Tax Law Improvement Act (No. 1) 1998

Act No. 46 of 1998 as amended

This compilation was prepared on 28 October 2003

[This Act was amended by Act No. 57 of 2002 and Act No. 101 of 2003]

Amendments from Act No. 57 of 2002

[Schedule 12 (item 66) amended Item 373 of Schedule 2
Schedule 12 (item 67) amended Item 374 of Schedule 2
Schedule 12 (item 68) amended Heading to Item 519 of Schedule 2
Schedule 12 (item 84) repealed Items 95 and 466 of Schedule 2
Schedule 12 (item 85) repealed Items 3 and 18 of Schedule 3
Schedule 12 (items 66-68) commenced on 22 June 1998
Schedule 12 (items 84 and 85) commenced on 3 July 2002]

Amendments from Act No. 101 of 2003

[Schedule 6 (item 44) repealed Item 94 of Schedule 2
Schedule 6 (item 45) repealed Item 11 of Schedule 6
Schedule 6 (items 44 and 45) commenced on 22 June 1998]

Prepared by the Office of Legislative Drafting,
Attorney-General's Department, Canberra

Contents

1 Short title 1
2 Commencement 1
3 Schedules 1
4 Application of amendments 1

Schedule 1—Amendment of the Income Tax Assessment Act 1997 1

Schedule 2—CGT (new Parts 3-1, 3-3 and 3-5) 483

Part 1—Amendment of the Income Tax (Transitional Provisions) Act 1997 483

Part 2—Consequential amendment of the Income Tax Assessment Act 1997 509

Part 3—Consequential amendment of the Income Tax Assessment Act 1936 519

Part 4—Consequential amendment of other Acts 606

Australian Industry Development Corporation Act 1970 606

Bank Integration Act 1991 606

Civil Aviation Legislation Amendment Act 1995 606

Commonwealth Serum Laboratories Act 1961 607

Defence Act 1903 607

Federal Airports Corporation Act 1986 608

Financial Corporations (Transfer of Assets and Liabilities) Act 1993 610

Income Tax Rates Act 1986 617

Industry Research and Development Act 1986 618

Transport Legislation Amendment (Search and Rescue Service) Act 1997 618

Schedule 3—Company bad debts 619

Part 1—Amendment of the Income Tax (Transitional Provisions) Act 1997 619

Part 2—Consequential amendment of the Income Tax Assessment Act 1997 621

Part 3—Consequential amendment of the Income Tax Assessment Act 1936 623

Part 4—Consequential amendment of other Acts 625

Commonwealth Bank Sale Act 1995 625

Financial Corporations (Transfer of Assets and Liabilities) Act 1993 625

Schedule 4—Intellectual property (new Division 373) 628

Part 1—Amendment of the Income Tax (Transitional Provisions) Act 1997 628

Part 2—Consequential amendment of the Income Tax Assessment Act 1997 633

Part 3—Consequential amendment of the Income Tax Assessment Act 1936 636

Schedule 5—Horticultural plants (new Subdivision 387-C) 640

Part 1—Amendment of the Income Tax (Transitional Provisions) Act 1997 640

Part 2—Consequential amendment of the Income Tax Assessment Act 1997 644

Part 3—Consequential amendment of the Income Tax Assessment Act 1936 645

Schedule 6—Averaging primary producers' tax liability (new Division 392) 646

Part 1—Amendment of the Income Tax (Transitional Provisions) Act 1997 646

Part 2—Consequential amendment of the Income Tax Assessment Act 1997 648

Part 3—Consequential amendment of the Income Tax Assessment Act 1936 650

Part 4—Consequential amendment of the Income Tax Rates Act 1986 657

Schedule 7—Environment (new Division 400) 662

Part 1—Amendment of the Income Tax (Transitional Provisions) Act 1997 662

Part 2—Consequential amendment of the Income Tax Assessment Act 1997 665

Part 3—Consequential amendment of the Income Tax Assessment Act 1936 667

Schedule 8—Above-average special professional income (new Division 405) 669

Part 1—Amendment of the Income Tax (Transitional Provisions) Act 1997 669

Part 2—Consequential amendment of the Income Tax Assessment Act 1936 671

Part 3—Consequential amendment of the Income Tax Rates Act 1986 673

Schedule 9—Consequential amendments relating to indexation 674

Part 1—Amendment of the Income Tax (Transitional Provisions) Act 1997 674

Part 2—Consequential amendment of the Income Tax Assessment Act 1997 675

Part 3—Consequential amendment of the Income Tax Assessment Act 1936 676

Part 4—Application 677

Schedule 10—Amendment of Chapter 6 (the Dictionary) of the Income Tax Assessment Act 1997 678

An Act to amend the law about income tax, and for related purposes

[*Assented to 22 June 1998*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Law Improvement Act (No. 1) 1998*.

2 Commencement

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Schedule 2 (except item 3 of it) commences immediately after the commencement of Schedule 1.

(3) Schedule 3 commences immediately after the commencement of Schedule 2 (except item 4 of it).

(4) Each of Schedules 4 to 8 commences immediately after the commencement of the immediately preceding Schedule.

(5) Item 3 of Schedule 2 commences immediately after the commencement of Schedule 8.

3 Schedules

Subject to section 2, each Act specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned. Any other item in a Schedule to this Act has effect according to its terms.

4 Application of amendments

An amendment made by an item in a Schedule (except an item in Schedule 1 or in Part 1 of any of Schedules 2 to 8)

applies to assessments for the 1998-99 income year and later income years, unless otherwise indicated in the Schedule in which the item appears.

Schedule 1—Amendment of the Income Tax Assessment Act 1997

1 Before Part 3-5

Insert:

Part 3-1—Capital gains and losses: general topics

Division 100—A Guide to capital gains and losses

General overview

100-1 What this Division is about

This Division is a simplified outline of the capital gains and capital losses provisions, commonly referred to as capital gains tax (***CGT***). It will help you to understand your current liabilities, and to factor CGT into your on-going financial affairs.

Table of sections

100-5 Effect of this Division
100-10 Fundamentals of CGT
100-15 Overview of Steps 1 and 2

Step 1—Have you made a capital gain or a capital loss?

100-20 What events attract CGT?
100-25 What are CGT assets?
100-30 Does an exception or exemption apply?
100-33 Can there be a roll-over?

Step 2—Work out the amount of the capital gain or loss

100-35 What is a capital gain or loss?
100-40 What factors come into calculating a capital gain or loss?

100-45 How to calculate the capital gain or loss for most CGT events

Step 3—Work out your net capital gain or loss for the income year

100-50 How to work out your net capital gain or loss
100-55 How do you comply with CGT?

Keeping records for CGT purposes

100-60 Why keep records?
100-65 What records?
100-70 How long you need to keep records

100-5 Effect of this Division

This Division is a *Guide.

Note: In interpreting an operative provision, a Guide may be considered only for limited purposes: see section 950-150.

100-10 Fundamentals of CGT

(1) CGT affects your income tax liability because your assessable income includes your net capital gain for the income year. Your net capital gain is the total of your capital gains for the income year, reduced by certain capital losses you have made.

See later in this Guide (section 100-50) for more detail.

(2) When you prepare your income tax return, you need to check whether you have made any capital gains for the income year.

You also need to check whether you have made any capital losses. You cannot deduct a capital loss from your assessable income, but it will reduce your capital gain in the current income year or later income years.

(3) You will also need to consider the impact of CGT when doing your financial planning. In particular, you will need adequate record-keeping to deal most effectively with any immediate or future CGT liability.

To give you a sense of the range of things affected by CGT, if you are involved with any of the following, you may have a CGT liability now or at some time in the future:

- leases
- inheritance
- subdividing land
- goodwill
- contracts
- options
- a company liquidation
- leaving Australia
- marriage breakdown
- working from home
- shares
- a civil court case
- trusts
- bankruptcy
- incorporating a company

100-15 Overview of Steps 1 and 2

Step 1—Have you made a capital gain or a capital loss?

100-20 What events attract CGT?

(1) You can make a capital gain or loss *only if* a CGT event happens.

(2) There are a wide range of CGT events. Some happen often and affect many different taxpayers. Others are rare and affect only a few.

Some examples of CGT events

Situation	Event	Which CGT event?
You own shares you acquired on or after 20 September 1985	You sell them	CGT event A1
You sell a business	You agree with the purchaser not to operate a similar business in the same area	CGT event D1
You are a lessor	You receive a payment for changing the lease	CGT event F5
You own shares in a company	The company makes a payment (not a dividend) to you as a shareholder	CGT event G1

A summary of all the CGT events is in section 104-5.

Identifying the time of a CGT event

(3) The specific time when a CGT event happens is important for various reasons: in particular, for working out whether a capital gain or loss from the event affects your income tax for the current or another income year.

If a CGT event involves a contract, the time of the event will often be when the contract is *made*, not when it is completed.

The time of each CGT event is explained early in the relevant section in Division 104.

100-25 What are CGT assets?

(1) Most CGT events involve a CGT asset. (For many, there is an *exception* if the CGT asset was acquired *before* 20 September 1985.) However, many CGT events are concerned directly with capital receipts and do *not* involve a CGT asset.

See the summary of the CGT events in section 104-5.

(2) Some CGT assets are reasonably well-known:

- land and buildings, for example, a weekender;
- shares;
- units in a unit trust;
- collectables which cost over $500, for example, jewellery or an artwork;
- personal use assets which cost over $10,000, for example, a boat.

(3) Other CGT assets are not so well-known. For example:

- your home;
- contractual rights;
- goodwill;
- foreign currency.

For a full explanation of what things are CGT assets: see Division 108.

100-30 Does an exception or exemption apply?

(1) Once you identify a CGT event which applies to you, you need to know if there is an exception or exemption that would reduce the capital gain or loss or allow you to disregard it.

(2) There are 4 categories of exemptions:

1. exempt assets: for example, cars;
2. exempt receipts: for example, compensation for personal injury;
3. exempt transactions: for example, your tenancy comes to an end;
4. anti-overlap provisions (that reduce your capital gain by the amount that is otherwise assessable).

Note: Most of the exceptions are in Division 104. You will find a full explanation of the possible exemptions in Division 118.

Some exemptions are limited

(3) Take the family home for example. Generally, you are exempt from CGT when you make a capital gain on disposing of your main residence.

But this can change depending on how you came to own the house and what you have done with it. For example, if you rent it out, you may be liable to CGT when you sell it.

For the limits on the general exemption of your main residence: see Subdivision 118-B.

100-33 Can there be a roll-over?

(1) Roll-overs allow you to defer or disregard a capital gain or loss from a CGT event. They apply in specific situations. Some require a choice (for example, where an asset is compulsorily acquired: see Subdivision 124-B) and some are automatic (for example, where an asset is transferred because of marriage breakdown: see Subdivision 126-A).

(2) There are 2 types of roll-over:

1. a *replacement-asset roll-over* allows you to defer a capital gain or loss from one CGT event until a later CGT event happens where a CGT asset is replaced with another one;
2. a *same-asset roll-over* allows you to disregard a capital gain or loss from a CGT event where the same CGT asset is involved.

Note: The replacement-asset roll-overs are listed in section 112-115, and the same-asset roll-overs are listed in section 112-150.

Step 2—Work out the amount of the capital gain or loss

100-35 What is a capital gain or loss?

For most CGT events:

- You make a capital gain if you receive (or are entitled to receive) capital amounts from the CGT event which exceed your total costs associated with that event.
- You make a capital loss if your total costs associated with the CGT event exceed the capital amounts you receive (or are entitled to receive) from the event.

100-40 What factors come into calculating a capital gain or loss?

Capital proceeds

(1) For most CGT events, the capital amounts you receive (or are entitled to receive) from the event are called the ***capital proceeds***.

To work out the capital proceeds: see Division 116.

Cost base and reduced cost base

(2) For most CGT events, your total costs associated with the event are worked out in 2 different ways:

- For the purpose of working out a capital *gain*, those costs are called the ***cost base*** of the CGT asset.

- For the purpose of working out a capital *loss*, those costs are called the ***reduced cost base*** of the asset.

One of the main differences is that the costs are indexed for inflation in working out a capital *gain* (which reduces the size of the gain), but not in working out a capital *loss*.

To work out the cost base and reduced cost base: see Division 110.

100-45 How to calculate the capital gain or loss for most CGT events

1. Work out your capital proceeds from the CGT event.
2. Work out the cost base for the CGT asset.
3. Subtract the cost base from the capital proceeds.
4. If the proceeds exceed the cost base, the difference is your capital *gain*.
5. If not, work out the reduced cost base for the asset.
6. If the reduced cost base exceeds the capital proceeds, the difference is your capital *loss*.
7. If the capital proceeds are less than the cost base but more than the reduced cost base, you have neither a capital *gain* nor a capital *loss*.

Step 3—Work out your net capital gain or loss for the income year

100-50 How to work out your net capital gain or loss

1. Add up your capital gains for the income year. Then add up your capital losses for the income year.
2. Subtract the total losses from the total gains.
3. If the gains exceed the losses, then also subtract any unapplied net capital losses for previous income years. If the result is still more than zero, then this is your net capital gain.

4. If the capital losses for the income year exceed the capital gains, the difference is your net capital loss. (You cannot deduct a net capital loss from your assessable income.)

For the rules on working out your *net* capital gain or loss: see Division 102.

100-55 How do you comply with CGT?

Declare any net capital gain as assessable income in your income tax return.

Defer any net capital loss to the next income year for which you have capital gains that exceed the capital losses for that income year.

Keeping records for CGT purposes

100-60 Why keep records?

1. To ensure you do not disadvantage yourself.
2. To comply as easily as possible.
3. To plan for your CGT position in future income years.
4. The law requires you to: see Division 121.

100-65 What records?

Keeping full records will make it easier for you to comply. For example, keep records of:

- receipts of purchase or transfer;
- interest on money you borrowed;
- costs of agents, accountants, legal, advertising etc.;
- insurance costs and land rates or taxes;
- any market valuations;
- costs of maintenance, repairs or modifications;
- brokerage on shares;

- legal costs.

100-70 How long you need to keep records

The law requires you to keep records for 5 years after a CGT event has happened.

Division 102—Assessable income includes net capital gain

Guide to Division 102

102-1 What this Division is about

This Division tells you how to work out if you have made a net capital gain or a net capital loss for the income year. A net capital gain is included in your assessable income. However, you cannot deduct a net capital loss. (Amounts otherwise included in your assessable income do not form part of a net capital gain.)

Table of sections

Operative provisions

102-5 Assessable income includes net capital gain
102-10 How to work out your net capital loss
102-15 How to apply net capital losses
102-20 Ways you can make a capital gain or a capital loss
102-22 Amounts of capital gains and losses
102-23 CGT event still happens even if gain or loss disregarded
102-25 Order of application of CGT events
102-30 Exceptions and modifications

Operative provisions

102-5 Assessable income includes net capital gain

(1) Your assessable income includes your net capital gain (if any) for the income year. You work out your ***net capital gain*** in this way:

Working out your net capital gain

Step 1. Add up the *capital gains you made during the income year. Also add up the *capital losses you made.

Step 2. Subtract your *capital losses from your *capital gains. (If your capital losses exceed your capital gains, you have no net capital gain for the income year.)

Note: You do have a net capital loss if your capital losses exceed your capital gains: see section 102-10.

Step 3. If the Step 2 amount is *more than* zero, reduce it by applying any unapplied *net capital losses from previous income years. (If this reduces it to zero, you have no net capital gain for the income year.)

Note: To apply net capital losses: see section 102-15.

Step 4. If the Step 3 amount is *more than* zero, it is your ***net capital gain*** for the income year.

Note: For exceptions and modifications to these rules: see section 102-30.

(2) However, if during the income year:

(a) you became bankrupt; or

(b) you were released from debts under a law relating to bankruptcy;

any *net capital loss you made for an earlier income year must be disregarded in working out whether you made a *net capital gain for the income year or a later one.

(3) Subsection (2) applies even though your bankruptcy is annulled if:

(a) the annulment happens under section 74 of the *Bankruptcy Act 1966*; and

(b) under the composition or scheme of arrangement concerned, you were, will be or may be released from

debts from which you would have been released if instead you had been discharged from the bankruptcy.

102-10 How to work out your net capital loss

(1) You work out if you have a ***net capital loss*** for the income year in this way:

Working out your net capital loss

Step 1. Add up the *capital losses you made during the income year. Also add up the *capital gains you made.

Step 2. Subtract your *capital gains from your *capital losses.

Step 3. If the Step 2 amount is *more than* zero, it is your ***net capital loss*** for the income year.

Note: For exceptions and modifications to these rules: see section 102-30.

(2) You *cannot* deduct from your assessable income a *net capital loss for any income year.

Note: However, it can be applied against your capital gains for a later income year: see section 102-5 and subsection 102-15(3).

102-15 How to apply net capital losses

(1) In working out if you have a *net capital gain, your *net capital losses are applied in the order in which you made them.

(2) A *net capital loss can be applied only to the extent that it has not already been applied.

(3) To the extent that a *net capital loss cannot be applied in an income year, it can be carried forward to a later income year.

Example: You have capital gains for the income year of $1,000 and capital losses for the income year of $600. Your capital losses are subtracted from your capital gains to leave a balance of $400.

You have available net capital losses of $300 (for last year) and $200 (for the year before that).

The $400 is reduced to zero by applying the available net capital losses in the order in which you made them. This leaves $100 of the $300 to be carried forward and extinguishes the $200.

Note: For applying a net capital loss for the 1997-98 income year or an earlier income year: see section 102-15 of the *Income Tax (Transitional Provisions) Act 1997*.

102-20 Ways you can make a capital gain or a capital loss

You can make a *capital gain or *capital loss if and only if a *CGT event happens. The gain or loss is made at the time of the event.

Note 1: The full list of CGT events is in section 104-5.

Note 2: These Divisions of Part IIIA of the *Income Tax Assessment Act 1936* continue to have effect for the purposes of working out capital gains and capital losses under this Part and Part 3-3:

- Division 17A (about roll-over relief on certain disposals of assets of small businesses);
- Division 17B (about disposal of small business assets where the proceeds are used for retirement);
- Division 19A (about transfers of assets between companies under common ownership).

See sections 160ZZPJA, 160ZZPZAA and 160ZZRAAAA of that Act.

102-22 Amounts of capital gains and losses

Most *CGT events provide for calculating a *capital gain or *capital loss by comparing 2 different amounts. The amount of the gain or loss is the difference between those amounts.

102-23 CGT event still happens even if gain or loss disregarded

A *CGT event still happens even if:

(a) it does not result in a *capital gain or *capital loss; or

(b) a capital gain or capital loss from the event is disregarded.

Example: Lindy sells a car. Section 118-5 says that any capital gain or loss from a CGT event happening to a car is disregarded. However, the sale is still an example of CGT event A1.

102-25 Order of application of CGT events

(1) Work out if a *CGT event (except *CGT events D1 and H2) happens to your situation. If more than one event can happen, the one you use is the one that is the most specific to your situation.

(2) However, there is an exception for *CGT event K5 (which depends on CGT event A1, C2 or E8 happening). In that case, CGT event K5 happens in addition to the other event.

(3) If no *CGT event (except *CGT events D1 and H2) happens:

(a) work out if CGT event D1 happens and use that event if it does; and

(b) if it does not, work out if CGT event H2 happens and use that event if it does.

Note: The full list of CGT events is in section 104-5.

102-30 Exceptions and modifications

Provisions of this Act are in normal text, the other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

Special rules affecting capital gains and capital losses

Item	For this kind of entity:	There are these special rules:	See:
1	All entities	You can subtract capital losses from collectables only from your capital gains from collectables.	section 108-10
2	All entities	Disregard capital losses you make from personal use assets.	section 108-20

Special rules affecting capital gains and capital losses			
Item	**For this kind of entity:**	**There are these special rules:**	**See:**
3	All entities	If any of your commercial debts have been forgiven in the income year, your net capital losses (including net capital losses from collectables) may be reduced.	sections 245-130 and 245-135 of Schedule 2C to the *Income Tax Assessment Act 1936*
4	A company	If it has a change of ownership or control during the income year, and has not carried on the same business, it works out its net capital gain and net capital loss in a special way.	Subdivision 165-CB
5	A company	It cannot apply a net capital loss unless: • the same people owned the company during both the loss year and the income year; and • no person controlled the company's voting power at any time during the income year who did not also control it during the whole of the loss year; *or* the company has carried on the same business and commenced no additional business or new transactions.	Subdivision 165-CA

Special rules affecting capital gains and capital losses

Item	For this kind of entity:	There are these special rules:	See:
6	A company	If one or more of these things happen: • a capital gain or loss is injected into it; • a tax benefit is obtained from its available net capital losses or current year capital losses; • a tax benefit is obtained because of its available capital gains; the Commissioner can disallow its net capital losses or current year capital losses, and it may have to work out its net capital loss in a special way.	Division 175
7	A company	A company can transfer a surplus amount of its net capital loss to another company so that the other company can apply the amount in the income year of the transfer. (Both companies must be members of the same wholly-owned group.)	Subdivision 170-B
8	A PDF	If it is a PDF at the end of an income year for which it has a net capital loss, it can apply the loss in a later income year only if it is a PDF throughout the last day of the later income year.	section 195-25
9	A PDF	If it becomes a PDF during an income year, it works out its net capital gain and net capital loss for the income year in a special way.	section 195-35

Special rules affecting capital gains and capital losses			
Item	**For this kind of entity:**	**There are these special rules:**	**See:**
10	Body that has ceased to be an STB	Net capital losses made before cessation disregarded. Special rules apply in cessation year where net capital gain before cessation and net capital loss after cessation.	**section 24AX**
11	A life assurance company	Sections 102-5 and 102-10 do not apply to the calculation of net capital gains and losses. Capital gains and losses are instead allocated to separate classes of income.	**section 116CD**
12	A registered organisation	Sections 102-5 and 102-10 do not apply to the calculation of net capital gains and losses. Capital gains and losses are instead allocated to separate classes of income.	**section 116GB**
13	A PDF	Sections 102-5 and 102-10 do not apply to the calculation of net capital gains and losses. Capital gains and losses are instead allocated to separate classes of income.	**Subdivision C of Division 10E of Part III**
14	A CFC	In calculating the CFC's attributable income, pre-1 July 1990 capital losses are disregarded.	**section 409**

Division 103—General rules

Guide to Division 103

103-1 What this Division is about

This Division sets out some general rules that apply to the provisions dealing with capital gains and capital losses.

Table of sections

Operative provisions

103-5 Giving property as part of a transaction
103-10 Entitlement to receive money or property
103-15 Requirement to pay money or give property
103-20 Amounts to be expressed in Australian currency
103-25 Choices

Operative provisions

103-5 Giving property as part of a transaction

There are a number of provisions in this Part and Part 3-3 that say that a payment, cost or expenditure can include giving property.

To the extent that one does, use the market value of the property in working out the amount of the payment, cost or expenditure.

103-10 Entitlement to receive money or property

(1) This Part and Part 3-3 apply to you as if you had received money or other property if it has been applied for your benefit (including by discharging all or part of a debt you owe) or as you direct.

(2) Those Parts apply to you as if you are entitled to receive money or other property:

(a) if you are entitled to have it so applied; or

(b) if:

(i) you will not receive it until a later time; or

(ii) the money is payable by instalments.

103-15 Requirement to pay money or give property

This Part and Part 3-3 apply to you as if you are required to pay money or give other property even if:

(a) you do not have to pay or give it until a later time; or

(b) the money is payable by instalments.

103-20 Amounts to be expressed in Australian currency

If an amount of money or the market value of other property:

(a) is to be taken into account at a particular time under this Part or Part 3-3; and

(b) is in a foreign currency;

it is to be converted into the equivalent amount of Australian currency at that time.

103-25 Choices

(1) A choice you can make under this Part or Part 3-3 must be made:

(a) by the day you lodge your *income tax return for the income year in which the relevant *CGT event happened; or

(b) within a further time allowed by the Commissioner.

(2) The way you (and any other entity making the choice) prepare your *income tax returns is sufficient evidence of the making of the choice.

(3) However, there are 2 exceptions: see subsections 124-380(5) and 124-465(5). These relate to *replacement-asset roll-over events where there is an interposed company. The company is required to make the choice at an earlier time specified in that subsection.

Note: This section is modified in calculating the attributable income of a CFC: see section 421 of the *Income Tax Assessment Act 1936*.

Division 104—CGT events

Table of Subdivisions

Guide to Division 104
104-A Disposals
104-B Use and enjoyment before title passes
104-C End of a CGT asset
104-D Bringing into existence a CGT asset
104-E Trusts
104-F Leases
104-G Shares
104-H Special capital receipts
104-I Australian residency ends
104-J Reversals of roll-overs
104-K Other CGT events

Guide to Division 104

104-1 What this Division is about

This Division sets out all the CGT events for which you can make a capital gain or loss. It tells you how to work out if you have made a gain or loss from each event and the time of each event. It also contains exceptions for gains and losses for many events (such as the exception for CGT assets acquired before 20 September 1985) and some cost base adjustment rules.

104-5 Summary of the CGT events

CGT events			
Event number and description	**Time of event is:**	**Capital gain is:**	**Capital loss is:**
A1 Disposal of a CGT asset *[See section 104-10]*	when disposal contract is entered into or, if none, when entity stops being asset's owner	capital proceeds from disposal *less* asset's cost base	asset's reduced cost base *less* capital proceeds
B1 Use and enjoyment before title passes *[See section 104-15]*	when use of CGT asset passes	capital proceeds *less* asset's cost base	asset's reduced cost base *less* capital proceeds
C1 Loss or destruction of a CGT asset *[See section 104-20]*	when compensation is first received or, if none, when loss discovered or destruction occurred	capital proceeds *less* asset's cost base	asset's reduced cost base *less* capital proceeds
C2 Cancellation, surrender and similar endings *[See section 104-25]*	when contract ending asset is entered into or, if none, when asset ends	capital proceeds from ending *less* asset's cost base	asset's reduced cost base *less* capital proceeds

CGT events			
Event number and description	**Time of event is:**	**Capital gain is:**	**Capital loss is:**
C3 End of option to acquire shares etc. *[See section 104-30]*	when option ends	capital proceeds from granting option *less* expenditure in granting it	expenditure in granting option *less* capital proceeds
D1 Creating contractual or other rights *[See section 104-35]*	when contract is entered into or right is created	capital proceeds from creating right *less* incidental costs of creating it	incidental costs of creating right *less* capital proceeds
D2 Granting an option *[See section 104-40]*	when option is granted	capital proceeds from grant *less* expenditure to grant it	expenditure to grant option *less* capital proceeds
D3 Granting a right to income from mining *[See section 104-45]*	when contract is entered into or, if none, when right is granted	capital proceeds from grant of right *less* expenditure to grant it	expenditure to grant right *less* capital proceeds
E1 Creating a trust over a CGT asset *[See section 104-55]*	when trust is created	capital proceeds from creating trust *less* asset's cost base	asset's reduced cost base *less* capital proceeds

CGT events			
Event number and description	**Time of event is:**	**Capital gain is:**	**Capital loss is:**
E2 Transferring a CGT asset to a trust *[See section 104-60]*	when asset transferred	capital proceeds from transfer *less* asset's cost base	asset's reduced cost base *less* capital proceeds
E3 Converting a trust to a unit trust *[See section 104-65]*	when trust is converted	market value of asset at that time *less* its cost base	asset's reduced cost base *less* that market value
E4 Capital payment for trust interest *[See section 104-70]*	when trustee makes payment	non-assessable part of the payment *less* cost base of the trust interest	*no capital loss*
E5 Beneficiary becoming entitled to a trust asset *[See section 104-75]*	when beneficiary becomes absolutely entitled	for trustee—market value of CGT asset at that time *less* its cost base; for beneficiary—that market value *less* cost base of beneficiary's capital interest	for trustee—reduced cost base of CGT asset at that time *less* that market value; for beneficiary—reduced cost base of beneficiary's capital interest *less* that market value

CGT events			
Event number and description	**Time of event is:**	**Capital gain is:**	**Capital loss is:**
E6 Disposal to beneficiary to end income right *[See section 104-80]*	the time of the disposal	for trustee—market value of CGT asset at that time *less* its cost base; for beneficiary—that market value *less* cost base of beneficiary's right to income	for trustee—reduced cost base of CGT asset at that time *less* that market value; for beneficiary—reduced cost base of beneficiary's right to income *less* that market value
E7 Disposal to beneficiary to end capital interest *[See section 104-85]*	the time of the disposal	for trustee—market value of CGT asset at that time *less* its cost base; for beneficiary—that market value *less* cost base of beneficiary's capital interest	for trustee—reduced cost base of CGT asset at that time *less* that market value; for beneficiary—reduced cost base of beneficiary's capital interest *less* that market value

CGT events			
Event number and description	**Time of event is:**	**Capital gain is:**	**Capital loss is:**
E8 Disposal by beneficiary of capital interest *[See section 104-90]*	when disposal contract entered into or, if none, when beneficiary ceases to own CGT asset	capital proceeds *less* appropriate proportion of the trust's net assets	appropriate proportion of the trust's net assets *less* capital proceeds
E9 Creating a trust over future property *[See section 104-105]*	when entity makes agreement	market value of the property (as if it existed when agreement made) *less* incidental costs in making agreement	incidental costs in making agreement *less* market value of the property (as if it existed when agreement made)
F1 Granting a lease *[See section 104-110]*	for grant of lease—when entity enters into lease contract or, if none, at start of lease; for lease renewal or extension—at start of renewal or extension	capital proceeds *less* expenditure on grant, renewal or extension	expenditure on grant, renewal or extension *less* capital proceeds

CGT events			
Event number and description	**Time of event is:**	**Capital gain is:**	**Capital loss is:**
F2 Granting a long term lease *[See section 104-115]*	for grant of lease—when lessor grants lease; for lease renewal or extension—at start of renewal or extension	capital proceeds from grant, renewal or extension *less* cost base of leased property	reduced cost base of leased property *less* capital proceeds from grant, renewal or extension
F3 Lessor pays lessee to get lease changed *[See section 104-120]*	when lease term is varied or waived	*no capital gain*	amount of expenditure to get lessee's agreement
F4 Lessee receives payment for changing lease *[See section 104-125]*	when lease term is varied or waived	capital proceeds *less* cost base of lease	*no capital loss*
F5 Lessor receives payment for changing lease *[See section 104-130]*	when lease term is varied or waived	capital proceeds *less* expenditure in relation to variation or waiver	expenditure in relation to variation or waiver *less* capital proceeds
G1 Capital payment for shares *[See section 104-135]*	when company pays non-assessable amount	payment *less* cost base of shares	*no capital loss*

CGT events			
Event number and description	**Time of event is:**	**Capital gain is:**	**Capital loss is:**
G2 Shifts in share values *[See section 104-140 and Division 140]*	when the shift happens	the decrease in the shares' market value (so far as it has shifted into certain other shares) *less* the corresponding proportion of the shares' cost base	*no capital loss*
G3 Liquidator declares shares worthless *[See section 104-145]*	when liquidator makes declaration	*no capital gain*	shares' reduced cost base
H1 Forfeiture of a deposit *[See section 104-150]*	when deposit is forfeited	deposit *less* expenditure in connection with prospective sale	expenditure in connection with prospective sale *less* deposit
H2 Receipt for event relating to a CGT asset *[See section 104-155]*	when act, transaction or event occurred	capital proceeds *less* incidental costs	incidental costs *less* capital proceeds

CGT events			
Event number and description	**Time of event is:**	**Capital gain is:**	**Capital loss is:**
I1 Individual or company stops being a resident *[See section 104-160]*	when individual or company stops being Australian resident	for each CGT asset the person owns, its market value *less* its cost base	for each CGT asset the person owns, its reduced cost base less its market value
I2 Trust stops being a resident trust *[See section 104-170]*	when trust ceases to be resident trust for CGT purposes	for each CGT asset the trustee owns, its market value of asset *less* its cost base	for each CGT asset the trustee owns, its reduced cost base less its market value
J1 Company stops being member of wholly-owned group after roll-over *[See section 104-175]*	when the company stops	market value of asset at time of event *less* its cost base	reduced cost base of asset *less* that market value
K1 Partial realisation of intellectual property right *[See section 104-205]*	when contract is entered into or, if none, when partial realisation happens	capital proceeds from partial realisation *less* cost base of the item of intellectual property	*no capital loss*

CGT events			
Event number and description	**Time of event is:**	**Capital gain is:**	**Capital loss is:**
K2 Bankrupt pays amount in relation to debt *[See section 104-210]*	when payment is made	*no capital gain*	so much of payment as relates to denied part of a net capital loss
K3 Asset passing to tax-advantaged entity *[See section 104-215]*	when individual dies	market value of asset at death *less* its cost base	reduced cost base of asset *less* that market value
K4 CGT asset starts being trading stock *[See section 104-220]*	when asset starts being trading stock	market value of asset *less* its cost base	reduced cost base of asset *less* its market value
K5 Special capital loss from collectable that has fallen in market value *[See section 104-225]*	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

CGT events			
Event number and description	**Time of event is:**	**Capital gain is:**	**Capital loss is:**
K6 Pre-CGT shares or trust interest *[See section 104-230]*	when another CGT event involving the shares or interest happens	capital proceeds from the shares or trust interest (so far as attributable to post-CGT assets owned by the company or trust) *less* the assets' cost bases	*no capital loss*

[This is the end of the Guide]

Subdivision 104-A—Disposals

104-10 Disposal of a CGT asset: CGT event A1

(1) ***CGT event A1*** happens if you *dispose of a *CGT asset.

(2) You ***dispose of*** a *CGT asset if a change of ownership occurs from you to another entity, whether because of some act or event or by operation of law. However, a change of ownership does not occur:

(a) if you stop being the legal owner of the asset but continue to be its beneficial owner; or

(b) merely because of a change of trustee.

(3) The time of the event is:

(a) when you enter into the contract for the *disposal; or

(b) if there is no contract—when the change of ownership occurs.

Example: In June 1999 you enter into a contract to sell land. The contract is settled in October 1999. You make a capital gain of $50,000.

The gain is made in the 1998-99 income year (the year you entered into the contract) and not the 1999-2000 income year (the year that settlement takes place).

Note 1: If the contract falls through before completion, this event does not happen because no change in ownership occurs.

Note 2: If the asset was compulsorily acquired from you: see subsection (6).

(4) You make a ***capital gain*** if the *capital proceeds from the disposal are *more* than the asset's *cost base. You make a ***capital loss*** if those *capital proceeds are *less* than the asset's *reduced cost base.

Exceptions

(5) A *capital gain or *capital loss you make is disregarded if:

(a) you *acquired the asset before 20 September 1985; or

(b) for a lease:

(i) it was granted before that day; or

(ii) if it has been renewed or extended—the start of the last renewal or extension occurred before that day.

Note: You can make a gain if you dispose of shares in a company, or an interest in a trust, that you acquired before that day: see CGT event K6.

Compulsory acquisition

(6) If the asset was *acquired from you by an entity under a power of compulsory acquisition conferred by an *Australian law or a *foreign law, the time of the event is the earliest of:

(a) when you received compensation from the entity; or

(b) when the entity became the asset's owner; or

(c) when the entity entered it under that power; or

(d) when the entity took possession under that power.

Note: You may be able to choose a roll-over if an asset is compulsorily acquired: see Subdivision 124-B.

(7) ***CGT event A1*** does not happen if the *disposal of the asset was done to provide or redeem a security.

Subdivision 104-B—Use and enjoyment before title passes

104-15 Use and enjoyment before title passes: CGT event B1

(1) ***CGT event B1*** happens if you enter into an agreement with another entity under which:

(a) the right to the use and enjoyment of a *CGT asset you own passes to the other entity; and

(b) title in the asset will or may pass to the other entity at the end of the agreement.

(2) The time of the event is when the other entity first obtains the use and enjoyment of the asset.

(3) You make a ***capital gain*** if the *capital proceeds from the agreement are *more* than the asset's *cost base. You make a ***capital loss*** if those *capital proceeds are *less* than the asset's *reduced cost base.

Exceptions

(4) A *capital gain or *capital loss you make is disregarded if:

(a) title in the asset does not pass to the other entity when the agreement ends; or

(b) you *acquired the asset before 20 September 1985.

Subdivision 104-C—End of a CGT asset

Table of sections

104-20 Loss or destruction of a CGT asset: CGT event C1
104-25 Cancellation, surrender and similar endings: CGT event C2
104-30 End of option to acquire shares etc.: CGT event C3

104-20 Loss or destruction of a CGT asset: CGT event C1

(1) ***CGT event C1*** happens if a *CGT asset you own is lost or destroyed.

Note: This event can apply to part of a CGT asset: see section 108-5 (definition of ***CGT asset***).

(2) The time of the event is:

(a) when you first receive compensation for the loss or destruction; or

(b) if you receive no compensation—when the loss is discovered or the destruction occurred.

(3) You make a ***capital gain*** if the *capital proceeds from the loss or destruction are *more* than the asset's *cost base. You make a ***capital loss*** if those *capital proceeds are *less* than the asset's *reduced cost base.

Exception

(4) A *capital gain or *capital loss you make is disregarded if you *acquired the asset before 20 September 1985.

104-25 Cancellation, surrender and similar endings: CGT event C2

(1) ***CGT event C2*** happens if your ownership of an intangible *CGT asset ends by the asset:

(a) being redeemed or cancelled; or

(b) being released, discharged or satisfied; or

(c) expiring; or

(d) being abandoned, surrendered or forfeited.

(2) The time of the event is:

(a) when you enter into the contract that results in the asset ending; or

(b) if there is no contract—when the asset ends.

(3) You make a ***capital gain*** if the *capital proceeds from the ending are *more* than the asset's *cost base. You make a

capital loss if those *capital proceeds are *less* than the asset's *reduced cost base.

(4) A lease is taken to have expired even if it is extended or renewed.

Exceptions

(5) A *capital gain or *capital loss you make is disregarded if:

(a) you *acquired the asset before 20 September 1985; or

(b) for a lease:

(i) it was granted before that day; or

(ii) if it has been renewed or extended—the start of the last renewal or extension occurred before that day.

Note 1: There are other exceptions if:

- your lease expires and you did not use it mainly to produce assessable income: see section 118-40; or
- you exercise rights to acquire shares or units: see section 130-40; or
- you acquire shares or units by converting a convertible note: see section 130-60; or
- you exercise an option: see section 134-1.

Note 2: A company can agree to forgo any capital loss it makes as a result of forgiving a commercial debt owed to it by another company where the companies are under common ownership: see section 245-90 of Schedule 2C to the *Income Tax Assessment Act 1936*.

Note 3: A capital gain or loss a company makes because shares in its 100% subsidiary are cancelled (an example of CGT event C2) on the liquidation of the subsidiary may be reduced if there was a roll-over for a CGT asset under Subdivision 126-B: see section 126-85.

104-30 End of option to acquire shares etc.: CGT event C3

(1) ***CGT event C3*** happens if an option a company or a trustee of a unit trust granted to an entity to *acquire a *CGT asset that is:

(a) *shares in the company or units in the unit trust; or

(b) *debentures of the company or unit trust;

ends in one of these ways:

(c) it is not exercised by the latest time for its exercise;
(d) it is cancelled;
(e) the entity releases or abandons it.

(2) The time of the event is when the option ends.

(3) The company or trustee makes a ***capital gain*** if the *capital proceeds from the grant of the option are *more* than the expenditure incurred in granting it. It makes a ***capital loss*** if those *capital proceeds are *less*.

(4) The expenditure can include giving property: see section 103-5. However, it does not include an amount you have received as *recoupment of it and that is not included in your assessable income.

Exception

(5) A *capital gain or *capital loss the company or trustee makes is disregarded if it granted the option before 20 September 1985.

Note: This subsection is modified for the purpose of calculating the attributable income of a CFC: see section 418 of the *Income Tax Assessment Act 1936*.

Subdivision 104-D—Bringing into existence a CGT asset

Table of sections

104-35 Creating contractual or other rights: CGT event D1
104-40 Granting an option: CGT event D2
104-45 Granting a right to income from mining: CGT event D3

104-35 Creating contractual or other rights: CGT event D1

(1) ***CGT event D1*** happens if you create a contractual right or other legal or equitable right in another entity.

Example: You enter into a contract with the purchaser of your business not to operate a similar business in the same town. The contract states that $20,000 was paid for this.

You have created a contractual right in favour of the purchaser. If you breach the contract, the purchaser can enforce that right.

(2) The time of the event is when you enter into the contract or create the other right.

(3) You make a ***capital gain*** if the *capital proceeds from creating the right are *more* than the *incidental costs you incurred that relate to the event. You make a ***capital loss*** if those *capital proceeds are *less*.

Example: To continue the example: If you paid your lawyer $1,500 to draw up the contract, you make a capital gain of:

$20,000 – $1,500 = $18,500

(4) The costs can include giving property: see section 103-5. However, they do not include an amount you have received as *recoupment of them and that is not included in your assessable income, or an amount to the extent that you have deducted or can deduct it.

Exceptions

(5) ***CGT event D1*** does not happen if:

(a) you created the right by borrowing money or obtaining credit from another entity; or

(b) the right requires you to do something that is another *CGT event that happens to you; or

(c) a company issues or allots *shares to you; or

(d) the trustee of a unit trust issues units in the trust to you.

Example: You agree to sell land. You have created a contractual right in the buyer to enforce completion of the transaction. The sale results in you disposing of the land, an example of CGT event A1. This means that a gain or loss from CGT event D1 is disregarded.

104-40 Granting an option: CGT event D2

(1) ***CGT event D2*** happens if you grant an option to an entity, or renew or extend an option you had granted.

Note: Some options are not covered: see subsections (6) and (7).

(2) The time of the event is when you grant, renew or extend the option.

(3) You make a ***capital gain*** if the *capital proceeds from the grant, renewal or extension of the option are *more* than the expenditure you incurred to grant, renew or extend it. You make a ***capital loss*** if those *capital proceeds are *less*.

(4) The expenditure can include giving property: see section 103-5. However, it does not include an amount you have received as *recoupment of it and that is not included in your assessable income, or an amount to the extent that you have deducted or can deduct it.

Exceptions

(5) A *capital gain or *capital loss you make from the grant, renewal or extension of the option is disregarded if the other entity exercises the option.

Note: Section 134-1 sets out the consequences of an option being exercised.

(6) This section does not apply to an option granted, renewed or extended by a company or the trustee of a unit trust to *acquire a *CGT asset that is:

(a) *shares in the company or units in the unit trust; or

(b) debentures of the company or unit trust.

Note: Section 104-30 deals with this situation.

(7) Nor does it apply to an option relating to a *personal use asset or a *collectable.

104-45 Granting a right to income from mining: CGT event D3

(1) ***CGT event D3*** happens if you own a *prospecting entitlement or *mining entitlement, or an interest in one, and you grant another entity a right to receive *ordinary income or *statutory income from operations permitted to be carried on by the entitlement.

Note: If this event applies, there is no disposal of the entitlement.

(2) The time of the event is:

(a) when you enter into the contract with the other entity; or

(b) if there is no contract—when you grant the right to receive *ordinary income or *statutory income.

(3) You make a ***capital gain*** if the *capital proceeds from the grant of the right are *more* than the expenditure you incurred in granting it. You make a ***capital loss*** if those *capital proceeds are *less*.

(4) The expenditure can include giving property: see section 103-5. However, it does not include an amount you have received as *recoupment of it and that is not included in your assessable income, or an amount to the extent that you have deducted or can deduct it.

Subdivision 104-E—Trusts

Table of sections

104-55 Creating a trust over a CGT asset: CGT event E1
104-60 Transferring a CGT asset to a trust: CGT event E2
104-65 Converting a trust to a unit trust: CGT event E3
104-70 Capital payment for trust interest: CGT event E4
104-75 Beneficiary becoming entitled to a trust asset: CGT event E5
104-80 Disposal to beneficiary to end income right: CGT event E6
104-85 Disposal to beneficiary to end capital interest: CGT event E7
104-90 Disposal by beneficiary of capital interest: CGT event E8
104-95 Making a capital gain
104-100 Making a capital loss
104-105 Creating a trust over future property: CGT event E9

104-55 Creating a trust over a CGT asset: CGT event E1

(1) ***CGT event E1*** happens if you create a trust over a *CGT asset by declaration or settlement.

(2) The time of the event is when the trust over the asset is created.

(3) You make a ***capital gain*** if the *capital proceeds from the creation are *more* than the asset's *cost base. You make a ***capital loss*** if those *capital proceeds are *less* than the asset's *reduced cost base.

Cost base rule

(4) If you are the trustee of the trust and no beneficiary is absolutely entitled to the asset as against you (disregarding any legal disability), the first element of the asset's *cost base and *reduced cost base in your hands is its market value when the trust is created.

Exceptions

(5) ***CGT event E1*** does not happen if:

(a) you are the sole beneficiary of the trust and:

(i) you are absolutely entitled to the asset as against the trustee (disregarding any legal disability); and

(ii) the trust is not a unit trust; or

(b) the trust is created by transferring the asset from another trust, and the beneficiaries and terms of both trusts are the same.

(6) A *capital gain or *capital loss you make is disregarded if you *acquired the asset before 20 September 1985.

104-60 Transferring a CGT asset to a trust: CGT event E2

(1) ***CGT event E2*** happens if you transfer a *CGT asset to an existing trust.

(2) The time of the event is when the asset is transferred.

(3) You make a ***capital gain*** if the *capital proceeds from the transfer are *more* than the asset's *cost base. You make a ***capital loss*** if those *capital proceeds are *less* than the asset's *reduced cost base.

(4) If you are the trustee of the trust and no beneficiary is absolutely entitled to the asset as against you (disregarding any legal disability), the first element of the asset's *cost base and *reduced cost base in your hands is its market value when the asset is transferred.

Exceptions

(5) ***CGT event E2*** does not happen if:

(a) you are the sole beneficiary of the trust and:

(i) you are absolutely entitled to the asset as against the trustee (disregarding any legal disability); and

(ii) the trust is not a unit trust; or

(b) the trust is created by transferring the asset from another trust, and the beneficiaries and terms of both trusts are the same.

Note: There is also an exception for employee share trusts: see section 130-90.

(6) A *capital gain or *capital loss you make is disregarded if you *acquired the asset before 20 September 1985.

104-65 Converting a trust to a unit trust: CGT event E3

(1) ***CGT event E3*** happens if:

(a) a trust (that is not a unit trust) over a *CGT asset is converted to a unit trust; and

(b) just before the conversion, a beneficiary under the trust was absolutely entitled to the asset as against the trustee (disregarding any legal disability the beneficiary is under).

(2) The time of the event is when the trust is converted.

(3) The trustee of the original trust makes a ***capital gain*** if the market value of the asset (when the trust is converted) is *more* than the asset's *cost base. The trustee makes a ***capital loss*** if that market value is *less* than the asset's *reduced cost base.

Exception

(4) A *capital gain or *capital loss the trustee makes is disregarded if it *acquired the asset before 20 September 1985.

104-70 Capital payment for trust interest: CGT event E4

(1) ***CGT event E4*** happens if:

(a) the trustee of a trust makes a payment to you in respect of a unit or an interest in the trust (except for *CGT event A1, C2, E1, E2, E6 or E7 happening in relation to it); and

(b) some or all of the payment (the ***non-assessable part***) is not included in your assessable income.

The payment can include giving property: see section 103-5.

(2) In working out the non-assessable part, disregard any part of the payment that is:

(a) *excluded exempt income; or

(b) *exempt income subject to withholding tax; or

(c) paid from an amount that has been assessed to the trustee.

(3) The time of the event is:

(a) just before the end of the income year in which the trustee makes the payment; or

(b) if another *CGT event (except CGT event E4) happens in relation to the unit or interest or part of it after the trustee makes the payment but before the end of that income year—just before the time of that CGT event.

(4) You make a ***capital gain*** if the sum of the amounts of the non-assessable parts (adjusted by subsection (7)) of the payments made in the income year made by the trustee in respect of the unit or interest is *more* than its *cost base.

Note: You cannot make a capital loss.

(5) If you make a *capital gain, the *cost base and *reduced cost base of the unit or interest are reduced to nil.

(6) However, if that sum is not more than the *cost base:

(a) the cost base is reduced by that sum; and

(b) the *reduced cost base is reduced by that sum (without the subsection (7) adjustment).

Example: Mandy owns units in a unit trust that she bought on 1 July 1999 for $10 each. During the 1999-2000 income year the trustee makes 4 non-assessable payments of $0.50 per unit. If at the end of the income year Mandy's cost base for each unit (including indexation) would otherwise be $10.10, the payments require that it be reduced by $2, giving a new cost base of $8.10. If Mandy sells the units (CGT event A1) in the 2000-01 year for more than their cost base at that time, she will make a capital gain equal to the difference.

(7) The amount of the non-assessable part is adjusted to exclude any part of it that is attributable to:

(a) deductions under Division 43 (about capital works); or

(b) an amount that is not included in the assessable income of an entity because of:

(i) section 124ZM or 124ZN (which exempt income arising from *shares in a *PDF) of the *Income Tax Assessment Act 1936*; or

(ii) section 159GZZZZE (which exempts certain payments related to infrastructure borrowings) of that Act; or

(c) proceeds from a *CGT event that happens in relation to *shares in a company that was a *PDF when that event happened.

Note 1: Deductions under Division 10C or 10D of Part III of the *Income Tax Assessment Act 1936* (about capital works) are also relevant: see section 104-72 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 2: In working out the cost base of the unit or interest, the non-assessable part does not exclude any part attributable to a deduction under Division 10C or 10D of Part III of the *Income Tax Assessment Act 1936* (about capital works) if the payment was made before 18 December 1986: see section 104-70 of the *Income Tax (Transitional Provisions) Act 1997*.

Exception

(8) A *capital gain you make is disregarded if you *acquired the *CGT asset that is the unit or interest before 20 September 1985.

104-75 Beneficiary becoming entitled to a trust asset: CGT event E5

(1) ***CGT event E5*** happens if a beneficiary becomes absolutely entitled to a *CGT asset of a trust (except a unit trust or a trust to which Division 128 applies) as against the trustee (disregarding any legal disability the beneficiary is under).

Note: Division 128 deals with the effect of death.

(2) The time of the event is when the beneficiary becomes absolutely entitled to the asset.

Trustee makes a capital gain or loss

(3) The trustee makes a ***capital gain*** if the market value of the asset (at the time of the event) is *more* than its *cost base. The trustee makes a ***capital loss*** if that market value is *less* than the asset's *reduced cost base.

Exception for trustee

(4) A *capital gain or *capital loss the trustee makes is disregarded if it *acquired the asset before 20 September 1985.

Note: There is also an exception for employee share trusts: see section 130-90.

Beneficiary makes a capital gain or loss

(5) The beneficiary makes a ***capital gain*** if the market value of the asset (at the time of the event) is *more* than the *cost base of the beneficiary's interest in the trust capital to the extent it relates to the asset.

The beneficiary makes a ***capital loss*** if that market value is *less* than the *reduced cost base of that beneficiary's interest in the trust capital to the extent it relates to the asset.

Exceptions for beneficiary

(6) A *capital gain or *capital loss the beneficiary makes is disregarded if the beneficiary:

(a) *acquired the *CGT asset that is the interest (except by way of an assignment from another entity) for no expenditure; or

(b) acquired it before 20 September 1985.

Expenditure can include giving property: see section 103-5.

104-80 Disposal to beneficiary to end income right: CGT event E6

(1) ***CGT event E6*** happens if the trustee of a trust (except a unit trust or a trust to which Division 128 applies) *disposes of a *CGT asset of the trust to a beneficiary in satisfaction of the beneficiary's right, or part of it, to receive *ordinary income or *statutory income from the trust.

Note: Division 128 deals with the effect of death.

(2) The time of the event is when the disposal occurs.

Trustee makes a capital gain or loss

(3) The trustee makes a ***capital gain*** if the market value of the asset (at the time of the disposal) is *more* than its *cost base. It makes a ***capital loss*** if that market value is *less* than the asset's *reduced cost base.

Exception for trustee

(4) A *capital gain or *capital loss the trustee makes is disregarded if it *acquired the asset before 20 September 1985.

Beneficiary makes a capital gain or loss

(5) The beneficiary makes a ***capital gain*** if the market value of the asset (at the time of the disposal) is *more* than the *cost base of the right, or the part of it. The beneficiary makes a ***capital loss*** if that market value is *less* than the *reduced cost base of the right or part.

Note: If the beneficiary did not pay anything for the right, the market value substitution rule does not apply: see section 112-20.

Exception for beneficiary

(6) A *capital gain or *capital loss the beneficiary makes is disregarded if it *acquired the *CGT asset that is the right before 20 September 1985.

104-85 Disposal to beneficiary to end capital interest: CGT event E7

(1) ***CGT event E7*** happens if the trustee of a trust (except a unit trust or a trust to which Division 128 applies) *disposes of a *CGT asset of the trust to a beneficiary in satisfaction of the beneficiary's interest, or part of it, in the trust capital.

Note: Division 128 deals with the effect of death.

(2) The time of the event is when the disposal occurs.

Trustee makes a capital gain or loss

(3) The trustee makes a ***capital gain*** if the market value of the asset (at the time of the disposal) is *more* than its *cost base. It makes a ***capital loss*** if that market value is *less* than the asset's *reduced cost base.

Exception for trustee

(4) A *capital gain or *capital loss the trustee makes is disregarded if it *acquired the asset before 20 September 1985.

Beneficiary makes a capital gain or loss

(5) The beneficiary makes a ***capital gain*** if the market value of the asset (at the time of the disposal) is *more* than the *cost base of the interest, or the part of it, being satisfied. The beneficiary makes a ***capital loss*** if that market value is *less* than the *reduced cost base of that interest or part.

Exceptions for beneficiary

(6) A *capital gain or *capital loss the beneficiary makes is disregarded if the beneficiary:

(a) *acquired the *CGT asset that is the interest (except by way of an assignment from another entity) for no expenditure; or

(b) acquired it before 20 September 1985.

Expenditure can include giving property: see section 103-5.

104-90 Disposal by beneficiary of capital interest: CGT event E8

(1) ***CGT event E8*** happens if:

(a) you are the beneficiary under a trust (except a unit trust or a trust to which Division 128 applies); and

(b) you did not give any money or property to *acquire the *CGT asset that is your interest in the trust capital and you did not acquire it by assignment; and

(c) you *dispose of the interest, or part of it (but not to the trustee).

Note: Division 128 deals with the effect of death.

(2) The time of the event is:

(a) when you enter into the contract for the *disposal; or

(b) if there is no contract—when you stop owning the interest or part.

Note 1: You work out if you have made a capital gain or capital loss under sections 104-95 and 104-100.

Note 2: There is a special indexation rule for this event: see section 114-10.

104-95 Making a capital gain

You are the only beneficiary

(1) If you are the only beneficiary with an interest in the trust capital and you *dispose of that interest, you work out if you have made a *capital gain in this way:

Working out your capital gain	
Step 1.	Work out the *capital proceeds from the *disposal.
Step 2.	Work out the *net asset amount.
Step 3.	If the Step 1 amount is *greater*, you make a ***capital gain*** equal to the difference.

