use the retirement exemption, or when you received the proceeds (whichever is later), or
- when you made the choice to use the retirement exemption if the relevant event is CGT event J2, J5 or J6.

If you choose the retirement exemption after you've received the capital proceeds (for example, when you lodge your income tax return), you're not required to make the contribution until you make the choice. Accordingly, you may use the capital proceeds for other purposes before making the choice. However, once you make the choice, you must immediately make a contribution of an amount equal to the exempt amount if you were less than 55 years old just before you made the choice.

To satisfy this requirement, you must pay the amount into a complying super fund or RSA by the relevant date. This is an important requirement. Failure to immediately contribute the amount will mean the conditions are not satisfied, and the retirement exemption will not be available.

If you're 55 years old or older when you make the choice to access the retirement exemption, there is no requirement to pay any amount to a complying super fund or RSA, even though you may have been under 55 years old when you received the capital proceeds.

If the gain arises as a result of CGT events J5 or J6 (about the replacement asset conditions not being met for the small business rollover concession) you can choose the retirement exemption for those gains without having to satisfy the basic conditions again. This is because you would have already satisfied the basic

conditions at the time you chose the rollover.

If you receive the capital proceeds in instalments, the above requirements about making a contribution apply to each instalment (up to the asset's CGT exempt amount). If your capital proceeds from the disposal of a CGT asset are increased by one or more financial benefits that you receive under a look-through earnout right relating to that CGT disposal, you are treated as receiving those capital proceeds in instalments.

Death and the retirement exemption

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

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

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

You'll be eligible for the retirement exemption to the same extent that the deceased would have been just prior to their death, except that there is no requirement for the deceased to contribute an amount to a complying super fund or RSA.

We can extend the two-year period in certain circumstances.

See also:

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

Company or trust

If you're a company or trust, other than a public entity, you can also choose to disregard all or part of a capital gain where you meet all the following conditions:

- you satisfy the basic conditions
- you satisfy the significant individual test
- you keep a written record of the amount you choose to disregard (the exempt amount) and, if there is more than one CGT concession stakeholder, each stakeholder's percentage of the exempt amount (one may be nil, but together they must add up to 100%)
- you make a payment to at least one of your CGT concession stakeholders worked out by reference to each individual's percentage of the exempt amount
- the payment is equal to the exempt amount or the amount of capital proceeds, whichever is less, and
- where you receive the capital proceeds in instalments, you make a payment to a CGT concession stakeholder for each instalment in succession (up to the asset's CGT exempt amount). If your capital proceeds from the disposal of a CGT asset are increased by one or more financial benefits that you receive

under a look-through earnout right relating to that CGT disposal, you are treated as receiving those capital proceeds in instalments.

You must make payments:

- if you choose the retirement exemption for a J2, J5 or J6 event, seven days after you choose to disregard the capital gain
- in any other case, by the later of
  - seven days after you choose to disregard the capital gain
  - seven days after you receive the capital proceeds from the CGT event.

If a CGT concession stakeholder is under 55 years old just before a payment is made in relation to them, the company or trust must make the payment to the CGT concession stakeholder by contributing it to a complying super fund or RSA on their behalf. The company or trust must notify the trustee of the fund or the RSA at the time of the contribution that the contribution is being made in accordance with the requirements of the retirement exemption.

There is no requirement to make this contribution if the stakeholder was 55 years old or older.

Therefore, if you choose the retirement exemption after you have received the capital proceeds (for example, when you lodge your tax return), there is no requirement to make any payment until you have made the choice. Accordingly, you may use the capital proceeds for other purposes before choosing. However, once you choose, you must make the payment by the end of seven days after making the choice.

This is an important requirement. Failure to make a payment by the end of seven days after making the choice to a CGT concession stakeholder (if they are 55 years old or older) or into a complying super fund or RSA (if the stakeholder is under 55 years old) will mean the conditions are not satisfied and the retirement exemption will not be available.

If the gain arises as a result of CGT events J5 or J6 (when the replacement asset conditions have not been met for the small business rollover concession) you can choose the retirement exemption for those gains without having to satisfy the basic conditions again. This is because you would have already satisfied the basic conditions at the time you chose the rollover.

The requirement for companies and trusts to make a payment to at least one CGT concession stakeholder can be satisfied by making the payment directly, or indirectly, through one or more interposed entities to a CGT concession stakeholder. There are no tax consequences for the interposed entity that receives and passes on the payments.

Example: small business retirement exemption

After offsetting her capital losses and applying the CGT discount and the

small business 50% active asset reduction, Lana has a capital gain of $3,500.

Lana could choose the small business retirement exemption but, as she is younger than 55 years old, she would need to pay the amount into a complying super fund or RSA.

Lana decides she needs the funds to reinvest in the business and so does not choose the retirement exemption.

Termination of employment not required

Where payments are made by a company or trust to a CGT concession stakeholder, the stakeholder is not required to cease any activity or office holding.

For an individual choosing the retirement exemption, there is no requirement to terminate any activity or cease their business.

Deemed dividends

Payments made to a CGT concession stakeholder who is an employee, to satisfy the retirement exemption requirements, are not deemed to be in consequence of termination of employment for the purposes of section 109 of the ITAA 1936 (about excessive payments to shareholders, directors and associates being deemed to be dividends).

Division 7A of the ITAA 1936 also does not apply to treat such payments made by a company or trust as dividends.

Payments made to satisfy the retirement exemption requirements are not treated as a dividend or frankable distribution provided you are:

- a company making a payment to
  - a CGT concession stakeholder or
  - an interposed entity, or
- an interposed entity receiving a payment and passing that payment on.

See also:

- Interposed entities receiving or making payments
- *Income Tax Assessment Act 1936* Division 7A

Capital proceeds received in instalments

If a company or trust receives the capital proceeds from a CGT event in instalments and chooses the retirement exemption, it must make a payment to at least one of its CGT concession stakeholders on receipt of each instalment, up to the CGT exempt amount. The payment must be made by the later of seven days after the choice is

made or seven days after an instalment of the capital proceeds is received.

In this situation, the total amount of each instalment must be paid until the total of the payments equals the capital gain being disregarded. In other words, the requirement to make a payment must be satisfied to the greatest extent possible out of the initial instalments, rather than in some other way, such as an apportionment across all the instalments received.

If an individual receives capital proceeds in instalments, each instalment is treated as a separate payment. This means that each instalment is looked at separately and in succession in applying the exemption up to the individual's CGT exempt amount.

