GENERAL	TAXPAYERS	GUIDE	NAT 4151–6.2007
SEGMENT	AUDIENCE	FORMAT	PRODUCT ID

Australian Government
Australian Taxation Office

Guide to capital gains tax 2007

To help you complete your tax return for 1 July 2006 – 30 June 2007

Covers:

- how to work out whether you are subject to capital gains tax
- how to calculate your capital gain or capital loss.

If you are a resident personal investor with a capital gain or capital loss only from shares, units or a managed fund, you can use the shorter *Personal investors guide to capital gains tax 2007* (NAT 4152–6.2007) instead of this guide

For CGT tools and calculators, including for demergers, visit **www.ato.gov.au**

OUR COMMITMENT TO YOU

We are committed to providing you with advice and information you can rely on.

We make every effort to ensure that our advice and information is correct. If you follow advice in this publication and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we must still apply the law correctly. If that means you owe us money, we must ask you to pay it. However, we will not charge you a penalty or interest if you acted reasonably and in good faith.

If you make an honest mistake when you try to follow our advice and you owe us money as a result, we will not charge you a penalty. However, we will ask you to pay the money, and we may also charge you interest.

If correcting the mistake means we owe you money, we will pay it to you. We will also pay you any interest you are entitled to.

If you feel this publication does not fully cover your circumstances, please seek help from us or a professional adviser.

The information in this publication is current at May 2007. We regularly revise our publications to take account of any changes to the law, so make sure that you have the latest information. If you are unsure, you can check for a more recent version on our website at **www.ato.gov.au** or contact us.

PUBLISHED BY

Australian Taxation Office
Canberra
May 2007

JS 7848

Guide to capital gains tax
2007

CONTENTS

ABOUT THIS GUIDE

The *Guide to capital gains tax 2007* explains how **capital gains tax** (CGT) works and will help you calculate your **net capital gain** or **net capital loss** for 2006–07 so you can meet your CGT obligations. There are worksheets at the back of the guide to help you do this.

WHO SHOULD USE THIS GUIDE?

An individual, company, trust or superannuation fund can use this guide to work out their CGT obligations.

A company, trust or superannuation fund that is required to complete and lodge a *Capital gains tax (CGT) schedule 2007* (CGT schedule) should use the schedule included at the back of this guide. Part C explains when a schedule must be lodged.

If you have a small business, you should get the publication *Guide to capital gains tax concessions for small business* (NAT 8384–6.2007).

Individuals may prefer to use the shorter, simpler *Personal investors guide to capital gains tax 2007* (NAT 4152–6.2007) if, during 2006–07, they only:
- sold some shares
- sold some units in a managed fund, and/or
- received a distribution of a capital gain from a managed fund.

This guide does not deal fully with the CGT position of:
- a company that is the head company of a consolidated group – the rules that apply to members of a consolidated group modify the application of the CGT rules. For more information about the consolidation rules or if you have technical tax enquiries, visit our website or phone the Tax Reform Infoline on **13 24 78**
- an individual or entity whose gains or losses are included as part of its income under other provisions of the tax law – for example, from carrying on a business of share trading (see the fact sheet *Carrying on a business of share trading*)
- an individual or entity that is not an Australian resident for tax purposes.

PUBLICATIONS AND SERVICES

To find out how to get a publication referred to in this guide, see page 141 and for information about our other services, see the inside back cover.

INTRODUCTION

This guide will help you work out whether any of the assets you own (or may own in the future), and any events that happen, are subject to CGT. Where they are, it tells you how to work out your capital gain or capital loss. It also covers what records you need to keep.

> **NEW TERMS**
>
> We may use some terms that are new to you. These words are printed in **red** the first time they are used and explained in **Definitions** on page 132. Generally they are also explained in more detail in the section where they first appear.
>
> While we have sometimes used the word 'bought' rather than 'acquired', you may have acquired an asset subject to CGT (a **CGT asset**) without paying for it (for example, as a gift or through an inheritance). Similarly, we refer to 'selling' such an asset when you may have disposed of it in some other way (for example, by giving it away or transferring it to someone else). Whether by sale or by any other means, all of these disposals are **CGT events**.

YOUR TAX RETURN

Whether you are an individual or an entity (company, trust or fund), if you have a capital gain or capital loss for 2006–07, this guide will help you to complete the capital gains item on your tax return.

WORKSHEETS

You may wish to use the two CGT worksheets provided at the back of this guide to help you keep track of your records and make sure you pay no more CGT than necessary.