(2) The ***net asset amount*** is worked out in this way:

Working out the net asset amount	
Step 1.	Work out the total of the *cost bases (at the time of the disposal) of the *CGT assets that the trustee *acquired on or after 20 September 1985 and that formed part of the trust capital at that time.
Step 2.	Work out the total of the market values (at the time of the disposal) of the *CGT assets that the trustee *acquired before 20 September 1985 and that formed part of the trust capital at that time.
Step 3.	Work out the amount of money that formed part of the trust capital at the time of the disposal.
Step 4.	Add up the Step 1, 2 and 3 amounts.
Step 5.	Subtract from the Step 4 amount any liabilities of the trust at the time of the disposal.

Step 6.	The result is the ***net asset amount***.

Example: You dispose of your interest in the trust capital for $10,000 (the capital proceeds).

The total of the cost bases of the CGT assets that the trustee acquired on or after 20 September 1985 is $6,000.

The total of the market values of the CGT assets that the trustee acquired before 20 September 1985 is $2,500.

There is $1,000 in the trust. The trust liabilities are $500.

The net asset amount is:

$$\$6{,}000 + \$2{,}500 + \$1{,}000 - \$500 = \$9{,}000$$

You make a capital gain of:

$$\$10{,}000 - \$9{,}000 = \$1{,}000$$

(3) If you *dispose of only *part* of that interest, any *capital gain is worked out using the method statement in subsection (1), except that the Step 2 amount is replaced by:

$$\text{The net asset amount} \times \text{The part of the interest you are disposing of (expressed as a fraction)}$$

Example: To vary the example in subsection (2), suppose you dispose of 50% of your interest for $5,000 (the capital proceeds).

The Step 2 amount becomes:

$$\$9{,}000 \times 50\% = \$4{,}500$$

You make a capital gain of:

$$\$5{,}000 - \$4{,}500 = \$500$$

There is more than one beneficiary

(4) If you are *not* the only beneficiary with an interest in the trust capital and you *dispose of your interest, any *capital gain is worked out using the method statement in subsection (1), except that the Step 2 amount is replaced by:

$$\text{The net asset amount} \times \text{Your interest in the trust capital (expressed as a fraction)}$$

Example: To vary the example in subsection (2), suppose you have a 20% interest in the trust capital and you dispose of it for $4,000 (the capital proceeds).

The Step 2 amount becomes:

$9,000 × 20% = $1,800

You make a capital gain of:

$4,000 – $1,800 = $2,200

(5) If you are *not* the only beneficiary with an interest in the trust capital and you *dispose of *part* of your interest, any *capital gain is worked out using the method statement in subsection (1), except that the Step 2 amount is replaced by:

The net asset amount	×	Your interest in the trust capital (expressed as a fraction)	×	The part of the interest you are disposing of (expresesed as a fraction)

Example: To vary the example in subsection (2), suppose you have a 50% interest in the trust capital. You dispose of 20% of it for $1,000 (the capital proceeds).

The Step 2 amount becomes:

$9,000 × 50% × 20% = $900

You make a capital gain of:

$1,000 – $900 = $100

Exception

(6) A *capital gain you make is disregarded if you *acquired the *CGT asset that is the interest in the trust capital before 20 September 1985.

Note: You can make a gain if you dispose of an interest in a trust that you acquired before that day: see CGT event K6.

104-100 Making a capital loss

You are the only beneficiary

(1) If you are the only beneficiary with an interest in the trust capital and you *dispose of that interest, you work out if you have made a *capital loss in this way:

Working out your capital loss

Step 1. Work out the *capital proceeds from the *disposal.

Step 2. Work out the *reduced net asset amount.

Step 3. If the Step 1 amount is *less*, you make a ***capital loss*** equal to the difference.

(2) The ***reduced net asset amount*** is worked out in this way:

Working out the reduced net asset amount

Step 1. Work out the total of the *reduced cost bases (at the time of the disposal) of the *CGT assets that the trustee *acquired on or after 20 September 1985 and that formed part of the trust capital at that time.

Step 2. Work out the total of the market values (at the time of the disposal) of the *CGT assets that the trustee *acquired before 20 September 1985 and that formed part of the trust capital at that time.

Step 3. Work out the amount of money that formed part of the trust capital at the time of the disposal.

Step 4. Add up the Step 1, 2 and 3 amounts.

Step 5. Subtract from the Step 4 amount any liabilities of the trust at the time of the disposal.

Step 6. The result is the ***reduced net asset amount***.

(3) If you *dispose of only *part* of that interest, any *capital loss is worked out using the method statement in subsection (1), except that the Step 2 amount is replaced by:

$$\text{The reduced net asset amount} \times \begin{array}{c}\text{The part of the interest}\\ \text{you are disposing of}\\ \text{(expresesed as a fraction)}\end{array}$$

There is more than one beneficiary

(4) If you are *not* the only beneficiary with an interest in the trust capital and you *dispose of your interest, any *capital loss is worked out using the method statement in subsection (1), except that the Step 2 amount is replaced by:

$$\text{The reduced net asset amount} \times \begin{array}{c}\text{Your interest in the trust capital}\\ \text{(expresesed as a fraction)}\end{array}$$

(5) If you are *not* the only beneficiary with an interest in the trust capital and you *dispose of *part* of your interest, any *capital loss is worked out using the method statement in subsection (1), except that the Step 2 amount is replaced by:

$$\begin{array}{c}\text{The reduced net}\\ \text{asset amount}\end{array} \times \begin{array}{c}\text{Your interest in}\\ \text{the trust capital}\\ \text{(expressed as a fraction)}\end{array} \times \begin{array}{c}\text{The part of the interest}\\ \text{you are disposing of}\\ \text{(expresesed as a fraction)}\end{array}$$

Exception

(6) A *capital loss you make is disregarded if you *acquired the *CGT asset that is the interest in the trust capital before 20 September 1985.

104-105 Creating a trust over future property: CGT event E9

(1) ***CGT event E9*** happens if:

(a) you agree for consideration that when property comes into existence you will hold it on trust; and

(b) at the time of the agreement, no potential beneficiary under the trust has a beneficial interest in the rights created by the agreement.

(2) The time of the event is when you made the agreement.

(3) You make a ***capital gain*** if the market value the property would have had if it had existed when you made the

agreement is *more* than any *incidental costs you incurred that relate to the event. You make a ***capital loss*** if that market value is *less*.

(4) The costs can include giving property: see section 103-5. However, they do not include an amount you have received as *recoupment of them and that is not included in your assessable income, or an amount to the extent that you have deducted or can deduct it.

Subdivision 104-F—Leases

Table of sections

104-110 Granting a lease: CGT event F1
104-115 Granting a long-term lease: CGT event F2
104-120 Lessor pays lessee to get lease changed: CGT event F3
104-125 Lessee receives payment for changing lease: CGT event F4
104-130 Lessor receives payment for changing lease: CGT event F5

104-110 Granting a lease: CGT event F1

(1) ***CGT event F1*** happens if a lessor grants, renews or extends a lease.

Note 1: Other CGT events can apply to leases. An assignment of a lease is an example of CGT event A1.

Note 2: There are special rules that apply to some lease transactions: see Division 132.

(2) The time of the event is:

(a) for the grant of a lease:

(i) when the contract for the lease is entered into; or

(ii) if there is no contract—at the start of the lease; or

(b) for a renewal or extension—at the start of the renewal or extension.

(3) The lessor makes a ***capital gain*** if the *capital proceeds from the grant, renewal or extension are *more* than the expenditure it incurred on the grant, renewal or extension. It makes a ***capital loss*** if those *capital proceeds are *less*.

(4) The expenditure can include giving property: see section 103-5. However, it does not include an amount you have received as *recoupment of it and that is not included in your assessable income, or an amount to the extent that you have deducted or can deduct it.

Exception

(5) The lessor can choose to apply section 104-115 to certain long term leases. If it does so, this section does not apply.

104-115 Granting a long-term lease: CGT event F2

(1) ***CGT event F2*** happens if:

(a) a lessor grants a lease over land (whether or not the lessor owns an estate in fee simple in the land), or renews or extends a lease over land; and

(b) the lease, renewal or extension is for at least 50 years and:

(i) at the time of the grant, renewal or extension, it was reasonable to expect that it would continue for at least 50 years; and

(ii) the terms of the lease, renewal or extension as they apply to the lessee are substantially the same as those under which the lessor owned the land; and

(c) the lessor chooses to apply this section instead of section 104-110.

Note: Section 103-25 tells you when the choice must be made.

(2) The time of the event is when the lessor grants the lease, or at the start of the renewal or extension, as appropriate.

(3) The lessor makes a ***capital gain*** if the *capital proceeds from the event are *more* than the *cost base of the lessor's interest in the land. The lessor makes a ***capital loss*** if those *capital proceeds are *less* than the *reduced cost base of that interest.

Exceptions

(4) A *capital gain or *capital loss the lessor makes is disregarded if:

(a) it *acquired the *CGT asset that is the land, or the lease to the lessor was granted, before 20 September 1985; or

(b) the lease to the lessor has been renewed or extended and the last renewal or extension started before that day.

Note: For any later CGT event that happens to the land or the lessor's lease of it: see section 132-10.

104-120 Lessor pays lessee to get lease changed: CGT event F3

(1) ***CGT event F3*** happens if a lessor incurs expenditure in getting the lessee's agreement to vary or waive a term of the lease. The lessor makes a ***capital loss*** equal to the amount of expenditure it incurred. (The expenditure can include giving property: see section 103-5.)

(2) The time of the event is when the term is varied or waived.

Exception

(3) However, this event does not apply to expenditure for a lease to which the lessor has chosen to apply section 104-115.

104-125 Lessee receives payment for changing lease: CGT event F4

(1) ***CGT event F4*** happens if a lessee receives a payment from the lessor for agreeing to vary or waive a term of the lease.

The payment can include giving property: see section 103-5.

(2) The time of the event is when the term is varied or waived.

(3) The lessee makes a ***capital gain*** if the *capital proceeds from the event are *more* than the lease's *cost base (at the time of the event). If the lessee makes a *capital gain, the lease's cost base is also reduced to nil.

Note: The lessee cannot make a capital loss.

(4) On the other hand, if those *capital proceeds are *less*, the lease's *cost base is reduced by that amount at the time of the event.

Example: On 1 January 1999 a lessee enters a lease. On 1 May 1999 the lessee agrees to waive a term. The lessor pays the lessee $1,000 for this.

If the lease's cost base at the time of the waiver is $2,500, it is reduced from $2,500 to $1,500.

On 1 September 1999 the lessee agrees to waive another term. The lessor pays the lessee $2,000 for this.

If the lease's cost base at the time of the waiver is $1,500, the lessee makes a capital gain of $500, and the cost base is reduced to nil.

Exceptions

(5) A *capital gain the lessee makes is disregarded if:

(a) the lease was granted before 20 September 1985; or

(b) for a lease that has been renewed or extended—the start of the last renewal or extension occurred before that day.

104-130 Lessor receives payment for changing lease: CGT event F5

(1) ***CGT event F5*** happens if a lessor receives a payment from the lessee for agreeing to vary or waive a term of the lease.

The payment can include giving property: see section 103-5.

(2) The time of the event is when the term is varied or waived.

(3) The lessor makes a ***capital gain*** if the *capital proceeds from the event are *more* than the expenditure the lessor incurs in relation to the variation or waiver. The lessor makes a ***capital loss*** if those *capital proceeds are *less*.

Example: You own a shopping centre. The lessee of a shop in the centre pays you $10,000 for agreeing to change the terms of its lease. You incur expenses of $1,000 for a solicitor and $500 for a valuer. You make a capital gain of $8,500.

(4) The expenditure can include giving property: see section 103-5. However, it does not include an amount you

have received as *recoupment of it and that is not included in your assessable income.

Exceptions

(5) A *capital gain or *capital loss the lessor makes is disregarded if:

(a) the lease was granted before 20 September 1985; or

(b) for a lease that has been renewed or extended—the start of the last renewal or extension occurred before that day.

Subdivision 104-G—Shares

Table of sections

104-135 Capital payment for shares: CGT event G1
104-140 Shifts in share values: CGT event G2
104-145 Liquidator declares shares worthless: CGT event G3

104-135 Capital payment for shares: CGT event G1

(1) ***CGT event G1*** happens if:

(a) a company makes a payment to you for a *share you own in the company (except for *CGT event A1 or C2 happening in relation to the share); and

(b) some or all of the payment (the ***non-assessable part***) is not a *dividend, or an amount that is taken to be a dividend under section 47 of the *Income Tax Assessment Act 1936*.

The payment can include giving property: see section 103-5.

(2) The time of the event is when the company makes the payment.

(3) You make a ***capital gain*** if the amount of the non-assessable part is *more* than the *share's *cost base. If you make a *capital gain, the share's *cost base and *reduced cost base are reduced to nil.

Note: You cannot make a capital loss.

(4) However, if the amount of the non-assessable part is not more than the *share's *cost base, that cost base and its *reduced cost base are reduced by the amount of the non-assessable part.

Exceptions

(5) A *capital gain you make is disregarded if you *acquired the *CGT asset that is the *share before 20 September 1985.

(6) You disregard a payment by a liquidator for the purposes of this section if the company is dissolved within 18 months of the payment. The payment will be part of your *capital proceeds for *CGT event C2 happening when the share ends.

104-140 Shifts in share values: CGT event G2

(1) ***CGT event G2*** happens if:

(a) a *share value shift occurs under a *scheme involving a company and an entity (or the entity's *associate); and

(b) the entity is a *controller (for CGT purposes) of the company at any time from when the scheme is entered into to when it has been implemented; and

(c) there is a *material decrease in the market value of a share in the company that is owned by the entity or the entity's associate.

Note 1: Other matters relevant to this event are set out in Division 140.

Note 2: Division 140 is also relevant to interests in shares and rights or options to acquire shares: see section 140-30.

(2) The time of the event is when the *share value shift happens.

(3) An entity makes a ***capital gain*** in the circumstances set out in sections 140-55 and 140-90.

Note 1: The entity cannot make a capital loss.

Note 2: The entity will not make a capital gain unless:

- for value shifted into shares acquired *before* 20 September 1985—value is shifted into shares owned by the entity or an

associate or, in certain circumstances, owned by an associate of an associate; or

- for value shifted into shares acquired *on or after* 20 September 1985—value is shifted into shares owned by an associate of the entity or, in certain circumstances, owned by an associate of an associate.

104-145 Liquidator declares shares worthless: CGT event G3

(1) ***CGT event G3*** happens if you own a *share in a company and its liquidator declares in writing that he or she has reasonable grounds to believe (as at the time of the declaration) there is no likelihood that the shareholders in the company, or shareholders of the relevant class of shares, will receive any further distribution in the course of winding up the company.

(2) The time of the event is when the liquidator makes the declaration.

(3) You can choose to make a ***capital loss*** equal to the *reduced cost base of your *share (as at the time of the declaration).

(4) If you make the choice, the *cost base and *reduced cost base of the *share are reduced to nil just after the liquidator makes the declaration.

Note: This is for the purpose of working out if you make a capital gain or loss from any later CGT event in relation to the share.

Exception

(5) You cannot choose to make a *capital loss if you *acquired the *CGT asset that is the *share before 20 September 1985.

Subdivision 104-H—Special capital receipts

Table of sections

104-150 Forfeiture of deposit: CGT event H1
104-155 Receipt for event relating to a CGT asset: CGT event H2

104-150 Forfeiture of deposit: CGT event H1

(1) ***CGT event H1*** happens if a deposit paid to you is forfeited because a prospective sale or other transaction does not proceed.

The payment can include giving property: see section 103-5.

Example: You decide to sell land. Before entering into a contract of sale, the prospective purchaser pays you a 2 month holding deposit of $1,000.

The negotiations fail and the deposit is forfeited.

(2) The time of the event is when the deposit is forfeited.

(3) You make a ***capital gain*** if the deposit is *more* than the expenditure you incur in connection with the prospective sale or other transaction. You make a ***capital loss*** if the deposit is *less*.

(4) The expenditure can include giving property: see section 103-5. However, it does not include an amount you have received as *recoupment of it and that is not included in your assessable income.

Example: To continue the example: if you gave a lawyer wine worth $400 in connection with the prospective sale, you make a capital gain of:

$1,000 – $400 = $600

104-155 Receipt for event relating to a CGT asset: CGT event H2

(1) ***CGT event H2*** happens if:

(a) an act, transaction or event occurs in relation to a *CGT asset that you own; and

(b) the act, transaction or event does not result in an adjustment being made to the asset's *cost base or *reduced cost base.

Example: You own land on which you intend to construct a manufacturing facility. A business promotion organisation pays you $50,000 as an inducement to start construction early.

No contractual rights or obligations are created by the arrangement.

The payment is made because of an event (the inducement to start construction early) in relation to your land.

Note: This event does not apply if any other CGT event applies: see section 102-25.

(2) The time of the event is when the act, transaction or event occurs.

(3) You make a ***capital gain*** if the *capital proceeds because of the *CGT event are *more* than the *incidental costs you incurred that relate to the event. You make a ***capital loss*** if those *capital proceeds are *less*.

(4) The costs can include giving property: see section 103-5. However, they do not include an amount you have received as *recoupment of them and that is not included in your assessable income.

Exceptions

(5) ***CGT event H2*** does not happen if:

(a) the act, transaction or event is the borrowing of money or the obtaining of credit from another entity; or

(b) the act, transaction or event requires you to do something that is another *CGT event that happens to you; or

(c) a company issues or allots *shares to you; or

(d) the trustee of a unit trust issues units in the trust to you.

Subdivision 104-I—Australian residency ends

Table of sections

104-160 Individual or company stops being resident: CGT event I1
104-165 Exception for individual who stops being resident
104-170 Trust stops being a resident trust: CGT event I2

104-160 Individual or company stops being resident: CGT event I1

(1) ***CGT event I1*** happens if you stop being an *Australian resident.

(2) The time of the event is when you stop being one.

(3) You need to work out if you have made a *capital gain or a *capital loss for *each* *CGT asset that you owned just before the time of the event, except one having the *necessary connection with Australia.

(4) You make a ***capital gain*** if the market value of the asset (at the time of the event) is *more* than its *cost base. You make a ***capital loss*** if that market value is *less* than the asset's *reduced cost base.

Exception

(5) A *capital gain or *capital loss you make is disregarded if you *acquired the asset before 20 September 1985.

Note 1: An individual may be able disregard the gain or loss if he or she was a short term resident: see section 104-165.

Note 2: An individual can choose to disregard a capital gain or loss he or she makes until another CGT event happens in relation to the asset or he or she becomes a resident again: see section 104-165.

104-165 Exception for individual who stops being resident

Short term residents

(1) A *capital gain or *capital loss from a *CGT asset covered by *CGT event I1 is disregarded if you are an individual and you were an *Australian resident for less than 5 years during the 10 years before you stopped being one and:

(a) you owned the asset before last becoming one; or

(b) you *acquired the asset (after last becoming one) because of someone's death.

Choosing to disregard making a gain or loss

(2) If you are an individual, you can choose to disregard making a *capital gain or a *capital loss from all *CGT assets covered by *CGT event I1.

(3) If you do so choose, each of those assets is taken to have the *necessary connection with Australia until the earlier of:

(a) a *CGT event happening in relation to the asset;

(b) you again becoming an *Australian resident.

104-170 Trust stops being a resident trust: CGT event I2

(1) ***CGT event I2*** happens if a trust stops being a *resident trust for CGT purposes.

(2) The time of the event is when the trust stops being one.

(3) The trustee needs to work out if it has made a *capital gain or a *capital loss for *each* *CGT asset that it owned (in the capacity as trustee of the trust) just before the time of the event (except one having the *necessary connection with Australia).

(4) The trustee makes a ***capital gain*** if the market value of the asset (at the time of the event) is *more* than the asset's *cost base. The trustee makes a ***capital loss*** if that market value is *less* than the asset's *reduced cost base.

Exception

(5) A *capital gain or *capital loss the trustee makes is disregarded if it *acquired the asset before 20 September 1985.

Subdivision 104-J—Reversal of roll-overs

Table of sections

104-175 Company ceasing to be member of wholly-owned group after roll-over: CGT event J1

104-180 Sub-group break-up

104-175 Company ceasing to be member of wholly-owned group after roll-over: CGT event J1

(1) ***CGT event J1*** happens if:

(a) there is a roll-over under Subdivision 126-B for a *CGT event (the ***roll-over event***) that happens in relation to a *CGT asset (the ***roll-over asset***) involving 2 companies that are members of the same *wholly-owned group; and

(b) the company (the ***recipient company***) that owns the roll-over asset just after the roll-over stops being a 100% subsidiary of a company in the group in the circumstances set out in subsection (2) or (3); and

(c) at the time of the roll-over, the recipient company was a *100% subsidiary of:

(i) the other company involved in the roll-over event (the ***originating company***); or

(ii) another member of the same *wholly-owned group.

Note: If the roll-over was under section 160ZZO of the *Income Tax Assessment Act 1936*, CGT event J1 does not happen if there would not have been a deemed disposal and re-acquisition under that Act: see section 104-175 of the *Income Tax (Transitional Provisions) Act 1997*.

(2) This condition applies if there has been only one roll-over within the *wholly-owned group under Subdivision 126-B involving the roll-over asset.

The recipient company must stop, at a time (the ***break-up time***) when it still owns the roll-over asset, being a *100% subsidiary of a member of the group (the ***ultimate holding company***) that is not a 100% subsidiary of any other member of the group at the time of the roll-over event.

(3) This condition applies if the roll-over event was the last in a series of *CGT events involving the roll-over asset and there was a roll-over within the *wholly-owned group under Subdivision 126-B for all the events.

The recipient company must stop, at a time (also the ***break-up time***) when it still owns the roll-over asset, being a *100% subsidiary of another member of the group (also the ***ultimate holding company***) that was not a 100% subsidiary of any other member of the group at the time of the first of the events.

(4) The time of the event is the break-up time.

(5) The recipient company makes a ***capital gain*** if the roll-over asset's market value (at the break-up time) is *more* than its *cost base. It makes a ***capital loss*** if that market value is *less* than its *reduced cost base.

Exceptions

(6) ***CGT event J1*** does not happen if the conditions in section 104-180 are satisfied.

(7) A *capital gain or *capital loss the recipient company makes is disregarded if the roll-over asset is taken to have been *acquired by it before 20 September 1985 under Subdivision 126-B.

Acquisition rule

(8) The recipient company is taken to have *acquired the roll-over asset at the break-up time.

Cost base adjustment

(9) The first element of the recipient company's *cost base and *reduced cost base of the roll-over asset (just after the break-up time) is its market value (at the break-up time).

104-180 Sub-group break-up

(1) The condition in subsection (2) must have been satisfied at each time when there is a roll-over within the *wholly-owned group under Subdivision 126-B for a *CGT event happening in relation to the roll-over asset.

(2) The originating company and the recipient company must have been members of a group of 2 or more companies (the ***sub-group***) within the *wholly-owned group (excluding the ultimate holding company) for which one of these is satisfied:

(a) if the sub-group consists of 2 companies, either the recipient company is a 100% subsidiary of the other company (the ***holding company***), or the other company is a 100% subsidiary of the recipient company (also the ***holding company***);

(b) if the sub-group consists of 3 or more companies:

(i) the recipient company is a 100% subsidiary of one of those other companies (also the ***holding company***) and so are the other companies (except the holding company) in the sub-group; or

(ii) each of the companies in the sub-group (except the recipient company) is a 100% subsidiary of the recipient company (also the ***holding company***).

(3) If the roll-over event was the last in a series of *CGT events involving the roll-over asset and there was a roll-over within the *wholly-owned group under Subdivision 126-B for all the events, each company that was the originating company or the recipient company for the purposes of that Subdivision for one of those roll-overs must have been members of the sub-group at the time of each of the roll-overs.

(4) The conditions in subsection (5) or (6) must be satisfied just after the break-up time.

(5) If the recipient company was the holding company of the sub-group, none of its *shares can be owned by:

(a) the ultimate holding company; or

(b) a company that is a *100% subsidiary of the ultimate holding company just after the break-up time.

(6) If the recipient company was not the holding company of the sub-group, no *shares in it or in the holding company can be owned by:

(a) the ultimate holding company; or

(b) a company that is a *100% subsidiary of the ultimate holding company just after the break-up time.

Subdivision 104-K—Other CGT events

Table of sections

104-205 Partial realisation of intellectual property: CGT event K1
104-210 Bankrupt pays amount in relation to debt: CGT event K2
104-215 Asset passing to tax-advantaged entity: CGT event K3
104-220 CGT asset starts being trading stock: CGT event K4
104-225 Special collectable losses: CGT event K5
104-230 Pre-CGT shares or trust interest: CGT event K6

104-205 Partial realisation of intellectual property: CGT event K1

(1) ***CGT event K1*** happens if there is a *partial realisation of an item of *intellectual property.

(2) The time of the event is:

(a) when you enter into the contract for the realisation; or

(b) if there is no contract—when the realisation occurred.

(3) You make a ***capital gain*** if the *capital proceeds from the realisation are *more* than the item's *cost base. If you make a *capital gain, the item's *cost base and *reduced cost base are also reduced to nil.

Note: You cannot make a capital loss.

(4) On the other hand, if the *capital proceeds from the realisation are *less* than the item's *cost base, the item's cost base is reduced by that amount at the time of the realisation.

Example: On 1 January 1999 you buy a patent for an invention for $100,000. On 1 March 1999 you grant a 5 year licence to exploit the patent in South Australia for $60,000 (a partial realisation).

Suppose the patent's cost base just before the grant is $100,000. The capital proceeds ($60,000) are less than the patent's cost base, which is reduced to $40,000.

On 1 September 1999 you receive damages of $70,000 for infringement of the patent (another partial realisation).

Suppose the patent's cost base just before the other realisation is $40,000. The capital proceeds ($70,000) exceed the patent's cost base. You make a capital gain of $30,000 and the patent's cost base is reduced to nil.

Extension of licence treated as grant of new licence

(5) This section has effect as if an extension of the term of a licence relating to a patent, design or copyright were the grant of a new licence (and so a *partial realisation).

Exception

(6) A *capital gain you make is disregarded if you *acquired the *CGT asset that is the item of intellectual property before 20 September 1985.

104-210 Bankrupt pays amount in relation to debt: CGT event K2

(1) ***CGT event K2*** happens if:

(a) you made a *net capital loss for an income year that, because of subsection 102-5(2), cannot be applied in working out whether you made a *net capital gain for the income year or a later one; and

(b) you make a payment in an income year (the ***payment year***) in respect of a debt that was taken into account in working out the amount of that net capital loss; and

(c) ignoring subsection 102-5(2), some part of the net capital loss (the ***denied part***) would have been applied (if you had made sufficient *capital gains) in working out whether you had made a *net capital gain for the payment year.

The payment can include giving property: see section 103-5.

Note: A net capital loss mentioned in subsection 160ZC(4A) of the *Income Tax Assessment Act 1936* is also relevant: see section 104-210 of the *Income Tax (Transitional Provisions) Act 1997*.

(2) The time of the event is when you make the payment.

(3) You make a ***capital loss*** equal to the smallest of:

(a) the amount you paid; or

(b) that part of it that was taken into account in working out the denied part; or

(c) the denied part less the sum of *capital losses you made as a result of previous payments you made in respect of the debt that was taken into account in working out the denied part.

(4) In calculating that ***capital loss***, disregard any amount you have received as *recoupment of the payment and that is not included in your assessable income.

104-215 Asset passing to tax-advantaged entity: CGT event K3

(1) ***CGT event K3*** happens if you die and a *CGT asset you owned just before dying *passes to a beneficiary in your estate who (when the asset passes):

(a) is an *exempt entity; or

(b) is the trustee of a *complying superannuation fund; or

(c) is the trustee of a *complying approved deposit fund; or

(d) is the trustee of a *pooled superannuation trust; or

(e) is not an *Australian resident.

(2) If the asset passes to a beneficiary who is not an *Australian resident, ***CGT event K3*** happens only if:

(a) you were an *Australian resident just before dying; and

(b) the asset (in the hands of the beneficiary) does not have the *necessary connection with Australia.

(3) The time of the event is just before you die.

(4) A ***capital gain*** is made if the market value of the asset on the day you died is *more* than the asset's *cost base. A ***capital loss*** is made if that market value is *less* than the asset's *reduced cost base.

Note: The trustee of the estate must include in the date of death return any net capital gain for the income year when you died.

Exception

(5) A *capital gain or *capital loss is disregarded if you *acquired the asset before 20 September 1985.

Note: There is also an exception if the CGT asset is property under the Cultural Bequests Program: see section 118-5.

104-220 CGT asset starts being trading stock: CGT event K4

(1) ***CGT event K4*** happens if:

(a) you start holding as *trading stock a *CGT asset you already own but do not hold as trading stock; and

(b) you elect under paragraph 70-30(1)(a) to be treated as having sold the asset for its market value.

Note 1: Paragraph 70-30(1)(a) allows you to elect the cost of the asset, or its market value, just before it became trading stock.

Note 2: There is an exemption if you elect its cost: see section 118-25.

(2) The time of the event is when you start.

(3) You make a ***capital gain*** if the asset's market value (just before it became *trading stock) is *more* than its *cost base. You make a ***capital loss*** if that market value is *less* than its *reduced cost base.

Exception

(4) A *capital gain or *capital loss you make is disregarded if you *acquired the asset before 20 September 1985.

104-225 Special collectable losses: CGT event K5

(1) ***CGT event K5*** happens if the requirements in subsections (2), (3) and (4) are satisfied.

(2) There is a fall in the market value of a *collectable of a company or trust.

(3) *CGT event A1, C2 or E8 happens to:

(a) *shares you own in the company (or in a company that is a member of the same *wholly-owned group); or

(b) an interest you have in the trust;

and there is no roll-over for that CGT event.

(4) As a result of the *capital proceeds from that event being replaced under section 116-80:

(a) you make a *capital gain that you would not otherwise have made; or

(b) you do not make the *capital loss you would otherwise have made; or

(c) you make a capital loss that is less than you would otherwise have made.

Note: The capital proceeds from that event are replaced with the market value of the shares or the interest in the trust as if the fall in the market value of collectables and personal use assets had not occurred: see section 116-80.

(5) The time of CGT event K5 is the time of *CGT event A1, C2 or E8.

(6) You make a ***capital loss*** from a *collectable equal to:

- the market value of the *shares or the interest in the trust (worked out as at the time of *CGT event A1, C2 or E8 as if the fall in market value of the collectable had not occurred);

less:

- the actual *capital proceeds from CGT event A1, C2 or E8.

Example: You own 50% of the shares in a company. You bought them in 1999 for $60,000. The company owns a painting worth $100,000 and another asset worth $20,000. The painting falls in value to $50,000.

In 1999 you sell your shares for $35,000 (the actual capital proceeds). You would otherwise make a capital loss of $25,000.

However, the actual capital proceeds are replaced with $60,000 (the market value of the shares if the painting had not fallen in value). You do not make a capital loss from selling the shares.

You do make a collectable loss equal to:

$60,000 – $35,000 = $25,000

Note: You can subtract capital losses from collectables only from your capital gains from collectables: see section 108-10.

104-230 Pre-CGT shares or trust interest: CGT event K6

(1) ***CGT event K6*** happens if:

(a) you own *shares in a company or an interest in a trust you *acquired *before* 20 September 1985; and

(b) *CGT event A1, C2, E1, E2, E3, E5, E6, E7, E8, J1 or K3 happens in relation to the shares or interest; and

(c) there is no roll-over for the other CGT event; and

(d) the applicable requirement in subsection (2) is satisfied.

(2) Just before the other event happened:

(a) the market value of property of the company or trust (that is not its *trading stock) that was *acquired on or after 20 September 1985; or

(b) the market value of interests the company or trust owned through interposed companies or trusts in property (except trading stock) that was *acquired on or after 20 September 1985;

must be at least 75% of the *net value of the company or trust.

(5) The time of CGT event K6 is when the other event happens.

(6) You make a ***capital gain*** if the part of the *capital proceeds from the *shares or interest that is reasonably attributable to the market value of property referred to in subsection (2) is *more* than the sum of the *cost bases of that property.

Note: You cannot make a capital loss.

(7) This section applies to property that a company that is not an *Australian resident *acquired after 15 August 1989 from another company as if it were acquired before 20 September 1985 if:

(a) the other company acquired it before 20 September 1985; and

(b) the companies are members of the same *wholly-owned group; and

(c) the property does not have the *necessary connection with Australia.

(8) In working out the *net value of a company or trust for the purposes of subsection (2), disregard:

(a) the discharge or release of any liabilities; or

(b) the market value of any *CGT assets acquired;

if the discharge or release, or the *acquisition, was done for a purpose that included ensuring that the requirement in subsection (2) would not be satisfied in a particular situation.

Exceptions

(9) ***CGT event K6*** does not happen if:

(a) for a company referred to in subsection (2)—some of its *shares were listed for quotation in the official list of a stock exchange in Australia or a foreign country at the time of the other event and at all times in the period of 5 years before the time of the other event; or

(b) for a trust referred to in subsection (2) that is a unit trust—some of its units were so listed, or were ordinarily available to the public for subscription or purchase, at the time of the other event and at all times in that period.

Division 106—Entity making the gain or loss

Table of Subdivisions

Guide to Division 106
106-A Partnerships
106-B Bankruptcy and liquidation
106-C Absolutely entitled beneficiaries
106-D Security holders

Guide to Division 106

106-1 What this Division is about

This Division sets out the cases where a capital gain or loss is made by someone other than the entity to which a CGT event happens.

The entities affected are:

- partnerships (Subdivision 106-A);
- bankruptcy trustees and company liquidators (Subdivision 106-B);
- trustees where there is an absolutely entitled beneficiary (Subdivision 106-C);
- security holders (Subdivision 106-D).

Subdivision 106-A—Partnerships

106-5 Partnerships

(1) Any *capital gain or *capital loss from a *CGT event happening in relation to a partnership or one of its *CGT assets is made by the partners individually.

Each partner's gain or loss is calculated by reference to the partnership agreement, or partnership law if there is no agreement.

Example 1: A partnership creates contractual rights in another entity (CGT event D1). Each partner's capital gain or loss is calculated by allocating an appropriate share of the capital proceeds from the event and the incidental costs that relate to the event (according to the partnership agreement, or partnership law if there is no agreement).

Example 2: Helen and Clare set up a business in partnership. Helen contributes a block of land to the partnership capital. Their partnership agreement recognises that Helen has a 75% interest in the land and Clare 25%. The agreement is silent as to their interests in other assets and profit sharing.

When the land is sold, Helen's capital gain or loss will be determined on the basis of her 75% interest. For other partnership assets, Helen's gain or loss will be determined on the basis of her 50% interest (under the relevant Partnership Act).

(2) Each partner has a separate *cost base and *reduced cost base for the partner's interest in each *CGT asset of the partnership.

(3) If a partner leaves a partnership, a remaining partner *acquires a separate *CGT asset to the extent that the remaining partner acquires a share of the departing partner's interest in a partnership asset.

Note: The remaining partners would not be affected if the departing partner sells its interests to an entity that was not a partner.

Example: (Indexation is ignored for the purpose of this example).

John, Wil and Patricia form a partnership (in equal shares).

John contributes a building (which is a pre-20 September 1985 asset) having a market value of $200,000. Wil and Patricia contribute $200,000 each in cash.

The partnership buys another asset for $400,000.

John is taken to have disposed of 2/3 of his interest in the building (1/3 to Wil and 1/3 to Patricia). His remaining 1/3 share in the building remains a pre-CGT asset. The 1/3 shares that Wil and Patricia acquire are post-CGT assets.

Wil retires from the partnership when the partnership assets have a market value of $1,200,000 ($500,000 for the building and $700,000 for the other asset). John and Patricia pay Wil $400,000 for his interest in the partnership.

Wil has a capital gain of $100,000 on the building and $100,000 on the other asset. John and Patricia each acquire an additional 1/6 interest in the partnership assets. These additional interests are separate assets and post-CGT assets.

(4) If a new partner is admitted to a partnership:

(a) the new partner *acquires a share (according to the partnership agreement, or partnership law if there is no agreement) of each partnership asset; and

(b) the existing partners are treated as having *disposed of part of their interest in each partnership asset to the extent that the new partner has acquired it.

Example: (Indexation is ignored for the purpose of this example).

Lyn and Barry form a partnership, each contributing $15,000 to its capital. The partnership buys land for $30,000.

The land increases in value to $300,000.

Andrew is admitted as an equal partner, paying Lyn and Barry $50,000 each to acquire a 1/3 share in the land. His cost base is $100,000.

Lyn and Barry have each disposed of 1/3 of their interest in the land. Each has a cost base for that interest of $5,000, and capital proceeds of $50,000, leaving them with a capital gain of $45,000 each on Andrew's admission to the partnership.

The land is sold for its market value.

Andrew has no capital gain on the land.

Lyn and Barry have disposed of their remaining 2/3 original interest in the land for capital proceeds of $100,000, leaving each of them with a capital gain of:

$$\$100{,}000 - \left(\$15{,}000 - \$5{,}000\right) = \$90{,}000$$

Subdivision 106-B—Bankruptcy and liquidation

Table of sections

106-30 Effect of bankruptcy
106-35 Effect of liquidation

106-30 Effect of bankruptcy

(1) For the purposes of this Part and Part 3-3, the vesting of the individual's *CGT assets in the trustee under the *Bankruptcy Act 1966* or under a similar foreign law is ignored.

(2) This Part and Part 3-3 apply to an act done in relation to a *CGT asset of an individual in these circumstances as if it had been done by the individual:

(a) as a result of the bankruptcy of the individual by the Official Trustee in Bankruptcy or a registered trustee, or the holder of a similar office under a *foreign law;

(b) by a trustee under a deed of assignment or arrangement made under Part X of the *Bankruptcy Act 1966*, or under a similar instrument under a foreign law;

(c) by a trustee as a result of an arrangement with creditors under that Act or a foreign law.

106-35 Effect of liquidation

This Part and Part 3-3 apply to an act done by a liquidator of a company, or the holder of a similar office under a *foreign law, as if the act had been done instead by the company.

Example: Ben, a liquidator of a company, sells a CGT asset of the company. Any capital gain or loss is made by the company, not by Ben.

Subdivision 106-C—Absolutely entitled beneficiaries

106-50 Absolutely entitled beneficiaries

If you are absolutely entitled to a *CGT asset as against the trustee of a trust (disregarding any legal disability), this Part and Part 3-3 apply to an act done by the trustee in relation to the asset as if you had done it.

Subdivision 106-D—Security holders

106-60 Acts by security holders

This Part and Part 3-3 apply to an act done by an entity (or an agent of the entity) in relation to a *CGT asset for the purpose of enforcing or giving effect to a security, charge or encumbrance the entity holds over the asset as if the act had been done instead by the person who provided the security.

Example: A lender sells property under a power of sale after the failure of the owner of the property to make payments on the loan. Any capital gain or loss is made by the owner of the property, not the lender.

Division 108—CGT assets

Table of Subdivisions

	Guide to Division 108
108-A	What a CGT asset is
108-B	Collectables
108-C	Personal use assets
108-D	Separate CGT assets

Guide to Division 108

108-1 What this Division is about

This Division defines the various categories of assets that are relevant to working out your capital gains and losses. They are CGT assets, collectables and personal use assets.

It also tells you how capital losses from collectables and personal use assets are relevant to working out your net capital gain or loss.

It also sets out when land, buildings and capital improvements are taken to be separate CGT assets.

Subdivision 108-A—What a CGT asset is

Table of sections

108-5	CGT assets
108-7	Interest in CGT assets as joint tenants

108-5 CGT assets

(1) A ***CGT asset*** is:

(a) any kind of property; or
(b) a legal or equitable right that is not property.

(2) To avoid doubt, these are ***CGT assets***:
(a) part of, or an interest in, an asset referred to in subsection (1);
(b) goodwill or an interest in it;
(c) an interest in an asset of a partnership;
(d) an interest in a partnership that is not covered by paragraph (c).

Note 1: Examples of CGT assets are:
- land and buildings;
- shares in a company and units in a unit trust;
- options;
- debts owed to you;
- a right to enforce a contractual obligation;
- foreign currency.

Note 2: A capital gain or loss from a CGT asset is disregarded if the asset was last acquired before 26 June 1992 and was not an asset for the purposes of Part IIIA of the *Income Tax Assessment Act 1936*: see section 108-5 of the *Income Tax (Transitional Provisions) Act 1997*.

108-7 Interest in CGT assets as joint tenants

Individuals who own a *CGT asset as joint tenants are treated as if they each owned a separate CGT asset constituted by an equal interest in the asset and as if each of them held that interest as a tenant in common.

Note: Section 128-50 contains rules that apply when a joint tenant dies.

Subdivision 108-B—Collectables

Table of sections

108-10 Losses from collectables to be offset only against gains from collectables
108-15 Sets of collectables
108-17 Cost base of a collectable

108-10 Losses from collectables to be offset only against gains from collectables

(1) In working out your *net capital gain or *net capital loss for the income year, *capital losses from *collectables can be used only to reduce *capital gains from collectables.

Example: Your capital gains from collectables total $200 and your capital losses from collectables total $400. You have other capital gains of $500. You have a net capital gain of $500 and a net capital loss from collectables of $200.

The losses from collectables cannot be used to reduce the $500 capital gain.

(2) A ***collectable*** is:

(a) *artwork, jewellery, an antique, or a coin or medallion; or

(b) a rare folio, manuscript or book; or

(c) a postage stamp or first day cover;

that is used or kept mainly for your (or your *associate's) personal use or enjoyment.

(3) These are also ***collectables***:

(a) an interest in any of the things covered by subsection (2); or

(b) a debt that arises from any of those things; or

(c) an option or right to *acquire any of those things.

Note: Collectables acquired for $500 or less are exempt. However, you get an exemption for an interest in one only if the market value of all the interests combined is $500 or less: see Subdivision 118-A.

(4) If some or all of a *capital loss from a *collectable cannot be applied in an income year, the unapplied amount can be applied in the next income year for which your *capital gains from *collectables exceed your *capital losses (if any) from collectables.

Example: You have a capital gain from a collectable for the income year of $200 and a capital loss from another collectable of $600.

Your capital loss from one collectable reduces your capital gain from the other to zero. You cannot apply the remaining $400 of the capital loss in this income year, but you can apply it in a later income year.

(5) If you have 2 or more unapplied *net capital losses from *collectables, you must apply them in the order you made them.

108-15 Sets of collectables

(1) This section sets out what happens if:

(a) you own *collectables that are a set; and

(b) they would ordinarily be *disposed of as a set; and

(c) you dispose of them in one or more transactions for the purpose of trying to obtain the exemption in section 118-10.

Example: You buy a set of 3 books for $900. You apportion the $900 among each book: see section 112-30. If the books are of equal value, you have acquired each one for $300.

If you dispose of each book individually, you would ordinarily obtain the exemption in section 118-10, because you acquired each one for less than $500.

(2) The set of *collectables is taken to be a single *collectable and each of your *disposals is a disposal of part of that collectable.

Example: To continue the example, the 3 books are taken to be a single collectable. You will not obtain the exemption in section 118-10, because you acquired the set for more than $500.

You work out if you make a capital gain or loss from a disposal of part of an asset by comparing the capital proceeds from it with the cost base or reduced cost base (as appropriate) of the disposed part.

Note 1: Section 112-30 tells you how to apportion the cost base and reduced cost base of a CGT asset on a disposal of part of an asset.

Note 2: This section does not apply to a collectable you last acquired before 16 December 1995: see section 108-15 of the *Income Tax (Transitional Provisions) Act 1997*.

108-17 Cost base of a collectable

In working out the *cost base of a *collectable, disregard the third element (about non-capital costs of ownership).

Subdivision 108-C—Personal use assets

Table of sections

108-20 Losses from personal use assets must be disregarded
108-15 Sets of personal use assets
108-30 Cost base of a personal use asset

108-20 Losses from personal use assets must be disregarded

(1) In working out your *net capital gain or *net capital loss for the income year, any *capital loss you make from a *personal use asset is disregarded.

(2) A ***personal use asset*** is:

(a) a *CGT asset (except a *collectable) that is used or kept mainly for your (or your *associate's) personal use or enjoyment; or

(b) an option or right to *acquire a *CGT asset of that kind; or

(c) a debt arising from a *CGT event in which the *CGT asset the subject of the event was one covered by paragraph (a); or

(d) a debt arising other than:

(i) in the course of gaining or producing your assessable income; or

(ii) from your carrying on a *business.

Note 1: There is an exemption for a personal use asset you acquire for $10,000 or less: see section 118-10.

Note 2: A debt arising from a CGT event involving a CGT asset kept mainly for your personal use and enjoyment is a personal use asset to prevent any loss arising from the debt being a normal capital loss.

(3) A ***personal use asset*** does *not* include land, a *stratum unit or a building or structure that is taken to be a separate *CGT asset because of Subdivision 108-D.

108-25 Sets of personal use assets

(1) This section sets out what happens if:

(a) you own *personal use assets that are a set; and

(b) they would ordinarily be *disposed of as a set; and

(c) you dispose of them in one or more transactions for the purpose of trying to obtain the exemption in section 118-10.

(2) The set of *personal use assets is taken to be a single *personal use asset and each of your *disposals is a disposal of part of that asset.

108-30 Cost base of a personal use asset

In working out the *cost base of a *personal use asset, disregard the third element (about the non-capital costs of ownership).

Subdivision 108-D—Separate CGT assets

Guide to Subdivision 108-D

108-50 What this Subdivision is about

For CGT purposes, there are:

- exceptions to the common law principle that what is attached to the land is part of the land; and
- special rules about buildings and adjacent land; and
- rules about when a capital improvement to a CGT asset is treated as a separate CGT asset.

Table of sections

Operative provisions

108-55 When is a building a separate asset from land?
108-60 Plant that is part of a building is a separate asset
108-65 Land adjacent to land acquired before 20 September 1985
108-70 When is a capital improvement a separate asset?
108-75 Capital improvements to CGT assets for which a roll-over may be available
108-80 Deciding if capital improvements are related to each other
108-85 Meaning of *improvement threshold*

Operative provisions

108-55 When is a building a separate asset from land?

(1) A building or structure on land that you *acquired *on or after* 20 September 1985 is taken to be a separate *CGT asset from the land if one of the balancing adjustment provisions in this table applies to the building or structure (whether or not there is a balancing adjustment):

Balancing adjustment provisions

Item	For this capital allowance:	You do a balancing adjustment under:
1	Depreciation	Subdivision 42-F
2	Mining	Subdivision 330-J
3	Research and development	section 73B of the *Income Tax Assessment Act 1936*
4	Timber mill buildings	Subdivision 387-G
5	Timber operations: access roads	Subdivision 387-G

Example: You construct a timber mill building on land you own. The building is subject to a balancing adjustment on its disposal, loss or destruction. It is taken to be a separate CGT asset from the land.

(2) A building or structure that is constructed on land that you *acquired *before* 20 September 1985 is taken to be a separate *CGT asset from the land if:

(a) you entered into a contract for the construction on or after that day; or

(b) if there is no contract—the construction started on or after that day.

Example: You bought a block of land with a building on it on 10 August 1984. On 1 December 1999 you construct another building on the land. The other building is taken to be a separate CGT asset from the land.

108-60 Plant that is part of a building is a separate asset

A unit of *plant that is part of a building or structure is taken to be a separate *CGT asset from the building or structure.

Example: You own a factory from which you carry on a business. You install rest rooms for your employees. The plumbing fixtures and fittings are plant. These are taken to be a separate CGT asset from the factory.

108-65 Land adjacent to land acquired before 20 September 1985

Land that you *acquire on or after 20 September 1985 that is adjacent to land (the ***original land***) you acquired before that day is taken to be a separate *CGT asset from the original land if it and the original land are amalgamated into one title.

Example: On 1 April 1984 you bought a block of land. On 1 June 1999 you bought another block of land adjacent to the first block. You amalgamate the titles to the 2 blocks into 1 title.

The second block is treated as a separate CGT asset. You can make a capital gain or loss from it if you sell the whole area of land.

108-70 When is a capital improvement a separate asset?

Improvements to land

(1) A capital improvement to land is taken to be a separate *CGT asset from the land if one of the balancing adjustment provisions set out in the table in section 108-55 applies to the improvement (whether or not there is a balancing adjustment).

Example: You own land that you use for pastoral operations. You build some fences that are destroyed by fire. The fences are plant and are subject to a balancing adjustment on their destruction under Division 42. The fences are taken to be a separate CGT asset from the land.

Unrelated improvements to pre-CGT assets

(2) A capital improvement to a *CGT asset (the ***original asset***) that you *acquired *before* 20 September 1985 (that is not related to any other capital improvement to the asset) is taken to be a separate *CGT asset if its *cost base (assuming it were a separate CGT asset) when a *CGT event happens in relation to the original asset is:

(a) more than the *improvement threshold for the income year in which the event happened; and

(b) more than 5% of the *capital proceeds from the event.

Example: In 1983 you bought a boat. In 1999 you install a new mast (a capital improvement) for $30,000. Later, you sell the boat for $150,000.

If the cost base of the improvement in the sale year is $41,000 and the improvement threshold for that year is $96,000, the improvement will not be treated as a separate asset.

Note 1: Section 108-80 sets out the factors for deciding whether capital improvements are related to each other.

Note 2: If the improvement is a separate asset, the capital proceeds from the event must be apportioned between the original asset and the improvement: see section 116-40.

Related improvements to pre-CGT assets

(3) Capital improvements to a *CGT asset (the ***original asset***) that you *acquired *before* 20 September 1985 that are related to each other are taken to be a separate *CGT asset if the total of their *cost bases (assuming each one were a separate CGT asset) when a *CGT event happens in relation to the original asset is:

(a) more than the *improvement threshold for the income year in which the event happened; and

(b) more than 5% of the *capital proceeds from the event.

Note: If the improvements are a separate asset, the capital proceeds from the event must be apportioned between the original asset and the improvements: see section 116-40.

Some improvements not relevant

(4) This section does not apply to a capital improvement:

(a) that took place under a contract that you entered into before 20 September 1985; or

(b) if there is no contract—that started or occurred before that day.

(5) Subsections (2) and (3) do not apply if the capital improvement is made to:

(a) a *Crown lease; or

(b) a *prospecting entitlement or *mining entitlement; or

(c) a *statutory licence; or

(d) *plant to which Subdivision 124-K applies.

Note: Section 108-75 deals with this situation.

(6) This section does not apply to a capital improvement consisting of repairs to or restoration of a *CGT asset *acquired before 20 September 1985 in circumstances where there is a roll-over under Subdivision 124-B.

108-75 Capital improvements to CGT assets for which a roll-over may be available

(1) This section is relevant only if a *CGT event happens in relation to a *CGT asset that is:

(a) a *Crown lease; or

(b) a *prospecting entitlement or *mining entitlement; or

(c) a *statutory licence; or

(d) *plant to which Subdivision 124-K applies.

You must have *acquired it before 20 September 1985.

Note: Division 124 treats you as having acquired a CGT asset before that day in some situations.

(2) There are possible consequences if there has been one or more capital improvements to:

(a) the *CGT asset the subject of the *CGT event; or

(b) any *CGT assets of the same kind that were in existence before the CGT asset and came to an end where a

roll-over was obtained under a provision set out in this table:

Roll-over provisions

Item	For this CGT asset:	Roll-over is obtained under this provision:
1	A *Crown lease	Subdivision 124-J
2	A prospecting or mining entitlement	Subdivision 124-L
3	A *statutory licence	Subdivision 124-C
4	*Plant	Subdivision 124-K

Note: Roll-overs under sections 160ZWA, 160ZZF, 160ZZPE and 160ZWC of the *Income Tax Assessment Act 1936* are also relevant: see section 108-75 of the *Income Tax (Transitional Provisions) Act 1997*.

Example: In 1984 you acquired a commercial fishing licence. In 1986 you paid $62,000 to get an extra right (a capital improvement) attached to the licence.

In June 1999 the licence expired and you got a new licence. You obtained a roll-over for the old licence expiring. In April 2000 you sold the new fishing licence for $200,000.

(3) Any capital improvement that is not related to another capital improvement is taken to be a separate *CGT asset if its *cost base (assuming it were a separate CGT asset) when the *CGT event happens is:

(a) more than the *improvement threshold for the income year in which the event happened; and

(b) more than 5% of the *capital proceeds from the event.

Example: To continue the example, suppose the cost base of the right is $101,000 and the improvement threshold for the 1999-2000 income year is $96,000.

Since the cost base of the right is more than the improvement threshold and more than 5% of the capital proceeds, the right is taken to be a separate CGT asset.

Note 1: Section 108-80 sets out the factors for deciding whether capital improvements are related to each other.

Note 2: If the improvement is a separate asset, the capital proceeds from the event must be apportioned between the asset and the improvement: see section 116-40.

(4) Any capital improvements that are related to each other are taken to be a separate *CGT asset if the total of their *cost bases (assuming each one were a separate CGT asset) when the *CGT event happens is:

(a) more than the *improvement threshold for the income year in which the event happened; and

(b) more than 5% of the *capital proceeds from the event.

Note: If the improvements are a separate asset, the capital proceeds from the event must be apportioned between the asset and the improvements: see section 116-40.

(5) This section does not apply to any capital improvement:

(a) that took place under a contract that you entered into before 20 September 1985; or

(b) if there is no contract—that started or occurred before that day.

108-80 Deciding if capital improvements are related to each other

In deciding whether capital improvements are related to each other, the factors to be considered include:

(a) the nature of the *CGT asset to which the improvements are made; and

(b) the nature, location, size, value, quality, composition and utility of each improvement; and

(c) whether an improvement depends in a physical, economic, commercial or practical sense on another improvement; and

(d) whether the improvements are part of an overall project; and

(e) whether the improvements are of the same kind; and

(f) whether the improvements are made within a reasonable period of time of each other.

108-85 Meaning of *improvement threshold*

(1) The ***improvement threshold*** for the 1997-98 income year is $89,992.

(2) The *improvement threshold is indexed annually.

Note: Subdivision 960-M shows you how to index amounts.

(3) The Commissioner must publish before the beginning of each *financial year the *improvement threshold for that year.

Division 109—Acquisition of CGT assets

Table of Subdivisions

Guide to Division 109

109-A Operative rules

109-B Signposts to other acquisition rules

Guide to Division 109

109-1 What this Division is about

This Division sets out the ways in which you can *acquire* a CGT asset and the time of acquisition.

The time of acquisition is important for indexation, and for the exemption of assets acquired *before* 20 September 1985.

Generally, you *acquire* a CGT asset when you become its owner. You can also *acquire* a CGT asset:

- as a result of a CGT event happening: see section 109-5; or
- in other circumstances: see section 109-10.

This Division also directs you to special acquisition rules in other Divisions.

Subdivision 109-A—Operative rules

Table of sections

109-5 General acquisition rules

109-10 When you *acquire* a CGT asset without a CGT event

109-15 Exception

109-5 General acquisition rules

(1) In general, you ***acquire*** a *CGT asset when you become its owner.

(2) This table sets out specific rules for when you ***acquire*** a *CGT asset as a result of a *CGT event happening.

Note: The full list of CGT events is in section 104-5.