Receiving actual capital proceeds not required

It is not essential to receive actual capital proceeds from the CGT event to be able to choose the retirement exemption. The retirement exemption is available where a capital gain is made when an active asset is gifted and the market value substitution rule has applied, or where CGT event J2, J5 or J6 happens.

Example: Capital proceeds not received

In December 2006, Harry retired from farming and transferred the farm, which he acquired in 1996, to his son for no consideration. The market value of the farm was $1 million, so the market value substitution rule applies to deem the capital proceeds to equal the market value of the farm. As the cost base of the farm was $600,000, Harry made a capital gain of $400,000.

Harry reduced his capital gain by the 50% CGT discount to $200,000 and then further, by the 50% active asset reduction, to $100,000. Even though he has not received any capital proceeds, Harry may choose the retirement exemption for the full amount of the remaining $100,000 capital gain (assuming the other retirement exemption conditions are satisfied).

To access the exemption on a gain made by a company or trust for which there are no actual proceeds, the company or trust must make a payment of the disregarded capital gain to at least one of its CGT concession stakeholders.

CGT retirement exemption limit

The amount of the capital gain that you choose to disregard (that is, the CGT exempt amount) must not exceed your 'CGT retirement exemption limit' or, in the case of a company or trust, the CGT retirement exemption limit of each CGT concession stakeholder receiving a payment.

An individual's lifetime CGT retirement exemption limit is $500,000, reduced by any

previous CGT exempt amounts the individual has disregarded under the retirement exemption. This includes amounts disregarded under former (repealed) retirement exemption provisions. For a company or trust with eight CGT concession stakeholders (four significant individuals and their four spouses, where each spouse has a small business participation percentage greater than zero) the limit is effectively $4 million, that is, $500,000 for each stakeholder.

A company or trust may determine the percentage of the exempt amount attributable to each stakeholder, having regard to each stakeholder's retirement exemption limit (or remaining limit).

Example: Retirement exemption limit

Daryl and his wife, Mary, each own 50% of the shares in a company and are both significant individuals of the company. The company makes a capital gain and specifies Daryl's percentage of the exempt amount to be 90%, which means that the percentage specified for Mary must be 10%. Daryl's retirement exemption limit is $500,000.

To determine whether his exemption limit is exceeded, Daryl would take 90% of the exempt amount, add that to amounts previously specified, and see whether the total exceeds $500,000.

Consequences of choosing the exemption

If you choose this exemption, you disregard the amount of the capital gain you have chosen as the CGT exempt amount.

The amount of any capital gain that exceeds the CGT exempt amount does not qualify for this exemption.

Payments made to CGT concession stakeholder

If you're a CGT concession stakeholder, a payment you receive from a company or trust to satisfy the retirement exemption requirements is not assessable income and is not exempt income.

If you're a company or trust making the payment, it is not able to be deducted from your assessable income.

Interposed entities receiving or making payments

If you're a company or trust receiving a payment (whether directly or indirectly through one or more interposed entities) that another company or trust made to satisfy the retirement exemption requirements, and you're passing that payment on to a CGT concession stakeholder or another interposed entity:

- the payment you receive is not included in your assessable income and is not

exempt income, and
- the payment you make is not deductible from your assessable income.

Amounts that are not assessable income and not exempt income have no implications for tax losses of previous years.

A payment you make to satisfy the retirement exemption requirements is not treated as a dividend nor a frankable distribution provided:

- you are an interposed entity receiving a payment and passing that payment on, or
- you are a company making a payment to
  - a CGT concession stakeholder, or
  - an interposed entity.

This is the case despite section 109 of the ITAA 1936, which can treat excessive payments to shareholders, directors and associates as dividends. Therefore, section 109 has no application to these payments.

Division 7A of the ITAA 1936 also does not apply to treat such payments made by a company or trust as dividends.

See also:

- *Income Tax Assessment Act 1936* Division 7A

Superannuation consequences

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

See also:

- 15-year exemption
- 50% active asset reduction
- Rollover
- Small business restructure rollover

Small business rollover

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Small-business-rollover/

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

Find out about:

- Interaction with other concessions
- Conditions you must meet
- Consequences of choosing the rollover

See also:

- *Income Tax Assessment Act 1997* Subdivision 152-E

Interaction with other concessions

You may choose to apply the small business rollover to as much of the capital gain as you decide.

You may apply this small business rollover concession:

- after firstly using the small business 50% active asset reduction (if you choose to apply it), and then the 50% CGT discount (if applicable), or
- after you've applied any capital losses and CGT discount (if applicable)
  - this might ultimately allow a company or trust to make larger tax-free payment under the small business retirement exemption if they choose the retirement exemption after the deferred capital gain has crystallised, for example, when the replacement asset is later sold.

Alternatively, you may choose the small business retirement exemption if its conditions are satisfied, or you may choose both concessions for different parts of the remaining capital gain.

Conditions you must meet

To qualify for the small business rollover, you need to satisfy the basic conditions for the small business CGT concessions. You can choose to obtain a rollover even if you haven't yet acquired a replacement asset or incurred expenditure on a capital improvement to an existing asset.

Example: small business rollover

Instead of choosing the retirement exemption, Lana decides that she will search for a suitable replacement asset to use in her business. As she meets all basic conditions, she qualifies for the small business rollover.

This means she can defer her capital gain remaining after all other concessions have applied ($3,500).

After six months, Lana acquires another small parcel of land immediately adjoining the main business premises to use in her business. The replacement land costs $10,000, and it is her active asset before the end of the replacement asset period, so she meets the further conditions.

This deferred capital gain of $3,500 may later become assessable if Lana:

- sells the land
- stops using it in her business.

However, she could then choose a further small business rollover if she acquires another replacement active asset. Alternatively, Lana could choose the retirement exemption.

Consequences of choosing the rollover

If you choose the rollover, the capital gain will not be included in your assessable income.

Further CGT events happen if you previously chose the rollover and certain conditions are not met by the end of the replacement asset period. This period starts one year before the last CGT event in the income year for which you obtained the rollover and ends at the later of:

- two years after that last CGT event
- six months after the latest time a possible financial benefit becomes or could become due under a look-through earnout right relating to the CGT asset and the disposal.