There is:

- a **Capital gain or capital loss worksheet** for working out your capital gain or capital loss for each CGT 'event', and
- a **CGT summary worksheet for 2006–07 tax returns** (CGT summary worksheet) to help you summarise your capital gains and capital losses and produce the final net amount you need to include on your tax return.

You can tear out these forms and complete them as you work through the guide.

CGT SCHEDULE

If you are a company, trust or fund with total capital gains or capital losses of more than $10,000 this **income year**, you must complete a *Capital gains tax (CGT) schedule 2007* (CGT schedule). Partnerships and individual paper tax preparers are not required to lodge a schedule.

The CGT schedule is explained in detail in part C and a copy is provided at the back of this guide.

WHAT'S NEW

We provide easy-to-use online tools to take some of the complexity out of CGT.

The *Capital gains tax checklist* gives you an easy way to determine possible CGT consequences now and in the future.

Use the checklist's question-and-answer format to determine:

- whether you are likely to have a capital gain or capital loss in the current income year
- whether you are likely to have a CGT event in the future, and
- what sort of records you need to keep.

To get the checklist, visit our website and select **For Tax Professionals**, then click on **Tax Professionals homepage**. From the menu on the left, under **Tax topics explained**, select **Capital gains tax (CGT)**, select **CGT for tax professionals** and click on **Capital gains tax checklist**.

Capital gains tax updates, available through the above link, give you information on the latest CGT developments including:

- changes and proposed changes to the law
- new Tax Office rulings and determinations
- new ATO interpretative decisions (ATO IDs)
- new online CGT resources.

The guide *Basic capital gains tax issues for legal professionals* provides detailed information on the CGT consequences of some common legal transactions. Topics covered include conveyancing, wills and the administration of deceased estates, family law, litigation and compensation issues and record keeping.

To get *Basic capital gains tax issues for legal professionals*, visit our website and select **For Tax Professionals**, then click on **Tax Professionals homepage**. From the menu on the left, under **Your tax practice**, select **Industries and business types**, then click on **Legal practitioner's essentials**. From this page, click on **Capital gains tax information**.

Compliance activity

We continue to build on our CGT data-matching capability. We gather a large amount of information from state and territory revenue agencies and land titles offices to check that capital gains on properties, including rental properties, vacant land and holiday homes, have been declared. We also gather data to check capital gains on shares and managed fund investments.

Some common errors we've identified include:

- people claiming the main residence exemption when they have never lived in the property
- poor record keeping
- people using the date of settlement as the disposal date of a property, instead of the date they entered into the sale contract.

Changes and proposed changes to the law

There are a number of recent and proposed CGT changes to bear in mind when calculating your net capital gain for the income year or your net capital losses carried forward to later income years.

To see if the proposed changes below are now law, visit our website and select **For Tax Professionals**, then click on **Tax Professionals homepage**. From the menu on the left, under **Rulings, legislation & law**, select **New legislation**, then select **New legislation** and click on **Capital gains tax**.

Marriage breakdown rollover

The law has been changed to extend the scope of the marriage breakdown CGT rollover. For CGT events that happen after 12 December 2006 the rollover also applies to:

- assets transferred to a spouse or former spouse under a binding financial agreement or arbitral award under the *Family Law Act 1975* or a similar agreement or award under a corresponding foreign law, and
- assets transferred under a written agreement under a state, territory or foreign law relating to de facto marriage breakdowns where the agreement is similar to a binding financial agreement.

The law has also been changed to ensure that no CGT liability arises in relation to the ending of the spouses' rights that directly relate to the breakdown of their marriage or de facto marriage, including if they receive cash as part of a marriage breakdown settlement.

In addition, the law has been amended to ensure that the main residence exemption interacts more appropriately with the marriage breakdown rollover relief.

For more information, see chapter 8 **Marriage breakdown** on page 88.

International tax reform

Foreign residents

The law has been changed to narrow the range of assets on which a foreign resident is subject to Australian CGT.

For CGT events that happen on or after 12 December 2006, foreign residents disregard the capital gain or capital loss unless the CGT asset is taxable Australian property.

Taxable Australian property includes Australian real property, CGT assets used in carrying on a business through a permanent establishment in Australia, and indirect Australian real property interests. Rights or options to acquire these assets are also taxable Australian property.

For more information, see **Foreign residents, temporary residents and changing residency** on page 17 and our website.

Temporary residents

The law has been changed in regard to capital gains and capital losses made by temporary residents. These changes apply to CGT events that happen on or after 1 July 2006.