Acquisition rules (CGT events)

Event Number	In these circumstances:	You acquire the asset at this time:
A1 (case 1)	An entity *disposes of a CGT asset to you (except where you compulsorily acquire it)	when the disposal contract is entered into or, if none, when the entity stops being the asset's owner
A1 (case 2)	You compulsorily acquire a *CGT asset from another entity	the earliest of: (a) when you paid compensation to the entity; or (b) when you became the asset's owner; or (c) when you entered the asset under the power of compulsory acquisition; or (d) when you took possession of it under that power
B1	You enter into an agreement to obtain the use and enjoyment of a *CGT asset	when you first obtain the use and enjoyment of the asset (unless title does not pass to you when the agreement ends)
D1	An entity creates contractual or other rights in you	when the contract is entered into or the right created

Acquisition rules (CGT events)		
Event Number	**In these circumstances:**	**You acquire the asset at this time:**
D2	An entity grants an option to you	when the option is granted
D3	An entity grants you a right to receive *ordinary income from mining	when the contract is entered into or, if none, when the right is granted
E1	An entity creates a trust over a *CGT asset and you are the trustee	when the trust is created
E2	An entity transfers a *CGT asset to a trust and you are the trustee	when the asset is transferred
E3	A trust over a *CGT asset is converted to a unit trust and you are the trustee	when the trust is converted
E5	You as beneficiary under a trust become absolutely entitled to a *CGT asset of the trust as against the trustee (disregarding any legal disability)	when you become absolutely entitled
E6	Trustee *disposes of a *CGT asset of the trust to you to satisfy a right you had to receive *ordinary income from the trust	when the *disposal occurs
E7	Trustee *disposes of a *CGT asset of the trust to you to satisfy your interest, or part of it, in trust capital	when the *disposal occurs

Acquisition rules (CGT events)		
Event Number	**In these circumstances:**	**You acquire the asset at this time:**
E8	Beneficiary under a trust *disposes of its interest, or part of it, in trust capital to you	when disposal contract is entered into or, if none, when beneficiary stops being interest's owner
E9	An entity creates a trust over future property and you are the trustee	when the entity makes the agreement to create the trust
F1	A lessor grants a lease to you, or renews or extends a lease	for grant of lease—when the contract is entered into or, if none, at the start of lease; for lease renewal or extension—at the start of renewal or extension
F2	A lessor grants a lease to you, or renews or extends a lease, and term is at least 50 years	for grant of lease—when lessor grants the lease; for lease renewal or extension—at the start of renewal or extension
K1	An entity *partially realises an item of *intellectual property to you	when the contract is entered into or, if none, when the *partial realisation happens
K3	An individual dies and a *CGT asset of the individual *passes to you (as a tax advantaged entity)	when the individual dies
K6	A *CGT event happens to *shares or an interest in a trust you own	when the other CGT event happens

Note 1: For CGT events E1, E2 and E3, if the circumstances specified in the second column of the table happened to an asset before 12 January 1994, there may be no acquisition: see section 109-5 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 2: The acquisition rule for CGT event E9 in the table does not apply to you as trustee if the agreement to create the trust was made before 12 noon on 12 January 1994: see section 109-5 of the *Income Tax (Transitional Provisions) Act 1997*.

109-10 When you *acquire* a CGT asset without a CGT event

This table sets out specific rules for some cases where you ***acquire*** a *CGT asset otherwise than as a result of a *CGT event happening.

Acquisition rules (no CGT event)

Item	In these circumstances	You acquire the asset at this time:
1	You (or your agent) construct or create a *CGT asset, and you own it when the construction is finished or the asset is created	when the construction, or work that resulted in the creation, started
2	A company issues or allots *shares to you	when contract is entered into or, if none, when *shares issued or allotted
3	A trustee of a unit trust issues units in the trust to you	when contract is entered into or, if none, when units issued

109-15 Exception

You do not ***acquire*** a *CGT asset if the asset was *disposed of to you to provide or redeem a security.

Subdivision 109-B—Signposts to other acquisition rules

Table of sections

109-50 Effect of this Subdivision
109-55 Other acquisition rules
109-60 Acquisition rules outside this Part and Part 3-3

109-50 Effect of this Subdivision

This Subdivision is a *Guide.

109-55 Other acquisition rules

This table sets out other acquisition rules in this Part and Part 3-3.

Other acquisition rules

Item	In these circumstances	You acquire the asset at this time:	See:
1	A CGT asset devolves to you as legal personal representative of a deceased individual	when the individual died	section 128-15
2	A CGT asset passes to you as beneficiary in the estate of a deceased individual	when the individual died	sections 128-15 and 128-25
3	A surviving joint tenant acquires deceased joint tenant's interest in a CGT asset	when the deceased died	section 128-50
4	You get only a partial exemption under Subdivision 118-B for a CGT event happening to a CGT asset that is a dwelling, but you would have got a full exemption if the CGT event had happened just before the first time the dwelling was used for that purpose	at that time	section 118-92

Other acquisition rules			
Item	**In these circumstances**	**You acquire the asset at this time:**	**See:**
5	The trustee of a deceased estate acquires a dwelling under the deceased's will for you to occupy, and you obtain an interest in it	when the trustee acquired it	section 118-210
6	You obtain a replacement-asset roll-over for replacing an asset you acquired *before* 20 September 1985	*before* 20 September 1985	Divisions 122 and 124
7	You obtain a replacement-asset roll-over for a Crown lease, or a *prospecting or mining entitlement that is renewed or replaced and part of the new entitlement relates a part of the old one that you acquired *before* 20 September 1985	*before* 20 September 1985 (for that part of the new entitlement that relates to the pre-CGT part of the old one)	sections 124-595 and 124-725
8	You obtain a same-asset roll-over for a CGT asset the transferor acquired *before* 20 September 1985	*before* 20 September 1985	Divisions 122 and 126

Other acquisition rules			
Item	**In these circumstances**	**You acquire the asset at this time:**	**See:**
8A	There is a same-asset roll-over for a CGT event that happens to a CGT asset (acquired *on or after* 20 September 1985) because the trust deed of a fund is changed and you are the fund that owns the asset after the CGT event	at the time of the CGT event	Subdivision 126-C
9	A company or trustee of a unit trust issues you with bonus equities because it owes you an amount, and the amount is not included in your assessable income	if the original equities are post-CGT assets, or are pre-CGT assets and fully paid—when you acquired the original equities; or if the original equities are pre-CGT assets and you had to pay an amount for the bonus equities—when the liability to pay arose	section 130-20

Other acquisition rules

Item	In these circumstances	You acquire the asset at this time:	See:
10	You own shares in a company or units in a unit trust and you exercise rights to acquire new equities in the company or trust	for the rights if you acquired them from the company or trustee—when you acquired the original equities; or for the new equities—when you exercise the rights	section 130-40
11	You acquire shares in a company or units in a unit trust by converting a convertible note	when the liability to pay for the convertible note arose	section 130-60
12	You acquire a qualifying share or right under an employee share scheme and a CGT event does not happen to it at the cessation time or within 30 days after that time	at the cessation time	section 130-80

Other acquisition rules			
Item	**In these circumstances**	**You acquire the asset at this time:**	**See:**
13	You (as a lessee of land) acquire the reversionary interest of the lessor and there is no roll-over for the acquisition	if term of lease was for 99 years or more—when the lease was granted or assigned to you; or if term of lease less than 99 years—when the reversionary interest acquired	section 132-15
14	You acquired a CGT asset before 20 September 1985, and there has since been a change in the majority underlying interests in the asset	at the time of the change	Division 149
15	You become an Australian resident and you owned a CGT asset that you acquired on or after 20 September 1985 and that did not have the necessary connection with Australia	when you become an Australian resident	section 136-40

Other acquisition rules			
Item	**In these circumstances**	**You acquire the asset at this time:**	**See:**
16	A trust of which you are trustee becomes a resident trust for CGT purposes and you owned a CGT asset that you acquired on or after 20 September 1985 and that did not have the necessary connection with Australia	when the trust becomes a resident trust for CGT purposes	section 136-45
17	There is a roll-over under Subdivision 126-B for a *CGT event and you are the company owning the roll-over asset just after the roll-over and you stop being a *100% subsidiary of another company in the *wholly-owned group	when you stop	section 104-175

109-60 Acquisition rules outside this Part and Part 3-3

This table sets out other acquisition rules outside this Part and Part 3-3.

Provisions of the *Income Tax Assessment Act 1936* are **in bold**.

Other acquisition rules

Item	In these circumstances	The asset is acquired at this time:	See:
1	You stop holding an item as trading stock	when you stop	paragraph 70-110(b)
2	CGT event happens to Cocos (Keeling) Islands asset	30 June 1991	**section 24P**
3	Trust ceases to be a resident trust for CGT purposes and there is an attributable taxpayer	when it ceases	**section 102AAZBA**
4	CGT event happens to CGT asset in connection with the demutualisation of an insurance company	on the demutualisation resolution day	**section 121AS**
5	CGT event happens to assets of NSW State Bank	at the first taxing time	**section 121EN**
6	You own shares in a company that stops being a PDF	just after it stops	**section 124ZR**
7	You acquire a number of shares that results in you obtaining a 10% (threshold) interest in a SME	when you obtained the threshold interest	**section 128TI**
8	CGT event happens to 30 June 1988 asset of complying superannuation fund, complying ADF or complying PST	30 June 1988	**section 306**

Other acquisition rules			
Item	**In these circumstances**	**The asset is acquired at this time:**	**See:**
9	A CGT asset of a CFC (that it owned on its commencing day)	on the CFC's commencing day	**section 411**
10	A CGT asset is owned by a tax exempt entity and it becomes taxable	at the transition time	**section 57-25 of Schedule 2D**

Division 110—Cost base and reduced cost base

Table of Subdivisions

Guide to Division 110
110-A Cost base
110-B Reduced cost base

Guide to Division 110

110-1 What this Division is about

This Division tells you how to work out the cost base and reduced cost base of a CGT asset. You need to know these to work out if you make a capital gain or loss from most CGT events.

Table of sections

110-5 Modifications to general rules
110-10 Rules about cost base not relevant for some CGT events

110-5 Modifications to general rules

After you have read the general rules, you need to know if there are any modifications to them. Division 112 lists each situation that may result in a modification and tells you where you can find the detailed provisions for each situation.

110-10 Rules about cost base not relevant for some CGT events

This table sets out each CGT event for which you do not need to know what the cost base or reduced cost base of a CGT asset is to work out if you make a capital gain or loss. The section describing the event tells you what amount is relevant instead.

Rules about cost base not relevant for some CGT events		
Event number	**Description of event:**	**See section:**
C3	End of option to acquire shares etc.	104-30
D1	Creating contractual or other rights	104-35
D2	Granting an option	104-40
D3	Granting a right to income from mining	104-45
E9	Creating a trust over future property	104-105
F1	Granting a lease	104-110
F3	Lessor pays lessee to get lease changed	104-120
F5	Lessor receives payment for changing lease	104-130
H1	Forfeiture of deposit	104-150
H2	Receipt for event relating to a CGT asset	104-155
K2	Bankrupt pays amount in relation to debt	104-210

Subdivision 110-A—Cost base

Table of sections

110-25 General rules about *cost base*
110-30 Cost base of partnership assets
110-35 Incidental costs

110-25 General rules about *cost base*

(1) The ***cost base*** of a *CGT asset consists of 5 elements. It can also include indexation of those elements (except the third one).

To find out how to index expenditure: see Division 114.

Note: You need to keep records of each element: see Division 121.

5 elements of the cost base

(2) The first element is the total of:

(a) the money you paid, or are required to pay, in respect of *acquiring it; and

(b) the market value of any other property you gave, or are required to give, in respect of acquiring it (worked out as at the time of the acquisition).

Note 1: There are special rules for working out when you are required to pay money or give other property: see section 103-15.

Note 2: This element is replaced with another amount in many situations: see Division 112.

(3) The second element is the *incidental costs you incurred:

(a) to *acquire the *CGT asset; and

(b) that relate to the *CGT event.

These costs can include giving property: see section 103-5.

Note: There is one situation to do with options in which the incidental costs relating to the CGT event are modified: see section 112-85.

(4) The third element is the non-capital costs of ownership of the *CGT asset you incurred (but only if you *acquired the asset after 20 August 1991). These costs include:

(a) interest on money you borrowed to acquire the asset; and

(b) costs of maintaining, repairing or insuring it; and

(c) rates or land tax, if the asset is land; and

(d) interest on money you borrowed to refinance the money you borrowed to acquire the asset; and

(e) interest on money you borrowed to finance the capital expenditure you incurred to increase the asset's value.

These costs can include giving property: see section 103-5.

Note: This element does not apply to personal use assets or collectables: see sections 108-17 and 108-30.

(5) The fourth element is capital expenditure you incurred to increase the asset's value. However, the expenditure must be reflected in the state or nature of the asset at the time of the *CGT event. (The expenditure can include giving property: see section 103-5.)

Note: There are 3 situations involving leases in which this element is modified: see section 112-80.

(6) The fifth element is capital expenditure that you incurred to establish, preserve or defend your title to the asset, or a right over the asset. (The expenditure can include giving property: see section 103-5.)

What does not form part of the cost base

(7) Expenditure does *not* form part of the second or third element of the ***cost base*** to the extent that you have deducted or can deduct it.

(8) Expenditure does *not* form part of any element of the ***cost base*** to the extent of any amount you have received as *recoupment of it, except so far as the amount is included in your assessable income.

110-30 Cost base of partnership assets

(1) Expenditure does *not* form part of the second or third element of the ***cost base*** for your interest in a *CGT asset of a partnership to the extent that you, or a partnership in which you are or were a partner, have deducted or can deduct it.

(2) Expenditure does *not* form part of any element of the ***cost base*** for your interest in a *CGT asset of a partnership to the extent of any amount that you, or a partnership in which you are or were a partner, have received as *recoupment of it, except so far as the amount is included in your assessable income or the partnership's assessable income.

110-35 Incidental costs

(1) There are 5 ***incidental costs*** you may have incurred:
  (a) to *acquire a *CGT asset; or
  (b) that relate to a *CGT event.

(2) The *first* is remuneration for the services of a surveyor, valuer, auctioneer, accountant, broker, agent, consultant or legal adviser. However, remuneration for professional advice about the operation of this Act is not included unless it is provided by a *recognised tax adviser.

Note: The requirement in subsection (2) that the professional advice be provided by a recognised tax adviser does not apply to expenditure incurred before 1 July 1989: see section 110-35 of the *Income Tax (Transitional Provisions) Act 1997*.

(3) The *second* is costs of transfer.

(4) The *third* is stamp duty or other similar duty.

(5) The *fourth* is:
  (a) if you *acquired a *CGT asset—costs of advertising to find a seller; or
  (b) if a *CGT event happened—costs of advertising to find a buyer.

(6) The *fifth* is costs relating to the making of any valuation or apportionment for the purposes of this Part or Part 3-3.

Subdivision 110-B—Reduced cost base

Table of sections

110-55 General rules about *reduced cost base*
110-60 Reduced cost base for partnership assets

110-55 General rules about *reduced cost base*

(1) The ***reduced cost base*** of a *CGT asset consists of 5 elements. It does *not* include indexation of those elements.

5 elements of the reduced cost base

(2) All of the elements (except the third one) of the ***reduced cost base*** of a *CGT asset are the same as those for the *cost base.

(3) The third element is:

(a) any amount included in your assessable income for any income year because of a balancing adjustment for the asset; and

(b) any amount that would have been so included apart from any of these (which provide relief from including a balancing charge in your assessable income):

(i) section 42-285 or 42-290; or

(ii) subsection 59(2A) or (2D) of the *Income Tax Assessment Act 1936.*

What does not form part of the reduced cost base

(4) The ***reduced cost base*** does not include an amount to the extent that you have deducted or can deduct it (including because of a balancing adjustment) or could have deducted apart from paragraph 43-70(2)(h).

Note: That paragraph excludes from deductibility under Division 43 expenditure that qualifies for the heritage conservation rebate.

(5) The ***reduced cost base*** does not include an amount that is taken into account under paragraph 42-175(b).

Note: That paragraph covers reductions in the undeducted cost of plant.

(6) Expenditure does *not* form part of the ***reduced cost base*** to the extent of any amounts you have received as *recoupment of it. However, this rule does not apply to the extent that the amounts are included in your assessable income.

(7) If your *CGT asset is a *share in a company, its ***reduced cost base*** is reduced by the amount calculated under subsection (8) if:

(a) the company makes a distribution to you under an *arrangement; and

(b) an amount (the ***attributable amount***) representing the distribution or part of it is reasonably attributable to profits derived by the company before you *acquired the share; and

(c) you are entitled to a rebate of income tax under section 46 or 46A of the *Income Tax Assessment Act 1936* (the ***dividend rebate***) on the part of the distribution that is a *dividend (the ***dividend amount***); and

(d) you were a *controller (for CGT purposes) of the company, or an *associate of such a controller, when the arrangement was made or carried out.

(8) The amount of the reduction is:

$$\text{Attributable amount} \times \frac{\text{Amount of dividend rebate}}{\text{Dividend amount} \times \text{*General company tax rate}}$$

110-60 Reduced cost base for partnership assets

(1) The third element of an entity's ***reduced cost base*** for its interest in a *CGT asset of a partnership is the entity's share of:

(a) an amount included in the assessable income of the partnership because of a balancing adjustment for the asset; and

(b) any amount that would have been so included apart from any of these (which provide relief from including a balancing charge in your assessable income):

(i) section 42-285 or 42-290; or

(ii) subsection 59(2A) or (2D) of the *Income Tax Assessment Act 1936*;

calculated according to the entity's share in the partnership net income or net loss.

(2) Expenditure does *not* form part of an entity's ***reduced cost base*** for its interest in a *CGT asset of a partnership to the extent that a partnership in which the entity is or was a partner has deducted or can deduct it (including because of a

balancing adjustment), or could have deducted it apart from paragraph 43-70(2)(h).

(3) Expenditure does *not* form part of an entity's ***reduced cost base*** for its interest in a *CGT asset of a partnership to the extent that a partnership in which the entity is or was a partner has taken the expenditure into account under paragraph 42-175(b).

(4) Expenditure does not form part of an entity's ***reduced cost base*** for its interest in a *CGT asset of a partnership to the extent of any amounts that a partnership in which the entity is or was a partner has received as *recoupment of it and that are not included in the assessable income of the partnership.

(5) If a *CGT asset of a partnership is a *share in a company, an entity's ***reduced cost base*** for its interest in the share is reduced by the amount calculated under subsection (7) if:

(a) the company makes a distribution to the partnership under an *arrangement; and

(b) an amount (the ***attributable amount***) representing the distribution or part of it is reasonably attributable to profits derived by the company before the partnership *acquired the share; and

(c) the partnership is entitled to a rebate of income tax under section 46 or 46A of the *Income Tax Assessment Act 1936* (the ***dividend rebate***) on the part of the distribution that is a *dividend (the ***dividend amount***); and

(d) a partner in the partnership was a *controller (for CGT purposes) of the company, or an *associate of such a controller, when the arrangement was made or carried out.

(6) The amount of the reduction is:

$$\text{Attributable amount} \times \frac{\text{The entity's share of the amount of dividend rebate}}{\text{Dividend amount} \times \text{*General company tax rate}}$$

Division 112—Modifications to cost base and reduced cost base

Table of Subdivisions

Guide to Division 112
112-A General modifications
112-B Finding tables for special rules
112-C Replacement-asset roll-overs
112-D Same-asset roll-overs

Guide to Division 112

112-1 What this Division is about

This Division tells you the situations that may modify the general rules about the cost base and reduced cost base of a CGT asset.

112-5 Discussion of modifications

(1) Modifications can occur from the time you acquired the CGT asset to when a CGT event happens in relation to it.

Note: You should keep records of the modifications: see Division 121.

(2) Most modifications replace the first element (what you paid for a CGT asset) of the cost base and reduced cost base of the asset.

(3) Subdivision 112-A contains operative provisions setting out the general situations that may result in a modification to the general rules.

(4) Subdivision 112-B (which is a guide) has a number of tables (each one covering a specialist topic) that tell you each

situation that *may* result in a modification to the general rules.

(5) Subdivision 112-C (which is a guide) explains what a *replacement-asset* roll-over is and how it can modify the cost base or reduced cost base.

(6) Subdivision 112-D (which is a guide) explains what a *same-asset* roll-over is and how it can modify the cost base or reduced cost base.

Subdivision 112-A—General modifications

Table of sections

112-15 General rule for replacement modifications
112-20 Market value substitution rule
112-25 Split, changed or merged assets
112-30 Apportionment rules on acquisition or disposal of part
112-35 Assumption of liability rule

112-15 General rule for replacement modifications

If a cost base modification replaces an element of the *cost base of a *CGT asset with an amount, this Part and Part 3-3 apply to you as if you had paid that amount.

Example: An individual pays $10,000 to acquire an option. The individual dies and the option devolves to his legal personal representative, who exercises the option.

Section 134-1 applies to the legal personal representative as if the representative had paid $10,000 for the option.

112-20 Market value substitution rule

(1) The first element of your *cost base and *reduced cost base of a *CGT asset you *acquire from another entity is its market value (at the time of acquisition) if:

(a) you did not incur expenditure to acquire it; or

(b) some or all of the expenditure you incurred to acquire it cannot be valued; or

(c) you did not deal at arm's length with the other entity in connection with the acquisition.

The expenditure can include giving property: see section 103-5.

(2) Despite paragraph (1)(c), if you did not deal at arm's length with the other entity and:

(a) your *acquisition of the *CGT asset resulted from *CGT event D1 happening; or

(b) the *CGT asset is a *share in a company that was issued or allotted to you by the company; or

(c) the *CGT asset is a unit in a unit trust issued to you by the trustee of the unit trust;

the market value is substituted only if what you paid to acquire the CGT asset was more than its market value (at the time of acquisition).

The payment can include giving property: see section 103-5.

(3) The rule in subsection (1) does not apply in the situations set out in this table:

Exceptions to the market value substitution rule

Item	You *acquired this CGT asset:	...in this situation:
1	A right to receive *ordinary income or *statutory income from a trust (except a unit trust or a trust that arises because of someone's death)	(a) you did not pay or give anything for the right; and (b) you did not acquire the right by way of an assignment from another entity
2	A decoration awarded for valour or brave conduct	you did not pay or give anything for it
3	A contractual or other legal or equitable right	you did not pay or give anything for it

Exceptions to the market value substitution rule		
Item	**You *acquired this CGT asset:**	**...in this situation:**
4	Rights to *acquire: (a) *shares, or options to acquire *shares, in a company; or (b) units, or options to acquire units, in a unit trust; in a situation covered by Subdivision 130-B	you did not pay or give anything for the rights
5	A *share in a company	it was issued or allotted to you by the company and you did not pay or give anything for it
6	A unit in a unit trust	it was issued to you by the trustee of the unit trust and you did not pay or give anything for it

Note: Disregard subsections (2) and (3) for shares or units that you acquired before 16 August 1989: see section 112-20 of the *Income Tax (Transitional Provisions) Act 1997*.

112-25 Split, changed or merged assets

Split or changed assets

(1) This section sets out what happens if:

(a) a *CGT asset (the ***original asset***) is split into 2 or more assets (the ***new assets***); or

(b) a *CGT asset (also the ***original asset***) changes in whole or in part into an asset (also the ***new asset***) of a different nature;

and you are the beneficial owner of the original asset and each new asset.

Example: You subdivide a block of land into 3 separate blocks. Each of those blocks is a *new asset*.

(2) The splitting or change is not a *CGT event.

(3) You work out the *cost base and *reduced cost base of each new asset as follows:

Method statement	
Step 1.	Work out each element of the *cost base and *reduced cost base of the original asset at the time of the event referred to in subsection (1).
Step 2.	Apportion in a reasonable way each element to each new asset. The result is each corresponding element of the new asset's *cost base and *reduced cost base.

Merged assets

(4) If 2 or more *CGT assets (the ***original assets***) are merged into a single asset (the ***new asset***) and you are the beneficial owner of the original assets and the new asset:

(a) the merger is not a *CGT event; and

(b) each element of the *cost base and *reduced cost base of the new asset (at the time of the merging) is the sum of the corresponding elements of each original asset.

112-30 Apportionment rules on acquisition or disposal of part

Apportionment on acquisition of an asset

(1) If you *acquire a *CGT asset because of a transaction and only part of the expenditure you incurred under the transaction relates to the acquisition of the asset, the first element of your *cost base and *reduced cost base of the asset is that part of the expenditure that is reasonably attributable to the acquisition of the asset.

The expenditure can include giving property: see section 103-5.

Apportionment of expenditure in other elements

(1A) If you incur expenditure and only part of it relates to another element of the *cost base or *reduced cost base of a *CGT asset, that element includes that part of the expenditure that is reasonably attributable to that element.

Apportionment for CGT asset that was part of another asset

(2) The *cost base and *reduced cost base of a *CGT asset is apportioned if a *CGT event happens to some part of the asset, but not to the remainder of it.

Note: The full list of CGT events is in section 104-5.

(3) The *cost base for the *CGT asset representing the part to which the *CGT event happened is worked out using the formula:

$$\text{Cost base of the asset} \times \frac{\text{Capital proceeds for the CGT event happening to the part}}{\text{Those capital proceeds plus the market value of the remainder of the asset}}$$

The *reduced cost base is worked out similarly.

(4) The remainder of the *cost base and *reduced cost base of the asset is attributed to the part that remains.

Example: You acquire a truck for $24,000 and sell its motor for $9,000. Suppose the market value of the remainder of the truck is $16,000.

Under subsection (4), the cost base of the motor is:

$$\$24{,}000 \times \frac{\$9{,}000}{\$9{,}000 + \$16{,}000} = \$8{,}640$$

Under subsection (5), the cost base of the remainder of the truck is:

$$\$24{,}000 - \$8{,}640 = \$15{,}360$$

(5) However, an amount forming part of the *cost base or *reduced cost base of the asset is not apportioned if, on the facts, that amount is wholly attributable to the part to which the *CGT event happened or to the remaining part.

112-35 Assumption of liability rule

If you *acquire a *CGT asset from another entity that is subject to a liability, the first element of your *cost base and *reduced cost base of the asset includes the amount of the liability you assume.

Example: You acquire a block of land for $150,000. You pay $50,000 and assume a liability for an outstanding mortgage of $100,000.

Note: The first element of cost base is dealt with in subsection 110-30(2). The first element of reduced cost base is the same: see subsection 110-55(2).

Subdivision 112-B—Finding tables for special rules

Table of sections

112-40 Effect of this Subdivision
112-45 CGT events
112-50 Main residence
112-55 Effect of you dying
112-60 Bonus shares or units
112-65 Rights
112-70 Convertible notes
112-75 Employee share schemes
112-80 Leases
112-85 Options
112-87 Residency
112-90 An asset stops being a pre-CGT asset
112-95 Transfer of net capital losses within wholly-owned groups of companies
112-97 Modifications outside this Part and Part 3-3

112-40 Effect of this Subdivision

(1) This Subdivision is a *Guide.

Note: In interpreting an operative provision, a Guide may be considered only for limited purposes: see section 950-150.

(2) It sets out which element of the cost base or reduced cost base of a CGT asset is affected by various situations.

112-45 CGT events

CGT events			
Event number	**In this situation:**	**Element affected:**	**See section:**
E1	A trust is created over a CGT asset	First element of cost base and reduced cost base	104-55
E4	A trustee makes a capital payment to you in relation to units or an interest in the trust	The total cost base and reduced cost base	104-70
F4	A lessee receives payment for changing lease	The total cost base	104-125
G1	A company makes a capital payment to you in relation to your shares	The total cost base and reduced cost base	104-135
G2	There is a shift in share values	The total cost base and reduced cost base	140-60 140-95
G2	There is a shift in share values	Fourth element of cost base and reduced cost base	140-65
G3	A liquidator declares shares to be worthless	The total cost base and reduced cost base	104-145
K1	There is a partial realisation of an item of intellectual property	The total cost base	104-205

112-50 Main residence

Main residence			
Item	**In this situation:**	**Element affected:**	**See section:**
1	A dwelling that is your main residence begins to be used for the first time for the purpose of producing assessable income	The total cost base and reduced cost base	118-192

112-55 Effect of you dying

Effect of an individual dying			
Item	**In this situation:**	**Element affected:**	**See section:**
1	CGT asset devolves to the legal personal representative	First element of cost base and reduced cost base	128-15
2	CGT asset passes to a beneficiary	First element of cost base and reduced cost base	128-15
3	CGT asset passes to a trustee of: (a) a complying superannuation fund; or (b) a complying approved deposit fund; or (c) a pooled superannuation trust	First element of cost base and reduced cost base	128-25

Effect of an individual dying			
Item	**In this situation:**	**Element affected:**	**See section:**
4	Surviving joint tenant acquires deceased joint tenant's interest in CGT asset	First element of cost base and reduced cost base	128-50

112-60 Bonus shares or units

Bonus shares or units			
Item	**In this situation:**	**Element affected:**	**See section:**
1	A company issues you with bonus shares because of a dividend or other amount it owes you	First element of cost base and reduced cost base	130-20
2	A unit trust issues you with bonus units because of a dividend or other amount it owes you	First element of cost base and reduced cost base	130-20

112-65 Rights

Exercise of rights			
Item	**In this situation:**	**Element affected:**	**See section:**
1	You exercise rights to acquire shares, or options to acquire shares, in a company	First element of cost base and reduced cost base	130-40

Exercise of rights			
Item	**In this situation:**	**Element affected:**	**See section:**
2	You exercise rights to acquire units, or options to acquire units, in a unit trust	First element of cost base and reduced cost base	130-40

112-70 Convertible notes

Convertible notes			
Item	**In this situation:**	**Element affected:**	**See section:**
1	You acquire shares, or units in a unit trust, by converting a convertible note	First element of cost base and reduced cost base	130-60

112-75 Employee share schemes

Employee share schemes			
Item	**In this situation:**	**Element affected:**	**See section:**
1	You acquire a share or right at a discount under an employee share scheme	First element of cost base and reduced cost base	130-80 130-85

112-80 Leases

Leases			
Item	**In this situation:**	**Element affected:**	**See section:**

Leases			
Item	**In this situation:**	**Element affected:**	**See section:**
1	A lessee incurs expenditure in obtaining the lessor's agreement to vary or waive a term of the lease	Fourth element of cost base and reduced cost base	132-1
2	A lessor pays an amount to the lessee for improvements made by the lessee to the property	Fourth element of cost base and reduced cost base	132-5
3	A lessor of a long-term lease incurs expenditure in obtaining the lessee's agreement to vary or waive a term of the lease or to forfeit or surrender the lease	Fourth element of cost base and reduced cost base	132-10
4	A lessee of land acquires the reversionary interest of the lessor	First element of cost base and reduced cost base	132-15

112-85 Options

Exercise of options			
Item	**In this situation:**	**Element affected:**	**See section:**
1	Grantee of option acquires the CGT asset the subject of the option	First element of cost base and reduced cost base	134-1

Exercise of options			
Item	**In this situation:**	**Element affected:**	**See section:**
2	Grantor of option acquires the CGT asset the subject of the option	For the grantor—the first element of cost base and reduced cost base; For the grantee—the second element of cost base and reduced cost base	134-1

112-87 Residency

Residency			
Item	**In this situation:**	**Element affected:**	**See section:**
1	An individual or company becomes an Australian resident	First element of cost base and reduced cost base	136-40
2	A trust becomes a resident trust for CGT purposes	First element of cost base and reduced cost base	136-45

112-90 An asset stops being a pre-CGT asset

An asset stops being a pre-CGT asset			
Item	**In this situation:**	**Element affected:**	**See section:**
1	An asset of a non-public entity stops being a pre-CGT asset	The total cost base and reduced cost base	149-35

An asset stops being a pre-CGT asset			
Item	**In this situation:**	**Element affected:**	**See section:**
2	An asset of a public entity stops being a pre-CGT asset	The total cost base and reduced cost base	149-75

112-95 Transfer of net capital losses within wholly-owned groups of companies

Transfer of net capital losses within wholly-owned groups of companies			
Item	**In this situation:**	**Element affected:**	**See section:**
1	An amount of a net capital loss is transferred and a company owns a share in the loss company or is owed a debt by it	The total cost base and reduced cost base	170-175
2	An amount of a net capital loss is transferred and a company owns a share in the gain company or is owed a debt by it	The total cost base and reduced cost base	170-180

112-97 Modifications outside this Part and Part 3-3

This table sets out other cost base modifications outside this Part and Part 3-3.

Provisions of the *Income Tax Assessment Act 1936* are **in bold**.

Modifications outside this Part and Part 3-3

Item	In this situation	Element affected:	See:
1	You stop holding an item as trading stock	First element of cost base and reduced cost base	Paragraph 70-110(b)
2	CGT event happens to Cocos (Keeling) Islands asset	First element of cost base and reduced cost base	**section 24P**
3	CGT event happens by the borrower disposing of the borrowed security to a third party	First element of cost base and reduced cost base	**paragraph 26BC(9)(a)**
4	CGT event happens to replacement security and compensatory payment was incurred by the borrower	Second element of cost base and reduced cost base	**subsection 26BC(9A)**
5	CGT event happens to CGT asset in connection with the demutualisation of an insurance company	First element of cost base and reduced cost base	**section 121 AS**
6	CGT event happens to assets of NSW State Bank	First element of cost base and reduced cost base	**section 121 EN**
7	Trust ceases to be a resident trust for CGT purposes and there is an attributable taxpayer	The total cost base and reduced cost base	**section 102 AAZBA**
8	You own shares in a company that stops being a PDF	First element of cost base and reduced cost base	**section 124 ZR**

Modifications outside this Part and Part 3-3			
Item	**In this situation**	**Element affected:**	**See:**
9	You acquire a number of shares that results in you obtaining a 10% (threshold) interest in a SME	First element of cost base and reduced cost base	**section 128 TI**
10	CGT event happens to CGT asset used in gold mining	The total cost base	**section 159 GZZZBC**
11	CGT event happens to CGT asset used in gold mining	The total reduced cost base	**section 159 GZZZBD**
12	Shares in a holding company are cancelled	The total cost base and reduced cost base	**section 159 GZZZH**
13	CGT event happens to 30 June 1988 asset of complying superannuation funds, complying ADF or PST	First element of cost base and reduced cost base	**section 308**
14	CGT event happens to CGT asset of complying superannuation fund, ADF or PST	First element of cost base and reduced cost base	**section 311**
15	A CGT asset of a CFC is taken into account in calculating its attributable income	First element of cost base and reduced cost base	**section 412**
16	A CGT asset of a CFC is taken into account in calculating its attributable income	First element of cost base and reduced cost base	**subsection 413(2)**

Modifications outside this Part and Part 3-3			
Item	**In this situation**	**Element affected:**	**See:**
17	A CGT asset of a CFC is taken into account in calculating its attributable income	First element of cost base and reduced cost base	**subsection 413(3)**
18	A CGT asset of a CFC is taken into account in calculating its attributable income	First element of cost base and reduced cost base	**section 414**
19	A commercial debt is forgiven	The total cost base and reduced cost base of CGT assets of the debtor (except assets that are excluded assets under Schedule 2C)	**sections 245-175 to 245-190 of Schedule 2C**
20	A tax exempt entity becomes taxable	First element of cost base and reduced cost base	**section 57-25 of Schedule 2D**

Subdivision 112-C—Replacement-asset roll-overs

Table of sections

112-100 Effect of this Subdivision
112-105 What is a replacement-asset roll-over?
112-110 How is the cost base of the replacement asset modified?
112-115 Table of replacement-asset roll-overs

112-100 Effect of this Subdivision

This Subdivision is a *Guide.

Note: In interpreting an operative provision, a Guide may be considered only for limited purposes: see section 950-150.

112-105 What is a replacement-asset roll-over?

(1) A ***replacement-asset roll-over*** allows you to defer the making of a capital gain or a capital loss from one CGT event until a later CGT event happens.

(2) It involves your ownership of one CGT asset (the ***original asset***) ending and you acquiring another one (the ***replacement asset***).

(3) All replacement-asset roll-overs are set out in Divisions 122 and 124 of this Act and Division 17A of Part IIIA of the *Income Tax Assessment Act 1936*.

112-110 How is the cost base of the replacement asset modified?

If you acquired the original asset on or after 20 September 1985:

(a) the first element of the replacement asset's cost base is replaced by the original asset's cost base at the time you acquired the replacement asset; and

(b) the first element of the replacement asset's reduced cost base is replaced by the original asset's reduced cost base at the time you acquired the replacement asset.

Note 1: Some replacement-asset roll-overs involve other rules that affect the cost base or reduced cost base of the replacement asset.

Note 2: If you acquired the original asset before 20 September 1985, you are taken to have acquired the replacement asset before that day: see Subdivision 124-A.

112-115 Table of replacement-asset roll-overs

This table sets out all the replacement-asset roll-overs and tells you where you can find more detail about each one.

Provisions of this Act are in normal text. The other provisions, **in bold**, are provisions of the *Income Tax Assessment Act 1936*.

Replacement-asset roll-overs		
Item	**For the rules about this roll-over:**	**See:**
1	Disposal or creation of assets by individual to a wholly-owned company	sections 122-40 to 122-65
2	Disposal or creation of assets by partners to a wholly-owned company	sections 122-150 to 122-195
3	CGT event happens to small business assets and you acquire replacement assets	**Division 17A of Part IIIA**
4	Asset compulsorily acquired, lost or destroyed	Subdivision 124-B
5	Renewal or extension of a statutory licence	Subdivision 124-C
6	Strata title conversion	Subdivision 124-CD
7	Exchange of shares in the same company or units in the same unit trust	Subdivision 124-E
8	Exchange of rights or options to acquire shares in a company or units in a unit trust	Subdivision 124-F
9	Exchange of shares in one company for shares in an interposed company	Subdivision 124-G
10	Exchange of units in a unit trust for shares in a company	Subdivision 124-H
11	Body is converted to an incorporated company	Subdivision 124-I
12	Crown leases	Subdivision 124-J
13	Plant	Subdivision 124-K
14	Prospecting and mining entitlements	Subdivision 124-L
15	Disposal of a security under a securities lending arrangement	**section 26BC**

Subdivision 112-D—Same-asset roll-overs

Table of sections

112-135 Effect of this Subdivision
112-140 What is a same-asset roll-over?
112-145 How is the cost base of the asset modified?
112-150 Table of same-asset roll-overs

112-135 Effect of this Subdivision

This Subdivision is a *Guide.

Note: In interpreting an operative provision, a Guide may be considered only for limited purposes: see section 950-150.

112-140 What is a same-asset roll-over?

A ***same-asset roll-over*** allows one entity (the ***transferor***) to disregard a capital gain or loss it makes from disposing of a CGT asset to, or creating a CGT asset in, another entity (the ***transferee***). Any gain or loss is deferred until another CGT event happens in relation to the asset (in the hands of the transferee).

All same-asset roll-overs are set out in Divisions 122 and 126.

112-145 How is the cost base of the asset modified?

If the transferor acquired the asset on or after 20 September 1985:

(a) the first element of the asset's cost base (in the hands of the transferee) is replaced by the asset's cost base at the time the transferee acquired it; and

(b) the first element of the asset's reduced cost base (in the hands of the transferee) is replaced by the asset's reduced cost base at the time the transferee acquired it.

Note: If the transferor acquired the asset before 20 September 1985, the transferee is taken to have acquired it before that day: see Subdivision 126-A.

112-150 Table of same-asset roll-overs

This table sets out all the same-asset roll-overs and tells you where you can find more detail about each one.

Same-asset roll-overs		
Item	**For the rules about this roll-over:**	**See:**
1	Transfer of a CGT asset from one spouse to the other because of a marriage breakdown	Subdivision 126-A
2	Transfer of a CGT asset from a company or trust to a spouse because of a marriage breakdown	Subdivision 126-A
3	Transfer of a CGT asset to a wholly-owned company	sections 122-70 and 122-75
4	Transfer of a CGT asset of a partnership to a wholly-owned company	Sections 122-200 and 122-205
5	Transfer of a CGT asset between related companies	Subdivision 126-B
6	CGT event happens because a trust deed of a complying approved deposit fund or complying superannuation fund is changed	Subdivision 126-C

Division 114—Indexation of cost base

Table of sections

114-1 Indexing elements of cost base
114-5 When indexation relevant
114-10 Requirement for 12 months ownership
114-15 Cost base modifications
114-20 When expenditure is incurred for roll-overs

114-1 Indexing elements of cost base

In working out the *cost base of a *CGT asset, index expenditure in each element. (The expenditure can include giving property: see section 103-5).

Note 1: Subdivision 960-M shows you how to index amounts.

Note 2: You have to work out the cost base of a CGT asset if a CGT event happens in relation to it or if there is a cost base modification.

Note 3: You cannot index expenditure in the third element (non-capital costs of ownership): see subsection 960-275(4).

Example: Peter purchases a building as an investment on 1 January 1994 for $250,000. This amount forms the first element of his cost base.

He sold the building on 1 February 1996.

The index number for the quarter in which he sold the building (the March quarter 1996) is 119.0. The index number for the quarter in which he purchased the building (the March quarter 1994) is 110.4.

Applying section 960-275, work out the indexation factor as follows:

$$\frac{119.0}{110.4} = 1.078$$

The indexed first element of Peter's cost base is:

$$\$250{,}000 \times 1.078 = \$269{,}500$$

114-5 When indexation relevant

Indexation is only relevant if the *cost base of a *CGT asset is relevant to a *CGT event.

Note 1: The table in section 110-10 sets out the CGT events for which cost base is not relevant.

Note 2: Indexation is not relevant to the reduced cost base of a CGT asset.

114-10 Requirement for 12 months ownership

(1) You only index expenditure in the *cost base of a *CGT asset for a *CGT event happening in relation to the asset if you, or the entity whose cost base is being worked out, had *acquired the asset at least 12 months before the time of that *CGT event.

Note: Generally, expenditure is indexed from when it is incurred: see subsection 960-275(2). The exception is when there is an acquisition that did not result from a CGT event. The first element in this case is indexed from when the expenditure was paid: see subsection 960-275(3).

(2) There are 5 exceptions:

- one for *CGT event E8: see subsection (3); and
- one for roll-overs: see subsections (4) and (5); and
- one for deceased estates: see subsection (6); and
- one for a surviving joint tenant: see subsection (7); and
- one for *CGT event J1: see subsection (8).

CGT event E8

(3) For *CGT event E8, the beneficiary indexes the *cost bases of the *CGT assets of the trust only if the beneficiary *acquired the *CGT asset that is the interest in the trust capital at least 12 months before *disposing of it.

It does not matter (for indexation from the beneficiary's point of view) how long the trustee owned any of the assets of the trust.

Same asset roll-overs

(4) The 12 month rule is satisfied for both the entity that owned a *CGT asset before a *same-asset roll-over and the entity that owned it after the roll-over if the sum of their periods of ownership of the asset (and the sum of the periods of

ownership of the asset of other entities involved in an unbroken series of roll-overs) is at least 12 months.

Replacement asset roll-overs

(5) The 12 month rule is satisfied for an entity obtaining a *replacement-asset roll-over for a *CGT event happening in relation to a *CGT asset if the period of the entity's ownership of the original asset (and of other assets for an unbroken series of replacement-asset roll-overs) and of the replacement asset are together at least 12 months.

Example: Company A transfers a CGT asset to Company B (which is a member of the same wholly-owned group) 5 months after acquiring it. There is a roll-over for the transfer under Subdivision 126-B.

Company B sells the asset 8 months after the transfer.

Company A indexes expenditure in its cost base up to the transfer. That cost base becomes the first element of Company B's cost base. Company B indexes its cost base from the transfer to the sale.

Deceased estates

(6) If a *CGT asset you owned just before dying devolves to your *legal personal representative or *passes to a beneficiary in your estate, the 12 month rule applies to the legal personal representative or the beneficiary as if that entity had *acquired the asset when you acquired it.

Surviving joint tenant

(7) If individuals own a *CGT asset as joint tenants and one of them dies, the 12 month rule applies to the surviving joint tenant as if the surviving joint tenant had *acquired the deceased's interest in the asset when the deceased acquired it.

Note: The surviving joint tenant is taken to have acquired the deceased's interest in the asset: see section 128-50.

CGT event J1

(8) If *CGT event J1 happens, the company that owns the roll-over asset ignores (for indexation purposes) the acquisition rule in subsection 104-175(8).

114-15 Cost base modifications

(1) There are a number of modifications to the *cost base of *CGT assets (see sections 112-20 and 112-35 and Subdivisions 112-B, 112-C and 112-D). These affect the way indexation works.

(2) If a cost base modification replaces an element of the *cost base of a *CGT asset with an amount, or includes an amount in such an element, you index the element or the amount as if expenditure equal to the amount had been incurred in the quarter in which the modification occurred.

Example: A trust is declared over a CGT asset (an example of CGT event E1). The first element of the cost base in the hands of the trustee is its market value. The trustee indexes that market value from the quarter in which the trust was declared.

(3) A different rule applies if a cost base modification reduces the *total* *cost base of a *CGT asset.

Method statement

Step 1. Work out the *cost base (all elements) of the asset as at the quarter in which the modification occurred.

Step 2. Subtract the amount of the reduction.

Step 3. The Step 2 amount forms a new first element of your *cost base, and is later indexed as if you had incurred expenditure equal to that amount in the quarter in which the modification occurred.

Example: Margaret receives a capital payment of $1,000 for shares (an example of CGT event G1). The first element of her cost base is $10,250 (indexed to the quarter in which the payment was made) and the second element (similarly indexed) is $210. Add those amounts ($10,460) and subtract the $1,000. Her new first element of the cost base is $9,460. There are no other elements at that time.

114-20 When expenditure is incurred for roll-overs

If there is a roll-over for a *CGT event happening in relation to a *CGT asset and the first element of the *cost base of the asset is the whole of the cost base of:

(a) for a *replacement-asset roll-over, the original asset; or

(b) for a *same-asset roll-over, the CGT asset;

you index that element as if expenditure equal to the amount in that element had been incurred in the quarter in which the CGT event happened.

Division 116—Capital proceeds

Guide to Division 116

116-1 What this Division is about

This Division tells you how to work out what the capital proceeds from a CGT event are. You need to know this to work out if you made a capital gain or loss from the event.

Table of sections

116-5 General rules
116-10 Modifications to general rules

General rules

116-20 General rules about *capital proceeds*

Modifications to general rules

116-25 Table of modifications to the general rules
116-30 Market value substitution rule: modification 1
116-40 Apportionment rule: modification 2
116-45 Non-receipt rule: modification 3
116-50 Repaid rule: modification 4
116-55 Assumption of liability rule: modification 5

Special rules

116-65 Disposal of a CGT asset the subject of an option
116-70 Option requiring both acquisition and disposal
116-75 Special rule for CGT event C2 happening to a lease
116-80 Special rule if CGT asset is shares or an interest in a trust
116-85 Section 47A of 1936 Act applying to rolled-over asset
116-95 Company changes residence from an unlisted country

116-5 General rules

Section 116-20 sets out the general rules about capital proceeds. They are relevant to each CGT event that is listed in the table in section 116-25.

116-10 Modifications to general rules

(1) There are 5 modifications to the general rules that may be relevant. The table in section 116-25 lists which ones *may* be relevant to each CGT event listed in the table.

Explanation of modifications

(2) The first is a market value substitution rule. It is relevant if:

- you receive no capital proceeds from a CGT event; or
- some or all of the capital proceeds cannot be valued; or
- you did not deal at arm's length with another entity in connection with the event.

(3) The second is an apportionment rule. It is relevant if a payment you receive in connection with a transaction relates in part only to a CGT event.

Example: You sell 3 CGT assets for a total of $100,000. The $100,000 needs to be apportioned between the 3 assets.

(4) The third is a non-receipt rule. It is relevant if you do not receive, or are not likely to receive, some or all of the capital proceeds from a CGT event.

(5) The fourth is a repaid rule. It is relevant if you are required to repay some or all of the capital proceeds from a CGT event.

(6) The fifth is relevant only if another entity assumes a liability in connection with a CGT event.

Note: Also, these provisions of the *Income Tax Assessment Act 1936* modify capital proceeds:

- sections 159GZZZF and 159GZZZG (cancellation of shares in a holding company);
- sections 159GZZZQ and 159GZZZS (buy-backs of shares);

- sections 401, 422, 423 and 461 (CFC's);
- section 613 (foreign investment funds).

[This is the end of the Guide]

General rules

116-20 General rules about *capital proceeds*

(1) The ***capital proceeds*** from a *CGT event are the total of:

(a) the money you have received, or are entitled to receive, in respect of the event happening; and

(b) the market value of any other property you have received, or are entitled to receive, in respect of the event happening (worked out as at the time of the event).

Note 1: The timing rules for each event are in Division 104.

Note 2: In some situations you are treated as having received money or other property, or being entitled to receive it: see section 103-10.

Note 3: If you dispose of shares in a buy-back, the capital proceeds are worked out under Division 16K of the *Income Tax Assessment Act 1936*.

(2) This table sets out what the ***capital proceeds*** from *CGT events F1, F2 and H2 are:

General rules about capital proceeds

Event number	Description of event:	The *capital proceeds* are:
F1	Granting, renewing or extending a lease	Any premium paid or payable to you for the grant, renewal or extension

General rules about capital proceeds		
Event number	**Description of event:**	**The *capital proceeds* are:**
F2	Granting, renewing or extending a long-term lease	The greatest of: (a) the market value of the estate in fee simple or head lease (worked out when you grant, renew or extend the lease); and (b) what would have been that market value if you had not granted, renewed or extended the lease; and (c) any premium paid or payable to you for the grant, renewal or extension
H2	Receipt for event relating to a CGT asset	The money or other consideration you received, or are entitled to receive, because of the act, transaction or event

(3) In working out the market value of the property the subject of the grant, renewal or extension of a long-term lease:

(a) include the market value of any building, part of a building, structure or improvement that is treated as a separate *CGT asset from the property; and

(b) disregard any *plant for which the lessor has deducted or can deduct an amount for depreciation under this Act.

Note: Subdivision 108-D sets out when a building, structure or improvement is treated as a separate CGT asset.

(4) In working out the amount of any premium paid or payable to the lessor for the grant, renewal or extension of a long-term lease, disregard any part of it that is attributable to *plant of that kind.

The payment of any premium can include giving property: see section 103-5.

Modifications to general rules

116-25 Table of modifications to the general rules

There are 5 modifications to the general rules that *may* be relevant to a *CGT event. This table tells you:

- each *CGT event for which the general rules about *capital proceeds are relevant; and
- the modifications that can apply to that event; and
- any special rules that apply to that event.

Capital proceeds modifications

Event number	Description of event:	Only these modifications can apply:	Special rules:
A1	Disposal of a CGT asset	1, 2, 3, 4, 5	If the disposal is because another entity exercises an option: see section 116-65 If the disposal is of *shares or an interest in a trust: see section 116-80
B1	Use and enjoyment before title passes	1, 2, 3, 4, 5	None
C1	Loss or destruction of a CGT asset	2, 3, 4	None
C2	Cancellation, surrender and similar endings	1, 2, 3, 4	See sections 116-75 and 116-80
C3	End of option to acquire shares etc.	2, 3, 4	None

Capital proceeds modifications			
Event number	**Description of event:**	**Only these modifications can apply:**	**Special rules:**
D1	Creating contractual or other rights	1, 2, 3, 4	None
D2	Granting an option	1, 2, 3, 4	See section 116-70
D3	Granting a right to income from mining	1, 2, 3, 4	None
K1	Partial realisation of intellectual property	1, 2, 3, 4	None
E1	Creating a trust over a CGT asset	1, 2, 3, 4, 5	None
E2	Transferring a CGT asset to a trust	1, 2, 3, 4, 5	None
E8	Disposal by beneficiary of capital interest	1, 2, 3, 4, 5	See section 116-80
F1	Granting a lease	2, 3, 4	None
F2	Granting a long-term lease	2, 3, 4	None
F4	Lessee receives payment for changing lease	2, 3, 4	None
F5	Lessor receives payment for changing lease	2, 3, 4	None
H2	Receipt for event relating to a CGT asset	2, 3, 4	None

Capital proceeds modifications			
Event number	**Description of event:**	**Only these modifications can apply:**	**Special rules:**
K6	Pre-CGT shares or trust interest	1, 2, 3, 4, 5	None

116-30 Market value substitution rule: modification 1

No capital proceeds

(1) If you received no *capital proceeds from a *CGT event, you are taken to have received the market value of the *CGT asset that is the subject of the event. (The market value is worked out as at the time of the event.)

Example: You give a CGT asset to another entity. You are taken to have received the market value of the CGT asset.

There are capital proceeds

(2) The *capital proceeds from a *CGT event are replaced with the market value of the *CGT asset that is the subject of the event if:

(a) some or all of those proceeds cannot be valued; or

(b) those capital proceeds are more or less than the market value of the asset and:

(i) you and the entity that *acquired the asset from you did *not* deal with each other at arm's length in connection with the event; or

(ii) the CGT event is the redemption, release, abandonment, surrender, forfeiture or cancellation of the asset.

(The market value is worked out as at the time of the event.)

Note: The matters set out in subparagraph (2)(b)(ii) are examples of CGT event C2.

Market value for CGT event C2

(3) Subsection (1) does not apply to:

(a) these examples of *CGT event C2:

(i) the expiry of a *CGT asset you own;

(ii) the cancellation of your statutory licence; or

(b) *CGT event D1 (about creating contractual or other rights).

(3A) If you need to work out the market value of a *CGT asset that is the subject of *CGT event C2, work it out as if the event had not occurred and was never proposed to occur.

Example: A company cancels shares you own in it. You work out the market value of the shares by disregarding the cancellation.

CGT assets the subject of certain events

(4) To avoid doubt, the *CGT asset that is the subject of a *CGT event specified in this table is the asset so specified.

***CGT assets the subject of certain events**	
For this *CGT event:	**This asset is the subject of the event:**
D1	the right you created
D2	the option you granted
D3	the right you granted
E8	your interest or part interest in the trust capital
K1	your partially realised item of *intellectual property
K6	the *share or interest you *acquired before 20 September 1985

116-40 Apportionment rule: modification 2

(1) If you receive a payment in connection with a transaction that relates to more than one *CGT event, the ***capital proceeds***

from each event are so much of the payment as is reasonably attributable to that event.

Example: You sell a block of land and a boat for a total of $100,000. This transaction involves 2 CGT events.

The $100,000 must be divided among the 2 events. The capital proceeds from the disposal of the land are so much of the $100,000 as is reasonably attributable to it. The rest relates to the boat.

(2) If you receive a payment in connection with a transaction that relates to one *CGT event and something else, the ***capital proceeds*** from the event are so much of the payment as is reasonably attributable to the event.

Example: You are an architect. You receive $70,000 for selling a block of land and giving advice to the new owner. This transaction involves one CGT event: the disposal of the land.

The capital proceeds from the disposal of the land is so much of the $70,000 as is reasonably attributable to that disposal.

(3) The payment can include giving property: see section 103-5.

116-45 Non-receipt rule: modification 3

(1) The *capital proceeds from a *CGT event are reduced if:

(a) you are not likely to receive some or all (the ***unpaid amount***) of those proceeds; and

(b) this is not because of anything you (or your *associate) have done or omitted to do; and

(c) you took all reasonable steps to get the unpaid amount paid.

The *capital proceeds are reduced by the unpaid amount.

Note: This rule exists because the general rules treat you as having received an amount when you are entitled to receive it.

Example You sell a painting to another entity for $5,000 (the capital proceeds). You agree to accept monthly instalments of $100.

