


# ***TD 95/47 - Income tax: capital gains: how is a net capital loss treated if it is unrecouped by a taxpayer at the date of his or her death?***

 This cover sheet is provided for information only. It does not form part of *TD 95/47 - Income tax: capital gains: how is a net capital loss treated if it is unrecouped by a taxpayer at the date of his or her death?*



This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

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## Taxation Determination

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### **Income tax: capital gains: how is a net capital loss treated if it is unrecouped by a taxpayer at the date of his or her death?**

1. A capital loss of a deceased taxpayer may be offset against any capital gain of the taxpayer in his or her final individual income tax return. Any unrecouped net capital loss lapses on the death of the taxpayer.
2. This (unrecouped) net capital loss **cannot** be:
  - (a) offset against other income in the final income tax return of the deceased; or
  - (b) carried forward into the first income tax return of the trust estate to be offset against future capital gains made by the trust estate; or
  - (c) used by the beneficiaries of the deceased estate to be offset against their own capital gains.

#### **Commissioner of Taxation**

30/8/95

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Related Determinations: TD 95/46

Related Rulings: IT 2622

Subject Ref: date of death; deceased estates; losses; unrecouped net capital losses

Legislative Ref: ITAA Pt IIIA

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