For example, further CGT events will happen, and a capital gain will arise, if:

- you don't acquire the replacement assets or make capital improvements to existing assets within the replacement asset period, or the assets are not active assets at the end of that period (CGT event J5)
- the rollover amount is greater than your expenditure on the replacement asset or capital improved asset (CGT event J6)
- after the end of the replacement asset period, there's a change in the status of a replacement or capital improved asset you chose for the small business rollover (CGT event J2).

For a share in a company or interest in a trust to be an active asset, the company or trust must satisfy the 80% test, that is, the market value of the active assets and certain financial instruments of the company or trust must be 80% or more of the total of the market value of all the assets of the company or trust.

We can allow a longer replacement asset period.

Example: Replacement asset test

Jordan owns 50% of the shares in Company A and Company B. This makes him a CGT concession stakeholder in both companies. The companies are connected with Jordan because he controls both of them.

Company A owns land that it leases to Jordan for use in a business. It sells the land at a profit and buys shares in Company B as replacement assets. All of Company B's assets are active assets.

The replacement asset test is satisfied because the shares are active assets and Jordan is connected with Company A and is a CGT concession stakeholder in Company B.

Distributions

If a company or trust chooses the rollover for a capital gain and then distributes an amount out of the gain to a shareholder or beneficiary, the distribution is not exempt – that is, the concession does not flow through to the individuals. Such distributions by a company are likely to be assessable to the shareholder as an unfranked dividend.

Failure to acquire a replacement asset or make a capital improvement after a rollover (CGT event J5)

CGT event J5 happens if you choose to obtain a rollover, and by the end of the replacement asset period:

- you have not acquired a replacement asset, and have not made a capital improvement to an existing asset
- the replacement or capital improved asset is not your active asset (for example, you have sold it, it has become your trading stock, or it is no longer used in the business), or
- where the replacement asset is a share in a company or an interest in a trust
  - the share or trust interest fails the 80% test (unless the failure is only of a temporary nature)
  - you, or an entity connected with you, are not a CGT concession stakeholder in the company or trust, or
  - CGT concession stakeholders in the company or trust do not have a small business participation percentage in you of at least 90%.

Consequences of CGT event J5

When CGT event J5 happens, you make a capital gain equal to the amount of the capital gain previously disregarded under the small business rollover.

The time of the event is at the end of the replacement asset period.

We may extend the replacement asset period.

A capital gain from CGT event J5 may be eligible for the retirement exemption if you meet the relevant conditions. You don't need to meet the basic conditions again, but you must meet the retirement exemption conditions. However, you can't apply the 50% discount, small business 50% active asset reduction, or the 15-year exemption to reduce this gain.

Example: CGT event J5

In September 2014, Luke made a capital gain of $80,000 on an active asset and met the maximum net asset value test. Luke disregarded the whole capital gain under the small business rollover.

In September 2016 (the end of the two-year period), Luke did not have any replacement or capital improved assets. CGT event J5 happens and Luke makes a capital gain of $80,000 in September 2016.

Rollover amount greater than cost of replacement asset (CGT event J6)

CGT event J6 happens if:

- you choose to obtain a rollover
- by the end of the replacement asset period you acquired a replacement asset or made a capital improvement to an asset, CGT event J5 has not happened and the amount you chose to roll over is greater than the sum of the following amounts
  - the amount paid to acquire the replacement asset (that is, the first element of the cost base of the replacement asset)
  - any incidental costs incurred in acquiring that asset, which can include giving property (that is, the second element of the cost base of the replacement asset), and
  - the amount expended on capital improvements to one or more assets that were acquired or already owned (that is, fourth element expenditure).

Consequences of CGT event J6

When CGT event J6 happens, you make a capital gain equal to the difference between:

- the amount of the capital gain disregarded under the small business rollover, and
- the amount incurred on the replacement asset or capital improvements.

The time of the event is at the end of the replacement asset period.

We may extend the replacement asset period.

When CGT event J6 occurs, you may be eligible for the retirement exemption,

provided you meet the relevant conditions for that exemption. You don’t need to meet the basic conditions again. However, you can't apply the 50% discount, small business 50% active asset reduction, or the 15-year exemption to reduce this gain.

Example: CGT event J6

In October 2014, Nicky made a capital gain of $700,000 on an active asset and met the maximum net asset value test. Nicky chose to disregard the whole capital gain.

In November 2015, Nicky purchased new business premises for $300,000 and spent $150,000 on improving some other assets. The replacement and capital improved assets met all of the relevant conditions.

However, the amount of expenditure on the replacement and capital improved assets was only $450,000. The capital gain that was rolled over was $700,000.

In October 2016, two years after the original CGT event, CGT event J6 happens because there has been insufficient expenditure and Nicky makes a capital gain of $250,000. The rollover of $450,000 of the original capital gain continues.

Change in status of replacement asset (CGT event J2)

A CGT event (CGT event J2) happens if, after the end of the replacement asset period, there is a change in the status of a replacement or capital improved asset you chose for the small business rollover.

Examples of CGT event J2 include:

- the replacement or capital improved asset stops being your active asset, for example, you dispose of the asset or you stop using it or holding it ready for use in your business
- the replacement or capital improved asset becomes your trading stock
- you start to use the replacement or capital improved asset solely to produce exempt income
- where the replacement asset is a share in a company or an interest in a trust
  - the share or interest stops being an active asset, that is, the share or trust interest fails the 80% test (and the failure is more than just temporary in nature), or
  - a liquidator or administrator of the company declares the shares worthless (CGT event G3), or
  - you, or an entity connected with you, cease to be a CGT concession stakeholder in the company or trust (or that entity is no longer connected with you), or
  - CGT concession stakeholders in the company or trust cease to have a

small business participation percentage in you of at least 90%.

Consequences of CGT event J2

When CGT event J2 happens to your replacement or capital improved asset, you make a capital gain equal to the gain previously disregarded under the small business rollover.

If there was more than one replacement or capital improved asset and a change happens to only some of the assets, the capital gain is the difference between the amount that was originally rolled over and the relevant expenditure on the remaining replacement or improved assets that satisfied the relevant conditions.

The time of the event is when the change happens.

A capital gain from CGT event J2 may qualify for:

- further rollover, if you acquire another replacement asset, or
- the retirement exemption.

This is provided you meet the relevant conditions for the rollover or exemption. You can't apply the CGT discount, the 15-year exemption, or the small business 50% active asset reduction to reduce this capital gain.