You receive $2,000, but then the other entity stops making payments. It becomes clear that you are not likely to receive the remaining $3,000. The capital proceeds are reduced to $2,000.

(2) There is a further consequence if:

(a) those proceeds are reduced by the unpaid amount; but

(b) you later receive a part of that amount.

Those proceeds are increased by that part.

(3) This Part and Part 3-3 apply to the debt owed to you (the unpaid amount) as if it were not a *CGT asset.

116-50 Repaid rule: modification 4

(1) The *capital proceeds from a *CGT event are reduced by:

(a) any part of them that you repay; or

(b) any compensation you pay that can reasonably be regarded as a repayment of part of them.

However, the *capital proceeds are not reduced by any part of the payment that you can deduct.

Example: You sell a block of land for $50,000 (the capital proceeds). The purchaser later finds out that you misrepresented a term in the contract. The purchaser sues you and the court orders you to pay $10,000 in damages to the purchaser.

The capital proceeds are reduced by $10,000.

(2) The payment can include giving property: see section 103-5.

116-55 Assumption of liability rule: modification 5

The *capital proceeds from a *CGT event are increased if another entity *acquires the *CGT asset (the subject of the event) subject to a liability by way of security over the asset.

They are increased by the amount of the liability the other entity assumes.

Example: You sell land for $150,000. You receive $50,000 (the capital proceeds) and the buyer becomes responsible for a $100,000 liability under an outstanding mortgage. The capital proceeds are increased by $100,000 to $150,000.

Special rules

116-65 Disposal of a CGT asset the subject of an option

If you *dispose of a *CGT asset because another entity exercises an option you granted in relation to the asset, the *capital proceeds from the disposal include any payment you received for granting the option.

The payment can include giving property: see section 103-5.

Note: This situation is an example of CGT event A1.

116-70 Option requiring both acquisition and disposal

If an option you granted requires you both to *acquire and *dispose of a *CGT asset, the option is treated as 2 separate options and half of the *capital proceeds from the grant is attributed to each option.

116-75 Special rule for CGT event C2 happening to a lease

The *capital proceeds from the expiry, surrender or forfeiture of a lease (an example of *CGT event C2) include any payment (because of the lease ending) by the lessor to the lessee for expenditure of a capital nature incurred by the lessee in making improvements to the leased property.

The payment or expenditure can include giving property: see section 103-5.

116-80 Special rule if CGT asset is shares or an interest in a trust

(1) This section sets out what happens if:

(a) there is a fall in the market value of a *personal use asset (other than a car, motor cycle or similar vehicle) or a *collectable of a company or trust; and

(b) *CGT event A1, C2 or E8 happens to:

(i) *shares you own in the company (or in a company that is a member of the same *wholly-owned group); or

(ii) an interest you have in the trust.

Note: The full list of CGT events is in section 104-5.

(2) The *capital proceeds from the event are replaced with the market value of the *shares, or the interest in the trust.

The market value is worked out as at the time of the event as if the fall in market value of the *personal use asset or *collectable had *not* occurred.

Note: You may also make a collectable loss: see CGT event K5.

116-85 Section 47A of 1936 Act applying to rolled-over asset

(1) You reduce the *capital proceeds from a *CGT event that happens in relation to a *CGT asset you have if the conditions in this table are satisfied.

Conditions for reduction

Item	Condition
1	You must have *acquired the asset from a company or *CFC
2	Either: (a) the company obtained a roll-over for the *CGT event that resulted in your *acquisition of the asset; or (b) the *CFC obtained a roll-over for that event in applying Division 7 of Part X of the *Income Tax Assessment Act 1936* for the purpose of working out the *attributable income of a company in relation to any entity except a roll-over under Subdivision 124-J (about Crown leases), 124-K (about plant) or 124-L (about prospecting and mining entitlements)

Conditions for reduction	
Item	**Condition**
3	The company or *CFC is taken, under section 47A of the *Income Tax Assessment Act 1936*, to have paid you a dividend in relation to that event, and: (a) some or all of the dividend is included in your assessable income under section 44 of that Act; or (b) an amount is included in another entity's assessable income in respect of the dividend under section 458 or 459 of that Act

Note: For roll-overs: see Divisions 122, 124 and 126.

(2) The reduction is the lesser of:

(a) the amount of the dividend; and

(b) the amount of any *capital gain that, apart from the roll-over, the company or *CFC would have made from the *CGT event if its *capital proceeds from the event had been the asset's market value (at the time of the event).

(3) The amount of that *capital gain is worked out:

(a) for the company—under this Part and Part 3-3; or

(b) for the *CFC—under this Part and Part 3-3 in their application for the purpose of calculating the *attributable income of the CFC in relation to the entity referred to in paragraph (b) of condition 3 in the table in subsection (1).

Note: This section is disregarded in calculating the attributable income of a CFC: see section 410 of the *Income Tax Assessment Act 1936*.

116-95 Company changes residence from an unlisted country

(1) This section sets out what happens if:

(a) a *CFC ceases at a time (the ***residency change time***) to be a resident of an *unlisted country and becomes a resident of a *listed country; and

(aa) subsection 457(3) of the *Income Tax Assessment Act 1936* does not apply to the change of residence; and

(b) because of the change in its residency status, an amount is included in an entity's assessable income under section 457 of the *Income Tax Assessment Act 1936* (including because of paragraph 58(1)(d) of the *Taxation Laws Amendment (Foreign Income) Act 1990*); and

(c) a *CGT event happens in relation to a *CGT asset (the ***CFC asset***) that has the *necessary connection with Australia and that the CFC owned since the residency change time.

(2) If the conditions in subsection (3) are satisfied, the *capital proceeds from the *CGT event are reduced by the amount worked out under subsection (4). If the conditions in subsection (5) are satisfied, those capital proceeds are increased by the amount worked out under subsection (6).

Reduction of capital proceeds

(3) If all the *CFC's assets were *disposed of at the residency change time for their market values in the circumstances mentioned in subparagraph 457(2)(a)(i) of the *Income Tax Assessment Act 1936*:

(a) *distributable profits of the CFC of a particular amount (the ***distributable profit amount***) would be created, or its distributable profits would be increased by an amount (also the ***distributable profit amount***); and

(b) the CFC would have made a profit (the ***CFC asset profit***) on the disposal of the CFC asset.

(4) The *capital proceeds are reduced by:

$$\text{Distributable profit amount} \times \frac{\text{CFC asset profit}}{\text{Total asset profits}}$$

where:

total asset profits is the sum of the profits that the CFC would have made if all its assets were *disposed of at the residency change time for their market values (ignoring disposals that would not result in a profit).

Increase in capital proceeds

(5) If all the *CFC's assets were *disposed of at the residency change time for their market values in the circumstances mentioned in subparagraph 457(2)(a)(i) of the *Income Tax Assessment Act 1936*:

(a) the *distributable profits of the CFC would be reduced by an amount (the ***distributable profit reduction amount***); and

(b) the CFC would have made a loss (the ***CFC asset loss***) on the disposal of the CFC asset.

(6) The *capital proceeds are increased by:

$$\text{Distributable profit reduction amount} \times \frac{\text{CFC asset loss}}{\text{Total asset losses}}$$

where:

total asset losses is the sum of the losses that the CFC would have made if all its assets were *disposed of at the residency change time for their market values (ignoring disposals that would not result in a loss).

Note: This section is disregarded in calculating the attributable income of a CFC: see section 410 of the *Income Tax Assessment Act 1936*.

Division 118—Exemptions

Table of Subdivisions

Guide to Division 118

118-A General exemptions

118-B Main residence

118-C Goodwill

118-D Insurance and superannuation

118-E Units in pooled superannuation trusts

Guide to Division 118

118-1 What this Division is about

This Division sets out various exemptions for many capital gains and losses.

There are other provisions that provide exemptions from CGT liability, for example, Division 104 (exceptions from CGT events) and Division 50 (exempt entities).

Note: There are also these exemptions in the *Income Tax Assessment Act 1936*:

- section 23AH (about foreign branch gains and losses of companies);
- section 24B (about External Territories);
- section 26BC (about securities lending arrangements);
- section 27CB (about eligible termination payments);
- section 116DK (about life insurance companies);
- section 121AS (about demutualisation of insurance companies);
- section 121EL (about offshore banking units);
- section 159GZZZN (about buy-back and cancellation of shares);
- section 315 (about superannuation and related businesses);

- section 408 (about calculating the attributable income of a CFC).

Subdivision 118-A—General exemptions

Table of sections

Exempt assets

118-5 Cars, motor cycles and valour decorations
118-10 Collectables and personal use assets
118-12 Assets used to produce exempt income
118-13 Shares in a PDF

Exempt receipts

118-15 Exempt capital receipts

Anti-overlap provisions

118-20 Reducing capital gains if amount otherwise assessable
118-22 Eligible termination payments
118-25 Trading stock
118-30 Film copyright
118-35 Research and development

Exempt or loss-denying transactions

118-40 Expiry of a lease
118-42 Transfer of stratum units
118-45 Sale of rights to mine
118-55 Foreign currency hedging gains and losses
118-60 Gifts under Cultural Bequests Program

[This is the end of the Guide.]

Exempt assets

118-5 Cars, motor cycles and valour decorations

A *capital gain or *capital loss you make from any of these *CGT assets is disregarded:

(a) a *car, motor cycle or similar vehicle;

(b) a decoration awarded for valour or brave conduct (unless you paid money or gave any other property for it).

118-10 Collectables and personal use assets

(1) A *capital gain or *capital loss you make from a *collectable is disregarded if you *acquired it for $500 or less.

(2) However, there is a special rule if the *collectable is an interest in one of these *CGT assets:

(a) *artwork, jewellery, an antique, or a coin or medallion;

(b) a rare folio, manuscript or book;

(c) a postage stamp or first day cover.

A *capital gain or *capital loss you make from the interest is disregarded only if the market value of the asset (when you *acquired the interest) is $500 or less.

Note: If you last acquired the interest before 16 December 1995, a capital gain or loss is disregarded if you acquired the *interest* for $500 or less: see section 118-10 of the *Income Tax (Transitional Provisions) Act 1997*.

(3) A *capital gain you make from a *personal use asset, or part of the asset, is disregarded if you *acquired the asset for $10,000 or less.

Note: A capital loss you make from a personal use asset is disregarded: see subsection 108-20(1).

118-12 Assets used to produce exempt income

(1) A *capital gain or *capital loss you make from a *CGT asset that you used solely to produce your *exempt income is disregarded.

(2) However, the exemption does not apply if the asset was used to gain or produce *excluded exempt income or *exempt income subject to withholding tax.

Note: This section is disregarded:

- in calculating the attributable income of a trust: see section 102AAZB of the *Income Tax Assessment Act 1936*; and
- in calculating the attributable income of a CFC: see section 410 of that Act.

118-13 Shares in a PDF

A *capital gain or *capital loss you make from a *CGT event happening in relation to *shares in a *PDF is disregarded.

Exempt receipts

118-15 Exempt capital receipts

In working out your *net capital gain or *net capital loss for the income year, disregard:

(a) compensation or damages you receive for any wrong or injury you suffer in your occupation; and

(b) compensation or damages you receive for any wrong, injury or illness you or your *relative suffers personally; and

(c) compensation you receive under the *firearms surrender arrangements; and

(d) winnings or losses from gambling, a game or a competition with prizes; and

(e) an amount you receive as reimbursement or payment of your expenses under one of these schemes established by an *Australian government agency:

(i) the General Practice Rural Incentives Program;

(ii) the Sydney Aircraft Noise Insulation Project.

Anti-overlap provisions

118-20 Reducing capital gains if amount otherwise assessable

(1) A *capital gain you make from a *CGT event is reduced if, because of the event, a provision of this Act (outside of this Part) includes an amount (for any income year) in:

(a) your assessable income or *exempt income; or

(b) if you are a partner in a partnership, the assessable income or exempt income of the partnership.

(1A) Subsection (1) applies to an amount that, under a provision of this Act (outside of this Part), is included in:

(a) your assessable income or *exempt income; or

(b) if you are a partner in a partnership, the assessable income or exempt income of the partnership;

in relation to a *CGT asset as if it were so included because of the *CGT event referred to in that subsection if the amount would also be taken into account in working out the amount of a *capital gain you make.

Note: An example is an amount assessable under Division 16E of Part III of the *Income Tax Assessment Act 1936*, which deals with accruals taxation of certain securities.

(1B) The rule in subsection (1) does not apply to:

(a) an amount that is taken to be a dividend under section 159GZZZP of the *Income Tax Assessment Act 1936* (which relates to buy-backs of *shares); or

(b) an amount included in assessable income under section 160AQT of that Act (which relates to franked dividends).

(2) The gain is reduced to zero if it does *not* exceed:

(a) the amount included; or

(b) if you are a partner, your share (the ***partner's share***) of the amount included in the assessable income or *exempt income of the partnership (calculated according

to your entitlement to share in the partnership net income or loss).

Example: Liz bought some land in 1990, as part of a profit-making scheme. In December 1998 she sells it.

Her profit from the sale is $40,000 and is included in her assessable income under section 6-5 (about ordinary income).

Suppose she made a capital gain from the sale of $30,000. It is reduced to zero because it is does not exceed the amount included.

(3) The gain is reduced by the amount included, or the amount of the partner's share, if the gain exceeds that amount.

Note: These rules are modified for complying superannuation funds that become non-complying and for non-resident superannuation funds that become resident: see Part IX of the *Income Tax Assessment Act 1936*.

(4) A *capital gain you make from a *CGT event is reduced by the extent that a provision of this Act treats:

(a) an amount of your *ordinary income or *statutory income from the event as being neither assessable income nor *exempt income; or

(b) if you are a partner, your share of the ordinary income or *statutory income of the partnership from the event (calculated according to your entitlement to share in the partnership net income or loss) as being neither assessable income nor *exempt income of the partnership.

Note: An example of a provision of this kind is section 121EG (about offshore banking units) of the *Income Tax Assessment Act 1936.*

(4A) A *capital gain the trustee of a *superannuation fund makes from a *CGT event happening in relation to a *CGT asset in an income year is reduced if the asset's market value was taken into account in working out the fund's net previous income for earlier income years under section 288A or 288B of the *Income Tax Assessment Act 1936.*

(4B) The gain is reduced to zero if it does not exceed the amount that would have been the *capital gain from the *CGT event if the *capital proceeds from the event were the asset's market

value that was taken into account in working out that net previous income.

If the gain exceeds that amount, it is reduced by that amount.

Exceptions

(5) The gain is not reduced if an amount is included in your assessable income, or the assessable income of the partnership, for any income year because of a balancing adjustment.

(6) The gain is not reduced if an amount is included in your *exempt income under section 23AJ (about exempting certain non-portfolio dividends paid by non-resident companies) of the *Income Tax Assessment Act 1936* because a company pays a *dividend to you that is:

(a) debited against a share capital account of the company; or

(b) debited against an account to which the company has credited amounts because of share premiums it received on shares issued by it (even if an amount that is not a share premium, or that cannot be identified as one in the company's books, has also been credited to the account); or

(c) debited against an asset revaluation reserve of the company; or

(d) directly or indirectly attributable to amounts transferred from such an account or reserve of the company.

118-22 Eligible termination payments

In applying section 118-20, if any part of an *eligible termination payment is included in your assessable income, the whole of the payment is taken to be included.

118-25 Trading stock

(1) A *capital gain or *capital loss you make from a *CGT asset is disregarded if, at the time of the *CGT event, the asset is:

(a) your *trading stock; or

(b) if you are a partner, trading stock of the partnership; or

(c) if you are absolutely entitled to the asset as against the trustee of a trust (disregarding any legal disability), trading stock of the trustee.

(2) A *capital gain or *capital loss you make in these circumstances is disregarded:

(a) you start holding as *trading stock a *CGT asset you already own but do not hold as trading stock; and

(b) you elect under paragraph 70-30(1)(a) to be treated as having sold the asset for its cost (worked out under that section).

Note 1: Paragraph 70-30(1)(a) allows you to elect the cost of the asset, or its market value, just before it became trading stock.

Note 2: You may make a capital gain or loss if you elect its market value: see CGT event K4.

118-30 Film copyright

(1) A *capital gain or *capital loss you make from a *CGT event relating to your interest in the copyright in a film is disregarded if:

(a) an amount is included in your assessable income under section 26AG (about film proceeds) of the *Income Tax Assessment Act 1936* because of the event; or

(b) an amount would have been included apart from section 23H (about exempting film proceeds) of that Act.

(2) If you are a partner in a partnership, a *capital gain or *capital loss you make from a *CGT event relating to the partnership's interest in the copyright in a film is disregarded if:

(a) an amount is included in the assessable income of a partner (including you) under section 26AG of that Act because of the event; or

(b) an amount would have been included apart from section 23H of that Act.

(3) If you are absolutely entitled to an interest in the copyright in a film as against the trustee of a trust (disregarding any legal disability), a *capital gain or *capital loss you make from a *CGT event relating to the interest is disregarded if:

(a) an amount is included in your assessable income or the net income of the trust under section 26AG of that Act because of the event; or

(b) an amount would have been included apart from section 23H of that Act.

118-35 Research and development

(1) Disregard a *capital gain or *capital loss from a *CGT event if an amount is included in your assessable income in any income year under subsection 73B(27A) of the *Income Tax Assessment Act 1936* because of that CGT event.

(2) Disregard a *capital gain or *capital loss from a *CGT event if an amount is included in the assessable income of a partner (including you) in any income year under subsection 73B(27A) of that Act because of that CGT event.

(3) If you are absolutely entitled to a *CGT asset as against the trustee of a trust (disregarding any legal disability), disregard a *capital gain or *capital loss the trustee makes from a *CGT event if an amount is included in your assessable income or the net income of the trust under subsection 73B(27A) of that Act because of that CGT event.

Exempt or loss-denying transactions

118-40 Expiry of a lease

A *capital loss a lessee makes from the expiry, surrender, forfeiture or assignment of a lease (except one granted for 99 years or more) is disregarded if the lessee did not use the lease solely or mainly for the *purpose of producing assessable income.

118-42 Transfer of stratum units

If:

(a) you own land on which there is a building; and

(b) you subdivide the building into *stratum units; and

(c) you transfer each unit to the entity who had the right to occupy it just before the subdivision;

a *capital gain or *capital loss you make from transferring the unit is disregarded.

118-45 Sale of rights to mine

A *capital gain or *capital loss you make from the sale, transfer or assignment of your rights to mine in a particular area in Australia is disregarded if you have *exempt income for the income year (because of section 330-60) from the sale, transfer or assignment.

118-55 Foreign currency hedging gains and losses

A *capital gain or *capital loss you make from a contract you entered into solely to reduce the risk of financial loss you may suffer from currency exchange rate fluctuations is disregarded if the contract relates to:

(a) a liability you have to make a payment under another contract; or

(b) a *CGT asset that is a right you *acquired *before* 20 September 1985 to receive money under another contract.

118-60 Gifts under Cultural Bequests Program

A *capital gain or *capital loss made from a testamentary gift of property under the Cultural Bequests Program is disregarded.

Subdivision 118-B—Main residence

Guide to Subdivision 118-B

118-100 What this Subdivision is about

You can ignore a capital gain or capital loss you make from a CGT event that happens to a dwelling that is your main residence.

However, this exemption may not apply in full if:

- it was your main residence during part only of your ownership period; or
- it was used for the purpose of producing assessable income.

There are special rules for dwellings passed from, or owned by a trustee of, a deceased estate.

Table of sections

118-105 Map of this Subdivision

Basic case and concepts

118-110 Basic case
118-115 Meaning of *dwelling*
118-120 Extension to adjacent land

118-125 Meaning of *ownership period*
118-130 Meaning of *ownership interest* in land or a dwelling

Rules that may extend the exemption

118-135 Moving into a dwelling
118-140 Changing main residences
118-145 Absences
118-150 If you build, repair or renovate a dwelling
118-155 Where individual referred to in section 118-150 dies
118-160 Destruction of dwelling and sale of land

Rules that may limit the exemption

118-165 Separate CGT event for adjacent land or other structures
118-170 Spouse having different main residence
118-175 Dependent child having different main residence
118-180 Acquisition of dwelling from company or trust on marriage breakdown—roll-over provision applying

Partial exemption rules

118-185 Partial exemption where dwelling was your main residence during part only of ownership period
118-190 Use of dwelling for producing assessable income
118-192 Special rule for first use to produce income

Dwellings acquired from deceased estates

118-195 Dwelling acquired from a deceased estate
118-200 Partial exemption for deceased estate dwellings
118-205 Adjustment if dwelling inherited from deceased individual
118-210 Trustee acquiring dwelling under will

118-105 Map of this Subdivision

[This is the end of the Guide.]

Basic case and concepts

118-110 Basic case

(1) A *capital gain or *capital loss you make from a *CGT event that happens in relation to a *CGT asset that is a *dwelling or your *ownership interest in it is disregarded if:

(a) you are an individual; and

(b) the dwelling was your main residence throughout your *ownership period; and

(c) the interest did not *pass to you as a beneficiary in, and you did not *acquire it as a trustee of, the estate of a deceased person.

Note 1: You may make a capital gain or capital loss even though you comply with this section if the dwelling was used for the purpose of producing assessable income: see section 118-190.

Note 2: There is a separate rule for beneficiaries and trustees of deceased estates: see section 118-195.

(2) Only these *CGT events are relevant:

(a) CGT events A1, B1, C1, C2, E1, E2, F2, I1, I2, K3, K4 and K6 (except one involving the forfeiting of a deposit); and

(b) a CGT event that involves the forfeiting of a deposit as part of an uninterrupted sequence of transactions ending in one of the events specified in paragraph (a) subsequently happening.

Note: The full list of CGT events is in section 104-5.

118-115 Meaning of *dwelling*

(1) A ***dwelling*** includes:

(a) a unit of accommodation that:

(i) is a building or is contained in a building; and

(ii) consists wholly or mainly of residential accommodation; and

(b) a unit of accommodation that is a caravan, houseboat or other mobile home; and

(c) any land immediately under the unit of accommodation.

(2) However, except as provided in section 118-120, a ***dwelling*** does not include any land adjacent to a building.

118-120 Extension to adjacent land

(1) This Subdivision applies to land that is adjacent to a *dwelling (if the same *CGT event happens to the land or your *ownership interest in it) to the extent that you used the land primarily for private or domestic purposes in association with the dwelling as if it were a dwelling.

(2) The maximum area of land covered by the exemption (including the area of the land on which the *dwelling is built) is 2 hectares.

(3) For a flat or home unit, this Subdivision also applies to a garage, storeroom or other structure that is associated with it (if the same *CGT event happens to the structure or your *ownership interest in it) as if it were a dwelling. However, it so applies only to the extent that you used the structure primarily for private or domestic purposes in association with the flat or home unit.

118-125 Meaning of *ownership period*

Your ***ownership period*** of a *dwelling is the period *on or after* 20 September 1985 when you had an *ownership interest in:

(a) the dwelling; or

(b) land (*acquired *on or after* 20 September 1985) on which the dwelling is later built.

118-130 Meaning of *ownership interest* in land or a dwelling

(1) You have an ***ownership interest*** in land or a *dwelling if:

(a) for land—you have a legal or equitable interest in it or a right to occupy it; or

(b) for a dwelling that is not a flat or home unit—you have a legal or equitable interest in the land on which it is erected, or a licence or right to occupy it; or

(c) for a flat or home unit—you have:

(i) a legal or equitable interest in a *stratum unit in it; or

(ii) a licence or right to occupy it; or

(iii) a *share in a company that owns a legal or equitable interest in the land on which the flat or home unit is erected and that gives you to a right to occupy it.

(2) For land or a *dwelling that you *acquire under a contract, you have an ***ownership interest*** in it from:

(a) the time when you obtain legal ownership of it; or

(b) if the contract or a related contract gives you a right to occupy it at an earlier time—the earlier time.

(3) For land or a *dwelling where you have a contract for the happening of the *CGT event, you have an ***ownership interest*** in it until your legal ownership of it ends.

Rules that may extend the exemption

118-135 Moving into a dwelling

If a *dwelling becomes your main residence by the time it was first practicable for you to move into it after you *acquired your *ownership interest in it, the dwelling is treated as your main residence from when you acquired the interest until it actually became your main residence.

118-140 Changing main residences

(1) If you *acquire an *ownership interest in a *dwelling that is to become your main residence and you still have your

ownership interest in your existing main residence, both dwellings are treated as your main residence for the shorter of:

(a) 6 months ending when your ownership interest in your existing main residence ends; or

(b) the period between the acquisition of the new ownership interest and the time when the ownership interest referred to in paragraph (a) ends.

(2) Subsection (1) only applies if:

(a) your existing main residence was your main residence for a continuous period of at least 3 months in the 12 months ending when your ownership interest in it ends; and

(b) your existing main residence was not used for the *purpose of producing assessable income in any part of that 12 month period when it was not your main residence.

118-145 Absences

(1) If a *dwelling that was your main residence ceases to be your main residence, you may choose to continue to treat it as your main residence.

(2) If you use the part of the *dwelling that was your main residence for the *purpose of producing assessable income, the maximum period that you can treat it as your main residence under this section while you use it for that purpose is 6 years. You are entitled to another maximum period of 6 years each time the dwelling again becomes and ceases to be your main residence.

(3) If you do not use the *dwelling for that purpose, you can treat it as your main residence under this section indefinitely.

(4) If you make the choice, you cannot treat any other *dwelling as your main residence while you apply this section, except if section 118-140 (about changing main residences) applies.

Example: You live in a house for 3 years. You are posted overseas for 5 years and you rent it out during your absence. On your return you move back into it for 2 years. You are then posted overseas again for 4 years (again renting it out), at the end of which you sell the house.

You have not treated any other dwelling as your main residence during your absences.

You may choose to continue to treat the house as your main residence during both absences because each absence is less than 6 years.

You can make this choice when preparing your income tax return for the income year in which you sold the house.

118-150 If you build, repair or renovate a dwelling

(1) This section applies to land in which you have an *ownership interest (except a life interest) if you build a *dwelling on the land, or repair, renovate or finish building a dwelling on the land.

(2) You can choose to apply this Subdivision as if the *dwelling that you are building, repairing or renovating on the land were your main residence from the time you *acquired the *ownership interest.

(3) You can make the choice only if:

(a) a *dwelling on the land that you construct, repair or renovate becomes your main residence as soon as practicable after the work is finished; and

(b) it continues to be your main residence for at least 3 months.

(4) There is a time limit during which the choice can operate. This is the shorter of:

(a) 4 years before the *dwelling becomes your main residence; or

(b) the period starting when you *acquired your *ownership interest in the land and ending when the dwelling becomes your main residence.

(5) If there was already a *dwelling on the land when you *acquired your *ownership interest and you or someone else

occupied it after that time, the period in subsection (2) and paragraph (4)(b) starts when the dwelling ceased to be occupied so that it could be repaired or renovated.

(6) Once you make the choice, no other *dwelling can be treated as your main residence during the period referred to in subsection (4), except if section 118-140 (about changing main residences) applies.

118-155 Where individual referred to in section 118-150 dies

(1) This section applies if the individual referred to in subsection 118-150(1) dies:

(a) after the work began, or the individual entered into a contract for it to be done, but before it was finished; or

(b) after the work was finished but before it was practicable for the *dwelling to become the individual's main residence; or

(c) during the period of 3 months referred to in paragraph 118-150(3)(b).

(2) If the individual owned the interest in the land as a joint tenant, the surviving joint tenant or, if none, the trustee of the individual's estate, can choose to apply this Subdivision as if the *dwelling were the main residence of the individual:

(a) when the individual died; and

(b) for the shorter of:

(i) 4 years before the individual's death; or

(ii) the period starting when the individual *acquired the interest in the land and ending when the individual died.

(3) If there was already a *dwelling on the land when the individual *acquired the interest in the land and someone occupied it after that time, the period in subparagraph (2)(b)(ii) starts when the dwelling ceased to be occupied so that it could be repaired or renovated.

(4) If the *dwelling is treated as the deceased's main residence under this section, no other dwelling can be treated as the deceased's main residence at the same time.

118-160 Destruction of dwelling and sale of land

(1) This section applies if a *dwelling that is your main residence is accidentally destroyed and a *CGT event happens in relation to the land on which it was built without you erecting another dwelling on the land.

(2) You can choose to apply this Subdivision to the land as if, from the time of the destruction until your *ownership interest in the land ends, the *dwelling had not been destroyed and were your main residence.

(3) If you do so, you cannot treat any other *dwelling as your main residence during that period, except under section 118-140 (about changing main residences).

Rules that may limit the exemption

118-165 Separate CGT event for adjacent land or other structures

The exemption does not apply to a *CGT event that happens in relation to land, or a garage, storeroom or other structure, to which the exemption can extend under section 118-120 (about adjacent land) if that event does not also happen in relation to the *dwelling or your *ownership interest in it.

118-170 Spouse having different main residence

(1) If, during a period, a *dwelling is your main residence and another *dwelling is the main residence of your *spouse (except a spouse living permanently separately and apart from you), you and your spouse must either:

(a) choose one of the dwellings as the main residence of both of you for the period; or

(b) nominate the different dwellings as your main residences for the period.

(2) If you nominate the different *dwellings as your main residences for the period, you split the exemption in accordance with subsections (3) and (4).

(3) If your interest in the *dwelling you chose was not, during the period, more than half of the total interests in the dwelling, the dwelling is taken to have been your main residence during the period. Otherwise, the dwelling is taken to have been your main residence for half of the period.

(4) If your *spouse's interest in the *dwelling your spouse chose was not, during the period, more than half of the total interests in the dwelling, the dwelling is taken to have been your spouse's main residence during the period. Otherwise, the dwelling is taken to have been your spouse's main residence for half of the period.

Example: You and your spouse own a town house as tenants in common in equal shares. You and your spouse also own a beach house as tenants in common, with your interest being 30% and your spouse's 70%. From 1 July 1999, you live mainly in the town house and your spouse lives mainly in the beach house. On 1 July 2000 you and your spouse dispose of both dwellings.

For the period 1 July 1999-30 June 2000 you nominate the town house as your main residence and your spouse nominates the beach house. The town house is taken to be your main residence during the period. The beach house is taken to be your spouse's main residence during half the period.

118-175 Dependent child having different main residence

If, at a particular time, a *dwelling is your main residence and another *dwelling is the main residence of a *child of yours who is under 18 and is dependent on you for economic support, you must choose one of them as the main residence of both of you.

118-180 Acquisition of dwelling from company or trust on marriage breakdown—roll-over provision applying

(1) This Subdivision applies to you as if you owned an *ownership interest in land or a dwelling during a period when it was actually owned by a company or trustee if:

(a) you *acquired the interest from the company or trustee; and

(b) it was acquired by the company or trustee *on or after* 20 September 1985 ; and

(c) a roll-over was available to the company or trustee under Subdivision 126-A.

(2) If subsection (1) applies to a *dwelling, it cannot be treated as your main residence during the period, despite other provisions of this Subdivision that would allow you to treat it as your main residence during the period.

Partial exemption rules

118-185 Partial exemption where dwelling was your main residence during part only of ownership period

(1) You get only a partial exemption for a *CGT event that happens in relation to a *dwelling or your *ownership interest in it if:

(a) you are an individual; and

(b) the dwelling was your main residence for part only of your *ownership period; and

(c) the interest did not *pass to you as a beneficiary in, and you did not *acquire it as a trustee of, the estate of a deceased person.

(2) You calculate your *capital gain or *capital loss using the formula:

$$\text{CG or CL amount} \times \frac{\text{Non-main residence days}}{\text{Days in your *ownership period}}$$

where:

CG or CL amount is the *capital gain or *capital loss you would have made from the *CGT event apart from this Subdivision.

non-main residence days is the number of days in your *ownership period when the *dwelling was not your main residence.

Note: The capital gain or loss may be further adjusted if the dwelling was used to produce assessable income: see section 118-190.

Example: You bought a house in July 1990 and moved in immediately. In July 1993, you moved out and began to rent it. You sold it in July 2000, making (apart from this Subdivision) a capital gain of $10,000.

You choose to continue to treat the dwelling as your main residence under section 118-145 (about absences) for the first 6 of the 7 years during which you rented the house out.

Under this section, you will be taken to have made a capital gain of:

$$\$10{,}000 \times \frac{365}{3{,}650} = \$1{,}000$$

118-190 Use of dwelling for producing assessable income

(1) You get only a partial exemption for a *CGT event that happens in relation to a *dwelling or your *ownership interest in it if:

(a) apart from this section, because the dwelling was your main residence or someone else's during a period:

(i) you would not make a *capital gain or *capital loss from the event; or

(ii) you would make a lesser capital gain or loss than if this Subdivision had not applied; and

(b) the dwelling was used for the *purpose of producing assessable income during all or a part of that period; and

(c) if you had incurred interest on money borrowed to *acquire the dwelling, or your ownership interest in it, you could have deducted some or all of that interest.

Example: You acquire a house as a beneficiary in a deceased estate, rent it out for 12 months and sell it within 2 years of the deceased's death. You can ignore the rental because the exemption does not require the house to be your main residence during the 2 years after the death.

(2) The *capital gain or *capital loss that you would have made apart from this section from the *CGT event is increased by an amount that is reasonable having regard to the extent to which you would have been able to deduct that interest.

(3) However, you ignore any use of the *dwelling for the *purpose of producing assessable income during any period that you continue to treat it as your main residence under section 118-145 (about absences) to the extent that any part of it was not used for that purpose just before it last ceased to be your main residence.

Example: To continue the example from section 118-185, assume that, when you moved in, you used 1/4 of the house as a doctor's surgery.

Under section 118-185, your capital gain was $1,000.

Under this section, it would be reasonable to add an amount of:

$$\$10{,}000 \times \frac{9}{10} \times \frac{1}{4} = \$2{,}250$$

You have a total capital gain of $3,250 on the sale of the house.

(4) If a *dwelling or your *ownership interest in a dwelling *passed to you as a beneficiary in a deceased estate, or you owned it as the trustee of a deceased estate, you ignore any use of the *dwelling for the *purpose of producing assessable income before the deceased's death if:

(a) the dwelling was the deceased's main residence just before the death; and

(b) it was not being used for that purpose just before the death, or any use for that purpose just before the death was ignored because of subsection (3).

118-192 Special rule for first use to produce income

(1) There is a special rule if:

(a) you would get only a partial exemption under this Subdivision for a *CGT event happening in relation to a *dwelling or your *ownership interest in it because the dwelling was used for the *purpose of producing assessable income during your *ownership period; and

(b) you would have got a full exemption under this Subdivision if the CGT event had happened just before the first time (the ***income time***) it was used for that purpose during your ownership period.

(2) You are taken to have *acquired the *dwelling or your *ownership interest at the income time for its market value at that time.

(3) If your *ownership interest in the *dwelling *passed to you as a beneficiary in a deceased estate, or you owned it as the trustee of a deceased estate and the *CGT event did not happen within 2 years of the deceased' death, you apply this Subdivision as if:

(a) you had *acquired the interest as an individual and not as a beneficiary or trustee of a deceased estate; and

(b) for applying the formula in section 118-185, your *non-main residence days* were the number of days in your *ownership period when the dwelling was not the main residence of an individual referred to in item 2, column 3 of the table in section 118-195.

Dwellings acquired from deceased estates

118-195 Dwelling acquired from a deceased estate

(1) A *capital gain or *capital loss you make from a *CGT event that happens in relation to a *dwelling or your *ownership interest in it is disregarded if:

(a) you are an individual and the interest *passed to you as a beneficiary in a deceased estate, or you owned it as the trustee of a deceased estate; and

(b) at least one of the items in column 2 and at least one of the items in column 3 of the table are satisfied.

Beneficiary or trustee of deceased estate acquiring interest		
Item	**One of these items is satisfied**	**And also one of these items**
1	the deceased *acquired the *ownership interest *on or after* 20 September 1985 and the *dwelling was the deceased's main residence just before the deceased's death and was not then being used for the *purpose of producing assessable income	your *ownership interest ends within 2 years of the deceased's death
2	the deceased *acquired the *ownership interest *before* 20 September 1985	the *dwelling was, from the deceased's death until your *ownership interest ends, the main residence of one or more of: (a) the spouse of the deceased immediately before the death (except a spouse who was living permanently separately and apart from the deceased); or (b) an individual who had a right to occupy the dwelling under the deceased's will; or (c) if the *CGT event was brought about by the individual to whom the *ownership interest *passed as a beneficiary—that individual

Note 1: You may make a capital gain or capital loss if the dwelling was used for the purpose of producing assessable income: see section 118-190.

Note 2: In some cases the use of a dwelling to produce assessable income can be disregarded: see sections 118-45 and 118-190.

Note 3: There are special rules for dwellings acquired before 7.30 pm on 20 August 1996. These rules also affect the operation of section 118-192 and subsections 118-190(4) and 118-200(4): see section 118-195 of the *Income Tax (Transitional Provisions) Act 1997*.

(2) Only these *CGT events are relevant:

(a) CGT events A1, B1, C1, C2, E1, E2, F2, I1, I2, K3, K4 and K6 (except one involving the forfeiting of a deposit); and

(b) a CGT event that involves the forfeiting of a deposit as part of an uninterrupted sequence of transactions ending in one of the events specified in paragraph (a) subsequently happening.

Note: The full list of CGT events is in section 104-5.

118-200 Partial exemption for deceased estate dwellings

(1) You get only a partial exemption (or no exemption) if:

(a) you are an individual and your *ownership interest in a *dwelling *passed to you as a beneficiary in a deceased estate, or you owned it as the trustee of a deceased estate; and

(b) section 118-195 does not apply.

(2) You calculate your *capital gain or *capital loss using the formula:

$$\text{CG or CL amount} \times \frac{\text{Non-main residence days}}{\text{Total days}}$$

where:

CG or CL amount is the *capital gain or *capital loss you would have made from the *CGT event apart from this Subdivision.

non-main residence days is the sum of:

(a) if the deceased *acquired the *ownership interest *on or after* 20 September 1985—the number of days in the deceased's *ownership period when the *dwelling was not the deceased's main residence; and

(b) the number of days in the period from the death until your ownership interest ends when the dwelling was not the main residence of an individual referred to in item 2, column 3 of the table in section 118-195.

total days is:

(a) if the deceased *acquired the *ownership interest *before* 20 September 1985—the number of days in the period from the death until your ownership interest ends; or

(b) if the deceased acquired the ownership interest *on or after* that day—the number of days in the period from the acquisition of the dwelling by the deceased until your ownership interest ends.

(3) However, if the deceased *acquired the *ownership interest *on or after* 20 September 1985 and your ownership interest ends within 2 years of the deceased's death and you get a more favourable result by doing so, you can adjust the formula by ignoring any *non-main residence days* and *total days* in the period from the deceased's death until your ownership interest ended.

Note 1: The formula in this section will be adjusted (or further adjusted) under section 118-205 if the deceased acquired the dwelling through a deceased estate.

Note 2: There may be a further adjustment if the dwelling was used for the purpose of producing assessable income: see section 118-190.

(4) You ignore any *non-main residence days* before the deceased's death if:

(a) the *dwelling was the deceased's main residence just before the death; and

(b) the dwelling was not being used for the *purpose of producing assessable income just before the death, or any use for that purpose just before the death was ignored because of subsection 118-190(3).

118-205 Adjustment if dwelling inherited from deceased individual

(1) You must adjust the formula in subsection 118-200(2) if the *ownership interest of the deceased individual referred to in section 118-200 (the ***most recently deceased***) *passed to the individual *on or after* 20 September 1985 as a beneficiary in, or the individual owned it as trustee of, a deceased estate.

Note: Any gains or losses of individuals earlier in the inheritance chain are included in the gain or loss you would have made apart from this Subdivision. This section adjusts the formula to take account of times when the dwelling was the main residence of the individuals.

(2) Add to the component ***total days*** in the formula the fewer of:

(a) the number of days between 20 September 1985 and the day when the interest *passed to or was *acquired as trustee by the most recently deceased; and

(b) the number of days between the time when an *ownership interest in the *dwelling was last acquired *on or after* 20 September 1985 by an individual except as a beneficiary in a deceased estate or as trustee of a deceased estate and the day when the interest passed to or was acquired as trustee by the most recently deceased.

(3) Add to the component ***non-main residence days*** in the formula the number of days in the period applicable under subsection (2) that the *dwelling was not the main residence of one or more of:

(a) an individual who owned the dwelling at the time of the individual's death; or

(b) an individual who, immediately before the death of an individual referred to in paragraph (a), was the spouse of that individual (except a spouse who was living permanently separately and apart from the individual); or

(c) an individual who had a right to occupy the dwelling under a will; or

(d) an individual to whom an *ownership interest in the dwelling *passed as a beneficiary in, or who *acquired

an ownership interest in the dwelling as trustee of, a deceased estate.

118-210 Trustee acquiring dwelling under will

(1) This section applies if you are the trustee of a deceased estate and, under the deceased's will, you *acquire an *ownership interest in a *dwelling for occupation by an individual.

(2) If a *CGT event happens to the interest in relation to the individual and you receive no money or property for it:

(a) a *capital gain or *capital loss you make from the event is disregarded; and

(b) the first element of the *dwelling's *cost base and *reduced cost base in the hands of the individual is its cost base and reduced cost base in your hands at the time of the event; and

(c) the individual is taken to have *acquired it when you did.

(3) If:

(a) you receive money or property for the *CGT event happening or the event happens in relation to another entity; and

(b) the dwelling was the main residence of the individual from the time you *acquired the interest until the time of the event;

you do not make a *capital gain or *capital loss from the CGT event.

(4) However, if the *dwelling was the main residence of the individual during part only of that period, you make a *capital gain or *capital loss worked out using the formula:

$$\text{CG or CL amount} \times \frac{\text{Non-main residence days}}{\text{Days in that period}}$$

where:

CG or CL amount is the *capital gain or *capital loss you would have made from the *CGT event apart from this Subdivision.

non-main residence days is the number of days in that period when the *dwelling was not the individual's main residence.

(5) Only these *CGT events are relevant:

(a) CGT events A1, B1, C1, C2, E1, E2, F2, I1, I2, K3, K4 and K6 (except one involving the forfeiting of a deposit); and

(b) a CGT event that involves the forfeiting of a deposit as part of an uninterrupted sequence of transactions ending in one of the events specified in paragraph (a) subsequently happening.

Note: The full list of CGT events is in section 104-5.

Subdivision 118-C—Goodwill

Table of sections

118-250 Exempting part of a capital gain attributable to goodwill
118-255 Exception
118-260 Meaning of *business exemption threshold* and indexation

118-250 Exempting part of a capital gain attributable to goodwill

(1) If there is a change in the ownership of a *business of an entity (the ***primary business***) or its interest in it or that business or interest ends, and the entity makes a *capital gain attributable to the goodwill of the primary business, half of the capital gain is disregarded.

(2) However, that part of the *capital gain is disregarded only if the sum of:

(a) the *net value of the primary business and the net values of *businesses that are *related businesses at the time the *capital gain is made; or

(b) the values of the entity's interests in the net value of the primary business and the net values of *businesses that are *related businesses at that time;

is less than the *business exemption threshold for the income year in which the *CGT event occurred.

(3) A *business is a ***related business*** of the primary business if it is carried on by:

(a) the individual who carries on the primary business; or

(b) the company that carries on the primary business or by a company that is a member of the same *wholly-owned group.

(4) If the primary business is carried on by the trustee of a trust (the ***first trust***), a *business is a ***related business*** of the primary business if it is carried on by:

(a) the first trust; or

(b) another trust having the same trustee where an entity that benefits or is capable of benefiting under the first trust benefits or is capable of benefiting under the other trust; or

(c) any other trust having the same trustee where:

(i) the other trust is one of a series of trusts that includes the first trust; and

(ii) each trust in the series (also the ***first trust***) is linked to at least one other trust in the series in that an entity that benefits or is capable of benefiting under the first trust benefits or is capable of benefiting under the other trust.

118-255 Exception

Section 118-250 does not apply, and is taken never to have applied, to the goodwill if the entity makes an election for the goodwill under subsection 160ZZPQ(1) of the *Income Tax Assessment Act 1936* (about roll-overs for the assets of small *businesses).

118-260 Meaning of *business exemption threshold*

(1) The ***business exemption threshold*** for the 1997-98 income year is $2,248,000.

(2) The *business exemption threshold is indexed annually, but the result of the indexation is rounded upwards to the nearest multiple of 1,000.

Note: Subdivision 960-M shows you how to index amounts.

(3) The Commissioner must publish before the beginning of each *financial year the *business exemption threshold for that year.

Subdivision 118-D—Insurance and superannuation

Table of sections

118-300 Insurance policies
118-305 Superannuation
118-310 RSA's

118-300 Insurance policies

(1) A *capital gain or *capital loss you make from a *CGT event happening in relation to a *CGT asset that is your interest in rights under a *general insurance policy, a *life insurance policy or an *annuity instrument is disregarded in the situations set out in this table.

Insurance policies

Item	The *CGT event happens to this type of policy:	... and you are
1	Any insurance policy or *annuity instrument	the insurer or the entity that issued the instrument

Insurance policies		
Item	**The *CGT event happens to this type of policy:**	**... and you are**
2	A *general insurance policy for property where, if a *CGT event happened in relation to the property, any *capital gain or *capital loss would be disregarded	the insured
3	A *life insurance policy or an *annuity instrument	the original beneficial owner of the policy or instrument
4	A *life insurance policy or an *annuity instrument	an entity that *acquired the interest in the policy or instrument for no consideration
5	A *life insurance policy or an *annuity instrument	the trustee of: (a) a *complying superannuation fund; or (b) a *complying approved deposit fund; or (c) a *pooled superannuation trust; for the income year in which the *CGT event happened

Example 1: Brian (as the insured) receives an insurance payment from his insurer for the destruction of a building he owned as an investment. The payment constitutes capital proceeds on the destruction (CGT event C1). The discharge of the insurance policy (CGT event C2) has no CGT consequences.

Example 2: Peter is the original beneficial owner of the rights under a life insurance policy. He transfers the rights to his spouse for nothing. There are no CGT consequences for him, and none for his spouse if he dies.

(2) Only these *CGT events are relevant: CGT events A1, B1, C2, E1, E2, E3, E5, E6, E7, E8, I1, I2, K3 and K4.

Note: The full list of CGT events is in section 104-5.

118-305 Superannuation

(1) A *capital gain or *capital loss is disregarded if you make it from a *CGT event happening in relation to any of the following:

(a) a right to an allowance, annuity or capital amount payable out of a *superannuation fund or *approved deposit fund;

(b) a right to an asset of such a fund;

(c) a right to any part of such an allowance, annuity, capital amount or asset.

Example: Angela retires from her employment and receives a lump sum payment from her superannuation fund. This is an example of CGT event C2 (her rights to receive the payment ending). There are no CGT consequences for Angela.

(2) However, this exemption is not available if:

(a) you are the trustee of the fund and a *CGT event happens in relation to a *CGT asset of the fund; or

(b) an entity receives a payment or property where:

(i) the entity was not a member of the fund; and

(ii) the entity *acquired the right to the payment or property for consideration.

118-310 RSA's

A *capital gain or *capital loss you make from a *CGT event happening in relation to a right to, or any part of, an *RSA is disregarded.

Subdivision 118-E—Units in pooled superannuation trusts

118-350 Units in pooled superannuation trusts

(1) A *capital gain or *capital loss an entity makes from a *CGT event happening in relation to a unit in a unit trust is disregarded if:

(a) the trust is a *pooled superannuation trust for the income year in which the event happened; and

(b) one of the conditions in subsection (2) is satisfied.

(2) The entity must be:

(a) the trustee of a *complying superannuation fund, a *complying approved deposit fund or a *pooled superannuation trust for the income year in which the *CGT event happened; or

(b) a *life insurance entity and, just before the event happened, the unit must have been included in a *tax advantaged insurance fund of the entity; or

(c) a *registered organisation and, just before the event happened, the unit must have been owned by the entity solely for *tax-advantaged business of the entity.

Division 121—Record keeping

Guide to Division 121

121-10 What this Division is about

You must keep records of matters that affect the capital gains and losses you make. You must retain them for 5 years after the last relevant CGT event.

Table of sections

Operative provisions

121-20 What records you must keep
121-25 How long you must retain the records
121-30 Exceptions

[This is the end of the Guide.]

Operative provisions

121-20 What records you must keep

(1) You must keep records of every act, transaction, event or circumstance that can reasonably be expected to be relevant to working out whether you have made a *capital gain or *capital loss from a *CGT event. (It does not matter whether the CGT event has already happened or may happen in the future.)

Note: There are exceptions: see section 121-30.

Example 1: You dispose of a CGT asset. The records that are relevant to working out your capital gain or loss are records of:

- the date you acquired the asset;
- the date you disposed of it;

- each element of its cost base and reduced cost base and the effect of indexation on those elements;
- what you sold it for (the capital proceeds).

Example 2: Company A disposes of a CGT asset it acquired from company B (a member of the same wholly-owned group) where company B obtained a roll-over under Subdivision 126-B. In addition to the records mentioned in example 1, company A needs records showing:

- the status of the 2 companies as members of the group;
- which company is the ultimate holding company in the group;
- the cost base and reduced cost base of the asset in the hands of company B just before the roll-over (because these become company A's cost base and reduced cost base).

Example 3: CGT event G2 (about shifts in share values) happens involving company X and Greg (a controller (for CGT purposes) of company X). Z Nominees Pty Ltd (an associate of Greg's) suffers a material decrease in the value of its shares in company X as a result of the shift. Z Nominees needs records showing:

- the essential elements of the relevant scheme;
- the date when the share value shift occurred;
- the amounts of the decreases and increases in the market values of all shares involved in the scheme;
- if shares are issued at a discount under the scheme, the amount of the discount;
- the cost bases and market values of the shares that decreased in value.

(2) The records must be in English, or be readily accessible and convertible into English. They must show what is described in this section. (They ***show*** something if they include whatever material is necessary for that thing to be easily identified or worked out.)

(3) They must show the nature of the act, transaction, event or circumstance, the day when it happened or arose and:

(a) in the case of an act—who did it; and

(b) in the case of a transaction—who were the parties to it.

(4) They must show details (including relevant amounts) of how the act, transaction, event or circumstance is relevant (or can reasonably be expected to be relevant) to working out whether you have made a *capital gain or *capital loss from a *CGT event.

(5) If the necessary records of an act, transaction, event or circumstance do not already exist, you must reconstruct them or have someone else reconstruct them.

Example: Your capital gain or capital loss from a CGT event may depend on the market value of property at a particular time. To record that market value properly, you may need to get a valuation done.

Penalty: 30 penalty units.

121-25 How long you must retain the records

(1) You must retain records that section 121-20 requires you to keep.

(2) You must retain them until the end of 5 years after it becomes certain that no *CGT event (or no further *CGT event) can happen such that the records could reasonably be expected to be relevant to working out whether you have made a *capital gain or *capital loss from the event.

(3) This section has effect despite subsection 262A(4) of the *Income Tax Assessment Act 1936* (which requires records to be retained for a different period).

(4) However, it is not necessary to retain records:

(a) if the Commissioner notifies you that you do not need to retain them; or

(b) for a company that has been finally dissolved.

Note: There are special record keeping rules where there has been a roll-over for a merger between superannuation funds under section 160ZZPI of the *Income Tax Assessment Act 1936*: see section 121-25 of the *Income Tax (Transitional Provisions) Act 1997*.

Penalty: 30 penalty units.

121-30 Exceptions

You do not need to keep records under section 121-20 if:

(a) for each *CGT event (if any) that has happened such that the records are relevant (or could reasonably be expected to be relevant) to working out whether you

have made a *capital gain or *capital loss from the event; and

(b) for each *CGT event that may happen in the future such that the records could reasonably be expected to be relevant to working out whether you might make a *capital gain or *capital loss from the event;

any capital gain or capital loss you made (or might make) from it is to be (or would be) disregarded.

[The next Part is Part 3-3.]

Part 3-3—Capital gains and losses: special topics

Division 122—Roll-over for the disposal of assets to, or the creation of assets in, a wholly-owned company

Table of Subdivisions

	Guide to Division 122
122-A	Disposal or creation of assets by individual to a wholly-owned company
122-B	Disposal or creation of assets by partners to a wholly-owned company

Guide to Division 122

122-1 What this Division is about

A roll-over can delay the making of a capital gain or loss if:

- you dispose of a CGT asset, or all the assets of a business, to a company in which you own all the shares; or
- you create a CGT asset in such a company; or
- all the partners in a partnership dispose of partnership property to a company in which they own all the shares; or
- the partners create a CGT asset in such a company.

Subdivision 122-A—Disposal or creation of assets by individual to a wholly-owned company

Guide to Subdivision 122-A

122-5 What this Subdivision is about

This Subdivision sets out when you can obtain a roll-over if you transfer a CGT asset, or all the assets of a business, to a company. It also deals with the creation of a CGT asset in a company. There are consequences for the company also.

Table of sections

When is a roll-over available

122-15 Disposal or creation of assets—wholly-owned company
122-20 What you receive for the trigger event
122-25 Other requirements to be satisfied
122-35 What if the company undertakes to discharge a liability (disposal case)
122-37 Rules for working out what a liability in respect of an asset is

Replacement-asset roll-over if you dispose of a CGT asset

122-40 Disposal of a CGT asset

Replacement-asset roll-over if you dispose of all the assets of a business

122-45 Disposal of all the assets of a business
122-50 All assets acquired on or after 20 September 1985
122-55 All assets acquired before 20 September 1985
122-60 Assets acquired before and after 20 September 1985

Replacement-asset roll-over for a creation case

122-65 Creation of asset

Same-asset roll-over consequences for the company (disposal case)

122-70 Consequences for the company (disposal case)

Same-asset roll-over consequences for the company (creation case)

122-75 Consequences for the company (creation case)

[This is the end of the Guide.]

When is a roll-over available

122-15 Disposal or creation of assets—wholly-owned company

If you are an individual or a trustee, you can choose to obtain a roll-over if one of the *CGT events (the ***trigger event***) specified in this table happens involving you and a company in the circumstances set out in sections 122-20 to 122-35.

Relevant *CGT events

Event No.	What you do
A1	*Dispose of a CGT asset, or all the assets of a business, to the company
D1	Create contractual or other rights in the company
D2	Grant an option to the company
D3	Grant the company a right to income from mining
F1	Grant a lease to the company, or renew or extend a lease

Note 1: The roll-over starts at section 122-40.

Note 2: Section 103-25 tells you when you have to make the choice.

Example: Gavin runs a plumbing business. He wants to incorporate it so he disposes of all its assets to a company. He becomes the sole shareholder of the company.

122-20 What you receive for the trigger event

(1) The consideration you receive for the trigger event happening must be only:

(a) *shares in the company; or

(b) for a *disposal of a *CGT asset, or all the assets of a business, to the company (a ***disposal case***)—shares in the company and the company undertaking to discharge one or more liabilities in respect of the asset or assets of the *business (as appropriate).

Note: There are rules for working out what are the liabilities in respect of an asset: see section 122-37.

(2) The *shares cannot be *redeemable shares.

(3) The market value of the *shares you receive for the trigger event happening must be substantially the same as:

(a) for a disposal case—the market value of the asset or assets you disposed of, less any liabilities the company undertakes to discharge in respect of the asset or assets (as appropriate); or

(b) for another trigger event (a ***creation case***)—the market value of the CGT asset created in the company (the ***created asset***).