Individuals now disregard a capital gain or capital loss from a CGT event where they are a temporary resident at the time of the CGT event or immediately before the CGT event. The exception is if the CGT event happened:

- before 12 December 2006 to a CGT asset that has the 'necessary connection with Australia', or
- on or after 12 December 2006 to a CGT asset that is 'taxable Australian property'.

There are specific rules where the CGT asset is a share or right acquired under an employee share scheme.

For more information, see **Foreign residents, temporary residents and changing residency** on page 17 and our website.

Extending rollover for assets that are compulsorily acquired

The law has been changed to extend the rollover on the disposal of CGT assets compulsorily acquired by a private acquirer under a statutory power. The changes apply to disposals made on or after 11 November 1999. (Under the previous law, the rollover only applied to such acquisitions by Australian Government agencies.)

Under the changes, rollover also applies where a landowner whose land is compulsorily subject to a mining lease sells the land to the lessee and acquires a replacement asset. Rollover only applies to the landowner if, just before the sale, the lease significantly affected their use of the land or such a lease would have significantly affected their use of the land.

The change does not affect compulsory acquisitions of minority interests under the corporations law – such as shares compulsorily acquired under a takeover.

For more information, see chapter 7 **Loss, destruction or compulsory acquisition of an asset** on page 84.

Government grants

The law has been changed to provide a CGT exemption for an amount received as reimbursement or payment of your expenses, including the receipt or use of a certificate, under a scheme established by an Australian government agency. The scheme needs to be established under an Act or a legislative instrument – for example, regulations or local government by-laws. The law has also been changed to ensure that recipients of grants under the Unlawful Termination Assistance Scheme and Alternative Dispute Resolution Assistance Scheme do not have CGT consequences.

The exemption applies to assessments for the 2005–06 year and later income years.

Small business CGT concessions

Changes have been made to the small business CGT concessions. These changes:

- affect the maximum net asset value test, the active asset test, the 15-year exemption, the retirement exemption, the small business rollover and how the concessions apply to partners in a partnership, and the deceased estate of a person who would have qualified for the concessions had they not died
- replace the controlling individual 50% test with a more generous significant individual 20% test, which can be satisfied either directly or through one or more interposed entities.

These changes will apply to CGT events that happen from the 2006–07 income year. For more information, see the *Guide to capital gains tax concessions for small business* (NAT 8384–6.2007) which is available on our website.

In addition, a Bill has been introduced into Parliament which contains changes to:

- increase the net asset threshold for the small business CGT concessions from $5 million to $6 million
- allow simplified tax system (STS) taxpayers access to the concessions without having to satisfy the net asset threshold.

The Government's intention is that these changes will apply to CGT events that happen from the 2007–08 income year.

Employee share schemes – stapled securities

The employee share scheme and CGT rules have only applied to ordinary shares or rights to acquire ordinary shares. The law has been changed to extend the rules to include stapled securities where an ordinary share in an ASX listed company and another security, such as a unit in a unit trust, are contractually bound together so that they cannot be sold separately.

The change applies from the 2006–07 income year.

Donating shares

A Bill has been introduced into Parliament which will allow a tax deduction for the donation of small parcels of publicly listed shares to eligible deductible gift recipients where the shares have been held for at least 12 months and valued at $5,000 or less. There will be no change to the CGT treatment: a capital gain or capital loss will continue to arise on donated shares.

The Government's intention is that the changes will apply from the first income year after the date of royal assent of the amending legislation.

Testamentary trusts

A Bill has been introduced into Parliament which will improve the tax treatment of income beneficiaries in testamentary trusts, such as life tenants.

The amendments will allow the trustee of a testamentary trust to choose to be assessed on some part or all of an amount of net capital gain that is included in the net income of the trust where:

- that part or all of the net capital gain would be assessed to a presently entitled income beneficiary of the trust, and
- that beneficiary is not entitled under the terms of the trust to benefit from the gain.

These amendments will ensure that an income beneficiary is not assessed in respect of trust capital gains from which they will not benefit. The Government intends that the changes apply to the 2005–06 and later income years.

2007 BUDGET ANNOUNCEMENTS

Extending small superannuation CGT rollover on marriage breakdown

On 8 May 2007, as part of the Budget, the Government announced that it intends to change the law to provide CGT rollover to small superannuation funds to allow one spouse in a marriage breakdown to transfer their entire *in specie* interest to another complying fund without there being an immediate liability to CGT.

The change recognises that it is often in the interests of separating spouses to continue to provide for their future superannuation arrangements through a single small superannuation fund and will provide greater choice of fund to the spouse whose interest is transferred.

The Government intends that the change will apply from 1 July 2007.