If you dispose of a replacement or capital improved asset, another CGT event (CGT event A1) happens in addition to CGT event J2. Any capital gain you make from CGT event A1 on the disposal of the replacement or capital improved asset may qualify for any of the small business CGT concessions, if the relevant conditions are satisfied.

Example: CGT event J2

Peter disposes of an active asset for $10,000, making a capital gain of $2,000. He buys two replacement assets (not being depreciating assets) for $5,000 each, and chooses the small business rollover.

$1,000 of the capital gain is disregarded for each replacement asset.

Peter later sells one of the replacement assets for $7,500 – so he makes a capital gain of $2,500.

He also makes a capital gain of $1,000 because the sale of the replacement asset results in that asset no longer being an active asset. The $1,000 capital gain is the capital gain made on the disposal of the active asset that was rolled over in respect of this replacement asset.

Peter’s capital gain of $1,000 made from the crystallising of the deferred capital gain (CGT event J2) may be eligible for further rollover relief or the retirement exemption. The capital gain of $2,500 made from the disposal of the replacement asset (CGT event A1) may be eligible for any of the

concessions if the relevant conditions are satisfied.

If CGT event J6 had previously happened in relation to the rollover, the capital gain is the same as calculated above, less the capital gain previously made under CGT event J6.

If CGT event J2 has previously happened in relation to the rollover, the capital gain is the same as calculated above, less the capital gain previously made under CGT event J2.

See also:

- Types of CGT events
- 15-year exemption
- 50% active asset reduction
- Retirement exemption
- Small business restructure rollover
- Requesting an extension of time

Small business restructure rollover

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Small-business-restructure-rollover/
- Last modified: 17 Jul 2017
- QC 48586

The small business restructure rollover allows small businesses to transfer active assets from one entity (the transferor) to one or more other entities (transferees), on or after 1 July 2016, without incurring an income tax liability.

This rollover applies to the transfer of active assets that are CGT assets, trading stock, revenue assets or depreciating assets.

You can access this concession if your aggregated turnover is less than $10 million.

Next steps:

- Eligible entities
- When the rollover is available
- Tax implications

Eligible entities

The rollover applies if each party to the transfer is one of the following in the income

year in which the transfer occurs:

- a small business entity
- an entity that has an affiliate that is a small business entity
- an entity that is connected with a small business entity
- a partner in a partnership that is a small business entity.

This means that an entity not carrying on a business, but holding assets for a small business entity, may be able to apply the rollover. For example, where one entity owns a property in which another connected entity is carrying on a business.

See also:

- Small business entity concessions
- Affiliates
- Connected entities

When the rollover is available

Part of a genuine restructure

The rollover is available where the transfer of assets forms part of a genuine restructure as opposed to an artificial or inappropriately tax-driven scheme.

Determining whether a restructure is 'genuine' depends on all the facts surrounding the restructure.

To provide certainty to small business owners, a safe harbour rule is included that provides an alternative way of satisfying the requirement that a restructure is genuine.

See also:

- Small Business Restructure Rollover: genuine restructure of an ongoing business

No change to ultimate economic ownership

To be eligible for this rollover, the transaction must not result in a change to the ultimate economic ownership of transferred assets.

The ultimate economic owners of an asset are the individuals who, directly or indirectly, own an asset. Where there is more than one individual with ultimate economic ownership, there is an additional requirement that each individual's share of ultimate economic ownership be maintained.

Example: Ultimate ownership unchanged

Penny runs a small furniture manufacturing business as a sole trader. She wishes to run the business through a unit trust.

Penny sets up the Just Me Unit Trust with herself as sole unit holder, and transfers the active assets of the business to the trust. This would not result in a change in ultimate economic ownership of those assets.

Example: Changed share of ownership

Amy, Joanna and Remy run a delivery business as equal partners and want to transfer their interests in the assets of the partnership to a company. Joanna and Remy are a couple.

Amy, Joanna and Remy establish a company, whereby 300 identical shares are issued

- 100 shares are issued to Amy
- 150 shares are issued to Joanna
- 50 shares are issued to Remy.

This is because Remy has other income and Joanna and Remy, as a couple, want to lower their overall income tax bill.

While this doesn't change the individuals who have the ultimate economic ownership of the asset, there is a change in the proportionate share of that ultimate economic ownership. Accordingly, Amy, Joanna and Remy cannot use the small business restructure rollover.

However, if the shares were distributed equally between the partners, the ultimate economic ownership of the assets would be unchanged, and Amy, Joanna and Remy could use the rollover, subject to satisfying the other conditions.

Discretionary trusts

Non-fixed (discretionary) trusts may be able to meet the requirements for ultimate economic ownership, for example, where there is no practical change in which individuals economically benefit from the assets before and after the transfer.

Family trusts may meet an alternative ultimate economic ownership test where:

- the trustee has made a family trust election, and
- every individual who had ultimate economic ownership of the transferred asset before the transfer, and every individual who has ultimate economic ownership after the transfer, must be members of the family group relating to the family trust.

See also:

- [Small business restructure roll-over: consequences of a roll-over]
- [Family Trust elections (FTEs)]

Eligible assets

This rollover applies to active assets that are CGT assets, depreciating assets, trading stock or revenue assets transferred between entities as part of a genuine restructure of an ongoing business.

Active assets are assets used, or held ready for use, in the course of carrying on a business.

The rollover is not available for any other business assets. Assets such as loans to shareholders of a company are not active assets of the business carried on by the creditor, and as such are not eligible.

Tax implications

There are a number of tax implications you need to consider if you choose to apply the small business restructure rollover. Generally:

- assets transferred under the rollover will not result in an income tax liability arising for either party at the time of the transfer
- the transferor is taken to have received an amount for the transferred asset equal to the transferor's cost of the asset for income tax purposes
- the transferee will be taken to have acquired the asset at the time of the transfer for an amount that equals the transferor's cost just before transfer.

CGT assets

The following apply to transferred CGT assets:

- Pre-CGT assets will retain their pre-CGT status after the transfer.
- To be eligible to claim the CGT discount for any subsequent sale of the asset, you will need to wait at least 12 months before a CGT event happens to that asset.
- For the purposes of determining eligibility for the 15 year CGT exemption, the transferee is taken as having acquired the asset when the transferor acquired it.

See also:

- [General depreciation rules]
- [Working out your capital gain]

Trading stock

The rollover cost of an asset that is trading stock is either the:

- cost of the item for the transferor at the time of the transfer, or
- value of the item for the transferor at the start of the income year, if the

transferor held the item as trading stock at that time.