(4) In working out if the requirement in paragraph (3)(a) is satisfied, if the market value of the *shares is different to what it would otherwise be only because of the possibility of liabilities attaching to the asset or assets, disregard the difference.

Note: The company may have to pay income tax if an amount is included in its assessable income because of a CGT event happening to an asset you disposed of, or it may have a liability because of accrued leave entitlements of employees. The market value of the shares will reflect these contingent liabilities.

122-25 Other requirements to be satisfied

(1) You must own all the *shares in the company just after the time of the trigger event.

Note: You must own the shares in the same capacity as you owned or created the assets that the company now owns.

(2) This Subdivision does not apply to the *disposal or creation of any of the assets specified in this table:

Assets to which Subdivision does not apply		
Item	**In this situation:**	**This Subdivision does not apply to:**
1	You *dispose of a *CGT asset to the company or create a CGT asset in the company	(a) a *collectable or a *personal use asset; or (b) a decoration awarded for valour or brave conduct (except if you paid money or gave any other property for it); or (c) a *precluded asset; or (d) an asset that becomes *trading stock of the company just after the *disposal or creation
2	You *dispose of all the assets of a *business to the company	(a) a *collectable or a *personal use asset; or (b) a decoration awarded for valour or brave conduct (except if you paid money or gave any other property for it); or (c) an asset that becomes *trading stock of the company just after the disposal or creation (unless it was your trading stock when you disposed of it)

(3) A ***precluded asset*** is:

(a) a *car, motorcycle or similar vehicle; or

(b) *trading stock; or

(c) an interest in the copyright in a film referred to in section 118-30; or

(d) a right to mine in a particular area in Australia referred to in section 118-45.

(4) If:

(a) the *CGT asset or any of the assets of the *business is a right, option or *convertible note; and

(b) the company *acquires another CGT asset by exercising the right or option or by converting the convertible note;

the other asset cannot become *trading stock of the company just after the company acquired it.

(5) The *ordinary income and *statutory income of the company must not be exempt from income tax because of Division 50 for the income year of the trigger event.

(6) If you are an individual, the requirements in one of the items in this table must be satisfied:

Additional requirement

Item	Your residency status	The company's residency status	This requirement must be satisfied
1	An Australian resident at the time of the trigger event	An Australian resident at the time of the trigger event	It does not matter what each CGT asset is
2	Not an Australian resident at the time of the trigger event	An Australian resident at the time of the trigger event	Each asset must have the *necessary connection with Australia at that time
3	It does not matter what your residency status is	Not an Australian resident at the time of the trigger event	Each asset must have the *necessary connection with Australia at that time

(7) If you are a trustee of a trust, the requirements in one of the items in this table must be satisfied:

Additional requirement			
Item	**The trust's residency status**	**The company's residency status**	**Each CGT asset is:**
1	A *resident trust for CGT purposes for the income year of the trigger event	An Australian resident at the time of the trigger event	It does not matter what each *CGT asset is
2	Not a *resident trust for CGT purposes for the income year of the trigger event	An Australian resident at the time of the trigger event	A *CGT asset of the trust that has the *necessary connection with Australia at that time
3	It does not matter what the residency status of the trust is	Not an Australian resident at the time of the trigger event	A *CGT asset of the trust that has the *necessary connection with Australia at that time

122-35 What if the company undertakes to discharge a liability (disposal case)

Disposal of a CGT asset

(1) One of the requirements in this table must be satisfied if:

(a) you *dispose of a *CGT asset; and

(b) the company undertakes to discharge one or more liabilities in respect of it.

(The market value, or the *cost base, of an asset is worked out when you disposed of it.)

What amount the liabilities cannot exceed		
Item	**In this situation:**	**the liabilities cannot exceed:**

What amount the liabilities cannot exceed		
Item	**In this situation:**	**the liabilities cannot exceed:**
1	You *acquired the asset on or after 20 September 1985	The *cost base of the asset
2	You *acquired the asset before 20 September 1985	The market value of the asset

Note: There are rules for working out what are the liabilities in respect of an asset: see section 122-37.

Disposal of all the assets of a business

(2) One of the requirements in this table must be satisfied if:

(a) you *dispose of all the assets of a *business; and

(b) the company undertakes to discharge one or more liabilities in respect of the assets of the business.

(The market value, or the *cost base, of an asset is worked out when you disposed of it.)

What amount the liabilities cannot exceed		
Item	**In this situation:**	**The liabilities cannot exceed:**
1	You *acquired all the assets on or after 20 September 1985	The sum of the market values of the *precluded assets and the *cost bases of the other assets
2	You *acquired all the assets before 20 September 1985	The sum of the market values of the assets

What amount the liabilities cannot exceed		
Item	**In this situation:**	**The liabilities cannot exceed:**
3	You *acquired at least one asset on or after 20 September 1985 and at least one before that day	For liabilities in respect of assets you *acquired on or after that day—the sum of the market values of the *precluded assets and the *cost bases of the other assets; For liabilities in respect of assets you *acquired before that day—the sum of the market values of those assets

122-37 Rules for working out what a liability in respect of an asset is

(1) These rules are relevant to working out what are the liabilities in respect of an asset.

(2) A liability incurred for the purposes of a *business that is not a liability in respect of a specific asset or assets of the business is taken to be a liability in respect of all the assets of the business.

Note: An example is a bank overdraft.

(3) If a liability is in respect of 2 or more assets, the proportion of the liability that is in respect of any one of those assets is equal to:

$$\frac{\text{The market value of the asset}}{\text{The total of the market values of all the assets that the liability is in respect of}}$$

Replacement-asset roll-over if you dispose of a CGT asset

122-40 Disposal of a CGT asset

(1) If you choose a roll-over, a *capital gain or *capital loss you make from the trigger event is disregarded.

(2) If you *acquired the asset on or after 20 September 1985:

(a) the first element of each *share's *cost base is the asset's cost base when you *disposed of it (less any liabilities the company undertakes to discharge in respect of it) divided by the number of shares; and

(b) the first element of each share's *reduced cost base is worked out similarly.

Note 1: There are rules for working out what are the liabilities in respect of an asset: see section 122-37.

Note 2: There are special indexation rules for roll-overs: see Division 114.

(3) If you *acquired the asset before 20 September 1985, you are taken to have acquired the *shares before that day.

Replacement-asset roll-over if you dispose of all the assets of a business

122-45 Disposal of all the assets of a business

(1) If you choose a roll-over for *disposing of all the assets of a *business to the company, a *capital gain or *capital loss you make from each of the assets of the business is disregarded.

(2) The other consequences relate to the *shares you receive and depend on when you *acquired the assets of the *business.

Note 1: There are 3 possible cases:

- you acquired all the assets on or after 20 September 1985: see section 122-50;
- you acquired all the assets before that day: see section 122-55;
- you acquired some of the assets on or after that day: see section 122-60.

Note 2: There are special indexation rules for roll-overs: see Division 114.

Note 3: There are other consequences for you and the company if you dispose of trading stock: see Division 70.

122-50 All assets acquired on or after 20 September 1985

(1) If you *acquired all of the assets of the *business on or after 20 September 1985:

(a) the first element of each *share's *cost base is the sum of the market values of the *precluded assets and the cost bases of the other assets (less any liabilities the company undertakes to discharge in respect of all of those assets) divided by the number of shares; and

(b) the first element of each share's *reduced cost base is worked out similarly.

Note 1: There are rules for working out what are the liabilities in respect of an asset: see section 122-37.

Note 2: There are special indexation rules for roll-overs: see Division 114.

Example: Nick is a small trader. He wants to incorporate his business. He disposes of all its assets to a company and receives 10 shares in return.

Nick acquired all the assets of the business after 20 September 1985. The market value of the items of his trading stock when he disposed of them is $20,000. Trading stock is a precluded asset.

The cost bases of the other assets when he disposed of them are:

- plant and equipment: $50,000;
- buildings: $120,000;
- office furniture: $10,000.

Nick has a business overdraft of $15,000. It is taken to be a liability in respect of all the assets of his business.

The first element of the cost base of the 10 shares is:

$$\$20{,}000 + \$50{,}000 + \$120{,}000 + \$10{,}000 - \$15{,}000 = \$185{,}000$$

The first element of the reduced cost base of the 10 shares is worked out similarly.

(2) The market value of an asset is worked out when you *disposed of it. The *cost base or *reduced cost base of an asset is worked out at the same time.

122-55 All assets acquired before 20 September 1985

(1) You are taken to have *acquired all of the *shares before 20 September 1985 if you acquired all the assets of the *business before that day and none of the assets is a *precluded asset.

(2) However, if at least one of the assets is a *precluded asset, you are taken to have *acquired a whole number of the *shares (but not all of them) before that day. The number is the greatest possible that (when expressed as a percentage of all the shares) does not exceed:

- the total of the market values of the assets that are not *precluded assets, less any liabilities the company undertakes to discharge in respect of those assets;

expressed as a percentage of:

- the total of the market values of all the assets, less any liabilities the company undertakes to discharge in respect of those assets.

Note: There are rules for working out what are the liabilities in respect of an asset: see section 122-37.

(3) The first element of each other *share's *cost base and *reduced cost base is the total of the market values of the *precluded assets (less any liabilities the company undertakes to discharge in respect of those assets) divided by the number of those other shares.

(4) The market value of an asset is worked out when you *disposed of it. The *cost base or *reduced cost base of an asset is worked out at the same time.

122-60 Assets acquired before and after 20 September 1985

(1) If you *acquired some of the assets on or after 20 September 1985, you are taken to have acquired a whole number of the *shares (but not all of them) before that day. The number is the greatest possible that (when expressed as a percentage of all the shares) does not exceed:

- the total of the market values of the assets (except any *precluded assets) that you acquired before that day, less any liabilities the company undertakes to discharge in respect of those assets;

expressed as a percentage of:

- the total of the market values of all the assets, less any liabilities the company undertakes to discharge in respect of those assets.

(2) The first element of each other *share's *cost base is the sum of the market values of the *precluded assets and the cost bases of the other assets that you *acquired on or after that day (less any liabilities the company undertakes to discharge in respect of all of those assets) divided by the number of those other shares.

Note: There are special indexation rules for roll-overs: see Division 114.

(3) The first element of each other *share's *reduced cost base is worked out similarly.

(4) The market value of an asset is worked out when you *disposed of it. The *cost base or *reduced cost base of an asset is worked out at the same time.

Replacement-asset roll-over for a creation case

122-65 Creation of asset

(1) If you choose a roll-over, a *capital gain or *capital loss you make from the trigger event is disregarded.

(2) The first element of each *share's *cost base is the amount applicable under this table divided by the number of shares. The first element of each share's *reduced cost base is worked out similarly.

Creation case	
Event No.	**Applicable amount**
D1	the *incidental costs you incurred that relate to the trigger event
D2	the expenditure you incurred to grant the option
D3	the expenditure you incurred to grant the right
F1	the expenditure you incurred on the grant, renewal or extension of the lease

The expenditure can include a transfer of property: see section 103-5.

Example: Bill grants a licence (CGT event D1) to Tiffin Pty Ltd (a company he owns). The company issues him with 2 additional shares. He incurs legal expenses of $1,000 to grant the licence.

Bill's cost base for each of the shares is $500.

Same-asset roll-over consequences for the company (disposal case)

122-70 Consequences for the company (disposal case)

(1) There are these consequences for the company in a disposal case if you choose to obtain a roll-over. They are relevant for each *CGT asset (except a *precluded asset) that you *disposed of to the company.

Note: A capital gain or loss from a precluded asset can be disregarded: see Subdivision 118-A.

Asset acquired on or after 20 September 1985

(2) If you *acquired the asset on or after 20 September 1985:

(a) the first element of the asset's *cost base (in the hands of the company) is the asset's cost base when you disposed of it; and

(b) the first element of the asset's *reduced cost base (in the hands of the company) is the asset's reduced cost base when you disposed of it.

Note: There are special indexation rules for roll-overs: see Division 114.

Asset acquired before 20 September 1985

(3) If you *acquired the asset before 20 September 1985, the company is taken to have acquired it before that day.

Note: A capital gain or loss from a CGT asset acquired before 20 September 1985 is generally disregarded: see Division 104. This exemption is removed in some situations: see Division 149.

Same-asset roll-over consequences for the company (creation case)

122-75 Consequences for the company (creation case)

(1) There are these consequences for the company in a creation case if you choose to obtain a roll-over.

(2) The first element of the created asset's *cost base (in the hands of the company) is the applicable amount from the table in subsection 122-65(2).

Example: To continue the example in section 122-65, the cost base of the licence in Tiffin Pty Ltd's hands is $1,000.

(3) The first element of the created asset's *reduced cost base (in the hands of the company) is worked out similarly.

Subdivision 122-B—Disposal or creation of assets by partners to a wholly-owned company

Guide to Subdivision 122-B

122-120 What this Subdivision is about

This Subdivision sets out when the partners in a partnership can obtain a roll-over on transferring a CGT asset, or all the assets of a business, to a company. It also deals with the creation of a CGT asset in a company. There are consequences for the company also.

Table of sections

When is a roll-over available

122-125 Disposal or creation of assets—wholly-owned company
122-130 What the partners receive for the trigger event
122-135 Other requirements to be satisfied
122-140 What if the company undertakes to discharge a liability (disposal case)
122-145 Rules for working out what a liability in respect of an interest in an asset is

Replacement-asset roll-over if partners dispose of a CGT asset

122-150 Capital gain or loss disregarded
122-155 Disposal of post-CGT or pre-CGT interests
122-160 Disposal of both post-CGT and pre-CGT interests

Replacement-asset roll-over if the partners dispose of all the assets of a business

122-170 Capital gain or loss disregarded
122-175 Other consequences
122-180 All interests acquired on or after 20 September 1985
122-185 All interests acquired before 20 September 1985
122-190 Interests acquired before and after 20 September 1985

Replacement-asset roll-over for a creation case

122-195 Creation of asset

Same-asset roll-over consequences for the company (disposal case)

122-200 Consequences for the company (disposal case)

Same-asset roll-over consequences for the company (creation case)

122-205 Consequences for the company (creation case)

[This is the end of the Guide.]

When is a roll-over available

122-125 Disposal or creation of assets—wholly-owned company

All of the partners in a partnership can choose to obtain a roll-over if one of the *CGT events (the ***trigger event***) specified in this table happens involving the partners and a company in the circumstances set out in sections 122-130 to 122-140.

Relevant *CGT events	
Event No.	What the partners do
A1	*Dispose of their interests in a *CGT asset of the partnership, or all the assets of a business carried on by the partnership, to the company
D1	Create contractual or other rights in the company
D2	Grant an option to the company
D3	Grant the company a right to income from mining
F1	Grant a lease to the company, or renew or extend a lease

Note 1: The roll-over starts at section 122-150.

Note 2: Section 103-25 tells you when you have to make the choice.

Example: Michael and Sandra operate a fish shop in partnership. They agree to incorporate the business so they dispose of their interests in all its assets to a company. They are the only shareholders of the company.

122-130 What the partners receive for the trigger event

(1) The consideration the partners receive must be only:

(a) *shares in the company; or

(b) for a *disposal of their interests in a *CGT asset, or in all the assets of a business, to the company (a ***disposal case***)—shares in the company and the company undertaking to discharge one or more liabilities in respect of their interests.

Note: There are rules for working out what are the liabilities in respect of an interest in an asset: see section 122-145.

(2) The *shares cannot be *redeemable shares.

(3) The market value of the *shares each partner receives for the trigger event happening must be substantially the same as:

(a) for a disposal case—the market value of the interests in the asset or assets the partner disposed of, less any liabilities the company undertakes to discharge in respect of the interests in the asset or assets (as appropriate); or

(b) for another trigger event (a ***creation case***)—the market value of what would have been the partner's interest in the *CGT asset created in the company (the ***created asset***) if it were an asset of the partnership.

(4) In working out if the requirement in paragraph (3)(a) is satisfied, if the market value of the *shares is different to what it would otherwise be only because of the possibility of liabilities attaching to the asset or assets, disregard the difference.

Note: The company may have to pay income tax if an amount is included in its assessable income because of a CGT event happening to an asset a partner disposed of, or it may have a liability because of accrued leave entitlements of employees. The market value of the shares will reflect these contingent liabilities.

122-135 Other requirements to be satisfied

(1) The partners must own all the *shares in the company just after the time of the trigger event.

(2) Each partner must own the *shares the partner received for the trigger event happening in the same capacity that the partner:

(a) owned the partner's interests in the assets that the company now owns; or

(b) participated in the creation of the asset in the company.

Note: If a partner's interests were owned as trustee, the partner must receive shares as trustee.

(3) This Subdivision does not apply to the *disposal or creation of any of the assets specified in this table:

Assets to which Subdivision does not apply

Item	In this situation:	This Subdivision does not apply to:
1	The partners *dispose of their interests in a *CGT asset to, or create a CGT asset in, the company	(a) a *collectable or a *personal use asset; or (b) a decoration awarded for valour or brave conduct (except if a partner paid money or gave any other property for it); or (c) a *precluded asset; or (d) an asset that becomes *trading stock of the company just after the *disposal or creation

Assets to which Subdivision does not apply

Item	In this situation:	This Subdivision does not apply to:
2	The partners *dispose of their interests in all the assets of a business	(a) a *collectable or a *personal use asset; or (b) a decoration awarded for valour or brave conduct (except if a partner paid money or gave any other property for it); or (c) an asset that becomes *trading stock of the company just after the disposal or creation (unless it was trading stock of the partnership when it was disposed of)

(4) If:

(a) the *CGT asset or any of the assets of the *business is a right, option or *convertible note; and

(b) the company *acquires another CGT asset by exercising the right or option or by converting the convertible note;

the other asset cannot become *trading stock of the company just after the company acquired it.

(5) The *ordinary income and *statutory income of the company must not be exempt from income tax because of Division 50 for the income year of the trigger event.

(6) For a partner who is not a trustee of a trust, the requirements in one of the items in this table must be satisfied:

Additional requirement

Item	Partner's residency status	The company's residency status	This requirement must be satisfied
1	An Australian resident at the time of the trigger event	An Australian resident at the time of the trigger event	It does not matter what each CGT asset is

Additional requirement			
Item	**Partner's residency status**	**The company's residency status**	**This requirement must be satisfied**
2	Not an Australian resident at the time of the trigger event	An Australian resident at the time of the trigger event	Each asset must have the *necessary connection with Australia at that time
3	It does not matter what the partner's residency status is	Not an Australian resident at the time of the trigger event	Each asset must have the *necessary connection with Australia at that time

(7) For a partner who is a trustee of a trust, the requirements in one of the items in this table must be satisfied:

Additional requirement			
Item	**The trust's residency status**	**The company's residency status**	**The interest in each CGT asset is:**
1	A *resident trust for CGT purposes for the income year of the trigger event	An Australian resident at the time of the trigger event	It does not matter what each *CGT asset is
2	Not a *resident trust for CGT purposes for the income year of the trigger event	An Australian resident at the time of the trigger event	A *CGT asset of the trust that has the *necessary connection with Australia at that time

Additional requirement			
Item	**The trust's residency status**	**The company's residency status**	**The interest in each CGT asset is:**
3	It does not matter what the residency status of the trust is	Not an Australian resident at the time of the trigger event	A *CGT asset of the trust that has the *necessary connection with Australia at that time

122-140 What if the company undertakes to discharge a liability (disposal case)

Disposal of a CGT asset

(1) One of these requirements must be satisfied (for each partner) if:

(a) the partners *dispose of their interests in a *CGT asset; and

(b) the company undertakes to discharge one or more liabilities in respect of the interests in the asset.

(The market value, or the *cost base, of an interest is worked out at the time of the disposal.)

What amount the liabilities cannot exceed		
Item	**In this situation:**	**the liabilities cannot exceed:**
1	A partner *acquired the interest on or after 20 September 1985	The *cost base of the interest
2	A partner *acquired the interest before 20 September 1985	The market value of the interest

Note: There are rules for working out what are the liabilities in respect of an interest in an asset: see section 122-45.

Disposal of all the assets of a business

(2) One of these requirements must be satisfied (for each partner) if:

(a) the partners *dispose of their interests in all the assets of a *business; and

(b) the company undertakes to discharge one or more liabilities in respect of the interests in the assets.

(The market value, or the *cost base, of an interest is worked out at the time of the disposal.)

What amount the liabilities cannot exceed

Item	In this situation:	the liabilities cannot exceed:
1	A partner *acquired all the interests on or after 20 September 1985	The sum of the market values of the partner's interests in *precluded assets and the *cost bases of the partner's interests in other assets
2	A partner *acquired all the interests before 20 September 1985	The sum of the market values of the interests
3	A partner *acquired at least one interest on or after 20 September 1985 and at least one before that day	For liabilities in respect of interests *acquired on or after that day—the sum of the market values of the partner's interests in *precluded assets and the *cost bases of the partner's interests in other assets For liabilities in respect of interests *acquired before that day—the sum of the market values of those interests

122-145 Rules for working out what a liability in respect of an interest in an asset is

(1) These rules are relevant to working out what are the liabilities in respect of a partner's interests in an asset.

(2) A liability incurred for the purposes of a *business that is not a liability in respect of interests in a specific asset or assets of the business is taken to be a liability in respect of the partner's interests in all the assets of the business.

Note: An example is a bank overdraft.

(3) If a liability is in respect of both:

(a) the partner's interests in one or more assets that the partner *acquired on or after 20 September 1985; and

(b) the partner's interests in one or more assets that the partner acquired before that day;

the proportion of the liability that is in respect of the partner's interests that the partner acquired on or after that day is equal to:

$$\frac{\text{The market value of the partner's interest that the partner *acquired on or after that day}}{\text{The total of the market values of all the partner's interest in assets that the liability is in respect of}}$$

Replacement-asset roll-over if partners dispose of a CGT asset

122-150 Capital gain or loss disregarded

If the partners choose a roll-over for *disposing of their interests in a CGT asset to the company, a *capital gain or *capital loss any partner makes from the disposal is disregarded.

122-155 Disposal of post-CGT or pre-CGT interests

(1) If a partner *acquired all the partner's interests in the asset on or after 20 September 1985:

(a) the first element of each *share's *cost base is the sum of the cost bases of the interests when the partner *disposed of them (less any liabilities the company undertakes to discharge in respect of them) divided by the number of the partner's shares; and

(b) the first element of each share's *reduced cost base is worked out similarly.

Note 1: There are rules for working out what are the liabilities in respect of an interest in an asset: see section 122-145.

Note 2: There are special indexation rules for roll-overs: see Division 114.

(2) If a partner *acquired all the partner's interests in the asset before 20 September 1985, the partner is taken to have acquired the *shares before that day.

122-160 Disposal of both post-CGT and pre-CGT interests

(1) If a partner *acquired some of the partner's interests in the asset on or after 20 September 1985 and some before that day, the partner is taken to have acquired a whole number of the *shares (but not all of them) before that day. The number is the greatest possible that (when expressed as a percentage of all the shares the partner acquires) does not exceed:

- the market value of the interests in the asset that the partner acquired before that day;

expressed as a percentage of:

- the total of the market values of all the partner's interests in the asset.

(2) The first element of each other *share's *cost base is the sum of the cost bases of the partner's interests that the partner *acquired on or after that day (less any liabilities the company undertakes to discharge in respect of all of those interests) divided by the number of the other shares.

Note: There are special indexation rules for roll-overs: see Division 114.

(3) The first element of each other *share's *reduced cost base is worked out similarly.

(4) The market value of an interest in an asset is worked out when the partner *disposed of it. The *cost base or *reduced cost base of an interest in an asset is worked out at the same time.

Replacement-asset roll-over if the partners dispose of all the assets of a business

122-170 Capital gain or loss disregarded

If the partners choose a roll-over for *disposing of their interests in all the assets of a *business to the company, a *capital gain or *capital loss any partner makes from the disposal is disregarded.

122-175 Other consequences

The other consequences relate to the *shares the partners receive and depend on when they *acquired their interests in the assets of the *business.

Note 1: There are 3 possible cases:

- a partner acquired all the interests on or after 20 September 1985: see section 122-180;
- a partner acquired all the interests before that day: see section 122-185;
- a partner acquired some of the interests on or after that day: see section 122-190.

Note 2: There are other consequences for the partnership and the company if the partners dispose of their interests in trading stock of the partnership: see Division 70.

122-180 All interests acquired on or after 20 September 1985

(1) If a partner *acquired all of the partner's interests in the assets of the *business on or after 20 September 1985:

(a) the first element of the partner's *cost base of each *share is the sum of the market values of the partner's interests in the *precluded assets and the cost bases of the partner's interests in the other assets (less any

liabilities the company undertakes to discharge in respect of all of those interests) divided by the number of the partner's shares; and

(b) the first element of the partner's *reduced cost base of each *share is worked out similarly.

Note 1: There are rules for working out what are the liabilities in respect of interests: see section 122-145.

Note 2: There are special indexation rules for roll-overs: see Division 114.

(2) The market value of an interest in an asset is worked out when the partner *disposed of it. The *cost base or *reduced cost base of an interest is worked out at the same time.

122-185 All interests acquired before 20 September 1985

(1) A partner is taken to have *acquired all of the *shares before 20 September 1985 if the partner acquired all the partner's interests in the assets of the *business before that day and none of the assets is a *precluded asset.

(2) However, if at least one of the assets is a *precluded asset, the partner is taken to have *acquired a whole number of the *shares (but not all of them) before that day. The number is the greatest possible that (when expressed as a percentage of all the shares) does not exceed:

- the total of the market values of the partner's interests in the assets that are not *precluded assets, less any liabilities the company undertakes to discharge in respect of those interests;

expressed as a percentage of:

- the total of the market values of the partner's interests in all the assets, less any liabilities the company undertakes to discharge in respect of those interests.

Note: There are rules for working out what are the liabilities in respect of an interest: see section 122-145.

(3) The first element of the partner's *cost base and *reduced cost base of each other *share is the total of the market values of

the partner's interests in the *precluded assets (less any liabilities the company undertakes to discharge in respect of those interests) divided by the number of the other shares.

(4) The market value of an interest in an asset is worked out when the partner *disposed of it. The *cost base or *reduced cost base of an interest is worked out at the same time.

122-190 Interests acquired before and after 20 September 1985

(1) If a partner *acquired some of the interests in the assets on or after 20 September 1985, the partner is taken to have acquired a whole number of the *shares (but not all of them) before that day. The number is the greatest possible that (when expressed as a percentage of all the shares) does not exceed:

- the total of the market values of the partner's interests in the assets (except any *precluded assets) that the partner acquired before that day, less any liabilities the company undertakes to discharge in respect of those interests;

expressed as a percentage of:

- the total of the market values of all the partner's interests in the assets, less any liabilities the company undertakes to discharge in respect of those interests.

(2) The first element of the partner's *cost base of each other *share is the sum of the market values of the partner's interests in the *precluded assets and the cost bases of the partner's interests in the other assets that the partner *acquired on or after that day (less any liabilities the company undertakes to discharge in respect of all of those interests) divided by the number of the other shares.

Note: There are special indexation rules for roll-overs: see Division 114.

(3) The first element of the partner's *reduced cost base of each other *share is worked out similarly.

(4) The market value of an interest in an asset is worked out when the partner *disposed of it. The *cost base or *reduced cost base of an interest in an asset is worked out at the same time.

Replacement-asset roll-over for a creation case

122-195 Creation of asset

(1) If the partners choose a roll-over, a *capital gain or *capital loss any partner makes from the trigger event is disregarded.

(2) The first element of the partner's *cost base of each *share is the amount applicable under this table divided by the number of shares. The first element of each share's *reduced cost base is worked out similarly.

Creation case	
Event No.	**Applicable amount**
D1	the partner's share of the *incidental costs incurred that relate to the trigger event
D2	the partner's share of the expenditure incurred to grant the option
D3	the partner's share of the expenditure incurred to grant the right
F1	the partner's share of the expenditure incurred on the grant, renewal or extension of the lease

The expenditure can include a transfer of property: see section 103-5.

Same-asset roll-over consequences for the company (disposal case)

122-200 Consequences for the company (disposal case)

(1) There are these consequences for the company in a disposal case if the partners choose to obtain a roll-over. They are relevant for interests in each *CGT asset (except a *precluded asset) that the partners *disposed of to the company.

Note: A capital gain or loss from a precluded asset can be disregarded: see Subdivision 118-A.

Interests acquired on or after 20 September 1985

(2) If all of the partners' interests in an asset were *acquired on or after 20 September 1985:

(a) the first element of the asset's *cost base (in the hands of the company) is the sum of the cost bases of the partners' interests in the asset when it was disposed of; and

(b) the first element of the asset's *reduced cost base (in the hands of the company) is the sum of the reduced cost bases of the partners' interests in the asset when it was disposed of.

Note: There are special indexation rules for roll-overs: see Division 114.

Interests acquired before 20 September 1985

(3) If all of the partners' interests in an asset were *acquired before 20 September 1985, the company is taken to have acquired it before that day.

Note: A capital gain or loss from a CGT asset acquired before 20 September 1985 is generally disregarded: see Division 104. This exemption is removed in some situations: see Division 149.

Interests acquired on or after and before 20 September 1985

(4) If some of the partners' interests in an asset (the ***original asset***) were *acquired on or after 20 September 1985 and

some before that day, the company is taken to have acquired 2 separate *CGT assets:

(a) one (which the company is taken to have acquired on or after 20 September 1985) representing the extent to which the partners' interests in the original asset were acquired by the partners on or after that day; and

(b) another (which the company is taken to have acquired before that day) representing the extent to which the partners' interests in the original asset were acquired by the partners before that day.

(5) The first element of the *cost base of the separate asset that the company is taken to have *acquired on or after 20 September 1985 is the sum of the cost bases of the partners' interests in the original asset that they acquired on or after that day.

Note: There are special indexation rules for roll-overs: see Division 114.

(6) The first element of its *reduced cost base is worked out similarly.

Same-asset roll-over consequences for the company (creation case)

122-205 Consequences for the company (creation case)

(1) There are these consequences for the company in a creation case if the partners choose to obtain a roll-over.

(2) The first element of the created asset's *cost base (in the hands of the company) is the applicable amount from this table.

Creation case	
Event No.	**Applicable amount**
D1	the total *incidental costs incurred that relate to the trigger event
D2	the total expenditure incurred to grant the option
D3	the total expenditure incurred to grant the right
F1	the total expenditure incurred on the grant, renewal or extension of the lease

The expenditure can include a transfer of property: see section 103-5.

(3) The first element of the created asset's *reduced cost base (in the hands of the company) is worked out similarly.

[The next Division is Division 124.]

Division 124—Replacement-asset roll-overs

Table of Subdivisions

Guide to Division 124

124-A General rules

124-B Asset compulsorily acquired, lost or destroyed

124-C Statutory licences

124-D Strata title conversion

124-E Exchange of shares or units

124-F Exchange of rights or options

124-G Exchange of shares in one company for shares in another company

124-H Exchange of units in a unit trust for shares in a company

124-I Conversion of a body to an incorporated company

124-J Crown leases

124-K Plant

124-L Prospecting and mining entitlements

Guide to Division 124

124-1 What this Division is about

A replacement-asset roll-over allows you, in special cases, to defer the making of a capital gain or loss from one CGT event until a later CGT event happens. It involves your ownership of one CGT asset ending and you acquiring another one.

124-5 How to find your way around this Division

(1) First, find out if you can obtain a roll-over when your ownership of one or more CGT assets ends and you acquire one or more CGT assets: see Subdivisions 124-B to 124-L.

(2) Second, find out what the consequences are for being able to obtain a roll-over: see Subdivision 124-A.

(3) Third, find out if there are any special rules relevant to your situation: see the Subdivision under which you can get the roll-over.

Subdivision 124-A—General rules

Table of sections

124-10 Your ownership of one CGT asset ends
124-15 Your ownership of more than one CGT asset ends

124-10 Your ownership of one CGT asset ends

(1) There are these consequences (in most cases) if you can obtain a roll-over when your ownership of a *CGT asset (the ***original asset***) ends and you *acquire one or more CGT assets (the ***new assets***) in a situation covered by this Division.

Example: Your commercial fishing licence expires and you get a new one.

(2) A *capital gain or a *capital loss you make from the original asset is disregarded.

(3) If you *acquired the original asset on or after 20 September 1985, the first element of each new asset's *cost base is:

$$\frac{\text{The original asset's cost base (worked out when your ownership of it ended)}}{\text{Number of new assets}}$$

The first element of each new asset's *reduced cost base is worked out similarly.

Example: To continue the example, suppose the cost base of the fishing licence that expires is $5,000. This becomes the first element of the new one's cost base.

Note 1: In some cases the amount you paid to acquire the new asset also forms part of the first element: see Subdivisions 124-C (about statutory licences) and 124-D (about strata title conversion).

Note 2: There are modifications to the consequences in Subdivision 124-B (about compulsory acquisition, loss or destruction), Subdivision 124-J (about Crown leases) and Subdivision 124-L (about prospecting and mining).

Note 3: No other elements of the cost base of the new asset are affected by the roll-over.

Note 4: There are special indexation rules for roll-overs: see Division 114.

(4) If you *acquired the original asset before 20 September 1985, you are taken to have acquired each new asset before that day.

Note: A capital gain or loss you make from a CGT asset you acquired before 20 September 1985 is generally disregarded: see Division 104. This exemption is removed in some situations: see Division 149.

124-15 Your ownership of more than one CGT asset ends

(1) There are these consequences (in most cases) if you can obtain a roll-over when your ownership of more than one *CGT asset (the ***original assets***) ends and you acquire one or more CGT assets (the ***new assets***) in a situation covered by this Division.

Example: You own 100 shares in a company. The company cancels these shares and issues you with 10 shares in return.

(2) A *capital gain or a *capital loss you make from each original asset is disregarded.

(3) If you *acquired all the original assets on or after 20 September 1985, the first element of each new asset's cost base is:

$$\frac{\text{The total of the cost bases of all the original assets (worked out when your ownership of them ended)}}{\text{Number of new assets}}$$

The first element of each new asset's *reduced cost base is worked out similarly.

Note 1: No other elements of the cost base of the new asset are affected by the roll-over.

Note 2: There are special indexation rules for roll-overs: see Division 114.

(4) If you *acquired all the original assets before 20 September 1985, you are taken to have acquired each new asset before that day.

Note: A capital gain or loss you make from a CGT asset you acquired before 20 September 1985 is generally disregarded: see Division 104. This exemption is removed in some situations: see Division 149.

(5) If you *acquired some of the original assets before 20 September 1985, you are taken to have acquired a number of new assets before that day. It is the maximum possible that does not exceed:

$$\text{The number of new assets} \times \frac{\text{The number of original assets you *acquired before 20 September 1985}}{\text{The total number of original assets}}$$

If the result is less than one, none of the new assets are taken to have been *acquired before 20 September 1985.

Example: To continue the example, suppose you acquired 67 of the 100 original shares before 20 September 1985. The number of new shares that you are taken to have acquired before that day cannot exceed:

$$10 \times \frac{67}{100} = 6.7$$

So, you are taken to have acquired 6 of the 10 shares before that day.

(6) These rules are relevant to each remaining new asset. The first element of each one's *cost base is:

$$\frac{\text{The total of the cost bases of all the original assets that you *acquired on or after 20 September 1985 (worked out when your ownership of them ended)}}{\text{Number of remaining new assets}}$$

The first element of each one's *reduced cost base is worked out similarly.

Note: There are special indexation rules for roll-overs: see Division 114.

Example: To continue the example, suppose the total of the cost bases of the 33 shares you acquired on or after 20 September 1985 is $400.

The first element of the cost base of each of the remaining 4 shares is:

$$\frac{\$400}{4} = \$100$$

The first element of the reduced cost base of those 4 shares is worked out similarly.

Subdivision 124-B—Asset compulsorily acquired, lost or destroyed

Table of sections

When roll-over is available

124-70 Events giving rise to a roll-over
124-75 Other requirements if you receive money
124-80 Other requirements if you receive an asset

The consequences of a roll-over being available

124-85 Consequences for receiving money
124-90 Consequences for receiving an asset
124-95 You receive both money and an asset

[This is the end of the Guide.]

When a roll-over is available

124-70 Events giving rise to a roll-over

(1) You may be able to choose a roll-over if one of these events happens to a *CGT asset (the ***original asset***) you own:

(a) it is compulsorily *acquired by an *Australian government agency;

(b) it, or part of it, is lost or destroyed;

(c) you *dispose of it to an *Australian government agency after a notice was served on you by or on behalf of the agency:

(i) inviting you to negotiate with the agency with a view to the agency acquiring it by agreement; and

(ii) informing you that if the negotiations are unsuccessful, it will be compulsorily acquired by the agency;

(d) if it is a lease granted to you by an *Australian government agency under an *Australian law—the lease expires and is not renewed.

Note 1: There are no roll-over consequences if you make a capital loss from the event.

Note 2: Section 103-25 tells you when you have to make the choice.

(2) You must receive money or another *CGT asset, or both:

(a) as compensation for the event happening; or

(b) under an insurance policy against the risk of loss or destruction of the original asset.

Note: There are other requirements that must be satisfied if:

- you receive money: see section 124-75; or
- you receive another CGT asset: see section 124-80.

(3) The requirement in subsection (4) must be satisfied if:

(a) you are not an Australian resident just before the event happens; or

(b) you are the trustee of a trust that is not a *resident trust for CGT purposes for the income year in which the event happens.

(4) The original asset must have the *necessary connection with Australia just before the event happens. The other asset must have the *necessary connection with Australia just after you *acquire it.

124-75 Other requirements if you receive money

(1) If you receive money for the event happening, you can choose to obtain a roll-over only if these other requirements are satisfied.

Note: The roll-over consequences are set out in section 124-85.

(2) You must:

(a) incur expenditure in *acquiring another *CGT asset; or

(b) if part of the original asset is lost or destroyed—incur expenditure of a capital nature in repairing or restoring it.

(3) At least some of the expenditure must be incurred:

(a) no earlier than one year, or within such further time as the Commissioner allows in special circumstances, before the event happens; or

(b) no later than one year, or within such further time as the Commissioner allows in special circumstances, after the end of the income year in which the event happens.

Special rules if you acquire another asset

(4) If just before the event happened the original asset:

(a) was used in your *business; or

(b) was *installed ready for use in your business; or

(c) was in the process of being *installed ready for use in your business;

the other asset must be used in the business, or be installed ready for use in the business, for a reasonable time after you *acquired it.

Otherwise, you must use the other asset (for a reasonable time after you *acquired it) for the same purpose as, or for a similar purpose to, the purpose for which you used the original asset just before the event happened.

(5) The other asset cannot become an item of your *trading stock just after you *acquire it.

124-80 Other requirements if you receive an asset

(1) If you receive another *CGT asset for the event happening, you can choose to obtain a roll-over only if these other requirements are satisfied.

Note: The roll-over consequences are set out in section 124-90.

(2) The other asset cannot become an item of your *trading stock just after you *acquire it.

(3) The market value of the other asset (when you *acquire it) must be more than the *cost base of the original asset just before the event happens.

The consequences of a roll-over being available

124-85 Consequences for receiving money

(1) If you receive money for the event happening, there are these consequences if you choose to obtain a roll-over.

Original asset acquired on or after 20 September 1985

(2) If you make a *capital gain from the event, this table sets out in what situations the gain is reduced, not reduced or disregarded.

It also sets out in what situations the expenditure you incurred to *acquire another *CGT asset or to repair or restore the original asset is reduced.

You make a capital gain from the event		
Item	**In this situation:**	**There are these consequences**
1	The money exceeds the expenditure you incurred to *acquire another CGT asset or to repair or restore the original asset	If the gain is more than the excess: (a) the gain is reduced to the amount by which the money exceeds that expenditure; and (b) that expenditure is reduced by the amount by which the gain (before it is reduced) is more than the excess
2	The money exceeds that expenditure	If the gain is less than or equal to the excess, the gain is not reduced
3	The money does not exceed that expenditure	The gain is disregarded in working out your *net capital or *net capital loss for the income year. That expenditure is reduced by the amount of the gain

Example: In 1999 Simon bought a yacht. In 2000 a fire destroys part of it. He receives $100,000 under an insurance policy.

The capital gain is worked out under section 112-30.

Suppose the yacht's cost base at the time of the fire is $75,000 and the market value of the part that is not destroyed is $150,000. The cost base of the part that is destroyed is:

$$\$75{,}000 \times \frac{\$100{,}000}{\$100{,}000 + \$150{,}000} = \$30{,}000$$

The capital gain is:

$$\$100{,}000 - \$30{,}000 = \$70{,}000$$

Case 1

Suppose Simon spent $80,000 on repairing the yacht. The money he received under the insurance policy exceeds the repair cost by $20,000. The gain exceeds that by $50,000.

The result is that the gain is reduced to $20,000 and the $80,000 he spent on repairs is reduced to $30,000.

Case 2

Suppose Simon spent $15,000 on repairs instead. The money he received under the policy exceeds that amount by $85,000. This is more than the gain he made.

The gain is relevant to working out Simon's net capital gain or loss for the income year and the $15,000 he spent on repairs forms part of the yacht's cost base.

Case 3

Suppose Simon spent $120,000 on repairs instead. The gain is disregarded and the $120,000 is reduced to $50,000.

Original asset acquired before 20 September 1985

(3) If you *acquired the original asset before 20 September 1985 and you incurred expenditure in acquiring another *CGT asset, you are taken to have acquired the other asset before that day if:

(a) the expenditure is not more than 120% of the market value of the original asset when the event happened; or

(b) a natural disaster happened so that the original asset, or part of it, is lost or destroyed and it is reasonable to treat the other asset as substantially the same as the original asset.

(4) If you *acquired the original asset before 20 September 1985 and you incurred expenditure of a capital nature in repairing or restoring it, you are taken to have acquired the original asset (as repaired or restored) before that day.

124-90 Consequences for receiving an asset

(1) If you receive another *CGT asset for the event happening, there are these consequences if you choose to obtain a roll-over.

(2) A *capital gain you make from the original asset is disregarded.

(3) If you *acquired the original asset on or after 20 September 1985:

(a) the first element of the other asset's *cost base is the original asset's cost base at the time of the event; and

(b) the first element of the other asset's *reduced cost base is the original asset's reduced cost base at the time of the event.

Note: There are special indexation rules for roll-overs: see Division 114.

Example: Steven bought land in 1999 for $100,000. In 2001 the government compulsorily acquires the land and gives him new land in return.

A capital gain he makes from the original land is disregarded. Suppose the original land's cost base when it is acquired is $120,000. The first element of the new land's cost base becomes $120,000.

(4) If you acquired the original asset before 20 September 1985, you are taken to have *acquired the other asset before that day.

124-95 You receive both money and an asset

(1) If you receive both money and another *CGT asset for the event happening and choose to obtain a roll-over, the requirements and consequences are different for each part of the compensation attributable to the original asset (having regard to the amount of money and the market value of the other asset).

The other asset as a part of compensation

(2) The market value of the other asset (when you *acquire it) must be more than that part of the *cost base of the original asset that is attributable to the new asset.

Note: This requirement is different to that in subsection 124-80(3). It requires a proportional attribution of the cost base of the original asset.

(3) If you *acquired the original asset on or after 20 September 1985:

(a) the first element of the other asset's *cost base is that part of the original asset's cost base at the time of the event that is attributable to the new asset; and

(b) the first element of the other asset's *reduced cost base is worked out similarly.

Note: These consequences are different to those in subsection 124-90(3). They require a proportional attribution of the cost base of the original asset.

(4) If you *acquired the original asset before 20 September 1985, you are taken to have acquired the new asset before that day.

Money as a part of compensation

(5) If you make a *capital gain from the event, this table sets out in what situations that part of the gain on the original asset that is attributable to the amount of money you received is reduced, not reduced or disregarded.

It also sets out in what situations the expenditure you incurred to *acquire another *CGT asset or to repair or restore the original asset is reduced.

You make a capital gain from the event

Item	In this situation:	There are these consequences

You make a capital gain from the event		
Item	**In this situation:**	**There are these consequences**
1	The money exceeds the expenditure you incurred to *acquire another CGT asset or to repair or restore the original asset	If that part of the gain that is attributable to the amount of money is more than the excess: (a) that part of the gain is reduced to the amount by which the money exceeds that expenditure; and (b) that expenditure is reduced by the amount by which that part of the gain (before it is reduced) is more than the excess
2	The money exceeds that expenditure	If that part of the gain that is attributable to the amount of money is less than or equal to the excess, the gain is not reduced
3	The money does not exceed that expenditure	That part of the gain that is attributable to the amount of money is disregarded in working out your *net capital gain or *net capital loss for the income year. That expenditure is reduced by the amount of that part of the gain

Note: These consequences are different to those in subsection 124-85(2). They require a proportional attribution of capital gain on the original asset.

(6) If you *acquired the original asset before 20 September 1985 and you incurred expenditure in acquiring another *CGT asset, you are taken to have acquired the other asset before that day if:

(a) the expenditure you incurred in acquiring the other asset is not more than 120% of the market value of that part of the original asset that is attributable to the other asset when the event happened; or

(b) a natural disaster happened so that the original asset, or part of it, is lost or destroyed and it is reasonable to treat the other asset as substantially the same as that part of the original asset that is attributable to the new asset.

Note 1: The consequences in paragraph (6)(a) are different to those in paragraph 124-85(3)(a). They require a proportional attribution of the market value of the original asset.

Note 2: The consequences in paragraph (6)(b) are different to those in paragraph 124-85(3)(b). They require a proportional attribution of the original asset.

Example: Kris owns land, which he acquired in 1998. It is compulsorily acquired, and Kris receives $80,000 in cash and replacement land with a market value of $80,000.

The cost base of the original land is $150,000.

Kris buys additional land for $80,000.

Subsection (2) is satisfied because the market value of the replacement land ($80,000) is more than the part of the cost base of the original land that is attributable to the replacement land:

$$50\% \times \$150{,}000 = \$75{,}000$$

Applying subsection (5), the other part of the gain is disregarded, and the first element of the cost base of the replacement land is the part of the cost base of the original land that is attributable to the replacement land:

$$50\% \times \$150{,}000 = \$75{,}000$$

Applying subsection (3), the money he received ($80,000) is the same as the expenditure he incurred to buy the additional land. Item 3 in the table applies. The part of the gain that is attributable to that money is disregarded:

50% × $10,000 = $5,000

The expenditure is reduced by $5,000.

Subdivision 124-C—Statutory licences

124-140 Renewal or extension of a statutory licence

(1) There is a roll-over if:

(a) a *statutory licence (the ***original licence***) you have expires or you surrender it; and

(b) you get a new licence by renewing or extending the original one (which is due mainly to you having the original one).

Note 1: The roll-over consequences are set out in section 124-10. The original asset is the original licence. The new asset is the licence you get by renewing or extending the original licence.

Note 2: If there has been a capital improvement to the statutory licence: see section 108-75.

(2) The first element of the *cost base and *reduced cost base of the new licence includes any amount you paid to get it (which can include giving property: see section 103-5).

Note: The rest of the first element is worked out under Subdivision 124-A.

(3) A ***statutory licence*** is an authority, licence, permit or quota (except a lease or a *mining entitlement or *prospecting entitlement) granted by:

(a) an *Australian government agency under an *Australian law; or

(b) a *foreign government agency under a *foreign law.

Subdivision 124-D—Strata title conversion

124-190 Strata title conversion

(1) You can choose to obtain a roll-over if:

(a) you own property that gives you a right to occupy a unit in a building; and

(b) the building's owner subdivides it into *stratum units; and

(c) the owner transfers to you the stratum unit that corresponds to the unit you had the right to occupy just before the subdivision.

Note 1: The roll-over consequences are set out in section 124-10. The original asset is the property that gave you the right to occupy a unit in the building. The new asset is the stratum unit.

Note 2: Section 103-25 tells you when you have to make the choice.

(2) The first element of the *cost base and *reduced cost base of the *stratum unit includes any amount you paid to get it (which can include giving property: see section 103-5).

Note: The rest of the first element is worked out under Subdivision 124-A.

(3) A ***stratum unit*** is a lot or unit (however described in an *Australian law or a *foreign law relating to strata title or similar title) and any accompanying common property.

Subdivision 124-E—Exchange of shares or units

Table of sections

124-240 Exchange of shares in the same company
124-245 Exchange of units in the same unit trust

124-240 Exchange of shares in the same company

You can choose to obtain a roll-over if:

(a) you own *shares (the ***original shares***) of a certain class in a company; and

(b) the company redeems or cancels all shares of that class; and

(c) the company issues you with new shares (and you receive nothing else) in substitution for the original shares; and

(d) the market value of the new shares just after they were issued is at least equal to the market value of the

original shares just before they were redeemed or cancelled; and

(e) the total paid up capital of the company just after the new shares were issued is the same as just before the original shares were redeemed or cancelled; and

(f) one of these requirements is satisfied:

(i) you are an Australian resident at the time of the redemption or cancellation; or

(ii) if you are not an Australian resident at that time—the original shares have the *necessary connection with Australia.

Note 1: The roll-over consequences are set out in Subdivision 124-A. The original assets are the original shares. The new assets are the new shares.

Note 2: Section 103-25 tells you when you have to make the choice.

124-245 Exchange of units in the same unit trust

You can choose to obtain a roll-over if:

(a) you own units (the ***original units***) of a certain class in a unit trust; and

(b) the trustee redeems or cancels all units of that class; and

(c) the trustee issues you with new units (and you receive nothing else) in substitution for the original units; and

(d) the market value of the new units just after they were issued is at least equal to the market value of the original units just before they were redeemed or cancelled; and

(e) one of these requirements is satisfied:

(i) you are an Australian resident at the time of the redemption or cancellation; or

(ii) if you are not an Australian resident at that time—the original units have the *necessary connection with Australia.

Note: The roll-over consequences are set out in Subdivision 124-A. The original assets are the original units. The new assets are the new units.

Subdivision 124-F—Exchange of rights or options

Table of sections

124-295 Exchange of rights or option to acquire shares in a company
124-300 Exchange of rights or option to acquire units in a unit trust

124-295 Exchange of rights or option to acquire shares in a company

(1) You can choose to obtain a roll-over if:

(a) you own rights (the ***original rights***) to *acquire *shares in a company or to acquire an option to acquire *shares in a company; or

(b) you own an option (the ***original option***) to acquire *shares in a company;

and these other requirements are satisfied.

Note: Section 103-25 tells you when you have to make the choice.

(2) The *shares must:

(a) be consolidated and divided into new shares of a larger amount; or

(b) be subdivided into new shares of a smaller amount.

(3) The company must cancel the original rights or original option because of the consolidation or subdivision.

(4) The company must:

(a) issue you with new rights (relating to the new *shares) in substitution for the original rights; or

(b) issue you with a new option (relating to the new shares) in substitution for the original option.

(5) You must receive nothing else in substitution for the original rights or original option.

(6) The market value of the new rights or new option just after it was issued must be at least equal to the market value of the original rights or original option just before it was cancelled.

(7) One of these requirements must be satisfied:

(a) you must be an Australian resident at the time of the cancellation; or

(b) if you are not an Australian resident at that time—the original rights or original option have the *necessary connection with Australia.

Note: The roll-over consequences are set out in Subdivision 124-A. The original asset is the original rights or original option. The new asset is the new rights or new option.

124-300 Exchange of rights or option to acquire units in a unit trust

(1) You can choose to obtain a roll-over if:

(a) you own rights (the ***original rights***) to *acquire units in a unit trust or to acquire an option to acquire units in a unit trust; or

(b) you own an option (the ***original option***) to acquire units in a unit trust;

and these other requirements are satisfied.

Note: Section 103-25 tells you when you have to make the choice.

(2) The units must:

(a) be consolidated and divided into new units of a larger amount; or

(b) be subdivided into new units of a smaller amount.

(3) The trustee must cancel the original rights or original option because of the consolidation or subdivision.

(4) The trustee must:

(a) issue you with new rights (relating to the new units) in substitution for the original rights; or

(b) issue you with a new option (relating to the new units) in substitution for the original option.

(5) You must receive nothing else in substitution for the original rights or original option.

(6) The market value of the new rights or new option just after it was issued must be at least equal to the market value of the original rights or original option just before it was cancelled.

(7) One of these requirements must be satisfied:

(a) you must be an Australian resident at the time of the cancellation; or

(b) if you are not an Australian resident at that time—the original rights or original option have the *necessary connection with Australia.

Note: The roll-over consequences are set out in Subdivision 124-A. The original asset is the original rights or original option. The new asset is the new rights or new option.

Subdivision 124-G—Exchange of shares in one company for shares in another company

Guide to Subdivision 124-G

124-350 What this Subdivision is about

This Subdivision sets out when you can obtain a roll-over if:

- you own shares in a company; and
- there is a reorganisation of its affairs so that you become the owner of new shares in another company.

Table of sections

124-355 Summary of rules

Disposal case

124-360 Disposal of shares in one company for shares in another one

124-365 Other requirements to be satisfied

Redemption or cancellation case

124-370 Redemption or cancellation of shares in one company for shares in another one

124-375 Other requirements to be satisfied

Rules applying to both cases

124-380 Requirements to be satisfied in both cases

Consequences for the interposed company

124-385 Consequences for the interposed company

124-355 Summary of rules

(1) This Subdivision deals with 2 cases in which you can choose to obtain a roll-over because of the reorganisation of a company's affairs.

Note: Section 103-25 tells you when you have to make the choice.

(2) The first case is if you dispose of shares in one company to another company and the other company issues you with new shares. You can find the specific rules relevant to this case in sections 124-360 and 124-365.

(3) The second case is if your shares in one company are redeemed or cancelled and another company issues you with new shares in return. You can find the specific rules relevant to this case in sections 124-370 and 124-375.

(4) There are some rules that apply in both cases: see section 124-380.

(5) There are also consequences for the other company if you can choose to obtain the roll-over: see section 124-385.

[This is the end of the Guide.]

Disposal case

124-360 Disposal of shares in one company for shares in another one

You can choose to obtain a roll-over if:

(a) you are a *member of a company (the ***original company***); and

(b) you and at least one other entity (the ***exchanging members***) own all the *shares in it; and

(c) under a *scheme for reorganising its affairs, the exchanging members *dispose of all their shares in it to another company (the ***interposed company***) in exchange for shares in the interposed company (and nothing else);

and the requirements in sections 124-365 and 124-380 are satisfied.

Note: The roll-over consequences are set out in Subdivision 124-A. The original assets are your shares in the original company. The new assets are your new shares in the interposed company.

124-365 Other requirements to be satisfied

(1) The interposed company must own all the *shares in the original company just after *all* the exchanging members have *disposed of their shares in the original company (the ***completion time***).

(2) Just after the completion time, *each* exchanging member must own:

(a) a whole number of *shares in the interposed company; and

(b) a percentage of the *shares in the interposed company that were issued to *all* the exchanging members that is equal to the percentage of the shares in the original company (that were *disposed of to the interposed company) that the member owned.

(3) The ratio of:

- the market value of *each* exchanging member's *shares in the interposed company *to* the market value of the shares in the interposed company issued to *all* the exchanging members (worked out just after the completion time);

must equal the ratio of:

- the market value of that member's shares in the original company that were *disposed of to the interposed

company *to* the market value of *all* the shares in the original company that were disposed of to the interposed company (worked out just before the first disposal).

