GENERAL	TAXPAYERS	GUIDE	NAT 4151–6.2008
SEGMENT	AUDIENCE	FORMAT	PRODUCT ID

Australian Government
Australian Taxation Office

Guide to capital gains tax 2008

To help you complete your tax return for 1 July 2007 – 30 June 2008

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 2008* (NAT 4152) 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 guidance you can rely on, so we make every effort to ensure that our publications are correct.

If you follow our guidance 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 but we will not charge you a penalty. Also, if you acted reasonably and in good faith we will not charge you interest.

If you make an honest mistake in trying to follow our guidance in this publication 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 that this publication does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

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.

This publication was current at **May 2008.**

PUBLISHED BY

Australian Taxation Office
Canberra
May 2008

JS 10741

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ABOUT THIS GUIDE

The *Guide to capital gains tax 2008* explains how **capital gains tax** (CGT) works and will help you calculate your **net capital gain** or **net capital loss** for 2007–08 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 2008* (NAT 3423) (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 *Capital gains tax concessions for small business* (NAT 8384).

> Individuals may prefer to use the shorter, simpler *Personal investors guide to capital gains tax 2008* (NAT 4152) if, during 2007–08, 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*, available on our website)
- an individual or entity that is not an Australian resident for tax purposes.

PUBLICATIONS AND SERVICES

To find out how to obtain a publication referred to in this guide, see page 147 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 137. 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 2007–08, 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 2007–08 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 2008* (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?

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'.

Australian property trusts and stapled securities

Changes to the law provide holders of ownership interests in certain stapled entities, for example Australian listed property trusts, with a CGT rollover where, under a scheme for reorganising the stapled entities' affairs, they dispose of their ownership interests in the stapled entity in exchange for an interest in an interposed public unit trust.

Stapled entities are a group of entities that may consist of two or more trusts, or one or more companies and one or more trusts, whose ownership interests are stapled together to form stapled securities.

For more information regarding the CGT consequences of stapled securities see page 52.

This change applies to CGT events that happen on or after 1 July 2006.

CGT rollover for medical defence organisations

Changes to the law provide a CGT rollover when a membership interest in a medical defence organisation (MDO) is replaced with a similar membership interest in another MDO and both MDOs were companies limited by guarantee. The rollover ensures that any capital gain made on the exchange of the membership interests is deferred until a CGT event happens to the replacement membership interests. A member of an MDO can choose whether or not to obtain the rollover.

The amendments apply to CGT events that happened on or after 14 February 2007. See page 20 for more information.

Gifts of shares listed on an approved Australian stock exchange valued at $5,000 or less to an eligible deductible gift recipient (DGR)

Changes to the law mean that from 1 July 2007, you could be eligible to claim a deduction if you make a gift to a DGR of Australian-listed public company shares valued at $5,000 or less that you acquired at least 12 months earlier.

If you choose to donate shares the disposal of the shares is a CGT event and the gain or loss is still subject to the CGT provisions.

Marriage breakdown rollover

Changes to the law extend the scope of a CGT rollover on marriage breakdown. The rollover now also defers the making of a capital gain or loss from a transfer of any asset reflecting the entire personal interest of one of the spouses from a small superannuation fund to another complying superannuation fund for the benefit of the transferor spouse. The CGT marriage breakdown rollover is available to the trustee of the small superannuation fund who made the transfer of the superannuation interest.

The changes apply to CGT events that happen on or after 1 July 2007, regardless of when the award, order or agreement is made.

For more information, see **chapter 9 Marriage breakdown** on page 92.

Partial CGT rollover for statutory licences

Changes to the law extend the statutory licence CGT rollover. Previously the rollover was only available where the statutory licence expired or was surrendered and a new licence was issued which renewed or extended the original licence. The law has been changed to provide for a rollover to apply:

- in a broader range of endings of the original licence, such as cancellation
- where a licence or licences may be issued to take the place of one or more original licences
- where the new licence or licences authorises activity which is substantially similar to the activity authorised by the original licence(s).

Partial rollover is available where one or more statutory licences end and are replaced by one or more new licences and the licensee also receives non-licence capital proceeds, such as money.

The changes apply to CGT events that happen in the 2006–07 and later income years.

For further information, see our fact sheet *Capital gains tax concession for cash payments and statutory licences* available only on our website.

Testamentary trusts

Changes now allow the trustee of a resident testamentary trust to choose to be assessed on the capital gains that would otherwise be assessed to a presently entitled income beneficiary of the trust (or the trustee on their behalf) where that beneficiary is not entitled under the terms of the trust to benefit from the gain.