Depreciating assets

The rollover prevents the transferor from having to make a balancing adjustment when assets are transferred. This allows the transferee to deduct the decline in value of the depreciating asset using the same method and effective life as the transferor was using.

Revenue assets

If the asset is a revenue asset, the rollover cost is the amount that would result in the transferor not making a profit or loss on the transfer. The transferee will inherit the same cost attributes as the transferor just before transfer.

Other implications

You may also need to consider the following:

- There may be potential liabilities such as stamp duty or GST consequences to consider prior to restructuring.
- Even though a restructure may satisfy the rollover requirements, this does not prevent the general anti-avoidance rule from applying to a scheme involving the application of the rollover.
- For shares or interests in a company or trust
    - this rollover does not require that market value consideration, or any consideration, be given in exchange for the transferred assets.
    - where membership interests are issued as consideration for the transfer, the cost base or reduced cost base of those new membership interests should be worked out based on the following formula:
      (Sum of rollover costs and adjustable values of the rollover assets minus liabilities the transferee assumes for the assets) divided by number of new membership interests
    - an integrity rule is included to ensure that a capital loss on any direct or indirect membership interest in the transferor or transferee that is made subsequent to the rollover will be disregarded.

See also:

- Small business restructure roll-over: consequences of a roll-over
- *Income Tax Assessment Act 1997* Subdivision 152-A

Death and small business CGT concessions

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Death-and-small-business-CGT-concessions/
- Last modified: 17 Jul 2017
- QC 52292

When a person dies, their assets devolve (are transferred) to their legal personal representative (LPR) or are acquired by a surviving joint tenant, where the deceased owned those assets as joint tenants with another person. In effect, there is a change of ownership of the assets and, therefore, a CGT event happens. However, any capital gain or loss from this CGT event is disregarded, as is any capital gain or loss that:

- the LPR makes when the asset passes to a beneficiary in the estate, or
- that is made as a result of the asset being acquired by a surviving joint tenant.

The LPR, beneficiary or surviving joint tenant is taken to have acquired the assets on the date of death. Generally, the cost base of the assets is transferred to the assets in the hands of the LPR, beneficiary or joint tenant. However, market value is used if the deceased acquired the assets before 20 September 1985.

In effect, with the disregarding of any capital gain upon death and transferring the cost base upon death of the asset owner, any unrealised capital gain is deferred until a later sale of the asset by the LPR, beneficiary or joint tenant.

The LPR or beneficiary of the deceased estate will be eligible for the small business CGT concessions where:

- the asset is disposed of within two years of the date of death (although we may allow a longer period by granting an extension of time), and
- the asset would have qualified for the small business CGT concessions if the deceased had disposed of the asset immediately before their death.

Provided these conditions are satisfied, the small business CGT concessions are also available to the trustee of a trust established by the will of the deceased, a beneficiary of such a trust, and a surviving joint tenant.

For the retirement exemption, there is no need for the amount to be paid into a super fund, even if the deceased was less than 55 years old just before his or her death.

The 15-year exemption can also be chosen if the deceased had met the requirements, except that it is not necessary for the CGT event to have happened in relation to the retirement of the individual.

On this page:

See also:

- Requesting an extension of time

Disposal of asset after two-year time limit

If a person carrying on a business dies and their assets devolve to their LPR, beneficiary, surviving joint tenant, or trustee or beneficiary of a testamentary trust (the transferee), the active asset test is applied to the transferee in relation to any capital gain made on a sale of the assets after the two-year time limit (or such further time that we allow).

This means if the transferee does not continue to carry on the deceased's business, or use the asset in another business, after the two-year time limit, the active asset test may not be satisfied and the small business concessions may not be available.

Previous small business rollover

If, just before dying, a person still owned a replacement or capital improved asset from an earlier small business rollover, CGT event J2 will happen upon the person's death. This is because the replacement or capital improved asset will stop being the deceased's active asset, having devolved to their LPR.

However, the general rules concerning death, in addition to disregarding any capital gain made on the replacement asset from CGT event A1, will also disregard the capital gain from CGT event J2. Although any capital gain from CGT event A1 is effectively deferred until a later sale of the asset by the LPR or beneficiary, the capital gain from CGT event J2 is not transferred to the LPR or beneficiary. This means the capital gain from CGT event J2 is permanently disregarded under the general rules concerning death.

Example: Disregarding CGT event J2

Jack disposed of an active asset and made a capital gain of $400,000. After applying the CGT discount and the active asset reduction, his remaining capital gain was $100,000. Jack acquired a replacement asset (for more than $100,000) and chose the small business rollover, disregarding the remaining capital gain of $100,000. Jack continued to carry on his business using the replacement asset until his death.

On Jack's death, the replacement asset (which had increased in value) devolved to his LPR. Accordingly, CGT event A1 and CGT event J2 happened.

The capital gains from CGT event A1 and CGT event J2 are disregarded under the general rules concerning death. The capital gain on the replacement asset from CGT event A1 is effectively deferred until a later sale of the asset by the LPR or beneficiary. However, the $100,000 capital gain from CGT event J2 is not transferred to the LPR or beneficiary and, as a result, remains permanently disregarded.

See also:

- [Keeping records for CGT small business concessions]
- [Requesting an extension of time]

Keeping records for CGT small business concessions

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Keeping-records-for-CGT-small-business-concessions/
- Last modified: 17 Jul 2017
- QC 52293

You must keep records of everything that may be relevant to working out whether you have made a capital gain or loss from a CGT asset.

This means you need records to substantiate the purchase and disposal of any CGT asset, as well as other costs relating to the asset. Records can include contracts, valuations, and details of commissions and legal fees you paid. Penalties can apply if you don't keep the records for at least five years after the relevant CGT event.

If you use information from those records in a later tax return, you may have to keep your records for longer. If you've applied a net capital loss, you should generally keep your records of the CGT event that resulted in the loss until the end of any period of review for the income year in which the net capital loss is fully applied.

The records must:

- show the nature of the act, transaction, event or circumstance, and the date it happened
- be in English, or in a form that can be readily translated into English.

If you don't keep proper CGT records you might have to pay:

- extra expenses to establish the cost of an asset when you dispose of it
- more tax than necessary.

CGT asset register

A convenient way to keep the required records is a CGT asset register. This is a register of information about your CGT assets that you have transferred from your CGT records (for example, invoices, receipts and contracts).