Example: There are 100 shares in A Pty Ltd (the original company), all having the same rights. B Pty Ltd (the interposed company) acquires all the shares in A by issuing each shareholder in A 10 shares in itself for each share they have in A. All shares in B have the same rights. Bill owned 15 shares in A and received 150 shares in B in exchange.

(4) Either:

(a) you are an Australian resident at the time you *disposed of your *shares in the original company; or

(b) if you are not an Australian resident at that time—your *shares in the original company have the *necessary connection with Australia.

Redemption or cancellation case

124-370 Redemption or cancellation of shares in one company for shares in another one

(1) You can choose to obtain a roll-over if you are a *member of a company (the ***original company***) and under a *scheme for reorganising its affairs:

(a) another company (the ***interposed company***) *acquires no more than 5 *shares in the original company; and

(b) these are the first shares that the interposed company acquires in the original company; and

(c) you and at least one other entity (the ***exchanging members***) own all the remaining shares in the original company; and

(d) the original company redeems or cancels those remaining shares; and

(e) each exchanging member receives shares (and nothing else) in the interposed company in return for their shares in the original company being redeemed or cancelled;

and the requirements in sections 124-375 and 124-380 are satisfied.

Note: The roll-over consequences are set out in Subdivision 124-A. The original assets are your shares in the original company. The new assets are your new shares in the interposed company.

(2) The original company can issue other *shares in itself to the interposed company as part of the scheme.

Note: Some of the interposed company's shares in the original company may be taken to be acquired before 20 September 1985: see section 124-385.

124-375 Other requirements to be satisfied

(1) The interposed company must own all the *shares in the original company just after *all* the exchanging members have had their shares in the original company redeemed or cancelled (the ***completion time***).

(2) Just after the completion time, *each* exchanging member must own:

(a) a whole number of *shares in the interposed company; and

(b) a percentage of the *shares in the interposed company that were issued to *all* the exchanging members that is equal to the percentage of the shares in the original company (that were redeemed or cancelled) that the member owned.

(3) The ratio of:

- the market value of each exchanging member's *shares in the interposed company *to* the market value of the shares in the interposed company issued to *all* the exchanging members (worked out just after the completion time);

must equal the ratio of:

- the market value of that member's shares in the original company that were redeemed or cancelled *to* the market value of *all* the shares in the original company that were

redeemed or cancelled (worked out just before the first redemption or cancellation).

Example: There are 100 shares in X Pty Ltd (the original company), all having the same rights. X issues 2 shares to Y Pty Ltd (the interposed company) and cancels all other shares in itself. Y issues each shareholder in X 10 shares in itself for each share they had in X. All shares in Y have the same rights. Wil owned 10 shares in X and received 100 shares in Y in exchange.

(4) Either:

(a) you are an Australian resident at the time your *shares in the original company are redeemed or cancelled; or

(b) if you are not an Australian resident at that time—your *shares in the original company have the *necessary connection with Australia.

Rules applying to both cases

124-380 Requirements to be satisfied in both cases

(1) The *shares issued in the interposed company must not be *redeemable shares.

(2) Each exchanging member who is issued *shares in the interposed company must own the shares from the time they are issued to the completion time.

(3) Just after the completion time:

(a) the exchanging members must own *all* the *shares in the interposed company; or

(b) entities other than those members must own no more than 5 *shares in the interposed company and the market value of those shares expressed as a percentage of the market value of all the shares in the interposed company is such that it is reasonable to treat the exchanging members as owning all the shares.

(4) The original company and interposed company must be Australian residents at the completion time.

Choice to be made by interposing company

(5) The interposed company must choose that section 124-385 apply. It must make its choice within 2 months after the completion time, or within such further time as the Commissioner allows.

Note: This is an exception to the general rule about choices in section 103-25.

Consequences for the interposed company

124-385 Consequences for the interposed company

(1) A whole number of the *shares that the interposed company owns in the original company (just after the completion time) are taken to have been *acquired before 20 September 1985 if any of the original company's assets as at the completion time were acquired by it before that day.

Note: Generally, a capital gain or capital loss you make from a CGT asset that you acquired before 20 September 1985 can be disregarded: see Division 104.

(2) The number (worked out as at the completion time) is the greatest possible that (when expressed as a percentage of all the *shares) does not exceed:

- the market value of the original company's assets that it *acquired before 20 September 1985 less its liabilities (if any) in respect of those assets;

expressed as a percentage of:

- the market value of *all* the original company's assets less *all* of its liabilities.

(3) The first element of the *cost base of the interposed company's *shares in the original company that are *not* taken to have been *acquired before 20 September 1985 is:

- the total of the cost bases (as at the completion time) of the original company's assets that it acquired on or after that day;

less:

- its liabilities (if any) in respect of those assets.

(4) The first element of the *reduced cost base of the interposed company's *shares is worked out similarly.

(5) A liability of the original company that is not a liability in respect of a specific asset or assets of the company is taken to be a liability in respect of all the assets of the company.

Note: An example is a bank overdraft.

(6) If a liability is in respect of 2 or more assets, the proportion of the liability that is in respect of any one of those assets is equal to:

$$\frac{\text{The market value of the asset}}{\text{The total of the market values of all the assets that the liability is in respect of}}$$

Subdivision 124-H—Exchange of units in a unit trust for shares in a company

Guide to Subdivision 124-H

124-435 What this Subdivision is about

This Subdivision sets out when you can obtain a roll-over if:

- you own units in a unit trust; and
- there is a reorganisation of its affairs so that you become the owner of new shares in a company.

Table of sections

124-440 Summary of rules

Disposal case

124-445 Disposal of units in a unit trust for shares in a company
124-450 Other requirements to be satisfied

Redemption or cancellation case

124-455 Redemption or cancellation of units in a unit trust for shares in a company
124-460 Other requirements to be satisfied

Rules applying to both cases

124-465 Requirements to be satisfied in both cases

Consequences for the company

124-470 Consequences for the company

124-440 Summary of rules

(1) This Subdivision deals with 2 cases in which you can choose to obtain a roll-over because of the reorganisation of a unit trust's affairs.

Note: Section 103-25 tells you when you have to make the choice.

(2) The first case is if you dispose of units in a unit trust to a company and the company issues you with shares. You can find the specific rules about this case in sections 124-445 and 124-450.

(3) The second case is if your units in a unit trust are redeemed or cancelled and a company issues you with shares. You can find the specific rules about this case in sections 124-455 and 124-460.

(4) There are some rules that apply in both cases: see section 124-465.

(5) There are also consequences for the company if you can choose to obtain a roll-over: see section 124-470.

[This is the end of the Guide.]

Disposal case

124-445 Disposal of units in a unit trust for shares in a company

You can choose to obtain a roll-over if:

(a) you are a member of a unit trust; and

(b) you and at least one other entity (the ***exchanging members***) own all the units in it; and

(c) under a *scheme for reorganising its affairs, the exchanging members *dispose of their units in it to a company in exchange for *shares in the company (and nothing else);

and the requirements in sections 124-450 and 124-465 are satisfied.

Note: The roll-over consequences are out in Subdivision 124-A. The original assets are your units in the unit trust. The new assets are your new shares in the company.

124-450 Other requirements to be satisfied

(1) The company must own all the units in the unit trust just after *all* the exchanging members have *disposed of their units in the unit trust (the ***completion time***).

(2) Just after the completion time, *each* exchanging member must own:

(a) a whole number of *shares in the company; and

(b) a percentage of the *shares in the company that were issued to all the exchanging members that is equal to the percentage of the units in the unit trust (that were *disposed of to the company) that the member owned.

(3) The ratio of:

- the market value of *each* exchanging member's *shares in the company *to* the market value of the shares in the company issued to *all* the exchanging members (worked out just after the completion time);

must equal the ratio of:

- the market value of that member's units in the unit trust that were disposed of to the company *to* the market value of *all* the units that were disposed of to the company (worked out just before the first disposal).

Example: There are 1,000 units in the A unit trust, all having the same rights. B Pty Ltd acquires all the units in A by issuing each unitholder in A 10 shares in itself for each 100 units they have in A. All shares in B have the same rights. Brian owned 300 units in A and received 30 shares in B in exchange.

(4) Either:

(a) you are an Australian resident at the time you *disposed of your units in the unit trust; or

(b) if you are not an Australian resident at that time—your units have the *necessary connection with Australia.

Redemption or cancellation case

124-455 Redemption or cancellation of units in a unit trust for shares in a company

(1) You can choose to obtain a roll-over if you are a member of a unit trust and under a *scheme for reorganising its affairs:

(a) a company *acquires no more than 5 units in the trust; and

(b) these are the first units that the company acquires in the trust; and

(c) you and at least one other entity (the ***exchanging members***) own all the remaining units in the trust; and

(d) the trustee redeems or cancels those remaining units; and

(e) each exchanging member receives *shares (and nothing else) in the company in return for their units being redeemed or cancelled;

and the requirements in sections 124-460 and 124-465 are satisfied.

Note: The roll-over consequences are set out in Subdivision 124-A. The original assets are your units in the unit trust. The new assets are your new shares in the company.

(2) The trustee of the unit trust can issue other units to the company as part of the scheme.

Note: Some of the company's units in the unit trust may be taken to be acquired before 20 September 1985: see section 124-470.

124-460 Other requirements to be satisfied

(1) The company must own all the units in the unit trust just after *all* the exchanging members have had their units in the unit trust redeemed or cancelled (the ***completion time***).

(2) Just after the completion time, *each* exchanging member must own:

(a) a whole number of *shares in the company; and

(b) a percentage of the *shares in the company that were issued to *all* the exchanging members that is equal to the percentage of the units in the unit trust (that were redeemed or cancelled) that the member owned.

(3) The ratio of:

- the market value of each exchanging member's *shares in the company *to* the market value of the shares in the company issued to *all* the exchanging members (worked out just after the completion time);

must equal the ratio of:

- the market value of that member's units in the unit trust that were redeemed or cancelled *to* the market value of *all* the units that were redeemed or cancelled (worked out just before the first redemption or cancellation).

Example: There are 1,000 units in the A unit trust, all having the same rights. 2 new units in A are issued to B Pty Ltd, and all other units in A are cancelled. Each unitholder in A is issued 10 shares in B for each 100 units they have in A. All shares in B have the same rights. Alison owned 200 units in A and received 20 shares in B in exchange.

(4) Either:

(a) you are an Australian resident at the time your units in the unit trust are redeemed or cancelled; or

(b) if you are not an Australian resident at that time—your units have the *necessary connection with Australia.

Rules applying to both cases

124-465 Requirements to be satisfied in both cases

(1) The *shares issued in the company must not be *redeemable shares.

(2) Each exchanging member who is issued *shares in the company must own the shares from the time they are issued to the completion time.

(3) Just after the completion time:

(a) the exchanging members must own *all* the *shares in the company; or

(b) entities other than those members must own no more than 5 *shares in the company and the market value of those shares expressed as a percentage of the market value of all the shares in the company is such that it is reasonable to treat the exchanging members as owning all the shares.

(4) The unit trust must be a *resident trust for CGT purposes for the income year in which the completion time occurs. The company must be an Australian resident at the completion time.

Choice to be made by company

(5) The company must choose that the rules in section 124-470 apply. It must make its choice within 2 months after the completion time, or within such further time as the Commissioner allows.

Note: This is an exception to the general rule about choices in section 103-25.

Consequences for the company

124-470 Consequences for the company

(1) A whole number of the units that the company owns in the unit trust (just after the completion time) are taken to have been *acquired before 20 September 1985 if any of the unit trust's assets as at the completion time were acquired by it before that day.

Note: Generally, a capital gain or capital loss you make from a CGT asset that you acquired before 20 September 1985 can be disregarded: see Division 104.

(2) The number (worked out as at the completion time) is the greatest possible that (when expressed as a percentage of all the units) does not exceed:

- the market value of the unit trust's assets that it *acquired before 20 September 1985 less its liabilities (if any) in respect of those assets;

expressed as a percentage of:

- the market value of *all* the unit trust's assets less *all* of its liabilities.

(3) The first element of the *cost base of the company's units in the unit trust that are *not* taken to have been *acquired before 20 September 1985 is:

- the total of the cost bases (as at the completion time) of the unit trust's assets that it acquired on or after that day;

less:

- its liabilities (if any) in respect of those assets.

(4) The first element of the *reduced cost base of the company's units is worked out similarly.

(5) A liability of the unit trust that is not a liability in respect of a specific asset or assets of the trust is taken to be a liability in respect of all the assets of the trust.

Note: An example is a bank overdraft.

(6) If a liability is in respect of 2 or more assets, the proportion of the liability that is in respect of any one of those assets is equal to:

$$\frac{\text{The market value of the asset}}{\text{The total of the market values of all the assets that the liability is in respect of}}$$

Subdivision 124-I—Conversion of a body to an incorporated company

124-520 Conversion of a body to an incorporated company

(1) You can choose to obtain a roll-over if:

(a) you are a member of a body that is incorporated under a law other than *company law; and

(b) the body is converted into a company incorporated under company law (without creating a new legal entity); and

(c) the company issues you with *shares (and you receive nothing else) in substitution for your interest in the body just before the conversion; and

(d) there is no significant difference in:

(i) the ownership of the body just before the conversion and the ownership of the company just after the conversion; or

(ii) the mix of ownership of the body just before the conversion and the mix of ownership of the company just after the conversion; and

(e) this requirement is satisfied:

(i) you are an Australian resident at the time of the conversion; or

(ii) if you are not an Australian resident at that time—your interest in the body has the *necessary connection with Australia.

Note 1: The roll-over consequences are set out in Subdivision 124-A. The original asset is your interest in the body. The new asset is your shares in the company.

Note 2: Section 103-25 tells you when you have to make the choice.

(2) ***Company law*** means the Corporations Law of a State or Territory or a similar *State law, *Territory law or *foreign law relating to companies.

Subdivision 124-J—Crown leases

Guide to Subdivision 124-J

124-570 What this Subdivision is about

This Subdivision sets out the situations in which the holder of a Crown lease over land obtains a replacement asset roll-over when the lease is, among other things, renewed, extended or converted to an estate in fee simple.

Table of sections

Operative provisions

124-575 Extension or renewal of Crown lease
124-580 Meaning of *Crown lease*
124-585 Original right differs in area from new right
124-590 Part of original right excised
124-595 Treating parts of new right as separate assets
124-600 What is the roll-over?
124-605 Change of lessor

[This is the end of the Guide.]

Operative provisions

124-575 Extension or renewal of Crown lease

(1) There is a roll-over if:

(a) you hold one or more *CGT assets that are *Crown leases over land (the ***original right***); and

(b) the original right expires or you surrender it; and

(c) you are granted one or more new Crown leases over land or one or more estates in fee simple in land, or both (the ***new right***); and

(d) the new right relates to the same land as the original right.

Note 1: The roll-over consequences are set out in Subdivision 124-A. They might be modified: see section 124-600.

Note 2: If there has been a capital improvement to the Crown lease: see section 108-75.

(2) The new right must have been granted in one of these ways:

(a) by renewing or extending the term of the original right where the renewal or extension is mainly due to your having held the original right; or

(b) by changing the purpose for which the land to which the original right related can be used; or

(c) by converting the original right to a *Crown lease in perpetuity; or

(d) by converting the original right to an estate in fee simple; or

(e) by consolidating, or consolidating and dividing, the original right; or

(f) by subdividing the original right; or

(g) by excising or relinquishing a part of the land to which the original right related; or

(h) by expanding the area of that land.

124-580 Meaning of *Crown lease*

A ***Crown lease*** is:

(a) a lease of land granted by the Crown under an *Australian law (other than the common law); or

(b) a similar lease granted under a *foreign law.

124-585 Original right differs in area from new right

(1) Even if the new right relates to different land to that to which the original right related, this Subdivision applies as if it relates to the same land in these cases:

(a) the difference in area is not significant;

(b) the difference in market value is not significant;

(c) the new right was granted to correct errors in or omissions from the original right;

(d) the new right relates to a significantly different area of land but you had made reasonable efforts to ensure that the area was the same;

(e) it is otherwise reasonable for this Subdivision to apply in that way.

(2) However, the rule in subsection (1) does not apply if section 124-590 applies.

124-590 Part of original right excised

(1) There is a *partial* roll-over if you *acquired the original right on or after 20 September 1985 and:

(a) the land to which the new right relates is different in area to the land the subject of the original right because a part (the ***excised part***) of the land to which the original right related was excised or you relinquished it; and

(b) you received a payment for the expiry or surrender of the original right.

The payment can include giving property: see section 103-5.

Note: Section 124-600 sets out the effect on your cost base.

(2) There is no roll-over for the excised part. The *cost base of the excised part is so much of the *cost base of the relevant *Crown lease as is attributable to the excised part.

Its *reduced cost base is worked out similarly.

Note: You may make a capital gain or loss on the excised part because of CGT event C2.

124-595 Treating parts of new right as separate assets

(1) Each part of a *Crown lease or an estate in fee simple that is part of the new right is taken to be a separate *CGT asset to the extent that it relates to:

(a) land to which a Crown lease (that was part of the original right) related where you *acquired the lease before 20 September 1985; and

(b) land to which a Crown lease (that was part of the original right) related where you acquired the lease on or after 20 September 1985; and

(c) other land.

(2) You are taken to have *acquired each asset that is a separate *CGT asset because of paragraph (1)(a) before 20 September 1985.

124-600 What is the roll-over?

(1) The roll-over is mainly as specified in Subdivision 124-A.

(2) However, you work out the *cost base and *reduced cost base of *CGT assets (that you are not taken to have *acquired before 20 September 1985) and that are part of the new right a bit differently where section 124-590 or 124-595 applies.

(3) The first element of your *cost base for each of those assets is:

$$\text{CB of post-CGT original right} \times \frac{\text{Market value of separate asset}}{\text{Market value of all new assets}}$$

where:

CB of post-CGT original right is the sum of the *cost bases of the *Crown leases (that were part of the original right) and that you *acquired on or after 20 September 1985 (just before the original right expired or was surrendered) reduced, if there is an excised part, by so much of those cost bases as is attributable to the excised part.

market value of all new assets is the market value of all *CGT assets (that you are not taken to have *acquired before 20 September 1985) that are part of the new right just after you acquired them.

market value of separate asset is the market value of the particular asset just after you *acquired it.

(4) The first element of the *reduced cost base of each of those assets is worked out similarly.

124-605 Change of lessor

(1) You treat a lease of land (whether or not it is a *Crown lease) granted to you (the ***fresh lease***) as being a renewal of your original right if:

(a) after the grant of the original right, the land (the ***original land***) to which it related became vested in an *Australian government agency (other than the one that granted the original right); and

(b) the second agency granted you the fresh lease over:

(i) the original land; or

(ii) the original land less an excised area; or

(iii) the original land and other land; and

(c) the fresh lease was granted under an *Australian law (other than the common law).

(2) You do this even if there is a period between the end of the original right and the grant of the fresh lease if you continued to occupy the original land during that period under a permission, licence or authority granted by the second agency.

Subdivision 124-K—Plant

Table of sections

124-655 Roll-over for depreciable plant
124-660 Right granted to associate

124-655 Roll-over for depreciable plant

There is a roll-over for a unit of *plant if:

(a) the plant is attached to land you hold under a *quasi-ownership right granted by an *exempt Australian government agency or an *exempt foreign government agency; and

(b) you are the *quasi-owner of the plant because of section 42-310; and

(c) the quasi-ownership right expires or is terminated or you surrender it; and

(d) you are granted a new quasi-ownership right over the land or an estate in fee simple in the land; and

(e) there is no roll-over for you under Subdivision 124-J (about Crown leases) or Subdivision 124-L (about prospecting and mining entitlements).

Note 1: The roll-over consequences are set out in Subdivision 124-A.

Note 2: This section provides a roll-over for plant in the limited circumstances where Subdivision 124-J cannot because a quasi-ownership right over land covers situations that a Crown lease does not (for example, an easement over land).

Note 3: If there has been a capital improvement to the quasi-ownership right: see section 108-75.

124-660 Right granted to associate

If the *quasi-ownership right or estate in fee simple is instead granted to an *associate or an *associated government entity of yours:

(a) your *reduced cost base of the *plant is reduced by the *undeducted cost of the plant just before the original quasi-ownership right expired or was surrendered or terminated; and

(b) there is no roll-over.

Subdivision 124-L—Prospecting and mining entitlements

Guide to Subdivision 124-L

124-700 What this Subdivision is about

This Subdivision sets out the situations in which there is a roll-over if a prospecting or mining entitlement expires or is surrendered and it is replaced by a new one.

Table of sections

Operative provisions

124-705 Extension or renewal of prospecting or mining entitlement
124-710 Meaning of *prospecting entitlement* and *mining entitlement*
124-715 Original entitlement differs in area from new entitlement
124-720 Part of original entitlement excised
124-725 Treating parts of new entitlement as separate assets
124-730 What is the roll-over?

[This is the end of the Guide.]

Operative provisions

124-705 Extension or renewal of prospecting or mining entitlement

(1) There is a roll-over if:

(a) you hold one or more *CGT assets that are *prospecting entitlements or *mining entitlements (the ***original entitlement***); and

(b) the original entitlement expires or you surrender it; and

(c) you are granted one or more new prospecting entitlements or mining entitlements (the ***new entitlement***); and

(d) the new entitlement relates to the same land as the original entitlement.

Note 1: The roll-over consequences are set out in Subdivision 124-A. They might be modified: see section 124-730.

Note 2: If there has been a capital improvement to the entitlement: see section 108-75.

(2) The new entitlement must have been granted in one of these ways:

(a) by renewing or extending the term of the original entitlement where the renewal or extension is mainly due to your having held the original entitlement; or

(b) by consolidating, or consolidating and dividing, the original entitlement; or

(c) by subdividing the original entitlement; or

(d) by converting a *prospecting entitlement to a *mining entitlement, or a mining entitlement to a prospecting entitlement; or

(e) by excising or relinquishing a part of the land to which the original entitlement related; or

(f) by expanding the area of that land.

124-710 Meaning of *prospecting entitlement* and mining entitlement

(1) A ***prospecting entitlement*** is:

(a) an authority, licence, permit or entitlement under an *Australian law or foreign law to prospect or explore for minerals in an area; or

(b) a lease of land that allows the lessee to prospect or explore for minerals on the land; or

(c) an interest in a thing referred to in paragraph (a) or (b).

(2) A ***mining entitlement*** is:

(a) an authority, licence, permit or entitlement under an *Australian law or foreign law to mine for *minerals in an area; or

(b) a lease of land that allows the lessee to mine for minerals on the land; or

(c) an interest in a thing referred to in paragraph (a) or (b).

124-715 Original entitlement differs in area from new entitlement

(1) Even if the new entitlement relates to different land to that to which the original entitlement related, this Subdivision applies as if it relates to the same land in these cases:

(a) the difference in area is not significant;

(b) the difference in market value is not significant;

(c) the new entitlement was granted to correct errors in or omissions from the original entitlement;

(d) it is otherwise reasonable for this Subdivision to apply in that way.

(2) However, the rule in subsection (1) does not apply if section 124-720 applies.

124-720 Part of original entitlement excised

(1) There is *partial* roll-over if you *acquired the original entitlement on or after 20 September 1985 and:

(a) the land to which the new entitlement relates is different in area to the land the subject of the original entitlement because a part (the ***excised part***) of the land to which the original entitlement related was excised or you relinquished it; and

(b) you received a payment for the expiry or surrender of the original entitlement.

The payment can include giving property: see section 103-5.

Note: Section 124-730 sets out the effect on your cost base.

(2) There is no roll-over for the excised part. The *cost base of the excised part is so much of the *cost base of the original entitlement as is attributable to the excised part.

Its *reduced cost base is worked out similarly.

Note: You may make a capital gain or loss on the excised part because of CGT event C2.

124-725 Treating parts of new entitlement as separate assets

(1) Each part of a *prospecting entitlement or *mining entitlement that is part of the new entitlement is taken to be a separate *CGT asset to the extent that it relates to:

(a) land to which a prospecting entitlement or mining entitlement (that was part of the original entitlement) related where you *acquired the entitlement before 20 September 1985; and

(b) land to which a prospecting entitlement or mining entitlement (that was part of the original entitlement) related where you acquired the entitlement on or after 20 September 1985; and

(c) other land.

(2) You are taken to have *acquired each asset that is a separate *CGT asset because of paragraph (1)(a) before 20 September 1985.

124-730 What is the roll-over?

(1) The roll-over is mainly as specified in Subdivision 124-A.

(2) However, you work out the *cost base and *reduced cost base of *CGT assets (that you are not taken to have *acquired before 20 September 1985) and that are part of the new entitlement a bit differently where section 124-720 or 124-725 applies.

(3) The first element of your *cost base for each of those assets is:

$$\text{CB of post-CGT original entitlement} \times \frac{\text{Market value of separate asset}}{\text{Market value of all new assets}}$$

where:

CB of post-CGT original entitlement is the sum of the *cost bases of the prospecting entitlements or mining entitlements (that were part of the original entitlement) and that you *acquired on or after 20 September 1985 (just before the original entitlement expired or was surrendered) reduced, if there is an excised part, by so much of those cost bases as is attributable to the excised part.

market value of all new assets is the market value of all *CGT assets (that you are not taken to have *acquired before 20 September 1985) that are part of the new entitlement just after you acquired them.

market value of separate asset is the market value of the particular asset just after you *acquired it.

(4) The first element of the *reduced cost base of each of those assets is worked out similarly.

Division 126—Same-asset roll-overs

Table of Subdivisions

Guide to Division 126
126-A Marriage breakdown
126-B Companies in the same wholly-owned group
126-C Changes to trust deeds

Guide to Division 126

126-1 What this Division is about

A same-asset roll-over allows a capital gain or loss an entity makes from disposing of a CGT asset to, or creating a CGT asset in, another entity to be disregarded. For a disposal, certain attributes of the asset are transferred to the receiving entity.

Subdivision 126-A—Marriage breakdown

Table of sections

126-5 CGT event involving spouses
126-15 CGT event involving company or trustee
126-20 Subsequent CGT event happening to roll-over asset where transferor was a CFC or a non-resident trust

126-5 CGT event involving spouses

(1) There is a roll-over if a *CGT event (the ***trigger event***) happens involving an individual (the ***transferor***) and his or her *spouse (the ***transferee***), or a former *spouse (also the ***transferee***), because of:

(a) a court order under the *Family Law Act 1975* or a corresponding *foreign law; or

(b) a maintenance agreement approved by a court under section 87 of that Act or a corresponding agreement approved by a court under a corresponding *foreign law; or

(c) a court order under a *State law, *Territory law or *foreign law relating to *de facto* marriage breakdowns.

(2) Only these *CGT events are relevant:

(a) CGT events A1 and B1 (a ***disposal case***); and

(b) CGT events D1, D2, D3 and F1 (a ***creation case***).

Note: The full list of CGT events is in section 104-5.

(3) However, there is no roll-over if:

(a) the *CGT asset involved is *trading stock of the transferor; or

(b) for *CGT event B1—title in the CGT asset does not pass to the transferee when the agreement ends.

(4) A *capital gain or a *capital loss the transferor makes from the *CGT event is disregarded.

Consequences for the transferee (disposal case)

(5) For a disposal case where the transferor *acquired the asset on or after 20 September 1985:

(a) the *first* element of the asset's *cost base (in the hands of the transferee) is the asset's cost base (in the hands of the transferor) at the time the transferee acquired it; and

(b) the *first* element of the asset's *reduced cost base (in the hands of the transferee) is worked out similarly.

Example: Your spouse transfers land to you because of a court order under the *Family Law Act 1975*. Any capital gain or loss your spouse makes is disregarded.

If the land's cost base at the time you acquired it is $10,000, the first element of the land's cost base in your hands becomes $10,000.

Note: There are special indexation rules for roll-overs: see Division 114.

(6) For a disposal case where the transferor *acquired the asset before 20 September 1985, the transferee is taken to have acquired it before that day.

Note: A capital gain or loss you make from a CGT asset you acquired before 20 September 1985 is generally disregarded: see Division 104. This exemption is removed in some situations: see Division 149.

(7) For a disposal case where the transferor *disposed of a *collectable or *personal use asset, the transferee is taken to have *acquired one.

Note 1: Capital losses from collectables can be subtracted only from capital gains from collectables: see section 108-10.

Note 2: Capital losses from personal use assets are disregarded: see section 108-20.

Consequences for the transferee (creation case)

(8) For a creation case, the *first* element of the asset's *cost base (in the hands of the transferee) is the amount applicable under this table. The first element of its *reduced cost base is worked out similarly.

Creation case

Event No.	Applicable amount
D1	the *incidental costs the transferor incurred that relate to the trigger event
D2	the expenditure the transferor incurred to grant the option
D3	the expenditure the transferor incurred to grant the right
F1	the expenditure the transferor incurred on the grant, renewal or extension of the lease

The expenditure can include giving property: see section 103-5.

126-15 CGT event involving company or trustee

(1) There are the roll-over consequences in section 126-5 if the trigger event involves a company (the ***transferor***) or a trustee (also the ***transferor***) and a *spouse or former spouse (the ***transferee***) of another individual because of:

(a) a court order under the *Family Law Act 1975* or a corresponding *foreign law; or

(b) a maintenance agreement approved by a court under section 87 of that Act or a corresponding agreement approved by a court under a corresponding *foreign law; or

(c) a court order under a *State law, *Territory law or *foreign law relating to *de facto* marriage breakdowns.

(2) There are other consequences if:

(a) just before the time of the trigger event, an entity (including the transferee) owned another *CGT asset of a kind covered by this table; and

(b) the entity *acquired it on or after 20 September 1985; and

(c) a *CGT event happens in relation to it.

Relevant CGT assets

Item	For this transferor:	The entity can own these assets:
1	Company	(a) a *share in the company; or (b) a loan to the company; or (c) an indirect interest (through one or more interposed companies or trusts) in a *share in, or loan to, the company

Relevant CGT assets		
Item	**For this transferor:**	**The entity can own these assets:**
2	Trustee	(a) an interest or unit in the trust; or (b) a loan to the trustee; or (c) an indirect interest (through one or more interposed companies or trusts) in an interest or unit in the trust or in a loan to the trustee

Example: An individual owns all the shares in a company. The company owns land. The individual's marriage breaks down. The Family Court orders that the company transfer the land it owns to the individual's spouse. The individual later sells the shares.

(3) The *cost base and *reduced cost base of the other asset are reduced by an amount that reasonably reflects the fall in its market value because of the trigger event. The reduction occurs at the time of the trigger event.

(4) If the entity owning the other asset is also the transferee, the *cost base and *reduced cost base of the other asset are then increased by any amount that is included in the entity's assessable income for any income year because of the trigger event.

126-20 Subsequent CGT event happening to roll-over asset where transferor was a CFC or a non-resident trust

(1) This section applies if:

(a) there is a roll-over for the trigger event under section 126-15; and

(b) the transferor was:

(i) a *CFC; or

(ii) a trustee of a trust that is a non-resident trust estate within the meaning of section 102AAB of the *Income Tax Assessment Act 1936* for the income year of the trigger event; and

(c) section 126-15 is relevant to:

(i) the calculation of the *attributable income of the CFC under Division 7 of Part X of the *Income Tax Assessment Act 1936*; or

(ii) the calculation of the attributable income of the trust under Subdivision D of Division 6AAA of Part III of that Act;

because (ignoring the residency assumptions in that Division or Subdivision) the roll-over asset did not have the *necessary connection with Australia; and

(d) a subsequent *CGT event happens in relation to the roll-over asset.

(2) In working out the amount of any *capital gain or *capital loss the transferee (or a subsequent owner of the roll-over asset if there is a series of roll-overs until there is no roll-over) makes when a subsequent *CGT event happens in relation to the asset, the modifications specified in Division 7 of Part X, or Subdivision D of Division 6AAA of Part III, of the *Income Tax Assessment Act 1936* apply.

Subdivision 126-B—Companies in the same wholly-owned group

Guide to Subdivision 126-B

126-40 What this Subdivision is about

This Subdivision sets out when a company can obtain a roll-over if it transfers a CGT asset to, or creates a CGT asset in, another company that is a member of the same wholly-owned group.

Table of sections

Operative provisions

126-45 Roll-over for members of wholly-owned group

126-50 Requirements for roll-over
126-55 When there is a roll-over
126-60 Consequences of roll-over
126-65 Choosing for no roll-over in loss situation
126-70 Loss disregarded if intention not realised
126-75 Originating company is a CFC
126-80 Roll-over asset is an interest in a CFC or FIF
126-85 Effect of roll-over on certain liquidations

[This is the end of the Guide.]

Operative provisions

126-45 Roll-over for members of wholly-owned group

(1) There may be a roll-over if a *CGT event (the ***trigger event***) happens involving a company (the ***originating company***) and another company (the ***recipient company***) in the circumstances set out in section 126-50.

(2) Only these *CGT events are relevant:

(a) CGT events A1 and B1 (a ***disposal case***); and

(b) CGT events D1, D2, D3 and F1 (a ***creation case***).

Note: The full list of CGT events is in section 104-5.

(3) However, there is no roll-over for *CGT event B1 if title in the *CGT asset does not pass to the transferee when the agreement ends.

Note: CGT event J1 can happen if the recipient company stops being a 100% subsidiary of a company in the relevant group: see section 104-175.

126-50 Requirements for roll-over

(1) The originating company and recipient company must be members of the same *wholly-owned group at the time of the trigger event.

Note: This requirement is taken to be satisfied in the case of the transfer of the life insurance business of a life insurance company: see section 121AS of the *Income Tax Assessment Act 1936*.

(2) The *CGT asset involved (the ***roll-over asset***) must not be *trading stock of the recipient company just after the time of the trigger event.

(3) If:

(a) the roll-over asset is a right, option or *convertible note; and

(b) the recipient company *acquires another *CGT asset by exercising the right or option or by converting the convertible note;

the other asset cannot become *trading stock of the recipient company just after the recipient company acquired it.

(4) The *ordinary income and *statutory income of the recipient company must not be exempt from income tax because of Division 50 for the income year of the trigger event.

(5) The requirements in one of the items in this table must be satisfied.

Additional requirements			
Item	**The originating company's residency status**	**The recipient company's residency status**	**This requirement must be satisfied**
1	An Australian resident at the time of the trigger event	An Australian resident at that time	It does not matter what the roll-over asset is
2	Not an Australian resident at that time	An Australian resident at that time	The asset must have the *necessary connection with Australia just before that time (for a disposal case) and just after that time (for a creation case)
3	It does not matter what the originating company's residency status is	Not an Australian resident at that time	The asset must have the *necessary connection with Australia just before and just after that time (for a disposal case) and just after that time (for a creation case)

126-55 When there is a roll-over

Capital gain or no loss

(1) There is a roll-over if:

(a) the trigger event would have resulted in the originating company making a *capital gain or no *capital loss; and

(b) the originating company and recipient company both choose to obtain it.

Note: Section 103-25 sets out when the choice must be made.

Capital loss

(2) There is also a roll-over if the trigger event would have resulted in the originating company making a *capital loss, unless the originating company and recipient company make a choice under section 126-65.

126-60 Consequences of roll-over

Consequences for the originating company in all cases

(1) A *capital gain or *capital loss the originating company makes from the trigger event is disregarded.

Consequences for the recipient company (disposal case)

(2) For a disposal case, if the originating company *acquired the roll-over asset on or after 20 September 1985:

(a) the *first* element of the asset's *cost base (in the hands of the recipient company) is the asset's cost base (in the hands of the originating company) when the recipient company acquired it; and

(b) the *first* element of the asset's *reduced cost base (in the hands of the recipient company) is worked out similarly.

Note: There are special indexation rules for roll-overs: see Division 114.

(3) If the originating company *acquired the roll-over asset before 20 September 1985, the recipient company is taken to have acquired it before that day.

Note: A capital gain or loss you make from a CGT asset you acquired before 20 September 1985 is generally disregarded: see Division 104. This exemption is removed in some situations: see Division 149.

(4) If the trigger event involved a *personal use asset of the originating company, the recipient company is taken to have *acquired one.

Note: Capital losses from personal use assets are disregarded: see section 108-20.

Consequences for the recipient company (creation case)

(5) For a creation case, the *first* element of the asset's *cost base (in the hands of the recipient company) is the amount applicable under this table. The first element of its *reduced cost base is worked out similarly.

Creation case	
Event No.	**Applicable amount**
D1	the *incidental costs the originating company incurred that relate to the trigger event
D2	the expenditure the originating company incurred to grant the option
D3	the expenditure the originating company incurred to grant the right
F1	the expenditure the originating company incurred on the grant, renewal or extension of the lease

The expenditure can include giving property: see section 103-5.

Note: CGT event J1 may occur if the recipient company stops being a member of the wholly-owned group while still owning the roll-over asset: see section 104-175.

126-65 Choosing for no roll-over in loss situation

(1) The originating company and recipient company can choose not to obtain a roll-over in the circumstances set out in this section.

Note: Section 103-25 sets out when the choice must be made.

(2) The trigger event must have resulted (apart from the roll-over) in the originating company making a *capital loss.

(3) The originating company and recipient company must intend that, before the end of the income year of the originating company after the one in which the trigger event happened:

(a) they will no longer be members of the same *wholly-owned group; and

(b) the originating company and companies that are members of its wholly-owned group at that time will own less than 50% of the *shares in the recipient company.

126-70 Loss disregarded if intention not realised

(1) The originating company's *capital loss is disregarded if the condition in subsection (2) or (3) is met despite a choice being made under section 126-65.

(2) The intention of the originating company and recipient company set out in subsection 126-65(3) must not be realised.

(3) After that intention is realised but, at a time (the ***disqualifying time***) within 4 years after the time of the trigger event, the roll-over asset must be owned by:

(a) the originating company; or

(b) a company that is a member of the originating company's *wholly-owned group at the disqualifying time; or

(c) a company at least 50% of whose *shares are owned by the originating company and companies that are members of the originating company's wholly-owned group at the disqualifying time.

126-75 Originating company is a CFC

(1) This section applies if:

(a) there is a roll-over for the trigger event under this Subdivision; and

(b) the originating company was a *CFC at the time of the trigger event; and

(c) this Subdivision is relevant to the calculation of the *attributable income of the originating company under

Division 7 of Part X of the *Income Tax Assessment Act 1936* because (ignoring the residency assumptions in that Division) the roll-over asset did not have the *necessary connection with Australia; and

(d) a subsequent *CGT event happens in relation to the roll-over asset.

(2) In working out the amount of any *capital gain or *capital loss the recipient company (or a subsequent owner of the roll-over asset if there is a series of roll-overs until there is no roll-over) makes when a subsequent *CGT event happens in relation to the asset, the modifications specified in Division 7 of Part X of the *Income Tax Assessment Act 1936* apply.

126-80 Roll-over asset is an interest in a CFC or FIF

(1) This section is relevant only if:

(a) there is a roll-over under this Subdivision because of subsection 126-55(2) (where there is a *capital loss); and

(b) the roll-over asset is an interest in a *CFC or *FIF; and

(c) the *capital proceeds from the trigger event are reduced under section 461 or 613 of the *Income Tax Assessment Act 1936*.

Note: Sections 461 and 613 of the *Income Tax Assessment Act 1936* reduce capital proceeds where the attributed income of a CFC or FIF is not distributed.

(2) The *cost base and *reduced cost base of the roll-over asset (in the hands of the recipient company) are increased by that part of the attribution surplus (for the purposes of Part X or Part XI of the *Income Tax Assessment Act 1936*) as was taken into account for the trigger event under paragraph 461(1)(c) or 613(1)(c) of that Act.

126-85 Effect of roll-over on certain liquidations

(1) A *capital gain or *capital loss a company (the ***holding company***) makes because *shares in its *100% subsidiary are

cancelled (an example of *CGT event C2: see section 104-25) on the liquidation of the subsidiary is reduced if the conditions in subsection (2) are satisfied. The reduction is worked out under subsection (3).

(2) These conditions must be satisfied:

(a) there must be a roll-over under this Subdivision for at least one *CGT asset (the ***CGT roll-over asset***) being *disposed of by the subsidiary to the holding company in the course of the liquidation of the subsidiary;

(b) the subsidiary must have acquired each CGT roll-over asset on or after 20 September 1985;

(c) the disposals must either:

(i) be part of the liquidator's final distribution in the course of the liquidation; or

(ii) have occurred within 18 months of the dissolution of the subsidiary if they are part of an interim distribution in the course of the liquidation;

(d) the holding company must have beneficially owned all of the shares in the subsidiary for the whole period from the time of the disposal, or the first disposal, of a CGT roll-over asset until the cancellation of the shares;

(e) the market value of the CGT roll-over asset or assets must comprise at least part of the *capital proceeds for the cancellation of the shares in the subsidiary that are beneficially owned by the holding company;

(f) one or more of the shares that were cancelled (the ***post-CGT shares***) must have been acquired by the holding company on or after 20 September 1985.

(3) The reduction of the *capital gain or *capital loss is worked out in this way.

Method statement

Step 1.	Work out (disregarding this section) the sum of the *capital gains and the sum of the *capital losses the holding company would make on the cancellation of its shares in the subsidiary.
Step 2.	Work out (disregarding this Subdivision) the sum of the *capital gains and the sum of the *capital losses the subsidiary would make on the *disposal of its CGT roll-over assets to the holding company in the course of the liquidation assuming the *capital proceeds were the assets' market values at the time of the disposal.
Step 3.	If, after subtracting the sum of the *capital losses from the sum of the *capital gains, there is: (a) an overall capital gain from Step 1 and an overall capital gain from Step 2; or (b) an overall capital loss from Step 1 and an overall capital loss from Step 2; then continue. Otherwise there is no adjustment.
Step 4.	Express the number of post-CGT shares as a fraction of the total number of shares the holding company owned in the subsidiary.
Step 5.	Multiply the overall *capital gain or *capital loss from Step 2 by the fraction from Step 4.
Step 6.	Reduce the overall *capital gain or *capital loss from Step 1 by the amount from Step 5. The result is the *capital gain or *capital loss the holding company makes from the cancellation of its shares in the subsidiary.

Note: This Subdivision is modified in calculating the attributable income of a CFC: see section 419 of the *Income Tax Assessment Act 1936.*

Subdivision 126-C—Changes to trust deeds

Guide to Subdivision 126-C

126-125 What this Subdivision is about

This Subdivision sets out when there is a roll-over for a CGT event that happens because of an amendment to or replacement of the trust deed of a complying approved deposit fund or complying superannuation fund.

Table of sections

126-130 Changes to trust deeds
126-135 Consequences of roll-over

[This is the end of the Guide.]

126-130 Changes to trust deeds

There is a roll-over if:

(a) *CGT event E1 or E2 happens in relation to a *CGT asset because the trust deed of a *complying approved deposit fund or *complying superannuation fund is amended or replaced; and

(b) the amendment or replacement is done for the purpose of:

(i) complying with the *Superannuation Industry (Supervision) Act 1993*; or

(ii) enabling a *complying approved deposit fund to become a *complying superannuation fund; and

(c) the assets and members of the fund do not change as a consequence of the amendment or replacement.

Note: The full list of CGT events is in section 104-5.

126-135 Consequences of roll-over

(1) A *capital gain or *capital loss made from the *CGT event is disregarded.

(2) If the fund that owned the *CGT asset just before the time of the *CGT event *acquired it before 20 September 1985, the asset retains its status as a *pre-CGT asset in the hands of the fund that owned it after the time of the event.

(3) If the fund that owned the *CGT asset just before the time of the *CGT event *acquired it on or after 20 September 1985:

(a) the first element of the asset's *cost base (in the hands of the fund that owned the asset after the time of the event) is its cost base just before that time; and

(b) the first element of the asset's *reduced cost base asset is worked out similarly; and

(c) the fund that owned the asset after the time of the event is taken to have acquired the asset at that time.

Division 128—Effect of death

Guide to Division 128

128-1 What this Division is about

This Division sets out what happens when you die and a CGT asset you owned just before dying devolves to your legal personal representative or passes to a beneficiary in your estate.

It also contains rules about what happens when a joint tenant dies.

General rules

128-10 Capital gain or loss when you die is disregarded
128-15 Effect on the legal personal representative or beneficiary
128-20 When does an asset *pass* to a beneficiary?
128-25 The beneficiary is a trustee of a superannuation fund etc.

Special rules for joint tenants

128-50 Joint tenants

[This is the end of the Guide.]

General rules

128-10 Capital gain or loss when you die is disregarded

When you die, a *capital gain or *capital loss from a *CGT event that results for a *CGT asset you owned just before dying is disregarded.

Note 1: Section 104-215 sets out an exception to this rule if the CGT asset passes to a beneficiary in your estate who is:

- an exempt entity, or

- the trustee of a complying superannuation fund, a complying approved deposit fund or a pooled superannuation trust; or
- not an Australian resident.

Note 2: There is a special indexation rule for deceased estates: see section 114-10.

128-15 Effect on the legal personal representative or beneficiary

(1) This section sets out what happens if a *CGT asset you owned just before dying:

(a) devolves to your *legal personal representative; or

(b) *passes to a beneficiary in your estate.

Note: Section 128-25 has different rules if the asset passes to a beneficiary in your estate who is:

- an exempt entity, or
- the trustee of a complying superannuation fund, a complying approved deposit fund or a pooled superannuation trust; or
- not an Australian resident.

(2) The *legal personal representative, or beneficiary, is taken to have *acquired the asset on the day you died.

Special rule for legal personal representative

(3) Any *capital gain or *capital loss the *legal personal representative makes if the asset *passes to a beneficiary in your estate is disregarded.

Cost base rules for both

(4) This table sets out the modifications to the *cost base and *reduced cost base of the *CGT asset in the hands of the *legal personal representative or beneficiary.

Modifications to cost base and reduced cost base

Item	For this kind of CGT asset:	The first element of the asset's cost base is:	The first element of the asset's reduced cost base is:
1	One you *acquired on or after 20 September 1985, except one covered by item 2 or 3	the *cost base of the asset on the day you died	the *reduced cost base of the asset on the day you died
2	One that was *trading stock in your hands just before you died	the amount worked out under section 70-105	the amount worked out under section 70-105
3	A *dwelling that was your main residence just before you died, and was not then being used for the *purpose of producing assessable income	the market value of the *dwelling on the day you died	the market value of the *dwelling on the day you died
4	One you *acquired before 20 September 1985	the market value of the asset on the day you died	the market value of the asset on the day you died

Note 1: Section 70-105 has a general rule that the person on whom the trading stock devolves is taken to have bought it for its market value. There are some exceptions though.

Note 2: Subdivision 118-B contains other rules about dwellings acquired through deceased estates.

Note 3: The rule in item 3 in the table does not apply to a dwelling that devolved to your legal personal representative, or passed to a beneficiary in your estate, on or before 7.30 pm on 20 August 1996:

see section 128-15 of the *Income Tax (Transitional Provisions) Act 1997*.

Further rule for a beneficiary

(5) A beneficiary can include in the *cost base or *reduced cost base of the asset any expenditure that the *legal personal representative *would* have been able to include at the time the asset *passes to the beneficiary. The beneficiary can include the expenditure on the day the representative incurred it.

Example: You die on 1 May 1995 owning land. On 15 June 1995 your legal personal representative pays $500 council rates for the land.

On 31 July 1995 your representative transfers it to a beneficiary in your estate, who is taken to have acquired it on 1 May 1995.

The beneficiary can include the $500 in the third element of the cost base of the land. It is included on 15 June 1995.

Collectables and personal use assets

(6) The *legal personal representative or beneficiary is taken to have *acquired a *collectable or a *personal use asset if:

(a) you acquired it on or after 20 September 1985; and

(b) it was a *collectable or a *personal use asset (as appropriate) in your hands when you died.

Note 1: Capital losses from collectables can be used only to reduce capital gains from collectables: see section 108-10.

Note 2: Capital losses from personal use assets are disregarded: see section 108-20.

128-20 When does an asset *pass* to a beneficiary?

(1) A *CGT asset ***passes*** to a beneficiary in your estate if the beneficiary becomes the owner of the asset:

(a) under your will, or that will as varied by a court order; or

(b) by operation of an intestacy law, or such a law as varied by a court order; or

(c) because it is appropriated to the beneficiary by your legal personal representative in satisfaction of a

pecuniary legacy or some other interest or share in your estate; or

(d) under a deed of arrangement if:

(i) the beneficiary entered into the deed to settle a claim to participate in the distribution of your estate; and

(ii) any consideration given by the beneficiary for the asset consisted only of the variation or waiver of a claim to one or more other *CGT assets that formed part of your estate.

(It does not matter whether the asset is transmitted directly to the beneficiary or is transferred to the beneficiary by your *legal personal representative.)

(2) A *CGT asset does *not **pass*** to a beneficiary in your estate if the beneficiary becomes the owner of the asset because your *legal personal representative transfers it under a power of sale.

128-25 The beneficiary is a trustee of a superannuation fund etc.

(1) This section has rules about *cost base and *reduced cost base that are relevant if you die and a *CGT asset you owned just before dying *passes to a beneficiary in your estate who (when the asset passes) is the trustee of:

(a) a *complying superannuation fund; or

(b) a *complying approved deposit fund; or

(c) a *pooled superannuation trust.

Note: A capital gain or loss is also made: see section 104-215.

(2) The beneficiary is taken to have *acquired the asset on the day you died. The first element of the *cost base and *reduced cost base of the asset is its market value on that day.

Note 1: If the beneficiary is an exempt entity, Division 57 of Schedule 2D to the *Income Tax Assessment Act 1936* has rules about exempt entities that become taxable. It sets out what the entity is taken to have purchased its assets for when it becomes taxable.

Note 2: If the beneficiary is not an Australian resident, Subdivision 136-B sets out what happens if a non-resident becomes a resident. The entity is taken to have acquired each asset it owned just before becoming a resident for the market value of the asset at that time.

(3) The beneficiary can include in the *cost base or *reduced cost base of the asset any expenditure that your *legal personal representative *would* have been able to include at the time the asset *passes to the beneficiary. The beneficiary can include the expenditure on the day the representative incurred it.

Special rules for joint tenants

128-50 Joint tenants

(1) This section has rules that are relevant if a *CGT asset is owned by joint tenants and one of them dies.

(2) The survivor is taken to have *acquired (on the day the individual died) the individual's interest in the asset. If there are 2 or more survivors, they are taken to have acquired that interest in equal shares.

Note: Joint tenants are treated as owning a CGT asset in equal shares: see section 108-7.

(3) If the individual who died *acquired his or her interest in the asset on or after 20 September 1985, the first element of the *cost base of the interest *each* survivor is taken to have acquired is:

$$\frac{\text{Cost base of the interest of the individual who died (worked out on the day the individual died)}}{\text{Number of survivors}}$$

The first element of the *reduced cost base of the interest each survivor is taken to have *acquired is worked out similarly.

Example: In 1999 2 individuals buy land for $50,000 as joint tenants. Each one is taken to have a 50% interest in it. On 1 May 2001 one of them dies.

The survivor is taken to have acquired the interest of the individual who died on 1 May 2001. If the cost base of that interest on that day is

$27,000, the survivor is taken to have acquired that interest for that amount.

(4) If the individual who died *acquired his or her interest in the asset before 20 September 1985, the first element of the *cost base and *reduced cost base of the interest *each* survivor is taken to have acquired is:

$$\frac{\text{Market value of the interest of the individual who died (worked out on the day the individual died)}}{\text{Number of survivors}}$$

Note: There is a special indexation rule for surviving joint tenants: see section 114-10.

Division 130—Investments

Table of Subdivisions

Guide to Division 130
130-A Bonus shares and units
130-B Rights
130-C Convertible notes
130-D Employee share schemes

Guide to Division 130

130-1 What this Division is about

This Division sets out the rules for these kinds of investments:

- bonus shares and units; and
- rights; and
- convertible notes; and
- shares acquired under an employee share scheme.

Most are about modifying the cost base and reduced cost base of a CGT asset.

Subdivision 130-A—Bonus shares and units

Guide to Subdivision 130-A

Table of sections

130-15 Acquisition time and cost base of bonus equities

Operative provisions

130-20 Issue of bonus shares or units

130-15 Acquisition time and cost base of bonus equities

[This is the end of the Guide]

Operative provisions

130-20 Issue of bonus shares or units

(1) This section sets out what happens if:

(a) you own *shares in a company or units in a unit trust (the ***original equities***); and

(b) the company issues other shares, or the trustee issues other units, (the ***bonus equities***) to you because it owes an amount to you in relation to the original equities.

(2) The first element of your *cost base and *reduced cost base for the bonus equities includes:

(a) for *shares—any part of the amount that is a *dividend; and

(b) for units—any part of the amount that is or will be included in your assessable income.

You are taken to have *acquired the bonus equities when they were issued.

Note 1: There are special indexation rules for cost base modifications: see Division 114.

Note 2: The amounts of calls you pay on partly-paid equities will also form part of the first element of their cost base and reduced cost base.

Note 3: There is a special rule for shares issued on or before 30 June 1987: see subsection 130-20(2) of the *Income Tax (Transitional Provisions) Act 1997*.

(3) This table sets out what happens if:

(a) none of the amount owed to you by the company is a *dividend; or

(b) none of the amount owed to you by the trustee is or will be included in your assessable income.

Modifications where amount neither a dividend nor assessable

Item	In this situation:	You are taken to have *acquired the bonus equities when:	There is this effect:
1	You *acquire the original equities on or after 20 September 1985	You *acquired the original equities	You apportion the first element of your *cost base and *reduced cost base for the original equities in a reasonable way over both the original and bonus equities
2	You *acquire the original equities before 20 September 1985 and you paid or were required to pay an amount for the bonus equities	The liability to pay the amount arose	The first element of your *cost base and *reduced cost base for the bonus equities includes their market value just before that time

Modifications where amount neither a dividend nor assessable			
Item	**In this situation:**	**You are taken to have *acquired the bonus equities when:**	**There is this effect:**
3	You *acquire the original equities before 20 September 1985 and the bonus equities are fully paid	You *acquired the original equities	Any *capital gain or *capital loss you make from the bonus equities is disregarded

The amount paid or payable can include giving property: see section 103-5.

Note 1: The amounts of calls you pay on partly-paid equities will also form part of the first element of their cost base and reduced cost base.

Note 2: There is a special rule for bonus equities issued on or before 1 pm on 10 December 1986 that affects item 2 of the table: see subsection 130-20(3) of the *Income Tax (Transitional Provisions) Act 1997*.

Special rule for unit trusts

(4) The modifications in this section are not made if, for the income year in which the bonus equities are issued, the unit trust is:

(a) a corporate unit trust within the meaning of section 102J of the *Income Tax Assessment Act 1936*; or

(b) a public trading trust within the meaning of section 102R of that Act.

Note: Subsection 26BC(9E) of the *Income Tax Assessment Act 1936* (about securities lending arrangements) modifies the operation of this section.

Subdivision 130-B—Rights

Table of sections

130-40 Exercise of rights

130-45 Timing rules
130-50 Application to options

130-40 Exercise of rights

(1) The table in this section sets out the modifications to the rules about *cost base and *reduced cost base that happen if you exercise rights to *acquire:

(a) *shares, or options to acquire shares, in a company; or

(b) units, or options to acquire units, in a unit trust.