This will ensure that if the choice is made by the trustee, tax is in effect borne by the capital beneficiaries of the trust who will ultimately benefit from the capital gain.

A trustee can make the choice in respect of capital gains included in the trust's net income for the 2005–06 and later income years.

For more information, see **chapter 10 Deceased estates** on page 100.

Small business CGT concessions

There is a change in the eligibility conditions for the small business CGT concessions. To qualify for any of the small business CGT concessions the following basic conditions must now be satisfied:

- you are a small business entity
- you satisfy the maximum net asset value test, or
- you are a partner in a partnership that is a small business entity, and the CGT asset is an asset of the partnership.

You are a small business entity if you are carrying on business and one or both of the following applies:

- the aggregated turnover for the previous year income year was less than $2 million
- the aggregated turnover for the current year is estimated to be less than $2 million. You cannot estimate your current year turnover if your aggregated turnover for the two previous income years was $2 million or more.

If you are unable to satisfy either of the above conditions then you may still be a small business entity if your actual aggregated turnover for the current year is less than $2 million.

Aggregated turnover is the annual turnover of the business plus the annual turnovers of any businesses that are connected or are affiliates.

A business with a turnover of more than $2 million may still be eligible for the small business CGT concessions if it satisfies the maximum net asset value test.

The maximum net asset value threshold is now $6 million instead of $5 million.

These changes apply to CGT events that happen in the 2007–08 income year and later years.

For further information, see our fact sheet *Changes to the capital gains tax (CGT) concessions for small business 2007–08*, available only on our website.

Forestry managed investment scheme interests

The law now provides specific CGT rules where secondary investors or subsequent participants hold forestry managed investment scheme (FMIS) interests on capital account.

These new rules apply to interests in an FMIS sold or disposed of in the 2007–08 income year.

See **chapter 6** on page 60.

Tobacco Growers Adjustment Assistance Program 2006

A Bill introduced into Parliament provides an exemption from CGT for grants made under the Tobacco Growers Adjustment Assistance Program 2006. The exemption only applies to those recipients who undertake to exit all agricultural enterprises for at least five years.

This change to the law applies to the 2006–07 and later income years.

ANNOUNCED CHANGES

Changes to market value substitution rule for widely held entities

A Bill introduced into Parliament provides that the market value substitution rule does not apply when CGT event C2 (about cancellations and similar endings) occurs in relation to interests in companies and unit trusts that have at least 300 members or unit holders and that do not have concentrated ownership. Under the existing law, the market value substitution rule replaces the capital proceeds with the market value of the asset that has come to an end, where the proceeds received are more or less than the asset's market value. The changes will ensure that taxpayers who hold interests in these companies or trusts are taxed on gains that are calculated with respect to the amount actually received when CGT event C2 happens to their interest.

The change to the law applies to CGT events occurring during the 2006–07 income year and later income years.

Taxation of rights issues

On 26 June 2007, the then Minister for Revenue and Assistant Treasurer announced changes to the tax law to restore the taxation treatment of rights issues that existed prior to the recent decision of the High Court of Australia in *Commissioner of Taxation v McNeil (2007)*.

Shareholders issued with rights by companies seeking to raise capital will not have an income tax liability at the time of issue. Instead, the long-standing position to treat such rights issues on capital account will be maintained under this proposal.

The announcement proposed that the change to the law would apply from the 2001–02 income year.

2008 BUDGET ANNOUNCEMENTS

Extension of small business concessions

The Government announced that it will legislate to increase access to the small business CGT concessions for:

- taxpayers owning a CGT asset used in a business by a related entity, and
- partners owning a CGT asset used in a partnership business.

These changes will take effect from the 2007–08 income year.

Demutualisation of health insurers

The Government announced that it will legislate to provide relief from CGT for policy holders of health insurers who receive shares when their insurer demutualises, with effect from 1 July 2007.

At the time of printing these instructions, the above two measures had not become law.

Removal of double taxation for employee share schemes

The Government announced that it will legislate to remove double taxation that arises in relation to certain employee share schemes (ESS) that use employee share trusts. The changes are intended to apply in relation to CGT events occurring from 7.30pm Australian Eastern Standard Time on 13 May 2008.

For more information, visit our website at **www.ato.gov.au** or phone the Business Infoline on **13 28 66**.

Modification of the scrip-for-scrip rollover provisions for corporate restructures

The Government announced that it will legislate to modify the scrip-for-scrip CGT rollover provisions to ensure that, for corporate restructures, the acquiring entity's cost base of shares in the target entity reflects the tax costs of the target entity's net assets. The cost base will be used in determining the value of the target entity's assets in consolidation if the target entity subsequently joins the acquiring entity's consolidated group.