For most assets this information includes:

- the date you acquired the asset
- the cost of the asset
- a description, amount and date for each cost associated with purchasing the asset (for example, stamp duty and legal fees)
- the date the asset was disposed of
- the amount you received when you disposed of the asset
- any other information relevant to working out your CGT obligation.

You can discard your CGT records five years after having an asset register entry certified if you meet all of the following:

- you enter all the necessary information about an asset in your CGT asset register
- the entry is in English and is certified in writing by an approved person (for example, a registered tax agent)
- the asset register entry is certified after 31 December 1997 (although you may have acquired the asset before this date).

If you don't keep an asset register, you generally have to keep CGT records for at least five years after you dispose of an asset. For example, if you hold an asset for 10 years and then sell it, you would have to keep the records for 15 years.

Example: CGT asset register

Max bought a business property on 1 January 2005.

His tax agent advised him to transfer the relevant CGT information from his records to an asset register. He transferred the records of the:

- date he purchased the property
- purchase price
- stamp duty.

His agent certified the register on 1 July 2005.

Max sold the property on 15 September 2010.

Because Max had recorded the details of the property on an asset register, he had to keep records relating to the property only until 1 July 2010, rather than 15 September 2015.

See also:

- Record keeping for CGT

Small business concessions in prior years

- https://www.ato.gov.au/General/Capital-gains-tax/Small-business-CGT-concessions/Small-business-concessions-in-prior-years/
- Last modified: 17 Jul 2017
- QC 52301

The rules for the small business CGT concessions have changed over the years.

The information in this part of the website is accurate for capital gains occurring in the 2015–16 income year.

For prior years, see:

- Capital gains tax concessions for small business 2014–15
- Advanced guide to capital gains tax concessions for small business 2013–14
- Advanced guide to capital gains tax concessions for small business 2012–13
- Advanced guide to capital gains tax concessions for small business 2011–12
- Advanced guide to capital gains tax concessions for small business 2010–11
- Advanced guide to capital gains tax concessions for small business 2009–10
- Advanced guide to capital gains tax concessions for small business 2008–09
- Advanced guide to capital gains tax concessions for small business 2007–08
- Advanced guide to capital gains tax concessions for small business 2006–07
- Advanced guide to capital gains tax concessions for small business 2005–06

International issues

- https://www.ato.gov.au/General/Capital-gains-tax/International-issues/
- Last modified: 29 Jun 2018
- QC 52302

If you're a foreign resident or temporary resident:

- you're subject to capital gains tax (CGT) only on taxable Australian property, such as real estate (or other real property) in Australia or a CGT asset you use in a business in Australia
- for any discount capital gains after 8 May 2012, you'll need to work out the CGT discount you can apply (this is only for individuals).

If you become an Australian resident, or stop being one, the range of assets on which you pay CGT in Australia changes.

Note that:

- ‘Australian resident’ means a resident of Australia for tax purposes.

- these rules don't affect assets you acquired before 20 September 1985 (when CGT started).

Foreign resident capital gains withholding first applied to vendors disposing of certain taxable Australian property under contracts entered into from 1 July 2016. A 10% non-final withholding was applied to these transactions at settlement.

New rules for foreign resident capital gains withholding (FRCGW) apply to vendors disposing of certain taxable property under contracts entered into from 1 July 2017. The changes will apply to real property disposals where the contract price is $750,000 and above (previously $2 million) and the FRCGW withholding tax rate will be 12.5% (previously 10%). The previous threshold and rate will apply for any contracts that were entered into from 1 July 2016 and before 1 July 2017, even if they are not due to settle until after 1 July 2017.

For more information visit Foreign resident capital gains withholding payments

For Norfolk Island residents CGT applies to assets acquired from 23 October 2015.

If you are a foreign resident when a CGT event happens to your residential property in Australia you are no longer entitled to claim the main residence exemption. There is a transitional period. To find out how this affects you, see Foreign residents and main residence exemption.

Find out about:

- Foreign residents and temporary residents
- Changing residency
- CGT discount for foreign resident individuals
- Foreign resident capital gains withholding payments
- Taxable Australian property
- Foreign residents and main residence exemption

See also:

- CGT and foreign exchange gains and losses
- Investments in foreign hybrids

Foreign residents and temporary residents

- https://www.ato.gov.au/General/Capital-gains-tax/International-issues/Foreign-residents-and-temporary-residents/
- Last modified: 29 Jun 2018
- QC 17934

If you're a temporary resident, foreign resident or the trustee of a foreign trust, you're subject to capital gains tax (CGT) if a CGT event happens to a CGT asset

that is taxable Australian property, such as real property in Australia or a CGT asset you use in a business in Australia.

Assets you acquired before 20 September 1985 are not subject to CGT.

For temporary residents there are specific rules where the CGT asset is a share or right acquired under an employee share scheme.

Foreign residents who dispose of taxable Australian property may not be entitled to claim the CGT main residence exemption when a CGT event happens to their property.

On this page:

- What is a temporary resident?
- Ceasing to be a temporary resident

See also:

- Taxable Australian property
- Work out your residency status for tax purposes
- Foreign residents and main residence exemption

What is a temporary resident?

You're a temporary resident if you:

- hold a temporary visa granted under the *Migration Act 1958*
- are not an Australian resident within the meaning of the *Social Security Act 1991*
- do not have a spouse who is an Australian resident within the meaning of the *Social Security Act 1991*.

The *Social Security Act 1991* defines an 'Australian resident' as a person who resides in Australia and is an Australian citizen, the holder of a permanent visa or a protected special category visa holder.

This is different to the standards we use to determine tax residency. You could be an Australian resident for tax purposes even if you're not an Australian citizen or permanent resident.

Anyone who is an Australian resident for tax purposes after 6 April 2006 but is not a temporary resident cannot later become a temporary resident, even if they later hold a temporary visa.

Ceasing to be a temporary resident

If you cease being a temporary resident and remain an Australian resident, you're taken to have acquired assets (other than assets you acquired before 20 September 1985) that are not taxable Australian property for their market value at the time you ceased being a temporary resident.

There is an exception to this rule for employee shares and rights.

Example

Fred has lived most of his life in London working as a market research consultant. He is single. He owns several apartments in and around London that are leased to tenants and has a share portfolio that provides him with regular dividend income.