Note: The exercise of rights acquired under an employee share scheme are dealt with in Subdivision 130-D.

(2) The modifications happen only if:

(a) you did not pay for the rights and the condition in subsection (3) is satisfied; or

(b) the condition in subsection (4) is satisfied.

The payment can include giving property: see section 103-5.

(3) When you were issued the rights, you must:

(a) already own shares in, or *convertible notes issued by, the company or a company that is a member of the same *wholly-owned group (the ***original shares or notes***); or

(b) already own units in, or convertible notes issued by the trustee of, the unit trust (the ***original units or notes***).

(4) You must have *acquired the rights from an entity that already owned shares, units or convertible notes of the kind referred to in subsection (3).

(5) The company that is a member of the same *wholly-owned group mentioned in paragraph (3)(a) includes a company that would cease to be a member of that group by the exercise of the rights.

(6) The rights to *acquire units or to acquire an option to acquire units in a unit trust must have been issued by the trustee after 28 January 1988.

Modifications on exercise of rights		
Item	**In this situation:**	**The modification is...**
1	You exercise rights issued to you to *acquire the *shares, units or options.	The first element of your *cost base and *reduced cost base for the shares, units or options is the amount you paid to exercise the rights.
2	You exercise rights you *acquired from another entity to acquire the *shares, units or options.	The first element of your *cost base and *reduced cost base for the shares, units or options is the amount you paid for them plus any amount you paid to exercise the rights.
3	You exercise rights issued to you to *acquire the *shares, units or options, and you acquired the original shares or notes, or the original units or notes, before 20 September 1985	The first element of your *cost base and *reduced cost base for the shares, units or options is the market value of the rights (when they were exercised) plus any amount you paid to exercise the rights.

The payment can include giving property: see section 103-5.

(7) A *capital gain or *capital loss you make from the exercise of the rights is disregarded.

Note 1: The exercise of the rights would be an example of CGT event C2 (about a CGT asset ending).

Note 2: There are transitional rules for some rights: see section 130-40 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 3: The effect of this Subdivision is modified in 2 cases by sections 102AAZBA (about non-resident trusts) and 414 (about CFC's) of the *Income Tax Assessment Act 1936*.

130-45 Timing rules

Acquisition of rights

(1) If you *acquired the rights from the company or trustee, you are taken to have acquired the rights when you acquired the original shares or notes or the original units or notes.

Acquisition of shares, units or options on exercise of rights

(2) You are taken to have *acquired the new *shares, units or options when you exercise the rights.

130-50 Application to options

This Subdivision applies to options in the same way that it applies to rights.

Subdivision 130-C—Convertible notes

130-60 Shares or units acquired by converting a convertible note

(1) This table sets out the modification to the rules about *cost base and *reduced cost base that happens if you *acquire *shares, or units in a unit trust, by converting a *convertible note.

Conversion of a convertible note

Item	In this situation:	The modification is:
1	You *acquire *shares or units in a unit trust by converting a *convertible note that is a *traditional security.	The first element of the *cost base and *reduced cost base of the *shares or units is their market value at the time of the conversion

Conversion of a convertible note		
Item	**In this situation:**	**The modification is:**
2	You *acquire *shares (except shares acquired under an *employee share scheme) by converting a *convertible note that is not a *traditional security	The first element of the *cost base and *reduced cost base of the *shares is the sum of: • the amount you paid to *acquire the *convertible note; and • any amount you paid in relation to the conversion
3	You *acquire units in a unit trust by converting a *convertible note (except one that is a *traditional security) that was issued by the trustee of the unit trust	The first element of the *cost base and *reduced cost base of the units is the sum of: • the amount you paid to *acquire the *convertible note; and • any amount you paid in relation to the conversion

The payment can include giving property: see section 103-5.

(2) You are taken to have *acquired the shares or units when the liability to pay for the convertible note arose.

(3) A *capital gain or *capital loss you make from converting the convertible note is disregarded.

Note 1: The conversion of the convertible note would be an example of CGT event C2 (about a CGT asset ending).

Note 2: There are transitional rules for some convertible notes: see section 130-60 of the *Income Tax (Transitional Provisions) Act 1997*.

Subdivision 130-D—Employee share schemes

Table of sections

130-80 Share or right acquired under employee share scheme
130-83 Qualifying shares and qualifying rights
130-85 Share or right acquired under employee share scheme involving your associate
130-90 Share or right acquired under an employee share trust

130-80 Share or right acquired under employee share scheme

(1) This section sets out what happens if you *acquire a *share or right at a discount (within the meaning of Subdivision C of Division 13A of Part III of the *Income Tax Assessment Act 1936*) under an *employee share scheme.

(2) The first element of the *cost base and *reduced cost base of the *share or right is its market value (worked out under sections 139FA to 139FF of the *Income Tax Assessment Act 1936*) when you *acquired it.

130-83 Qualifying shares and qualifying rights

(1) There is an exception if:

(a) the *share is a *qualifying share or the right is a *qualifying right; and

(b) you do not make an election under section 139E of the *Income Tax Assessment Act 1936* to include an amount in your assessable income for the income year in which you *acquired the share or right.

Note: If you do not make an election of this kind, the amount is included in your assessable income for the income year in which the cessation time occurs: for example, when restrictions on disposing of the share cease.

(2) If *CGT event A1, E1, E2 or E5 happens in relation to the *share or right (or any *share you *acquired by exercising the right) in an arm's length transaction at the *cessation time, or within 30 days after that time, any *capital gain or *capital loss you make from the disposal is disregarded.

Note: The full list of CGT events is in section 104-5.

(3) If that event does not happen in relation to the *share or right (or any *share you *acquired by exercising the right) in an arm's length transaction at the *cessation time, or within 30 days after that time:

(a) you are taken to have acquired the share or right at the cessation time; and

(b) the first element of the *cost base and *reduced cost base of the share or right is its market value (worked out under sections 139FA to 139FF of the *Income Tax Assessment Act 1936*) at that time.

130-85 Share or right acquired under employee share scheme involving your associate

(1) This section sets out the modification to the rules about *cost base and *reduced cost base that happens if:

(a) you *acquire a *share or right at a discount (within the meaning of Subdivision C of Division 13A of Part III of the *Income Tax Assessment Act 1936*) under an *employee share scheme; and

(b) an amount is included, under section 139D of the *Income Tax Assessment Act 1936*, in:

(i) your *associate's assessable income; or

(ii) the assessable income of a company (an ***affiliate company***) where you own an indirect interest in a *share in the company or in a right to acquire a share in it through one or more interposed companies, partnerships or trusts.

(2) The first element of the *cost base and *reduced cost base of the *share or right is its market value (worked out under sections 139FA to 139FF of the *Income Tax Assessment Act 1936*) when you *acquired it.

130-90 Share or right acquired under an employee share trust

(1) A *capital gain or a *capital loss a trustee makes when a beneficiary becomes absolutely entitled to a *share or right in a company is disregarded if these conditions are satisfied.

(1A) The beneficiary must be:

(a) a *PAYE earner of the company or of another company (at the time the beneficiary first became beneficially entitled to the *share or right); or

(b) an *associate or affiliate company of such a PAYE earner.

(2) The terms of the trust must have required or authorised the trustee to transfer the *share or right to the *PAYE earner, *associate or affiliate company.

(3) The *PAYE earner, *associate or affiliate company must have acquired the *share or right under an *employee share scheme.

(4) The *PAYE earner, *associate or affiliate company must not have *acquired the *share or right for more than the *cost base of the share or right (in the hands of the trustee) at the time of the transfer.

Note: There are transitional rules for some shares or rights acquired under employee share schemes: see Subdivision 130-D of the *Income Tax (Transitional Provisions) Act 1997*.

Division 132—Leases

Table of sections

132-1 Lessee incurs expenditure to get lease term varied or waived
132-5 Lessor pays lessee for improvements
132-10 Grant of a long-term lease
132-15 Lessee of land acquires reversionary interest of lessor

132-1 Lessee incurs expenditure to get lease term varied or waived

If the lessee of property incurs expenditure in obtaining the consent of the lessor to vary or waive a term of the lease, the fourth element of the lease's *cost base and *reduced cost base includes the amount of that expenditure.

The expenditure can include giving property: see section 103-5.

132-5 Lessor pays lessee for improvements

The fourth element of the *cost base and *reduced cost base of property that was subject to a lease includes any payment (because of the lease expiring or being surrendered or forfeited) by the lessor to the lessee for expenditure of a capital nature incurred by the lessee in making improvements to the lease property.

The payment or expenditure can include giving property: see section 103-5.

132-10 Grant of a long-term lease

(1) These rules apply if *CGT event F2 happens for a lessor of property.

(2) 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:

(a) any expenditure incurred before *CGT event F2 happens; and

(b) the *cost of any *plant for which the lessor has deducted or can deduct for depreciation under this Act.

Note: Subdivision 108-D sets out when a building, structure or improvement is treated as a separate CGT asset.

(3) 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.

(4) The expenditure or payment can include giving property: see section 103-5.

132-15 Lessee of land acquires reversionary interest of lessor

(1) This table sets out what happens if:

(a) the lessee of land *acquires the reversionary interest of the lessor in the land; and

(b) Subdivision 124-J (roll-over provisions for Crown leases) does not apply to the acquisition.

Lessee acquires reversionary interest of lessor

Item	In this situation:	The lessee is taken to have *acquired the land at this time:	The lessee is taken to have acquired the land for:
1	The lease was originally granted for 99 years or more	When the lease was granted or assigned to the lessee	Any premium the lessee paid for the grant or assignment of the lease, plus the amount the lessee paid to *acquire the reversionary interest

Lessee acquires reversionary interest of lessor			
Item	**In this situation:**	**The lessee is taken to have *acquired the land at this time:**	**The lessee is taken to have acquired the land for:**
2	The lease was originally granted for less than 99 years	When the lessee *acquired the reversionary interest	(a) if the lessee *acquired the lease after 19 September 1985—any premium the lessee paid for the grant or assignment of the lease, plus the amount the lessee paid to acquire the reversionary interest; or (b) if the lessee acquired the lease before 20 September 1985—the market value of the land when the lessee acquired it

(2) All the payments can include giving property: see section 103-5.

Note: CGT events F1 to F5 deal specifically with leases. See also (in particular) CGT event C2 (about cancellation, surrender and similar endings).

Division 134—Options

134-1 Exercise of options

(1) This table sets out the effects of the exercise of an option on the *cost bases and *reduced cost bases of the grantor and the entity that exercises the option (the ***grantee***).

Exercise of options

Item	In this situation:	Effect on cost base and reduced cost base:
1	Option binds grantor to *dispose of a *CGT asset (call option)	*For the grantee* The first element of the grantee's *cost base and *reduced cost base for the *CGT asset is what the grantee paid for the option plus any amount the grantee paid to exercise it *For the grantor* See section 116-65
2	Option binds grantor to *acquire a *CGT asset (put option)	*For the grantor* The first element of the grantor's *cost base and *reduced cost base for the asset acquired is any amount paid to exercise the option reduced by any payment received by the grantor for the option *For the grantee* The second element of the grantee's *cost base and *reduced cost base for the asset disposed of to the grantor includes any payment the grantee made to *acquire the option

Note 1: If you granted an option, CGT event C3 or D2 may happen.

Note 2: Item 1 in the table is modified for options granted before 20 September 1985: see section 134-1 of the *Income Tax (Transitional Provisions) Act 1997*.

(2) All the payments can include giving property: see section 103-5.

Example 1: Steven obtains an option to buy a yacht (for $75,000) from Tom. Steven pays $5,000 for the option.

Steven exercises the option. The first element of his cost base and reduced cost base for the yacht includes the expenditure he incurred for the option.

So, the first element of his cost base and reduced cost base for the yacht is:

$75,000 + $5,000 = $80,000

Example 2: An entity owns 1,000 shares in a company. Bill grants the entity an option which, if exercised, would require him to buy the shares for $2 each. The entity pays Bill 10 cents per share for the option.

The entity exercises the option. Bill paid $2,000 for the shares. He received $100 from the entity for granting the option.

The first element of Bill's cost base and reduced cost base for the shares is:

$2,000 – $100 = $1,900

In working out whether the entity made a capital gain or loss on the sale of the shares, the second element of its cost base (and reduced cost base) includes the $100 the entity paid for the option.

(4) A *capital gain or *capital loss the grantee makes from exercising the option is disregarded.

Note 1: The exercise of the option would be an example of CGT event C2 (about a CGT asset ending).

Note 2: There is an exemption for the grantor if the option is exercised: see subsection 104-40(5).

(5) This Division does not apply to rights or options to which Subdivision 130-B applies.

Note: Subdivision 130-B deals (amongst other things) with rights and options issued by a company or trust where you did not pay or give anything to acquire them.

Division 136—Non-residents

Table of Subdivisions

Guide to Division 136
136-A Making a capital gain or loss
136-B Becoming a resident

Guide to Division 136

136-1 What this Division is about

A non-resident makes a capital gain or loss only if a CGT event happens to a CGT asset that has the necessary connection with Australia. There are also rules dealing with what happens when a non-resident becomes a resident.

Subdivision 136-A—Making a capital gain or loss

Table of sections

136-5 What if you are a non-resident just before a CGT event
136-10 Making a capital gain or loss from most CGT events
136-15 Making a capital gain or loss from CGT events D1 and E9
136-20 Those events you cannot make a capital gain or loss from
136-25 When an asset has the necessary connection with Australia
136-30 Reducing a capital gain or loss from a business asset

[This is the end of the Guide.]

136-5 What if you are a non-resident just before a CGT event

This Subdivision sets out what happens if just before a *CGT event happens:

(a) you are an individual or a company that is not an Australian resident; or

(b) you are the trustee of a trust that is not a *resident trust for CGT purposes.

136-10 Making a capital gain or loss from most CGT events

You make a *capital gain or *capital loss from a *CGT event set out in this table only if the thing referred to in the relevant row of the table has the *necessary connection with Australia.

The last column lists each category of *CGT asset having the *necessary connection with Australia that is relevant to the event.

Note 1: Special rules apply to CGT events D1 and E9: see section 136-15.

Note 2: There are some CGT events for which you cannot make a capital gain or loss: see section 136-20.

Note 3: For the categories of CGT assets having the necessary connection with Australia: see section 136-25.

Non-resident gains and losses

Event number	Description of event:	This has the necessary connection with Australia:	Category of CGT asset:
A1	Disposal of a CGT asset	the CGT asset	1 to 8
B1	Use and enjoyment before title passes	the CGT asset	1, 2
C1	Loss or destruction of a CGT asset	the CGT asset	1, 2
C2	Cancellation, surrender and similar endings	the CGT asset	1 to 8
D2	Granting an option	the option	7
E1	Creating a trust over a CGT asset	the CGT asset	1 to 8
E2	Transferring a CGT asset to a trust	the CGT asset	1 to 8

Non-resident gains and losses			
Event number	**Description of event:**	**This has the necessary connection with Australia:**	**Category of CGT asset:**
E3	Converting a trust to a unit trust	the CGT asset	1 to 8
E4	Capital payment for trust interest	the units or interest in the trust	4, 6
E5	Beneficiary becoming entitled to a trust asset	the CGT asset	1 to 8
E6	Disposal to beneficiary to end income right	the CGT asset	1 to 8
E7	Disposal to beneficiary to end capital interest	the CGT asset	1 to 8
E8	Disposal by beneficiary of capital interest	the interest in the trust capital	4
F1	Granting a lease	the CGT asset the subject of the lease	1, 2
F2	Granting a long-term lease	the land	1
F3	Lessor pays lessee to get lease changed	the CGT asset the subject of the lease	1, 2
F4	Lessee receives payment for changing lease	the CGT asset the subject of the lease	1, 2
F5	Lessor receives payment for changing lease	the CGT asset the subject of the lease	1, 2

Non-resident gains and losses			
Event number	**Description of event:**	**This has the necessary connection with Australia:**	**Category of CGT asset:**
G1	Capital payment for shares	the shares	3, 5, 8
G2	Shifts in share values	the shift losing shares	3, 5, 7, 8
G3	Liquidator declares shares worthless	the shares	3, 5, 8
H1	Forfeiture of deposit	the CGT asset the subject of the prospective purchase or other transaction	1 to 8
H2	Receipt for event relating to a CGT asset	the CGT asset	1 to 8
J1	Company ceasing to be member of wholly-owned group	the CGT asset the subject of the roll-over	1 to 8
K1	Partial realisation of intellectual property	the item of intellectual property	2
K3	Asset passing to tax advantaged entity	the CGT asset	1 to 8
K4	CGT asset starts being trading stock	the CGT asset	1 to 8
K6	Pre-CGT shares or trust interest	the shares or interest in the trust	3 to 6

136-15 Making a capital gain or loss from CGT events D1 and E9

(1) You make a *capital gain or *capital loss from *CGT event D1 (about creating contractual or other rights) only if one of the items in this table is satisfied.

CGT event D1		
Item	**In this situation:**	**This requirement is satisfied:**
1	The *capital proceeds from the event are your *ordinary income	The proceeds are *derived from an *Australian source
2	The *capital proceeds from the event are *not* your *ordinary income	If the proceeds *were* your *ordinary income, they *would* have been *derived from an *Australian source

(2) You make a *capital gain or *capital loss from *CGT event E9 (about creating a trust over future property) only if one of the items in this table is satisfied.

CGT event E9		
Item	**In this situation:**	**This requirement is satisfied:**
1	The consideration is your *ordinary income	The consideration is *derived from an *Australian source
2	The consideration is *not* your *ordinary income	If the consideration *was* your *ordinary income, it *would* have been *derived from an *Australian source

136-20 Those events you cannot make a capital gain or loss from

This table sets out those *CGT events from which you cannot make a *capital gain or *capital loss.

CGT events not relevant

Event number	Description of event:	See section:
C3	End of option to acquire shares etc.	104-30
D3	Granting a right to income from mining	104-45
I1	Individual or company stops being resident	104-160
I2	Trust stops being a resident trust	104-170
K2	Bankrupt pays amount in relation to debt	104-210
K5	Special collectable losses	104-225

136-25 When an asset has the necessary connection with Australia

There are 8 categories of *CGT assets having the ***necessary connection with Australia***. They are set out in this table.

CGT assets having the necessary connection with Australia	
Category number	**Description**
1	Any of these: (a) land, or a building or structure, in Australia; (b) an interest in land in Australia, or a right, power or privilege to do with land in Australia; (c) a *stratum unit in Australia, or an interest in a stratum unit in Australia; (d) a *share in a company that owns a building on land in Australia that gives you a right to occupy a flat or home unit in the building
2	A *CGT asset that you have used at any time in carrying on a *business through a *permanent establishment in Australia

CGT assets having the necessary connection with Australia	
Category number	**Description**
3	A *share, or an interest in a *share, in a company that is an Australian resident, and a *private company, for the income year in which the *CGT event happens
4	An interest in a trust that is a *resident trust for CGT purposes for the income year in which the *CGT event happens
5	A *share, or an interest in a *share, in a company: (a) that is an Australian resident, and a *public company, for the income year in which the CGT event happens; and (b) in which you and your *associates beneficially owned at least 10% of the issued share capital (except share capital that carried a right only to participate in a distribution of profits or capital to a limited extent) at any time during the 5 years before the *CGT event happens
6	A unit in a unit trust: (a) that is a *resident trust for CGT purposes for the income year in which the CGT event happens; and (b) in which you and your *associates beneficially owned at least 10% of the issued units in the unit trust at any time during the 5 years before the *CGT event happens
7	An option or right to *acquire a *CGT asset of the kind referred to above

CGT assets having the necessary connection with Australia	
Category number	**Description**
8	A *share or security in a company that you received as consideration for your *disposal of another *CGT asset to the company and: (a) you chose to obtain a roll-over under Division 122 (roll-over of assets by an individual or partnership to a company) or Subdivision 126-B (roll-over of assets within a company group) because of the disposal; and (b) either you were not an Australian resident just before the disposal, or you were a trustee of a trust that was not a *resident trust for CGT purposes for the income year in which the disposal happened

136-30 Reducing a capital gain or loss from a business asset

(1) The *capital gain or *capital loss you make from a *CGT asset that you have used at any time in carrying on a *business through a *permanent establishment in Australia is reduced if you used it in this way for only part of the period from when you *acquired it to when the CGT event happened.

(2) The gain or loss is reduced by this fraction:

$$\frac{\text{Number of days the asset was not used in the way described in subsection (1)}}{\text{Number of days in that period}}$$

Subdivision 136-B—Becoming a resident

Table of sections

136-40 Individual or company becomes resident
136-45 Trust becomes a resident trust
136-50 CFC becomes an Australian resident

136-40 Individual or company becomes resident

(1) If you become an Australian resident, there are rules relevant to each *CGT asset that you owned just before you became an Australian resident, except an asset:

(a) having the *necessary connection with Australia; or

(b) that you *acquired before 20 September 1985.

(2) The first element of the *cost base and *reduced cost base of the asset (at the time you become an Australian resident) is its market value at that time.

(3) Also, Part 3-1 and this Part apply to the asset as if you had *acquired it at the time you became an Australian resident.

136-45 Trust becomes a resident trust

(1) If a trust becomes a *resident trust for CGT purposes, there are rules relevant to each *CGT asset that the trustee owned just before the trust became a resident trust for CGT purposes, except one:

(a) having the *necessary connection with Australia; or

(b) that the trustee *acquired before 20 September 1985.

(2) The first element of the *cost base and *reduced cost base of the asset (at the time the trust becomes a *resident trust for CGT purposes) is its market value at that time.

(3) Also, Part 3-1 and this Part apply to the asset as if the trustee had *acquired it at the time the trust became a *resident trust for CGT purposes.

Exception

(4) This section does not apply to a trust if, just before it became a *resident trust for CGT purposes, it was a *CFT because of paragraph 342(a) of the *Income Tax Assessment Act 1936*.

Note: This section is disregarded in calculating the attributable income of a trust: see section 102AAZB of the *Income Tax Assessment Act 1936.*

136-50 CFC becomes an Australian resident

(1) This section applies to a *CFC that stops at a time (the ***residence change time***) being a resident of a *listed country or an *unlisted country and becomes an Australian resident.

(2) Section 136-40 does not apply to the *CFC.

(3) The modifications of this Part and Part 3-1 in sections 411 to 414 (inclusive) of the *Income Tax Assessment Act 1936* have the effect they would have, in relation to each *commencing day asset owned by the *CFC at the residence change time, if those modifications were used to work out the taxable income of the CFC rather than its *attributable income.

(4) However, if a *capital gain on a *commencing day asset of the *CFC (for a period before the residence change time) was subject to tax (within the meaning of Part X of the *Income Tax Assessment Act 1936*) in a *listed country, the modifications of this Part and Part 3-1 in sections 411 to 414 (inclusive) of the *Income Tax Assessment Act 1936* have the effect they would have in relation to the asset if:

(a) those modifications were used to work out the taxable income of the CFC rather than its *attributable income; and

(b) the *commencing day of the CFC were the residence change time.

Note: This section is disregarded in calculating the attributable income of a CFC: see section 410 of the *Income Tax Assessment Act 1936*.

Division 140—Share value shifting

Table of Subdivisions

Guide to Division 140

140-A When is there share value shifting?

140-B Consequences of share value shifting

Guide to Division 140

140-1 What this Division is about

This Division prevents entities from obtaining a capital gains tax advantage from share value shifting schemes. They involve shifting value from one lot of shares to another lot: for example, by issuing new shares.

It sets out when an entity makes a capital gain under a scheme of this kind and how the cost base and reduced cost base of shares is varied.

140-5 Map of this Division

Subdivision 140-A—When is there share value shifting?

Table of sections

140-10 Shifts in share values
140-15 What is a *share value shift*?
140-20 When is an entity a *controller (for CGT purposes)* of a company?
140-22 When an entity has an *associate-inclusive control interest*
140-25 When is there a *material decrease* in the value of a share?
140-30 Interests in shares etc.

140-10 Shifts in share values

This Division is relevant to *CGT event G2.

Note 1: CGT event G2 is set out in section 104-140.

Note 2: The making of a capital gain from the event and cost base adjustments are dealt with in Subdivision 140-B.

140-15 What is a *share value shift*

(1) A ***share value shift*** occurs if the requirements in subsections (2), (3) and (4) are satisfied.

(2) The company, or the entity or the entity's *associate, must do something under a *scheme involving *shares in the company. Examples are issuing new shares at a *discount, buying back shares or changing the voting rights attached to shares.

Note 1: This Division is also relevant to interests in shares and rights or options to acquire shares: see section 140-30.

Note 2: No cost base adjustments are required under this Division if the increase and decrease in market value occurred before 12 noon on 12 January 1994: see section 140-7 of the *Income Tax (Transitional Provisions) Act 1997*.

(3) There must be a decrease in the market value of one or more *shares (the ***decreased value shares***) in the company that are owned by the entity or the entity's * associate.

The shares must have been *acquired on or after 20 September 1985. The decrease must be reasonably attributable to the thing done under the *scheme, and must occur at or after the time when the thing is done under the *scheme.

(4) The requirements in subsection (5) or (6) must be satisfied.

(5) There must be an issue of *shares (the ***increased value shares***) at a *discount to:

(a) the entity or the entity's *associate; or

(b) if any *decreased value share is owned by the entity's associate—an associate of that associate.

(6) There must be an increase in the market value of one or more *shares (also the ***increased value shares***) in the company owned by:

(a) the entity or the entity's *associate; or

(b) if any *decreased value share is owned by the entity's associate—an associate of that associate.

The increase must be reasonably attributable to the thing done under the scheme, and must occur at or after the time when it is done.

Example: A company runs a family business. There are 2 shares originally issued for $2 each. They are owned by a husband and wife. The market value of the shares is much greater (represented by the value of the assets of the company less its liabilities). The company issues one more share for $2 to their son.

Caution is needed in such a situation. This example would result in a large CGT liability for the husband and wife under this Division, because they have shifted 1/3 of the value of their own shares to their son. No such liability would arise if the share had been issued for its market value.

(7) If it is reasonable to say that the increase or decrease in the market value of one or more *shares in the company is partly caused by the doing of the thing under the *scheme, this Division applies to the increase or decrease to that extent only.

Off-market buy-backs

(8) Disregard a *share value shift that occurs in this situation:

(a) a decrease in the market value of one or more *shares in the company is reasonably attributable to the company proposing to buy back those shares for less than their market value; and

(b) the company does buy back those shares; and

(c) subsection 159GZZZQ(2) of the *Income Tax Assessment Act 1936* treats their owner as having received their market value worked out as if the buy-back had not occurred and was never proposed to occur.

Note: A share value shift is disregarded under subsection (8) only if the company buys back the shares after 7.30 pm on 9 May 1995 and the buy back is not done under an excluded transitional arrangement: see subsection 140-15(8) of the *Income Tax (Transitional Provisions) Act 1997*.

140-20 When is an entity a *controller (for CGT purposes)* of a company?

An entity (the ***first entity***) is a ***controller (for CGT purposes)*** of a company if:

(a) the first entity has an *associate-inclusive control interest in the company of at least 50%; or

(b) the first entity has an *associate-inclusive control interest in the company of at least 40% and entities other than the first entity or associates of the first entity do not control the company; or

(c) the first entity controls the company (alone or with an *associate).

140-22 When an entity has an *associate-inclusive control interest*

(1) An entity has an ***associate-inclusive control interest*** in a company in the circumstances set out in Subdivision A of Division 3 of Part X of the *Income Tax Assessment Act 1936*.

(2) However, in working out whether an entity has an *associate-inclusive control interest of a particular percentage for the purposes of section 140-20, there are these modifications to the way Part X of that Act operates:

(a) that Part is applied to any company, including one acting as a trustee; and

(b) subsection 349(4) applies in all cases in working out which entity holds a direct control interest or a control tracing interest equal to 100%; and

(c) subsections 350(6) and (7) and 355(1) are ignored; and

(d) despite subsection 352(2), an interposed entity may be taken into account in calculating an indirect control interest if it is:

(i) a company of which the first entity or an *associate is a controller; or

(ii) a partnership or a trust; and

(e) section 354 applies as if it referred to partnerships rather than CFP's; and

(f) section 355 applies as if it referred to trusts rather than CFT's.

Note 1: Part X of the *Income Tax Assessment Act 1936* defines company to exclude one in the capacity of a trustee.

Note 2: The terms direct control interest and control tracing interest are relevant to working out associate-inclusive control interests in a company: see sections 350, 351, 353, 354 and 355 of that Act.

Note 3: Under subsection 349(4) of that Act, if 2 or more entities would have a direct control interest or a control tracing interest in a company or trust equal to 100%, only one of them holds the interest.

Note 4: Subsections 350(6) and (7) deal with direct control interests in a company. They deal with interests held by Australian entities. Under subsection 355(1), certain entities are taken to hold a control tracing interest in a trust equal to 100%.

Note 5: Paragraphs 140-22(2)(d), (e) and (f) are necessary because Part X of the *Income Tax Assessment Act 1936* applies only to CFE's (which comprise CFC's, CFP's and CFT's).

140-25 When is there a *material decrease* in the value of a share?

There is a ***material decrease*** in the market value of a *decreased value share if:

(a) the total of the percentage decreases in its market value because of *share value shifts that occur under the *scheme is at least 5%; or

(b) the total of the decreases in the market value of all shares whose market value decreased because of *share value shifts that occur under the scheme is at least $100,000.

Note: There must be a material decrease in the market value of a share for CGT event G2 to happen: see section 104-140.

140-30 Interests in shares etc.

This Division applies to an interest in a *share, or a right or option to *acquire a share or an interest in a share, in the same way as it applies to a share.

Subdivision 140-B—Consequences of share value shifting

Guide to Subdivision 140-B

140-45 What this Subdivision is about

A share value shift involves a decrease in the market value of shares acquired on or after 20 September 1985. An entity owning these shares may make a capital gain. There are also rules dealing with cost base adjustments.

Table of sections

Different consequences where share value shift is neutral

140-50 What if the share value shift is neutral for each shareholder?

Value shifted to shares acquired on or after 20 September 1985

140-55 Making a capital gain
140-60 Cost base adjustment for shares decreasing in value
140-65 Cost base adjustment for shares increasing in value
140-70 Gain referable to fall in value of shares owned by others
140-75 Gain referable to fall in value of shares owned by the entity

Value shifted to shares acquired before 20 September 1985

140-90 Making a capital gain
140-95 Adjustments to cost base and reduced cost base

[This is the end of the Guide.]

Different consequences where share value shift is neutral

140-50 What if the share value shift is neutral for each shareholder?

(1) The consequences of a *share value shift (which are set out in this Subdivision) are different if these requirements are satisfied for *each* entity owning *shares in the company.

(2) The *share value shift consists of:

(a) a decrease in the market value of some of the entity's *shares in the company; and

(b) one of these:

(i) an increase in the market value of some of the entity's shares in the company; or

(ii) the issue of shares at a *discount to the entity.

(3) The total decrease in market value of the entity's *shares equals:

(a) the total increase in market value of the entity's shares; or

(b) the total *discounts given in relation to the entity's shares.

(4) An entity works out what the consequences of the *share value shift are by disregarding all *shares in the company owned by other entities.

Example: Bill and Bevan are the only shareholders in a company and are associates. They own one post-CGT share each. The shares are fully paid and each has a market value of $120,000. The company issues one new share to Bill and Bevan for $100,000 each. After the new shares are issued, each share in the company has a market value of $110,000. The total decrease in the market value of the original shares equals the total discount given in relation to the new shares.

Apart from this section, Bill and Bevan would make a capital gain based on the value shifted from their existing share into the new share of the other.

Bill and Bevan will not make a capital gain from the share value shift, although cost base adjustments will be required under this Subdivision.

Value shifted to shares acquired on or after 20 September 1985

140-55 Making a capital gain

(1) This section sets out what happens if a *share value shift results in *shares that were *acquired on or after 20 September 1985 becoming *increased value shares.

Example: The ownership of shares in a company looks like this:

- a controller (for CGT purposes) of the company owns 800 class A shares and 200 class B shares;
- the controller's associate owns 100 class A shares and 700 class B shares;
- a third party owns 100 class A shares and 100 class B shares.

All shares were acquired in 1999. A share value shift causes the market value of all class A shares to fall from $100 to $50 and the market value of all class B shares to increase from $100 to $150.

(2) An entity owning *decreased value shares that have *materially decreased in market value makes a ***capital gain*** if the *shift proceeds are more than the part of those shares' *cost base worked out under subsection (5).

Note: The entity cannot make a capital loss.

(3) The ***shift proceeds*** are:

$$\text{Total of the decreases in the market value of those *shares} \times \frac{\text{Total *discounts and increases in market value of *increased value shares acquired by other entities on or after 20 September 1985}}{\text{*Total share value increase of the *share value shift}}$$

Example: To continue the example, the total of the decreases in the market value of the controller's shares is $40,000.

The only increased value shares owned by other entities are the class B shares of the controller's associate. The total increase in their market value is $35,000.

The total share value increase is the increase in market value of all shares. This is $50,000.

The controller's shift proceeds are:

$$\$40{,}000 \times \frac{\$35{,}000}{\$50{,}000} = \$28{,}000$$

Note: This represents the decrease in the market value of the controller's shares which has shifted into shares owned by the controller's associate.

(4) The ***total share value increase*** of the *share value shift is the total of:

(a) the increases in the market value of, and the *discounts given in relation to, *increased value shares; and

(b) the increases in the market value of, and the discounts given in relation to, all other shares in the company if they are reasonably attributable to the thing done under the *scheme.

(5) The part of those *shares' *cost base is:

$$\text{Those *shares' *cost base just before they decreased in value} \times \frac{\text{The *shift proceeds}}{\text{Those *shares' market value just before they decreased in value}}$$

Example: To continue the example, suppose the cost base of the controller's class A shares just after they decreased in value is $16,000. Those shares' market value just before they decreased in value is $80,000.

The part of those shares' cost base is:

$$\$16{,}000 \times \frac{\$28{,}000}{\$80{,}000} = \$5{,}600$$

The controller makes a capital gain of:

$$\$28{,}000 - \$5{,}600 = \$22{,}400$$

The controller's associate also makes a capital gain because its class A shares have materially decreased in value and part of the decrease has been shifted into the controller's shares. The gain is worked out in the same way.

The third party does not make a capital gain because its 100 class A shares are not decreased value shares.

Note: The relevant proportion of the cost base of the controller's class A shares is the same proportion as the value of those shares that has shifted into the class B shares of the controller's associate.

140-60 Cost base adjustment for shares decreasing in value

(1) The *cost base and *reduced cost base of each *decreased value share that has *materially decreased in market value are reduced by the lesser of the following:

(a) this fraction:

$$\frac{\text{The decrease in the market value of that *share}}{\text{The market value of that *share just before it decreased in value}} \times \frac{\text{Total *discounts and increases in market value of *increased value shares *acquired on or after 20 September 1985}}{\text{*Total share value increase of the *share value shift}}$$

(b) the amount of the decrease in the market value of the share.

Example: To continue the example in section 140-55, the cost base and reduced cost base of each of the controller's class A shares is $20. Each one decreased in value from $100 to $50.

The $20 is reduced by:

$$\frac{\$50}{\$100} \times \frac{\$45{,}000}{\$50{,}000} = \frac{9}{20}$$

This is less than $50 (the decrease in the market value of each of the controller's class A shares). So, the cost base and reduced cost base of each one are reduced from $20 to $11.

Note: The reduction is by the same proportion as the proportion of the value of the controller's class A shares that has shifted into its class B shares and the class B shares of its associate.

(2) The reduction occurs when the *share value shift happens.

140-65 Cost base adjustment for shares increasing in value

(1) The fourth element of the *cost base and *reduced cost base of each *increased value share owned by an entity (and *acquired on or after 20 September 1985) that has *materially increased in value includes this amount:

- the gain referable to the decrease in value of *decreased value shares owned by other entities: see section 140-70;

plus:

- the gain referable to the decrease in value of *decreased value shares owned by the entity: see section 140-75.

The amount is included when the *share value shift happens.

Example: To continue the example in sections 140-55 and 140-60, the controller's 200 class B shares have materially increased in value. The cost base and reduced cost base of each one is increased.

The cost base and reduced cost base of each one before the gain in value is $20. Because these shares all had the same market value before the share value shift ($100), they all increased in value by the same amount ($50) and they all have the same cost base ($20), their cost base and reduced cost base adjustment can be calculated as an aggregate.

(1A) However, the amount is included only to the extent that it is reflected in the market value of the *increased value share at the time of a later *CGT event. The amount is so included even if it is not reflected in the state or nature of the share at that time.

(2) There is a ***material increase*** in the value of an *increased value share in 2 situations.

(3) The first is if the sum of:

(a) any *discount given in relation to the share (expressed as a percentage of its market value just before it was

issued) in a *share value shift that occurs under the scheme; and

(b) any percentage increases in its market value because of share value shifts that occur under the *scheme;

is at least 5%.

(4) The second is if the sum of:

(a) any *discounts given in relation to all shares in *share value shifts that occur under the scheme; and

(b) any increases in the market value of all shares whose market value increased because of *share value shifts that occur under the scheme;

is at least $100,000.

140-70 Gain referable to fall in value of shares owned by others

(1) The gain referable to the decrease in value of *decreased value shares owned by other entities is the smaller of these 2 amounts.

(2) The first amount is:

$$\text{*Discount or increase in market value of the *increased value share} \times \frac{\text{Total decreases in market value of *decreased value shares owned by other entities that have *materially decreased in value}}{\text{Total decreases in market value of all *decreased value shares}}$$

Example: To continue the example in sections 140-55 to 140-65, the controller's class B shares have increased in value by $10,000 (200 shares increasing by $50 per share).

The decreased value shares of the controller are the 800 class A shares. Each share decreases in value by $50, making the total decrease in their market value $40,000.

The only other decreased value shares are the 100 class A shares of the controller's associate. The total decrease in their market value is $5,000.

The first amount is:

$$\$10{,}000 \times \frac{\$5{,}000}{\$45{,}000} = \$1{,}111$$

(3) The second amount is:

$$\text{Total of the decreases in the market value of *decreased value shares owned by other entities that have *materially decreased in value} \times \frac{\text{*Discount or increase in market value of the *increased value share}}{\text{*Total share value increase of the *share value shift}}$$

Example: To continue the example, the decreased value shares owned by other entities are the class A shares of the controller's associate. The total decrease in their market value is $5,000.

The controller's class B shares have increased in value by $10,000.

The total share value increase of the share value shift is the total increase in market value of all the shares. The 700 class B shares of the controller's associate have increased in value by $35,000 ($50 each). The 100 class B shares of the third party have increased in value by $5,000. The total increase is:

$$\$10{,}000 + \$35{,}000 + \$5{,}000 = \$50{,}000$$

The second amount is:

$$\$5{,}000 \times \frac{\$10{,}000}{\$50{,}000} = \$1{,}000$$

The smaller of the 2 amounts is $1,000.

140-75 Gain referable to fall in value of shares owned by the entity

(1) The gain referable to the decrease in value of *decreased value shares owned by the entity is the smallest of these 3 amounts.

(2) The first amount is:

$$\text{*Discount or increase in market value of the *increased value share} \times \frac{\text{Total decreases in market value of *decreased value shares owned by the entity that have *materially decreased in value}}{\text{Total decreases in market value of all *decreased value shares}}$$

Example: To continue the example in sections 140-55 to 140-70, the controller's class B shares have increased in value by $10,000.

The decreased value shares of the controller are the 800 class A shares. The total decrease in their market value is $40,000.

The only other decreased value shares are the 100 class A shares of the controller's associate. The decrease in their market value is $5,000.

The first amount is:

$$\$10{,}000 \times \frac{\$40{,}000}{\$45{,}000} = \$8{,}889$$

(3) The second amount is:

$$\text{Total decreases in market value of *decreased value shares owned by the entity that have *materially decreased in value} \times \frac{\text{*Discount or increase in market value of the *increased value share}}{\text{*Total share value increase of the *share value shift}}$$

Example: To continue the example, the controller's decreased value shares are the 800 class A shares. The decrease in their market value is $40,000.

The controller's class B shares have increased in value by $10,000. The total share value increase of the share value shift is $50,000.

The second amount is:

$$\$40{,}000 \times \frac{\$10{,}000}{\$50{,}000} = \$8{,}000$$

$$\$40{,}000 \times \frac{\$10{,}000}{\$50{,}000} = \$8{,}000$$

(4) The third amount is worked out differently, depending on whether the increase in the *cost base or *reduced cost base of each *increased value share is being worked out.

Increase in cost base

(5) If the increase in the *cost base of each *increased value share is being worked out, work out:

- the total reduction in the *cost bases of the entity's *decreased value shares: see subsection (6);

less:

- the amount worked out under subsection 140-55(5) (which is the part of the cost base of the entity's decreased value shares relevant to the working out of any capital gain).

This amount is then apportioned to each increased value share in proportion to its *cost base. The amount apportioned is the third amount.

(6) The total reduction in the *cost bases of the entity's *decreased value shares is:

$$\text{The fraction worked out under section 140-60} \times \text{The total of the *cost bases of the entity's *decreased value shares when the *share value shift happened}$$

Example: To continue the example, the cost base and reduced cost base of each of the controller's 800 class A shares (the decreased value shares) is $20. The total of their cost bases is $16,000.

The total reduction is:

$$\frac{9}{20} \times \$16{,}000 = \$7{,}200$$

The part of the cost base of those shares relevant to working out any capital gain is $5,600: see section 140-60.

The third amount is:

$$\$7{,}200 - \$5{,}600 = \$1{,}600$$

This is the smallest of the 3 amounts.

The smaller of the 2 amounts worked out under section 140-70 is $1,000.

The total of the cost bases of the controller's 200 class B shares is $4,000: see section 140-65.

This is increased by:

$$\$1{,}000 + \$1{,}600 = \$2{,}600$$

(or the cost base of each of the controller's 200 class B shares is increased by $13).

Increase in reduced cost base

(7) If the increase in the *reduced cost base of each *increased value share is being worked out, the third amount is:

$$\text{The amount worked out for the *increased value share under subsection (5)} \times \frac{\text{Total of the *reduced cost bases of the entity's *decreased value shares when the *share value shift happened}}{\text{Total of the *cost bases of those *shares at that time}}$$

Value shifted to shares acquired before 20 September 1985

140-90 Making a capital gain

(1) This section sets out what happens if a *share value shift results in *shares that were *acquired before 20 September 1985 becoming *increased value shares.

Example: A controller of a company owns 100 shares in the company that were acquired in 1999. A share value shift causes each one to fall in value from $100 to $60.

The controller's associate owns 50 shares in the company that were acquired in 1984. Each one (the increased value shares) increases in value from $20 to $60.

(2) An entity owning *decreased value shares that have *materially decreased in market value makes a ***capital gain*** if the *shift proceeds are more than the part of those shares' *cost base worked out under subsection (4).

Note: The entity cannot make a capital loss.

(3) The ***shift proceeds*** are:

$$\text{Total of the decreases in the market value of those *shares} \times \frac{\text{Total of the increases in the market value of *increased value shares *acquired before 20 September 1985}}{\text{*Total share value increase of the *share value shift}}$$

Example: To continue the example, suppose someone else (who is not an associate of the controller) owns 50 shares in the company. Each one increases in value from $20 to $60.

The total share value increase is:

$$\$2{,}000 + \$2{,}000 = \$4{,}000$$

The controller's shift proceeds are:

$$\$4{,}000 \times \frac{\$2{,}000}{\$4{,}000} = \$2{,}000$$

Note: This represents the decrease in the market value of the controller's shares which has shifted into other shares owned by the controller or the controller's associate.

(4) The part of those *shares' *cost base is:

$$\text{Those *shares' *cost base just before they decreased in value} \times \frac{\text{The *shift proceeds}}{\text{Those *shares' market value just before they decreased in value}}$$

Example: To continue the example, suppose the cost base of the controller's shares just after they decreased in value is $5,000. Their market value just before they decreased in value is $10,000.

The part of those shares' cost base is:

$$\$5{,}000 \times \frac{\$2{,}000}{\$10{,}000} = \$1{,}000$$

The controller makes a capital gain of $2,000 - $1,000 = $1,000.

140-95 Adjustments to cost base and reduced cost base

(1) The *cost base and *reduced cost base of each *decreased value share that has *materially decreased in market value are reduced by the lesser of the following:

(a) this fraction:

$$\frac{\text{The decrease in the market value of that *share}}{\text{The market value of that *share just before it decreased in value}} \times \frac{\text{Total of the increases in the market value of *increased value shares *acquired before 20 September 1985}}{\text{*Total share value increase of the *share value shift}}$$

(b) the amount of the decrease in the market value of the share.

Example: To continue the example in section 140-90, the cost base and reduced cost base of each of the controller's shares is $50. Each one decreased in value from $100 to $60.

The $50 is reduced by:

$$\frac{\$40}{\$100} \times \frac{\$2{,}000}{\$4{,}000} = \frac{1}{5}$$

This is less than $40 (the decrease in the market value of each of the controller's shares). So, the cost base and reduced cost base of each one are reduced from $50 to $40.

(2) The reduction occurs when the *share value shift happens.

Division 149—When an asset stops being a pre-CGT asset

Table of Subdivisions

149-A Key concepts

149-B When asset of non-public entity stops being a pre-CGT asset

149-C When asset of public entity stops being a pre-CGT asset

149-D How to treat holdings of less than 1% in certain entities

149-E How to treat certain interposed funds, companies and government bodies

149-F How to treat a "demutualised" public entity

Subdivision 149-A—Key concepts

Table of sections

149-10 What is a pre-CGT asset?

149-15 Majority underlying interests in a CGT asset

149-10 What is a pre-CGT asset?

A *CGT asset that an entity owns is a ***pre-CGT asset*** if, and only if:

(a) the entity last acquired the asset before 20 September 1985; and

(b) the entity was not, immediately before the start of the 1998-99 income year, taken under:

(i) subsection 160ZZS(1) of the *Income Tax Assessment Act 1936*; or

(ii) Subdivision C of Division 20 of Part IIIA of that Act;

to have acquired the asset on or after 20 September 1985; and

(c) the asset has not stopped being a pre-CGT asset of the entity because of this Division.

Note: There are transitional rules for assets that stopped being pre-CGT assets under the *Income Tax Assessment Act 1936*: see section 149-5 of the *Income Tax (Transitional Provisions) Act 1997*.

149-15 Majority underlying interests in a CGT asset

(1) ***Majority underlying interests*** in a *CGT asset consist of:

(a) more than 50% of the beneficial interests that *ultimate owners have (whether directly or *indirectly) in the asset; and

(b) more than 50% of the beneficial interests that *ultimate owners have (whether directly or *indirectly) in any *ordinary income that may be *derived from the asset.

(2) An ***underlying interest*** in a *CGT asset is a beneficial interest that an *ultimate owner has (whether directly or *indirectly) in the asset or in any *ordinary income that may be *derived from the asset.

(3) An ***ultimate owner*** is:

(a) an individual; or

(b) a company whose *constitution prevents it from making any distribution, whether in money, property or otherwise, to its members; or

(c) the Commonwealth, a State or a Territory; or

(d) a municipal corporation; or

(e) a local governing body; or

(f) the government of a foreign country, or of part of a foreign country.

(4) An *ultimate owner ***indirectly*** has a beneficial interest in a *CGT asset of another entity (that is *not* an *ultimate owner) if he, she or it would receive for his, her or its own benefit any of the capital of the other entity if:

(a) the other entity were to distribute any of its capital; and

(b) the capital were then successively distributed by each entity interposed between the other entity and the ultimate owner.

(5) An *ultimate owner ***indirectly*** has a beneficial interest in *ordinary income that may be *derived from a *CGT asset of another entity (that is *not* an *ultimate owner) if he, she or it would receive for his, her or its own benefit any of a *dividend or income if:

(a) the other entity were to pay that dividend, or otherwise distribute that income; and

(b) the dividend or income were then successively paid or distributed by each entity interposed between the other entity and the ultimate owner.

Subdivision 149-B—When asset of non-public entity stops being a pre-CGT asset

Table of sections

149-25 Which entities are affected
149-30 Effects if asset no longer has same majority underlying ownership
149-35 Cost base elements of asset that stops being a pre-CGT asset

149-25 Which entities are affected

This Subdivision provides for when a *CGT asset of an entity stops being a *pre-CGT asset (unless the entity is covered by section 149-50).

Note: Subdivision 149-C deals with when an asset of such an entity stops being a pre-CGT asset.

149-30 Effects if asset no longer has same majority underlying ownership

(1) The asset stops being a *pre-CGT asset at the earliest time when *majority underlying interests in the asset were *not* had by *ultimate owners who had *majority underlying interests in the asset immediately before 20 September 1985. Also,

Part 3-1 and this Part (except this Division) apply to the asset as if the entity had acquired it at that earliest time.

(2) If the Commissioner is satisfied, or thinks it reasonable to assume, that at all times on and after 20 September 1985 and before a particular time *majority underlying interests in the asset *were* had by *ultimate owners who had *majority underlying interests in the asset immediately before that day, subsection (1) applies as if that were in fact the case.

New owner standing in shoes of former owner

(3) Subsection (4) affects how the *majority underlying interests in the asset are worked out if an *ultimate owner (the ***new owner***) has acquired a percentage (the ***acquired percentage***) of the *underlying interests in the asset because of an event described in column 2 of an item in the table. The ***former owner*** is the entity described in column 3 of that item.

Events leading to new owner standing in for former owner

Item	For this kind of event:	The *former owner* is:
1	*CGT event A1 or B1 if there is a roll-over under Subdivision 126-A (about marriage break-downs) for the event	the entity that, immediately before the event happened, owned the *CGT asset to which the event relates
2	the death of a person	that person

(4) This section applies as if the new owner had (in addition to any other *underlying interests), at any time when the former owner had a percentage (the ***former owner's percentage***) of the underlying interests in the asset, a percentage of the underlying interests in the asset equal to the acquired percentage, or the former owner's percentage at that time, whichever is the less.

149-35 Cost base elements of asset that stops being a pre-CGT asset

(1) This section affects the *cost base and *reduced cost base of the asset if it stops being a *pre-CGT asset.

(2) The first element of each is the asset's market value at the time referred to in subsection 149-30(1).

Subdivision 149-C—When asset of public entity stops being a pre-CGT asset

Table of sections

149-50 Which entities are affected
149-55 Entity to determine periodically whether asset still has same majority underlying ownership
149-60 What the determination must show
149-65 Effects of not making the determination
149-70 Effects if asset no longer has same majority underlying ownership
149-75 Cost base elements of asset that stops being a pre-CGT asset
149-80 No further determination needed after asset stops being a pre-CGT asset

149-50 Which entities are affected

(1) This Subdivision provides for when a *CGT asset of an entity of any of these kinds stops being a *pre-CGT asset:

(a) a company *shares in which (except shares that carry the right to a fixed rate of *dividend) are listed for quotation in the official list of an *approved stock exchange;

(b) a *publicly traded unit trust;

(c) a *mutual insurance company;

(d) a *mutual affiliate company;

(e) a company (other than one covered by paragraph (a)) all the *shares in which are beneficially owned by one or more of the following:

(i) a company covered by paragraph (a);

(ii) a *mutual insurance company;

(iii) a *mutual affiliate company;

(iv) a *publicly traded unit trust;

(f) a *100% subsidiary of a company covered by paragraph (e).

(2) A ***publicly traded unit trust*** is a unit trust the units in which:

(a) are listed for quotation in the official list of an *approved stock exchange; or

(b) are ordinarily available for subscription or purchase by the public.

(3) This Division applies as if what is done or not done by the trustee of a *publicly traded unit trust had been done or not done by the trust.

149-55 Entity to determine periodically whether asset still has same majority underlying ownership

(1) Within 6 months after each *test day, the entity must examine its records to make a determination about the *majority underlying interests in the asset at the end of that day. (The Commissioner can extend the period for making the determination.)

Test days

(2) Each of these days is a ***test day***:

(a) a day that is 5 years (or a multiple of 5 years) after 20 January 1997 (but see subsection (3));

(b) if the entity is covered by paragraph 149-50(1)(a), (e) or (f)—a day on which there is *abnormal trading in *shares in the company;

(c) if the entity is a *publicly traded unit trust—a day on which there is *abnormal trading in units in the trust;

(d) if the entity is a company all the *shares in which are beneficially owned:

(i) by a company *shares in which (except shares that carry the right to a fixed rate of *dividend) are listed for quotation in the official list of an *approved stock exchange; or

(ii) by a *publicly traded unit trust;

a day on which there is *abnormal trading in *shares in the other company or in units in that unit trust;

(e) if the entity is a 100% subsidiary of a company of the kind first mentioned in paragraph (d)—a day on which there is *abnormal trading in *shares in the company referred to in subparagraph (d)(i) or in units in that unit trust.

Note: Subsections (6) and (7) change the normal rules about abnormal trading.

(3) If a day (the ***fifth anniversary***) that would otherwise be a *test day because of paragraph (2)(a) is:

(a) a Saturday; or

(b) a Sunday; or

(c) a day that is a public holiday or a bank holiday in the place where the records of ownership of shares or other interests in the entity are kept;

the next day that is *not* covered by a paragraph of this subsection is a ***test day*** instead of the fifth anniversary.

Determining the end of a day

(4) For the purposes of this section, the end of a day is determined according to legal time in the place where the records of ownership of shares or other interests in the entity are kept.

Special rules about abnormal trading

(5) Subsections (6) and (7) change how Subdivision 960-H applies for the purposes of determining under this section whether there is *abnormal trading in *shares in a company or in units in a unit trust.

(6) An issue, redemption or transfer, or any other dealing, is a ***trading*** if, and only if, it changes the respective proportions in which *ultimate owners have *underlying interests in *CGT assets of the company or trust.

(7) Section 960-235 (about suspected transactions involving 5% or more of *shares in the company or units in the trust) is disregarded.

149-60 What the determination must show

(1) The determination must show whether, at the end of the *test day, *majority underlying interests in the asset were had by *ultimate owners who also had *majority underlying interests in the asset at the end of the starting day. The ***starting day*** is:

(a) a day the entity chooses under subsection (2); or

(b) if no day is so chosen—19 September 1985.

(2) The day chosen:

(a) must be no earlier than 1 July 1985 and no later than 30 June 1986; and

(b) must be one the choice of which will result in a determination that gives a reasonable approximation of the *ultimate owners who had *underlying interests in the assets of the entity at the end of 19 September 1985.

How unidentified owners are treated

(3) So far as the entity cannot identify from examining its records who had *underlying interests in the asset at the end of the *starting day, it must make the determination on the basis that those interests were then had by *ultimate owners who did *not* have *underlying interests in the asset at the end of the *test day.

New owner standing in the shoes of former owner

(4) Subsection (5) affects how the entity must make the determination if an *ultimate owner (the ***new owner***) has acquired a percentage (the ***acquired percentage***) of the *underlying interests in the asset because of an event described in column 2 of an item in the table. The ***former owner*** is the entity described in column 3 of that item.

Events leading to new owner standing in for former owner		
Item	**For this kind of event:**	**The *former owner* is:**
1	*CGT event A1 or B1 if there is a roll-over under Subdivision 126-A (about marriage break-downs) for the event	the entity that, immediately before the event happened, owned the *CGT asset to which the event relates
2	the death of a person	that person

(5) The entity must make the determination on the basis that the new owner had (in addition to any other *underlying interests), at any time when the former owner had a percentage (the ***former owner's percentage***) of the *underlying interests in the asset, a percentage of the underlying interests in the asset equal to the acquired percentage, or the former owner's percentage at that time, whichever is the less.