On 12 December 2011, he arrived in Brisbane to begin work with an Australian company that conducts market research. For the first three years, Fred held a temporary visa and expected to eventually return to the United Kingdom. During this period he was a temporary resident as he held a temporary visa and met the other criteria for being a temporary resident.

Fred decided to apply for, and was granted, permanent residence in Australia on 15 March 2016.

The CGT implications for Fred are as follows.

For assets disposed of between 12 December 2011 and 14 March 2016

Fred was a temporary resident and was only subject to CGT in Australia on any assets that were taxable Australian property.

For assets disposed of on or after 15 March 2016

Fred is an Australian resident and is subject to tax in Australia on his worldwide income and capital gains. Any capital gains or capital losses Fred makes on the assets held in the United Kingdom will be subject to CGT in Australia and the cost base for these assets will be set according to the market value of the assets on 15 March 2016. Fred will receive a foreign tax credit for any tax paid in the United Kingdom on those gains.

See also:

- Changing residency
- Taxable Australian property
- CGT discount for foreign resident individuals
- Foreign income exemption for Australian residents and temporary residents - employee share schemes

Changing residency

- https://www.ato.gov.au/General/Capital-gains-tax/International-issues/Changing-residency/
- Last modified: 29 Jun 2018
- QC 52303

If you become an Australian resident, or stop being one, the range of assets on which you pay CGT in Australia changes.

On this page:

- Becoming an Australian resident
- Ceasing to be an Australian resident

See also:

- Work out your residency status for tax purposes
- Taxable Australian property

Becoming an Australian resident

When you become an Australian resident (other than a temporary resident), you're taken to have acquired certain assets at the time you became a resident for their market value at that time.

This does not apply to assets you acquired before 20 September 1985 (pre-CGT assets) and assets that were taxable Australian property.

If you became a resident, the general cost base rules apply to any capital gains tax assets that are taxable Australian property.

Ceasing to be an Australian resident

If you cease being an Australian resident, or cease being a resident trust for capital gains tax (CGT) purposes, you're taken to have disposed of assets that are not taxable Australian property for their market value at the time you ceased being a resident.

If you have any indirect Australian real property interests, or options or rights to acquire such interests, you're taken to have immediately re-acquired these assets for their market value.

Exemption for temporary residents

If you're a temporary resident when you cease to be an Australian resident, you're not taken to have disposed of any of your assets.

See also:

- Foreign residents and temporary residents

Exemption for short-term residents

If you're an individual who was in Australia on 6 April 2006 and have remained here

as an Australian resident since that date, you may be exempt from CGT if you cease being an Australian resident.

You disregard the capital gain or loss if you were an Australian resident for less than a total of five years during the 10 years before you stopped being one, and either:

- owned the asset before last becoming an Australian resident, or
- inherited the asset after last becoming an Australian resident.

Choosing to disregard capital gains and losses

If you're an individual, you can choose to disregard all capital gains and losses you made when you stop being a resident.

If you cease being a resident and you make this choice, those assets are taken to be taxable Australian property until the earlier of:

- a CGT event happening to the assets (for example, their sale or disposal), or
- you again becoming an Australian resident.

The effect of making this choice is that the increase or decrease in the value of the assets from the time you cease being a resident to the time of the next CGT event, or of you again becoming a resident, is also taken into account in working out your capital gains or losses on those assets. The way you prepare your tax return is generally sufficient evidence of your choice.

See also:

- [Making choices and requesting extensions]

CGT discount for foreign resident individuals

- https://www.ato.gov.au/General/Capital-gains-tax/International-issues/CGT-discount-for-foreign-resident-individuals/
- Last modified: 17 Jul 2017
- QC 35657

Up to 8 May 2012, the CGT discount of 50% was available to foreign resident individuals who were subject to CGT on taxable Australian property.

For assets acquired after 8 May 2012, the discount is generally not available to foreign and temporary resident individuals (including beneficiaries of trusts and partners in a partnership).

The discount is apportioned where a CGT event happens after 8 May 2012 and:

- you acquired the asset before that date, or
- you had a period of Australian residency after that date.

If this affects you, use the CGT discount worksheet (PDF 135KB) to calculate the CGT discount you can apply.

CGT events that occurred before 8 May 2012 are not affected.

Foreign and temporary residents

You must calculate the CGT discount you can apply to the capital gain if you're a foreign or temporary resident individual and, after 8 May 2012, you have a discount capital gain from a CGT event.

If you were a foreign or temporary resident on 8 May 2012, you may choose to get a market value for the CGT asset as at 8 May 2012 and use a market value calculation. This will apportion the CGT discount to take into account the capital gain you accrued before 8 May 2012.

Australian residents with a period of foreign residency after 8 May 2012

You must calculate the CGT discount you can apply to the capital gain you have if you are an Australian resident and, after 8 May 2012, you have:

- a capital gain from a CGT event
- a period of foreign or temporary residency.

Your period of foreign or temporary residency after 8 May 2012 is taken into account when calculating the CGT discount you can apply.

See also:

- Foreign resident capital gains withholding payments
- Taxable Australian property

Foreign resident capital gains withholding payments

- https://www.ato.gov.au/General/Capital-gains-tax/International-issues/Foreign-resident-capital-gains-withholding-payments/
- Last modified: 17 Jul 2017
- QC 52305

Foreign resident capital gains withholding first applied to vendors disposing of certain taxable Australian property under contracts entered into from 1 July 2016. A

10% non-final withholding was applied to these transactions at settlement.

The assets subject to the withholding tax are:

- taxable Australian real property with a market value of $750,000 or more
- an indirect Australian real property interest
- an option or right to acquire such property or interest.

New rules for foreign resident capital gains withholding (FRCGW) apply to vendors disposing of certain taxable property under contracts entered into from 1 July 2017. The changes will apply to real property disposals where the contract price is $750,000 and above (previously $2 million) and the FRCGW withholding tax rate will be 12.5% (previously 10%). The existing threshold and rate will apply for any contracts that are entered into from 1 July 2016 and before 1 July 2017, even if they are not due to settle until after 1 July 2017.

Where the seller of these Australian assets is deemed a foreign resident, the buyer must pay 10% or 12.5% of the purchase price (depending on the date of the contract) to the ATO as a foreign resident capital gains withholding payment.

The foreign resident seller can claim a credit for the foreign resident capital gains withholding payment by lodging a tax return for the relevant year.

See also:

- Foreign resident capital gains withholding payments
- Taxable Australian property

Taxable Australian property

- https://www.ato.gov.au/General/Capital-gains-tax/International-issues/Taxable-Australian-property/
- Last modified: 17 Jul 2017
- QC 52306

Taxable Australian property includes:

- a direct interest in real property situated in Australia
- a mining, quarrying or prospecting right to minerals, petroleum or quarry materials situated in Australia
- a capital gains tax (CGT) asset that you have used at any time in carrying on a business through a permanent establishment in Australia
- an indirect interest in Australian real property – you and your associates hold 10% or more of an entity, including a foreign entity, and the value of your interest is principally attributable to Australian real property.

Taxable Australian property also includes an option or right over one of the above.

For CGT events happening on or after 20 May 2009, a leasehold interest in land situated in Australia is 'real property situated in Australia'.

Certain CGT assets will also be taken to be taxable Australian property if you take the option of [choosing to disregard capital gains and losses when you cease being an Australian resident].

If you acquired an indirect interest in Australian real property before 11 May 2005, you're taken to have acquired it at its market value on the previous day (10 May 2005) if:

- you're a foreign resident or the trustee of a trust that was not a resident trust for CGT purposes
- the interest did not have the necessary connection with Australia
- the interest is taxable Australian property.

Foreign residents must apply functional currency rules for the calculation of capital gains and losses on disposal of indirect Australian real property interests where the sole or predominant currency in which they keep their accounts is a foreign currency.

See also:

- Market valuation for tax purposes
- Guide to functional currency rules
- Capital gains tax changes to the principal asset test

CGT and foreign exchange gains and losses

- https://www.ato.gov.au/General/Capital-gains-tax/International-issues/CGT-and-foreign-exchange-gains-and-losses/
- Last modified: 17 Jul 2017
- QC 52307

A CGT asset can be denominated in a foreign currency and foreign currency cash can itself be a CGT asset. Gains or losses that you make while you hold such assets will generally be taxed as a capital gain or capital loss respectively.

However, if dealings with foreign currency denominated assets give rise to rights to receive or obligations to pay foreign currency, the rights or obligations may be subject to the foreign exchange (forex) provisions when a right or obligation ceases. For example, if a contract you enter into to sell an overseas rental property is denominated in foreign currency, you will have a right to receive foreign currency (being the sale price of the rental property). The right ceases on payment of the foreign currency. Such rights and obligations will usually arise on the acquisition or disposal of a CGT asset.

A forex gain or loss commonly arises for the acquisition or disposal of a CGT asset denominated in foreign currency where there is a currency exchange rate fluctuation between the date you entered into the contract and the date of settlement of the contract (when payment occurs). Currency fluctuations between the date of acquisition and date of disposal of a CGT asset are taken into account when the cost base and capital proceeds are translated into Australian currency.

It may be that the gain or loss you make on the ending of rights for foreign currency, a disposal of foreign currency or a right to receive foreign currency is taxable under both CGT and the forex measures. Generally, to the extent that both the forex measures and CGT bring to account a forex gain or loss, the forex measures take precedence, such that the forex gain or loss is brought to account only under the forex provisions.

In addition, if the taxation of financial arrangements (TOFA) rules apply to you, your foreign exchange gains and losses may be brought to account under those TOFA rules instead of the forex measures.

See also:

- Foreign exchange gains and losses
- Translation (conversion) rules
- Guide to the taxation of financial arrangements (TOFA)

Short-term forex gains and losses

Some short-term forex gains or losses, which arise under transactions for the acquisition or disposal of certain CGT assets, will be treated as capital gains or capital losses.

In such cases, CGT events K10 or K11 will happen, which will result in the forex gain or loss being integrated into the tax treatment of the CGT asset, or matched to the character of the gain or loss that would arise from the disposal of the asset. For the short-term rules to apply, the due date for payment must be within 12 months of acquiring or disposing of the asset.

See also:

- Capital assets and the 12 month rule

Investments in foreign hybrids

- https://www.ato.gov.au/General/Capital-gains-tax/International-issues/Investments-in-foreign-hybrids/

- Last modified: 17 Jul 2017
- QC 52308

A foreign hybrid is an entity that is taxed in Australia as a company but taxed overseas as a partnership. This can include a limited partnership, a limited liability partnership and a US limited liability company.

If you have an investment in a foreign hybrid (referred to as being a member of a foreign hybrid), you're treated for Australian tax purposes as having an interest in each asset of the partnership.

As a consequence, any capital gain or loss made in relation to the assets of a foreign hybrid is taken to be made by the member.

Foreign residents and main residence exemption

- https://www.ato.gov.au/General/Capital-gains-tax/International-issues/Foreign-residents-and-main-residence-exemption/
- Last modified: 29 May 2018
- QC 55771

There are special capital gains tax (CGT) rules you need to know if you're a foreign resident. These rules will impact you when you sell residential property in Australia.

In the 2017-18 Budget, the government announced that foreign residents will no longer be entitled to claim the main residence exemption when they sell property in Australia. This change is not yet law and is subject to parliamentary process.

If the law is passed and you are a foreign resident when a CGT event happens to your residential property in Australia, you may no longer be entitled to claim the main residence exemption. This will apply to you:

- when you use the exemption as a reason for a variation to your foreign resident capital gains withholding rate
- when you lodge your income tax return. You must declare any net capital gain in your income and you can claim a credit for the foreign resident withholding tax paid to us.

The change will apply to foreign residents as follows:

- for property held prior to 7:30pm (AEST) on 9 May 2017, the exemption will only be able to be claimed for disposals that happen up until 30 June 2019 and only if they meet the requirements for the exemption. For disposals that happen from 1 July 2019 they will no longer be entitled to the exemption
- for property acquired at or after 7:30pm (AEST) 9 May 2017, the exemption will

no longer apply to disposals from that date.

This change will only apply if you are not an Australian resident at the time of the disposal (contract date).

If you weren't an Australian resident for tax purposes while living in your property, you are unlikely to satisfy the current requirements for the main residence exemption.

If you are a foreign resident when you die, the changes will also apply to:

- legal personal representatives, trustees and beneficiaries of deceased estates
- surviving joint tenants
- special disability trusts.

See also:

- Capital gains tax changes for foreign investors
- Foreign residents claiming the main residence exemption as a reason for the variation

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Some of the information on this website applies to a specific financial year. This is clearly marked. Make sure you have the information for the right year before making decisions based on that information.

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