Determining the end of a day

(6) For the purposes of this section, the end of a day is determined according to legal time in the place where the records of ownership of shares or other interests in the entity are kept.

149-65 Effects of not making the determination

(1) The asset stops being a *pre-CGT asset if the entity fails to make the determination as required by this Division.

(2) Also, Part 3-1 and this Part (except this Division) apply to the asset as if the entity had acquired it at the end (as determined under subsection 149-55(4)) of the *last* *test day *before* the one for which the determination was required to be made.

(3) However, if the *test day is the first one after the entity began to be covered by section 149-50 (which lists the entities affected by this Division), Part 3-1 and this Part (except this

Division) apply to the asset as if the entity had acquired it when the entity began to be covered by that section.

149-70 Effects if asset no longer has same majority underlying ownership

(1) The asset stops being a *pre-CGT asset if the determination shows that at the end of the *test day *majority underlying interests in the asset were *not* had by *ultimate owners who had *majority underlying interests in the asset at the end of the *starting day.

(2) Also, Part 3-1 and this Part (except this Division) apply to the asset as if the entity had acquired it at the end of the *test day (as determined under subsection 149-55(4)).

(3) However, disregard subsections (1) and (2) if the Commissioner is satisfied, or thinks it reasonable to assume, that at the end of the *test day *majority underlying interests in the asset *were* had by *ultimate owners who had *majority underlying interests in the asset at the end of the *starting day.

149-75 Cost base elements of asset that stops being a pre-CGT asset

(1) This section affects the *cost base and *reduced cost base of the asset if it stops being a *pre-CGT asset.

(2) The first element of each is the asset's market value at the time referred to in subsection 149-65(2) or (3) or 149-70(2), as appropriate.

(3) The other elements do not include any expenditure before the time when the entity is taken to have acquired the asset.

149-80 No further determination needed after asset stops being a pre-CGT asset

After the asset stops being a *pre-CGT asset, the entity need not make a further determination about it under section 149-55.

Subdivision 149-D—How to treat holdings of less than 1% in certain entities

Guide to Subdivision 149-D

149-100 What this Subdivision is about

If the entity is a company covered by paragraph 149-50(1)(a), (e) or (f) or a publicly traded unit trust, this Subdivision has rules that make it easier for it to determine who had underlying interests in the asset.

Table of sections

149-105 Basic principles

Special tracing rules for certain companies and publicly traded unit trusts

149-110 Holdings of less than 1% in the entity
149-115 Holdings of less than 1% in interposed company or unit trust
149-120 Notional single shareholder or unitholder of head entity
149-125 Notional single shareholder or unitholder of interposed company or trust
149-130 Notional shareholder taken to have minimum rights to distributions
149-135 Income and capital unitholding of less than 1%

When the rules in this Subdivision do not apply

149-140 If company or unit trust would not otherwise pass the continuity of ownership test

149-105 Basic principles

(1) All holdings of shares or units of less than 1% in the entity are treated as if they were held by a single notional individual. This means that the entity does not have to trace through to the actual ultimate owners who have underlying interests in the asset.

(2) A similar rule applies if another company covered by paragraph 149-50(1)(a), (e) or (f) or publicly traded unit trust is interposed between the entity and those ultimate owners. All holdings of less than 1% in the *interposed* company or trust are treated as if they were held by a different single notional individual.

(3) This means that the entity does not have to trace through the interposed company or trust to the actual ultimate owners who have underlying interests in the asset.

Note: The rules in this Subdivision may not apply if they would hide a change in majority underlying interests in the asset: see section 149-140.

[This is the end of the Guide.]

Special tracing rules for certain companies and publicly traded unit trusts

149-110 Holdings of less than 1% in the entity

(1) If the entity (the ***head entity***) is a company covered by paragraph 149-50(1)(a), (e) or (f) or a *publicly traded unit trust, this Subdivision modifies how it may determine under section 149-60 the *ultimate owners who had *underlying interests in the asset at a particular time.

(2) If the entity is a company, there must have been at that time:
(a) *dividend shareholdings of less than 1% in it; or
(b) *capital shareholdings of less than 1% in it.

(3) If the entity is a unit trust, there must have been at that time:
(a) *income unitholdings of less than 1% in it; or
(b) *capital unitholdings of less than 1% in it.

149-115 Holdings of less than 1% in interposed company or unit trust

(1) This Subdivision also modifies how the head entity may determine under section 149-60 the *ultimate owners who had *underlying interests in the asset at a particular time if, at that time:
(a) the head entity was a company covered by paragraph 149-50(1)(a), (e) or (f) or a *publicly traded unit trust; and
(b) another entity (an ***interposed company or trust***) was such a company or unit trust and met the condition in subsection (2) and the one in either subsection (3) or (4).

(2) The interposed company or trust must have been interposed between the head entity and *ultimate owners who *indirectly had beneficial interests in the asset or in any *ordinary income that may be derived from the asset.

(3) In the case of a company, there must have been:
(a) *dividend shareholdings of less than 1% in it; or
(b) *capital shareholdings of less than 1% in it.

(4) In the case of a unit trust, there must have been:
(a) *income unitholdings of less than 1% in it; or
(b) *capital unitholdings of less than 1% in it.

149-120 Notional single shareholder or unitholder of head entity

Notional single shareholder

(1) If the head entity is a company, it may make the determination on the basis that a single notional individual

(the ***notional holder***) had the right to receive, for his or her own benefit and directly:

(a) any *dividends it may pay in respect of each *dividend shareholding of less than 1% in the entity at that time; and

(b) any distributions of capital of the entity in respect of each *capital shareholding of less than 1% in the entity at that time.

(2) If the head entity makes the determination on the basis mentioned in subsection (1), it must also make it on the basis that the *ultimate owners who at that time had the right to receive for their own benefit (whether directly, or *indirectly through one or more interposed entities):

(a) any *dividends the entity may pay in respect of each *dividend shareholding of less than 1% in the entity at that time; and

(b) any distributions of capital of the entity in respect of each *capital shareholding of less than 1% in the entity at that time;

did not have that right.

Notional single unitholder

(3) If the head entity is a unit trust, it may make the determination on the basis that a single notional individual (the ***notional holder***) had the right to receive, for his or her own benefit and directly:

(a) any income that the entity may distribute in respect of each *income unitholding of less than 1% in the entity at that time; and

(b) any distributions of capital of the entity in respect of each *capital unitholding of less than 1% in the entity at that time.

(4) If the head entity makes the determination on the basis mentioned in subsection (3), it must also make it on the basis that the *ultimate owners who at that time had the right to

receive for their own benefit (whether directly, or *indirectly through one or more interposed entities):

(a) any income that the entity may distribute in respect of each *income unitholding of less than 1% in the entity at that time; and

(b) any distributions of capital of the entity in respect of each *capital unitholding of less than 1% in the entity at that time;

did not have that right.

149-125 Notional single shareholder or unitholder of interposed company or trust

Notional shareholder

(1) The entity may make the determination on the basis that, for each interposed company that is covered by paragraph 149-50(1)(a), (e) or (f), a different single notional individual (the ***notional holder***) had the right to receive, for his or her own benefit and directly:

(a) any *dividends the interposed company may pay in respect of each *dividend shareholding of less than 1% in the interposed company at that time; and

(b) any distributions of capital of the interposed company in respect of each *capital shareholding of less than 1% in the interposed company at that time.

(2) If the head entity makes the determination on the basis mentioned in subsection (1), it must also make it on the basis that the *ultimate owners who at that time had the right to receive for their own benefit (whether directly, or *indirectly through one or more interposed entities):

(a) any *dividends the interposed company may pay in respect of each *dividend shareholding of less than 1% in the interposed company at that time; and

(b) any distributions of capital of the interposed company in respect of each *capital shareholding of less than 1% in the interposed company at that time;

did not have that right.

Notional unitholder

(3) The entity may make the determination on the basis that, for each interposed trust that is a *publicly traded unit trust, a different single notional individual (the ***notional holder***) had the right to receive, for his or her own benefit and directly:

(a) any income that the interposed trust may distribute in respect of each *income unitholding of less than 1% in the interposed trust at that time; and

(b) any distributions of capital of the interposed trust in respect of each *capital unitholding of less than 1% in the interposed trust at that time.

(4) If the head entity makes the determination on the basis mentioned in subsection (3), it must also make it on the basis that the *ultimate owners who at that time had the right to receive for their own benefit (whether directly, or indirectly through one or more interposed entities):

(a) any income that the interposed trust may distribute in respect of each *income unitholding of less than 1% in the interposed trust at that time; and

(b) any distributions of capital of the interposed trust in respect of each *capital unitholding of less than 1% in the interposed trust at that time.

did not have that right.

149-130 Notional shareholder taken to have minimum rights to distributions

If:

- the percentage of the distributions of capital, dividends or income of the head entity, or of the interposed company or trust, that the notional holder had the right to receive at that time;

is greater than:

- the percentage (the ***lower percentage***) of the distributions of capital, dividends or other income of the head entity, or of the interposed company or trust, that the notional holder had the right to receive at the end of the *starting day (as determined under subsection 149-60(6));

the notional holder is taken to have the right to receive the lower percentage of the distributions of capital, dividends or other income at that time.

149-135 Income and capital unitholding of less than 1%

*Meaning of **income unitholding of less than 1%***

(1) If all the units in a unit trust of which an entity is the registered holder at a particular time carry (between them) the right to receive less than 1% of any distribution of income of the trust, those units constitute an ***income unitholding of less than 1%*** in the trust at that time.

*Meaning of **capital unitholding of less than 1%***

(2) If all the units in a unit trust of which an entity is the registered holder at a particular time carry (between them) the right to receive less than 1% of any distribution of capital of the trust, those units constitute a ***capital unitholding of less than 1%*** in the trust at that time.

When the rules in this Subdivision do not apply

149-140 If company or unit trust would not otherwise pass the continuity of ownership test

(1) This Subdivision does not apply for the purposes of a determination under section 149-55 if the Commissioner decides that it is reasonable to assume that at the end of the *test day `*majority underlying interests in the asset were

not had by *ultimate owners who had *majority underlying interests in the asset at the end of the *starting day.

(2) If the Commissioner so decides *after* the head entity has already made the determination on the basis of a rule in this Subdivision, the determination is taken never to have been made.

Note: The head entity may still have time to make a fresh determination, or the Commissioner may extend the time for making one: see subsection 149-55(1).

Subdivision 149-E—How to treat certain interposed funds, companies and government bodies

Guide to Subdivision 149-E

149-145 What this Subdivision is about

If the entity is a company covered by paragraph 149-50(1)(a), (e) or (f) or a publicly traded unit trust, this Subdivision has rules that make it easier for it to determine who had underlying interests in the asset.

The entity does not have to trace through complying superannuation funds, complying approved deposit funds, companies of certain kinds, or government bodies, that are interposed between the entity and the ultimate owners who have underlying interests in the asset.

Table of sections

Special tracing rules for certain companies and publicly traded unit trusts

149-150 When certain funds, companies or government bodies are taken to have rights to capital, dividends or other income

149-155 Limits on tracing through interposed fund or body

[This is the end of the Guide.]

Special tracing rules for certain companies and publicly traded unit trusts

149-150 When certain funds, companies or government bodies are taken to have rights to capital, dividends or other income

(1) If the entity (the ***head entity***) is a company covered by paragraph 149-50(1)(a), (e) or (f) or a *publicly traded unit trust, and the conditions in this section are met, this Subdivision modifies how it may determine under section 149-55 the *ultimate owners who had *underlying interests in the asset at a particular time.

(2) An entity of any of these kinds (the ***interposed fund or body***):

(a) a *superannuation fund;

(b) an *approved deposit fund;

(c) a *mutual insurance company;

(d) a *mutual affiliate company;

(e) a company whose *constitution prevents it from making any distribution, whether in money, property or otherwise, to its members;

(f) a company that is prescribed by the regulations;

(g) the Commonwealth, a State or a Territory;

(h) a municipal corporation

(i) a local governing body;

(j) the government of a foreign country, or of part of a foreign country;

must have been interposed at that time between the head entity and *ultimate owners.

(3) At that time, those *ultimate owners must have had the right to receive for their own benefit, and *indirectly through the interposed fund or body (or through entities including it):

(a) a percentage of any distributions of capital of the head entity; or

(b) a percentage of any *dividends that the head entity may pay or any income that the head entity may distribute.

(4) If the interposed fund or body is a *superannuation fund, it must have been a *complying superannuation fund, or *a foreign superannuation fund, at the end of the *test day to which the determination relates.

(5) If the interposed fund or body is an *approved deposit fund, it must have been a *complying approved deposit fund at the end of the *test day to which the determination relates.

149-155 Limits on tracing through interposed fund or body

Interposed fund or body has more than 50 members or is a government body

(1) If:

(a) the interposed fund or body had more than 50 members at that time; or

(b) the interposed fund or body is covered by any of paragraphs 149-150(2)(g) to (j) (which describe certain Australian and foreign government bodies);

the head entity may make the determination on the basis that the interposed fund or body was at that time an individual who had the right to receive, for his or her own benefit, the percentage of distributions, *dividends or income mentioned in paragraph 149-150(3)(a) or (b).

If fund or special company has not more than 50 members

(2) Otherwise, the head entity may make the determination on the basis that each member of the interposed fund or body was at that time an individual who had a right to receive, for his or her own benefit, an equal proportion of the percentage of distributions, *dividends or income mentioned in paragraph 149-150(3)(a) or (b).

Persons who actually had the right are taken not to have had it

(3) If the head entity makes the determination on the basis mentioned in subsection (1) or (2), it must also make it on the basis that the *ultimate owners who at that time had the right mentioned in subsection 149-150(3) did not have that right (except as provided by subsection (2) of this section).

Subdivision 149-F—How to treat a "demutualised" public entity

Table of sections

149-165 Members treated as having underlying interests in assets until demutualisation
149-170 Effect of demutualisation of interposed company

149-165 Members treated as having underlying interests in assets until demutualisation

(1) This section modifies how the entity may determine under section 149-60 the *ultimate owners who had *underlying interests in the asset at a particular time if the entity:

(a) was:

(i) a *mutual insurance company; or

(ii) a *mutual affiliate company;

at the end of the *starting day (as determined under subsection 149-60(6)); and

(b) has since stopped being a company of either of those kinds, but has continued in existence as either a company covered by paragraph 149-50(1)(a), (e) or (f) or a *publicly traded unit trust; and

(c) when it stopped being an entity of either of those kinds (the ***stopping time***), had more than 50 members.

(2) The entity may make the determination on the basis that an *ultimate owner who:

(a) immediately before the stopping time was a member of the entity; and

(b) immediately after the stopping time had an *underlying interest in the asset;

had the interest at all times from and including the end of the *starting day until immediately after the stopping time.

149-170 Effect of demutualisation of interposed company

(1) This section modifies how the entity (the ***head entity***) may determine under section 149-60 the *ultimate owners who had *underlying interests in the asset at a particular time if another entity (the ***interposed company***):

(a) was:

(i) a *mutual insurance company; or

(ii) a *mutual affiliate company;

at the end of the *starting day (as determined under subsection 149-60(6)) for the head entity; and

(b) has since stopped being a company of either of those kinds, but has continued in existence as either a company covered by paragraph 149-50(1)(a), (e) or (f) or a *publicly traded unit trust; and

(c) when it stopped being an entity of either of those kinds (the ***stopping time***), had more than 50 members.

(2) The head entity may make the determination on the basis that an *ultimate owner who:

(a) immediately before the stopping time was a member of the interposed company; and

(b) immediately after the stopping time had, through the interposed company, an *underlying interest in the asset;

had the interest at all times from and including the end of the *starting day until immediately after the stopping time.

[The next Part is Part 3-5.]

2 Section 165-90 (link note)

Repeal the link note, substitute:

Subdivision 165-CA—Applying net capital losses of earlier income years

Guide to Subdivision 165-CA

165-93 What this Subdivision is about

In working out its net capital gain for an income year, a company cannot apply a net capital loss for an earlier income year unless:

- it has the same owners and the same control throughout the loss year and the income year; or
- it carried on the same business, entered no new kinds of transactions and conducted no new kinds of business.

Table of sections

Operative provisions

165-96 When a company cannot apply a net capital loss

[This is the end of the Guide.]

Operative provisions

165-96 When a company cannot apply a net capital loss

(1) In working out its *net capital gain or *net capital loss for the *current year, a company cannot apply a *net capital loss it has for an earlier income year if Subdivision 165-A would prevent it from deducting the loss for the current year if:

(a) the loss were a *tax loss of the company for that earlier income year; and

(b) section 165-20 (about deducting part of a tax loss) were disregarded.

Note 1: A company's net capital gain or net capital loss for an income year is usually worked out under section 102-5.

Note 2: Subdivision 165-A deals with the deductibility of a company's tax loss for an earlier income year if there has been a change in the ownership or control of the company in the loss year or the income year.

(2) If subsection (1) prevents the company from applying the *net capital loss, it can apply the *part* of the loss that it made during a *part* of that earlier income year, but only if, assuming that part of that income year had been treated as the whole of it, the company would have been entitled to apply the net capital loss.

Subdivision 165-CB—Working out the net capital gain and the net capital loss for the income year of the change

Guide to Subdivision 165-CB

165-99 What this Subdivision is about

A company that has not had the same ownership and control during the income year, and has not satisfied the same business test, works out its net capital gain and net capital loss under this Subdivision.

Table of sections

When a company must work out its net capital gain and net capital loss under this Subdivision

165-102 On a change of ownership, or of control of voting power, unless the company carries on the same business

Working out the company's net capital gain and net capital loss

165-105 First, divide the income year into periods

165-108 Next, calculate the notional net capital gain or notional net capital loss for each period
165-111 How to work out the company's net capital gain
165-114 How to work out the company's net capital loss

[This is the end of the Guide.]

When a company must work out its net capital gain and net capital loss under this Subdivision

165-102 On a change of ownership, or of control of voting power, unless the company carries on the same business

A company must calculate its *net capital gain and *net capital loss for the income year under this Subdivision if:

(a) it must calculate its taxable income and *tax loss for the income year under Subdivision 165-B; or

(b) it would be required to calculate them under that Subdivision but for subsection 165-50(3) (about cases where that Subdivision would make no difference to the taxable income).

Note: In the case of a listed public company or its 100% subsidiary, Subdivision 166-B modifies how this Subdivision applies, unless the company chooses otherwise.

Working out the company's net capital gain and net capital loss

165-105 First, divide the income year into periods

Divide the income year into periods according to section 165-45 (which is about working out the company's taxable income under Subdivision 165-B).

165-108 Next, calculate the notional net capital gain or notional net capital loss for each period

(1) The company has a ***notional net capital gain*** for a period if the total of the *capital gains it made during the period exceeds the total of the *capital losses it made during the

period. The ***notional net capital gain*** is the amount of the excess.

(2) On the other hand, if the total of those losses exceeds the total of those gains, the company has a ***notional net capital loss*** for the period, equal to the excess.

(3) If the company has a *notional net capital loss for *none* of the periods in the income year, this Subdivision has no further application, and the company's *net capital gain for the income year is calculated in the usual way.

The usual way of working out the net capital gain is set out in section 102-5.

Trust's capital gain attributed to company beneficiary

(4) If some or all (the ***attributable amount***) of an amount included in the company's assessable income for the income year under:

(a) section 97 (Beneficiary of a trust estate who is not under a legal disability) of the *Income Tax Assessment Act 1936*; or

(b) section 98A (Non-resident beneficiaries assessable in respect of certain income) of that Act;

is attributable to a *capital gain that the trust made at a particular time during the period, this section applies to the attributable amount as if it were a *capital gain made by the company at that time.

165-111 How to work out the company's net capital gain

The company's ***net capital gain*** for the income year is worked out in this way:

Working out the company's net capital gain

Step 1. Add up the *notional net capital gains (if any) worked out under section 165-108.

Note: A notional net capital *loss* for a period is *not* taken into account, but counts towards the company's net capital loss for the income year.

Step 2. Add to the Step 1 amount so much of each amount included in the company's assessable income for the income year under:

(a) section 97 (Beneficiary of a trust estate who is not under a legal disability) of the *Income Tax Assessment Act 1936*; or

(b) section 98A (Non-resident beneficiaries assessable in respect of certain income) of that Act;

as is attributable to a *capital gain that the trust made outside the income year.

Note: This is relevant only if the trust has an income year that starts and ends at a different time from when the company's income year starts and ends.

Step 3. If the Step 2 amount is *more than* zero, reduce it by applying any unapplied *net capital losses from previous income years. (If this reduces it to zero, the company has no net capital gain for the income year.)

Note: To apply net capital losses: see section 102-15.

Step 4. If the Step 3 amount is *more than* zero, it is the company's ***net capital gain***.

Note : For exceptions and modifications to these rules: see section 102-30.

165-114 How to work out the company's net capital loss

The company's ***net capital loss*** for the income year is worked out in this way:

Working out the company's net capital loss

Step 1.	Add up the *notional net capital losses (if any) worked out under section 165-108.
Step 2.	If the Step 1 amount is *more than* zero, it is the company's ***net capital loss***.

Note 1: The net capital loss can be applied against the company's capital gains for a later income year: see sections 102-5 and 102-15.

Note 2: For exceptions and modifications to these rules: see section 102-30.

Subdivision 165-C—Deducting bad debts

Guide to Subdivision 165-C

165-117 What this Subdivision is about

A company cannot deduct a bad debt unless:

- if the debt was incurred in an earlier income year—the company had the same owners and the same control during the rest of that income year and also during the income year in which it writes off the debt as bad; or
- if the debt was incurred in the current year—the company had the same owners and the same control during the income year both before and after the debt was incurred;

or, if there has been a change of ownership or control, the company has since carried on the same business, entered no new kinds of transactions and conducted no new kinds of business.

Table of sections

Operative provisions

165-120 To deduct a bad debt
165-123 Company must maintain the same owners
165-126 Alternatively, company must carry on same business

165-129 Same people must control the voting power, or company must carry on same business
165-132 When tax losses resulting from bad debts cannot be deducted

Operative provisions

165-120 To deduct a bad debt

(1) A company cannot deduct a debt (or part of a debt) that it writes off as bad in the *current year unless:

(a) it meets the conditions in section 165-123 (which is about the company maintaining the same owners); or

(b) the Commissioner thinks it would be unreasonable to require the company to meet the conditions in that section, having regard to the entities that beneficially owned the shares in the company when (in the Commissioner's opinion) the debt (or part) became bad; or

(c) the company meets the conditions in section 165-126 (which is about the company carrying on the same business).

Note 1: In the case of a listed public company or its 100% subsidiary, Subdivision 166-C modifies how this Subdivision applies, unless the company chooses otherwise.

Note 2: Normally bad debts are deductible under section 8-1 or 25-35.

(2) The conditions in section 165-123 or 165-126 apply to different periods, depending on whether the debt was incurred in the *current year or an earlier income year:

Meaning of *first continuity period* and *second continuity period*

In this case:	**the *first continuity period*:**	**and the *second continuity period*:**
the debt was incurred in an earlier income year	• starts on the day when the debt was incurred; and • ends at the end of that income year	is the *current year

the debt was incurred in the *current year (but not on the last day of it)	• starts on the first day of the *current year; and • ends on the day when the debt was incurred	• starts on the day after the debt was incurred; and • ends on the last day of the *current year

(3) A company cannot deduct a debt (or part of a debt) that it writes off as bad on the last day of the *current year if the debt was also incurred on that day.

165-123 Company must maintain the same owners

Voting power

(1) There must be persons who had *more than 50% of the voting power in the company during the whole of the *first continuity period. Also, those persons must have had *more than 50% of the voting power in the company during the whole of the *second continuity period.

See section 165-150 to work out who had more than 50% of the voting power.

Rights to dividends

(2) There must be persons who had rights to *more than 50% of the company's dividends during the whole of the *first continuity period. Also, those persons must have had rights to *more than 50% of the company's dividends during the whole of the *second continuity period.

See section 165-155 to work out who had rights to more than 50% of the company's dividends.

Rights to capital distributions

(3) There must be persons who had rights to *more than 50% of the company's capital distributions during the whole of the *first continuity period. Also, those persons must have had rights to *more than 50% of the company's capital distributions during the whole of the *second continuity period.

See section 165-160 to work out who had rights to more than 50% of the company's capital distributions.

When to apply the primary test

(4) To work out whether a condition in this section was satisfied during a period (the ***ownership test period***) that is:

(a) the *first continuity period; or

(b) the *second continuity period;

apply the primary test for that condition unless subsection (5) requires the alternative test to be applied.

For the primary test: see subsections 165-150(1), 165-155(1) and 165-160(1).

When to apply the alternative test

(5) Apply the alternative test for that condition if one or more other companies beneficially owned *shares, or interests in shares, in the company at any time during the *first continuity period or the *second continuity period.

For the alternative test: see subsections 165-150(2), 165-155(2) and 165-160(2).

Applying the tests for the purposes of this Subdivision

(6) In applying a test for the purposes of this Subdivision, subsection 165-180(2) and sections 165-185 and 165-190 have effect as if they referred to the *second continuity period instead of the income year.

165-126 Alternatively, company must carry on same business

(1) If the company fails to meet a condition in section 165-123 (which is about the company maintaining the same owners), it can instead meet the conditions in this section.

(2) There must be some period (the ***minimum continuity period***) that satisfies these conditions:

(a) it must start at the start of the *first continuity period (and end before, at or after the end of that period);

(b) if the minimum continuity period were the first continuity period, each of the conditions in section 165-123 about the first continuity period would be satisfied.

(3) The company must satisfy the *same business test for the *second continuity period (the ***same business test period***). Apply the test to the *business that the company carried on immediately before the time (the ***test time***) when the *minimum continuity period ends.

For the same business test: see Subdivision 165-E.

165-129 Same people must control the voting power, or company must carry on same business

(1) Even if section 165-120 does not prevent a company from deducting a bad debt (or part of one), it cannot deduct the bad debt (or that part of it) if:

(a) for some or all of the *second continuity period, a person controlled, or was able to control, the voting power in the company (whether directly, or indirectly through one or more interposed entities); and

(b) for some or all of the *first continuity period, that person did *not* control, and was *not* able to control, that voting power (directly, or indirectly in that way); and

(c) that person began to control, or became able to control, that voting power (directly, or indirectly in that way) for the purpose of:

(i) getting some benefit or advantage in relation to how this Act applies; or

(ii) getting such a benefit or advantage for someone else;

or for purposes including that purpose.

(2) However, that person's control of the voting power, or ability to control it, does not prevent the company from deducting the bad debt (or that part of it) if the company satisfies the

*same business test for the *second continuity period (the ***same business test period***).

(3) Apply the *same business test to the *business that the company carried on immediately before the time (the ***test time***) when the person began to control that voting power, or became able to control it.

For the same business test: see Subdivision 165-E.

165-132 When tax losses resulting from bad debts cannot be deducted

(1) If:

(a) a company can deduct a debt (or part of a debt) that it wrote off as bad in an income year; and

(b) because the company failed to meet a condition in section 165-123 (about the company maintaining the same owners), it could not have deducted the debt (or part) apart from section 165-126 (about the company carrying on the same business); and

(c) the company wrote off the debt *after* the *minimum continuity period; and

(d) because of the deduction, the company has a *tax loss for that income year, or there was an increase in the amount of its *tax loss for that income year; and

(e) the company carried on a *business during that income year for the purpose, or for purposes including the purpose, of securing a deduction for the debt (or part) by relying on section 165-126;

the company cannot deduct the *tax loss for a later income year, or cannot deduct it to the extent of the increase, unless it also satisfies the *same business test for the later income year (the ***same business test period***).

(2) Apply the test to the *business that the company carried on immediately before the time (the ***test time***) when the *minimum continuity period ended.

For the same business test: see Subdivision 165-E.

3 Section 166-35 (link note)

Repeal the link note, substitute:

Subdivision 166-C—Deducting bad debts

Table of sections

166-40 How Subdivision 165-C applies to a listed public company
166-45 How Subdivision 165-C applies to a 100% subsidiary of a listed public company
166-50 Companies can choose that this Subdivision is not to apply to them

166-40 How Subdivision 165-C applies to a listed public company

(1) This Subdivision modifies the way Subdivision 165-C applies to a company that is a *listed public company at all times during a period (the ***test period***) consisting of the *first continuity period, the *second continuity period and any intervening period.

Note 1: Subdivision 165-C is about the conditions a company must satisfy before it can deduct a bad debt.

Note 2: This Subdivision also modifies how Subdivision 165-C applies to a 100% subsidiary of a listed public company: see section 166-45.

Note 3: A company can choose that this Subdivision is not to apply to it: see section 166-50.

Substantial continuity of ownership

(2) The *listed public company is taken to have met the conditions in section 165-123 (about the company maintaining the same owners) if there is *substantial continuity of ownership of the company as between whichever of these times the company chooses:

(a) the start of the income year in which the debt was incurred;

(b) the start of the *test period;

and each of these other times in the test period:

(c) the time of each *abnormal trading in *shares in the company;

(d) the end of each income year.

See section 166-145 to work out whether there is substantial continuity of ownership.

No substantial continuity of ownership

(3) The *listed public company is taken to have *failed* to meet the conditions in section 165-123 if there is *no* *substantial continuity of ownership of the company as between the start of the *test period and one or more of the other times referred to in subsection (2).

Satisfies the same business test

(4) However, if the *listed public company satisfies the *same business test for the *second continuity period (the ***same business test period***), it is taken to have satisfied the condition in section 165-126 (which is about the company carrying on the same business).

For the same business test: see Subdivision 165-E.

(5) Apply the *same business test to the *business that the *listed public company carried on immediately before the first time (the ***test time***) covered by paragraph (2)(a) or (b) for which there was no *substantial continuity of ownership of the company as between the start of the test period and that time.

166-45 How Subdivision 165-C applies to a 100% subsidiary of a listed public company

(1) This Subdivision also modifies the way Subdivision 165-C applies to a company that is *not* a *listed public company, but only if the conditions in subsections (2) and (3) are met.

Note: Subdivision 165-C is about the conditions a company must satisfy before it can deduct a bad debt for an earlier income year.

(2) The company (the ***subsidiary***) must be a *100% subsidiary of another company (the ***holding company***) at all times during a period consisting of:

(a) the *first continuity period of the subsidiary; and

(b) the *second continuity period of the subsidiary; and

(c) any intervening period.

(3) Also, the *holding company must be a *listed public company at all times during that period.

(4) If the conditions are met then, for the purposes of applying Subdivision 165-C to the subsidiary, this Subdivision applies to the subsidiary as if:

(a) the subsidiary were itself a *listed public company at all times during that period; and

(b) an *abnormal trading in *shares in the *holding company during that period were an abnormal trading in shares in the subsidiary.

(Subdivisions 166-D, 166-F and 166-G apply to the subsidiary in the same way and for the same purpose.)

166-50 Companies can choose that this Subdivision is not to apply to them

(1) The *listed public company or subsidiary can choose that Subdivision 165-C is to apply to it for the income year *without* the modifications made by this Subdivision.

(2) The company must choose on or before the day it lodges its *income tax return for the income year, or before a later day if the Commissioner allows.

4 Section 170-70 (link note)

Repeal the link note, substitute:

Subdivision 170-B—Transfer of net capital losses within wholly-owned groups of companies

Guide to Subdivision 170-B

170-101 What this Subdivision is about

A company can transfer a surplus amount of its net capital loss to another company so that the other company can apply the amount in working out its net capital gain for the income year of the transfer. Both companies must be members of the same wholly-owned group.

Table of sections

170-105 Basic principles for transferring a net capital loss

Effect of transferring a net capital loss

170-110 When a company can transfer a net capital loss
170-115 Who can apply transferred loss
170-120 Gain company is taken to have made transferred loss
170-125 Tax treatment of consideration for transferred tax loss

Conditions for transfer

170-130 Companies must be in existence and members of the same wholly-owned group
170-135 The loss company
170-140 The gain company
170-145 Maximum amount that can be transferred
170-150 Transfer by written agreement
170-155 Losses must be transferred in order they are made
170-160 Gain company cannot transfer transferred net capital loss

Effect of agreement to transfer more than can be transferred

170-165 Agreement transfers as much as can be transferred
170-170 Amendment of assessments

Effect of transfer on cost base of equity or debt interest held by company in the same wholly-owned group

170-175 Direct and indirect interests in the loss company
170-180 Direct and indirect interests in the gain company

[This is the end of the Guide.]

170-105 Basic principles for transferring a net capital loss

(1) A company can transfer a net capital loss (except a net capital loss from collectables) to another company so that the other company can apply it in working out its net capital gain for the income year of the transfer.

(2) Both companies must be members of the same wholly-owned group. There are other eligibility requirements that they must also satisfy.

(3) The transferred loss must be "surplus" in the sense that, for the income year of the transfer, the transferring company does not have enough capital gains against which to apply it. The other company must have enough capital gains against which to apply it.

(4) Also, it must not exceed the total cost bases (without indexation) of equity and debt interests in the loss company held by companies in the same wholly-owned group, unless the other company is a 100% subsidiary of the loss company.

(5) Neither company must be prevented by Subdivision 165-CA or 175-CA from applying the loss in working out its net capital gain for the income year of the transfer.

Note: Subdivision 165-CA deals with the consequences of changing ownership or control of a company. Subdivision 175-CA deals with using a company's net capital losses to avoid income tax.

(6) The net capital loss is transferred by an agreement between the 2 companies.

(7) The net capital loss can be transferred in the same year as it is made. In that case different rules apply.

Effect of transferring a net capital loss

170-110 When a company can transfer a net capital loss

(1) A company (the ***loss company***) can transfer an amount of its *net capital loss for an income year (the ***capital loss year***) to another company (the ***gain company***) if the conditions in this Subdivision are met.

(2) The amount transferred can be the whole or part of the *net capital loss.

Note: A PDF cannot transfer a net capital loss, except one for a period before it became a PDF: see section 195-30 of the *Income Tax Assessment Act 1997*.

170-115 Who can apply transferred loss

(1) If an amount of a *net capital loss is transferred, the gain company can apply the amount in working out its *net capital gain, but only for the income year of the gain company for which the amount is transferred. That income year is called the ***application year***.

Note: A company's net capital gain or net capital loss for an income year is usually worked out under section 102-5.

(2) The loss company can no longer apply the transferred amount and is taken not to have made the *net capital loss to the extent of that amount.

170-120 Gain company is taken to have made transferred loss

(1) If an amount of a *net capital loss is transferred, the amount is taken to be a *net capital loss of the gain company for the capital loss year.

(2) However, if the capital loss year is the same as the application year, the amount is taken to be a *capital loss of the gain company for the application year.

170-125 Tax treatment of consideration for transferred tax loss

(1) If the loss company receives consideration from the gain company for the transferred amount:

(a) the consideration is neither assessable income nor exempt income of the loss company; and

(b) the loss company does not make a *capital gain because of receiving the consideration.

Note: However, the consideration may affect how section 170-175 modifies the cost base of direct and indirect interests in the loss company.

(2) If the gain company gives consideration to the loss company for the transferred amount:

(a) the gain company cannot deduct the consideration; and

(b) the gain company does not make a *capital loss because of giving the consideration.

Note: However, the consideration may affect how section 170-175 modifies the cost base of direct and indirect interests in the gain company.

Conditions for transfer

170-130 Companies must be in existence and members of the same wholly-owned group

(1) Both companies must be *in existence during at least part of each of the following income years:

(a) the capital loss year; and

(b) the application year; and

(c) any intervening income year.

(2) Also, both companies must be members of the same *wholly-owned group at all times during those income years when both companies were *in existence.

170-135 The loss company

(1) The loss company:

(a) must be an Australian resident throughout the capital loss year; and

(b) must not be a *dual resident investment company in either the capital loss year or the application year.

(2) It must be the case that the loss company was *not* required to calculate the *net capital loss:

(a) under section 165-114 (because of a change in ownership or control); or

(b) under section 175-75 (because of an injected capital gain or loss).

(3) Also, it must be the case that neither Subdivision 165-CA nor Subdivision 175-CA would have prevented the loss company from applying the *net capital loss in working out its *net capital gain for the application year if it had made enough capital gains in that year.

Note 1: Subdivision 165-CA deals with the consequences of changing ownership or control of a company. Subdivision 175-CA deals with using a company's net capital losses to avoid income tax.

Note 2: A company's net capital gain or net capital loss for an income year is usually worked out under section 102-5.

170-140 The gain company

(1) The gain company must be an Australian resident throughout the application year.

(2) If the capital loss year and the application year are *not* the same, the gain company must not be prevented by Subdivision 165-CA or 175-CA from applying the transferred amount in working out its *net capital gain for the application year.

Note 1: Subdivision 165-CA deals with the consequences of changing ownership or control of a company. Subdivision 175-CA deals with using a company's net capital losses to avoid income tax.

Note 2: A company's net capital gain or net capital loss for an income year is usually worked out under section 102-5.

(3) If the capital loss year and the application year *are* the same, it must be the case that the gain company was *not* required to calculate its own *net capital gain or *net capital loss for the application year:

(a) under Subdivision 165-CB (because of a change in ownership or control); or

(b) under section 175-75 (because of an injected capital gain or loss).

Note: In deciding whether paragraph (b) applies, remember that the transferred amount is taken to be a capital loss of the gain company for the application year (because of subsection 170-120(2)).

170-145 Maximum amount that can be transferred

Loss company can only transfer what it cannot use itself

(1) The amount transferred cannot exceed the amount of the loss company's *net capital loss that, apart from the transfer, the loss company would carry forward to the next income year after the application year.

Note: If the capital loss year and the application year are the same, the loss company would carry forward the *whole* of the net capital loss, because section 102-5 does not allow a net capital loss to be applied in the income year in which it was made.

Example: In the application year the loss company has:

- a net capital loss from an earlier income year of $25,000; and
- other capital losses totalling $10,000; and
- capital gains totalling $20,000;

Of the $25,000 loss, the loss company can transfer to the gain company no more than:

$$\$25{,}000 - \left(\$20{,}000 - \$10{,}000\right) = \$15{,}000$$

Transferred loss must not exceed total cost bases of equity and debt interests in the loss company held by companies in the same wholly-owned group

(2) The amount transferred also cannot exceed the total of the respective *cost bases at the end of the application year (excluding indexation) of:

(a) each *share in the loss company that is held at the end of the application year by a company that:

(i) was a member of the same *wholly-owned group as the loss company throughout the application year (disregarding a period when either was not *in existence); and

(ii) *acquired the share on or after 20 September 1985; and

(b) each debt that the loss company owes at the end of the application year, for money it *borrowed, to a company that:

(i) was a member of the same *wholly-owned group as the loss company throughout the application year (disregarding a period when either was not *in existence); and

(ii) *acquired the debt on or after 20 September 1985.

(3) No amount can be transferred if there is no such share or debt.

(4) Subsections (2) and (3) do not apply if the gain company is a *100% subsidiary of the loss company throughout the application year (disregarding a period when either was not *in existence).

Transferred loss must not exceed what the gain company can use

(5) No amount can be transferred if, apart from the operation of this section, the gain company would *not* have a *net capital gain for the application year.

(6) The amount transferred also cannot exceed the amount worked out as follows:

Method statement

Step 1. Work out what, apart from the operation of this section, would have been the gain company's *net capital gain for the application year.

Step 2. Subtract each amount that:

(a) the gain company can apply under section 170-115 in working out its *net capital gain for the application year; and

(b) was transferred to the gain company (by the loss company or any other company) by an agreement made *before* the agreement by which the first amount is transferred.

Example: In the application year:

- the gain company has capital gains totalling $60,000 and capital losses totalling $25,000; and
- another company, being a member of the same wholly-owned group as the gain company, transferred a net capital loss of $15,000 to the gain company; and
- the loss company incurred a net capital loss of $50,000.

Of the $50,000 loss, the loss company can transfer to the gain company no more than:

$60,000 – $25,000 – $15,000 = $20,000

170-150 Transfer by written agreement

(1) The transfer must be made by a written agreement between the loss company and the gain company.

(2) The agreement must:

(a) specify the income year of the transfer (which may be earlier than the income year in which the agreement is made); and

(b) specify the amount of the *net capital loss being transferred; and

(c) be signed by the public officer of each company; and

(d) be made on or before the day of lodgment of the gain company's *income tax return for the application year, or within such further time as the Commissioner allows.

Note: The agreement will usually be made in the next income year *after* the one for which the gain company will apply the loss.

170-155 Losses must be transferred in order they are made

If the loss company has 2 or more *net capital losses that it can transfer in the application year, it can transfer them only in the order in which it made them.

170-160 Gain company cannot transfer transferred net capital loss

The gain company cannot transfer an amount of a *net capital loss transferred to it, or any part of the amount.

Effect of agreement to transfer more than can be transferred

170-165 Agreement transfers as much as can be transferred

(1) If the amount specified in an agreement exceeds the maximum amount that the loss company can transfer to the gain company in the application year, only that maximum amount is taken to have been transferred.

(2) One reason why an agreement might specify more than can be transferred is that an assessment has been amended since the agreement.

170-170 Amendment of assessments

The Commissioner may amend an assessment to *disallow a transferred amount of a *net capital loss:

(a) if the agreement to transfer the net capital loss is ineffective because the loss company did not actually make the loss; or

(b) to the extent that section 170-165 reduces the transferred amount because the loss company did not actually make some of it.

The Commissioner may do so despite section 170 (Amendment of assessments) of the *Income Tax Assessment Act 1936*.

Effect of transfer on cost base of equity or debt interest held by company in the same wholly-owned group

170-175 Direct and indirect interests in the loss company

(1) If:

(a) an amount of a *net capital loss is transferred; and

(b) a company (the ***group company***) holds a *share in the loss company or is owed a debt by it in respect of a loan; and

(c) the group company *acquired the share or debt on or after 20 September 1985; and

(d) throughout the application year, the group company is a member of the same *wholly-owned group as the loss company (disregarding a period when either was not *in existence);

the *cost base and *reduced cost base of the share or debt are reduced by an amount that is appropriate having regard to:

(e) any consideration received by the loss company for the transferred amount; and

(f) the group company's direct or indirect interest in the loss company.

Note: Reductions under subsection 160ZP(13) of the *Income Tax Assessment Act 1936* are also relevant: see section 170-175 of the *Income Tax (Transitional Provisions) Act 1997*.

(2) If:

(a) an amount of a *net capital loss is transferred; and

(b) a company (the ***group company***) holds a *share in another company, or is owed a debt by it in respect of a loan; and

(c) the group company *acquired the share or debt on or after 20 September 1985; and

(d) the money the group company paid for the share, or the borrowed money, has been applied (directly, or indirectly through one or more interposed entities):

(i) in the other company or a third company acquiring shares in the loss company; or

(ii) in a *borrowing by the loss company from the other company or from a third company; and

(e) throughout the application year, the group company, the other company and the third company (if any) are all members of the same *wholly-owned group as the loss company (disregarding, for a particular company, a period when it was not *in existence);

the *cost base and *reduced cost base of the share or debt are reduced by an amount that is appropriate having regard to:

(f) any consideration received by the loss company for the transferred amount; and

(g) the group company's direct or indirect interest in the loss company.

170-180 Direct and indirect interests in the gain company

(1) If:

(a) an amount of a *net capital loss is transferred; and

(b) a company (the ***group company***) holds a *share in the gain company or is owed a debt by it in respect of a loan; and

(c) the group company *acquired the share or debt on or after 20 September 1985; and

(d) throughout the application year, the group company is a member of the same *wholly-owned group as the gain company (disregarding a period when either was not *in existence);

the *cost base and *reduced cost base of the share or debt are increased (see subsection (3)).

Note: Increases under subsections 160ZP(14) and (15) of the *Income Tax Assessment Act 1936* are also relevant: see section 170-180 of the *Income Tax (Transitional Provisions) Act 1997*.

(2) If:

(a) an amount of a *net capital loss is transferred; and

(b) a company (the ***group company***) holds a *share in another company, or is owed a debt by it in respect of a loan; and

(c) the group company *acquired the share or debt on or after 20 September 1985; and

(d) the money the group company paid for the share, or the borrowed money, has been applied (directly, or indirectly through one or more interposed entities):

(i) in the other company or a third company acquiring shares in the gain company; or

(ii) in a *borrowing by the gain company from the other company or from a third company; and

(e) throughout the application year, the group company, the other company and the third company (if any) are all members of the same *wholly-owned group as the gain company (disregarding, for a particular company, a period when it was not *in existence);

the *cost base and *reduced cost base of the share or debt are increased.

(3) The *cost base and *reduced cost base are increased by an amount that is appropriate having regard to:

(a) any consideration given by the gain company for the transferred amount; and

(b) the group company's direct or indirect interest in the gain company.

Note: This is because the consideration may be less than the commercial value of the transferred net capital loss.

(4) However, the increase cannot exceed the increase in the market value of the *share or debt that results from the amount of the *net capital loss being transferred. (If no increase in that market value results, the *cost base and *reduced cost base are not increased either.)

Note: This Subdivision is disregarded in calculating the attributable income of a CFC: see section 410 of the *Income Tax Assessment Act 1936.*

[The next Division is Division 175.]

5 Section 175-35 (link note)

Repeal the link note.

6 Subdivision 175-D

Repeal the Subdivision, substitute:

Subdivision 175-CA—Tax benefits from unused net capital losses of earlier income years

Table of sections

175-40 When Commissioner can disallow net capital loss of earlier income year
175-45 First case: capital gain injected into company because of available net capital loss
175-50 Second case: someone else obtains a tax benefit because of net capital loss available to company

175-40 When Commissioner can disallow net capital loss of earlier income year

(1) This Subdivision sets out cases where the Commissioner may prevent a company, in working out its *net capital gain or *net capital loss for an income year, from applying some or all of a *net capital loss it has for an earlier income year (or of part of one) (the ***excluded loss***). This is called ***disallowing*** the excluded loss.

Note: A company's net capital gain or net capital loss for an income year is usually worked out under section 102-5.

(2) However, the Commissioner cannot *disallow the *excluded loss if, in determining (under section 165-96) whether Subdivision 165-A would prevent the company from deducting the loss (or the part of the loss) for the income year if the loss were a *tax loss of the company for that earlier income year, the company:

(a) would fail to meet a condition in section 165-12 (which is about the company maintaining the same owners) in respect of the income year; but

(b) would meet the condition in section 165-13 (which is about the company carrying on the same *business) in respect of the income year.

Note: Subdivision 165-A deals with the deductibility of a company's tax loss for an earlier income year if there has been a change in the ownership or control of the company in the loss year or the income year.

175-45 First case: capital gain injected into company because of available net capital loss

(1) The Commissioner may *disallow the *excluded loss if, during the income year, the company made a *capital gain some or all of which (the ***injected capital gain***) it would not have made if the excluded loss had not been available to be applied in working out the company's *net capital gain or *net capital loss for the income year (or for some other income year).

(2) However, the Commissioner cannot *disallow the *excluded loss if the *continuing shareholders will benefit from the making of the injected capital gain to an extent that the Commissioner thinks fair and reasonable having regard to their respective rights and interests in the company.

(3) The ***continuing shareholders*** are:

(a) all of the persons who had *more than 50% of the voting power in the company during the whole (or the relevant part) of the earlier income year and during the whole of the income year; and

(b) all of the persons who had rights to *more than 50% of the company's dividends during the whole (or the relevant part) of the earlier income year and during the whole of the income year; and

(c) all of the persons who had rights to *more than 50% of the company's capital distributions during the whole (or the relevant part) of the earlier income year and during the whole of the income year.

To find out who they were, apply whichever tests are applied in order to determine (under section 165-96) whether Subdivision 165-A would prevent the company from deducting the loss for the current year if it were a *tax loss of the company for that earlier income year.

See section 165-12 (which is about the company maintaining the same owners).

175-50 Second case: someone else obtains a tax benefit because of net capital loss available to company

(1) The Commissioner may *disallow the *excluded loss if:

(a) a person has obtained or will obtain a tax benefit in connection with a *scheme; and

(b) the scheme would not have been entered into or carried out if the excluded loss had not been available to be applied in working out the company's *net capital gain or *net capital loss for the income year (or for some other income year).

(2) However, the Commissioner cannot *disallow the *excluded loss if:

(a) the person had a *shareholding interest in the company at some time during the income year; and

(b) the Commissioner considers the tax benefit to be fair and reasonable having regard to that shareholding interest.

(3) An expression means the same in this section as in Part IVA of the *Income Tax Assessment Act 1936.*

Subdivision 175-CB—Tax benefits from unused capital losses of the current year

Table of sections

175-55 When Commissioner can disallow capital loss of current year
175-60 Capital gain injected into company because of available capital loss
175-65 Capital loss injected into company because of available capital gain
175-70 Someone else obtains a tax benefit because of capital loss or gain available to company
175-75 Net capital loss resulting from disallowed capital losses

175-55 When Commissioner can disallow capital loss of current year

This Subdivision sets out cases where the Commissioner may prevent a company, in working out its *net capital gain or *net capital loss for an income year, from applying all or part of a *capital loss it made during the income year. This is called ***disallowing*** the capital loss or part.

175-60 Capital gain injected into company because of available capital loss

(1) The Commissioner may *disallow *capital losses of a company (or parts of them) for an income year if:

(a) the company has made a *capital gain some or all of which (the ***injected capital gain***) it would not have made if it did not have those capital losses; and

(b) the injected capital gain was made in that income year.

The disallowed capital losses and parts of capital losses may exceed the amount of the injected capital gain.

Note: The disallowance may result in a net capital loss for the income year: see section 175-75.

(2) The Commissioner cannot disallow the capital losses or parts of the capital losses if the *continuing shareholders will benefit from the making of the injected capital gain to an extent that the Commissioner thinks fair and reasonable

having regard to their respective *shareholding interests in the company.

(3) The ***continuing shareholders*** are the individuals who had *shareholding interests in the company both immediately before the *injected capital gain was made, and immediately afterwards.

175-65 Capital loss injected into company because of available capital gain

(1) The Commissioner may *disallow a *capital loss of a company for an income year to the extent that the company would not have made the loss if it had not also made some or all of a *capital gain it made in that income year.

Note: The disallowance may result in a tax loss for the income year: see section 175-75.

(2) The Commissioner cannot disallow any of the *capital loss if:

(a) the *continuing shareholders will benefit from any profit or advantage that has arisen or might arise directly or indirectly from the loss being made; and

(b) the Commissioner thinks that the extent to which they will benefit is fair and reasonable having regard to their respective *shareholding interests in the company.

(3) The ***continuing shareholders*** are the individuals who had *shareholding interests in the company both immediately before the *capital loss was made, and immediately afterwards.

175-70 Someone else obtains a tax benefit because of capital loss or gain available to company

(1) The Commissioner may *disallow a *capital loss of a company if:

(a) a person (other than the company) has obtained or will obtain a tax benefit in connection with a *scheme; and

(b) the scheme would not have been entered into or carried out if the company had not made some or all (the ***available capital loss***) of the capital loss.

However, the capital loss may be disallowed only to the extent of the available capital loss.

(2) The Commissioner may *disallow *capital losses of a company (or parts of them) if:

(a) a person has obtained or will obtain a tax benefit in connection with a *scheme; and

(b) the scheme would not have been entered into or carried out if the company had not made some or all (the ***available capital gains***) of the *capital gains it made:

(i) before it made the capital losses; and

(ii) in the same income year as it made them.

The disallowed capital losses and parts of capital losses may exceed the amount of the available capital gains.

Note: The disallowance may result in a tax loss for the income year: see section 175-75.

(3) An expression means the same in this section as in Part IVA of the *Income Tax Assessment Act 1936.*

(4) The Commissioner cannot *disallow under this section if:

(a) the person who has obtained or will obtain the tax benefit had a *shareholding interest in the company at some time during the income year; and

(b) the Commissioner considers the tax benefit to be fair and reasonable having regard to that shareholding interest.

175-75 Net capital loss resulting from disallowed capital losses

If a company has a *net capital gain for an income year because the Commissioner *disallows under this Subdivision *capital losses of the company for the income year (or parts of them), the company also has a ***net capital loss*** for the

income year equal to the total of those losses and parts of losses.

To find out *how much* of the net capital loss can be applied in later income years: see Subdivision 165-CA.

To find out *how* to apply it: see sections 102-5 and 102-15.

Subdivision 175-C—Tax benefits from unused bad debt deductions

Table of sections

175-80 When Commissioner can disallow deduction for bad debt
175-85 First case: income or capital gain injected into company because of available bad debt
175-90 Second case: someone else obtains a tax benefit because of bad debt deduction available to company

175-80 When Commissioner can disallow deduction for bad debt

(1) This Subdivision sets out cases where the Commissioner may disallow some or all of a deduction for a debt (or part of a debt) that is owed to a company and is written off as bad in the income year.

(2) However, the Commissioner cannot disallow any of the deduction if:

(a) the company fails to meet a condition in section 165-123 (about the company maintaining the same owners) in respect of the *first continuity period or the *second continuity period; but

(b) meets the condition in section 165-126 (about the company carrying on the same *business).

175-85 First case: income or capital gain injected into company because of available bad debt

(1) The Commissioner may disallow some or all of the deduction if the company would not have had some or all (the ***injected amount***) of its assessable income or *capital gains for the income year if:

(a) the debt had not been incurred; and

(b) the debt (or the relevant part of the debt) had not been written off (or able to be written off) as bad.

(2) However, the Commissioner cannot disallow any of the deduction if the *continuing shareholders will benefit from the company having the injected amount to an extent that the Commissioner thinks fair and reasonable having regard to their respective rights and interests in the company.

(3) The ***continuing shareholders*** are:

(a) all of the persons who had *more than 50% of the voting power in the company throughout the *first continuity period and the *second continuity period; and

(b) all of the persons who had rights to *more than 50% of the company's dividends throughout the *first continuity period and the *second continuity period; and

(c) all of the persons who had rights to *more than 50% of the company's capital distributions throughout the *first continuity period and the *second continuity period.

To find out who they were, apply whichever tests are applied in order to determine whether the company can deduct the debt (or the relevant part of the debt) in the first place.

See section 165-123 (about the company maintaining the same owners).

175-90 Second case: someone else obtains a tax benefit because of bad debt deduction available to company

(1) The Commissioner may disallow some or all of the deduction if:

(a) a person has obtained or will obtain a tax benefit in connection with a *scheme; and

(b) the scheme would not have been entered into or carried out if the debt had not been incurred and the debt (or the relevant part of the debt) had not been written off (or able to be written off) as bad.

(2) However, the Commissioner cannot disallow any of the deduction if:

(a) the person had a *shareholding interest in the company at some time during the income year; and

(b) the Commissioner considers the tax benefit to be fair and reasonable having regard to that shareholding interest.

(3) An expression means the same in this section as in Part IVA of the *Income Tax Assessment Act 1936.*

Subdivision 175-D—Shareholding interest in the company

Table of sections

175-95 When a person has a shareholding interest in the company

175-95 When a person has a shareholding interest in the company

(1) A person has a ***shareholding interest*** in the company if the person is the beneficial owner of:

(a) *shares in the company; or

(b) an interest in *shares in the company.

(2) A person also has a ***shareholding interest*** in the company if:

(a) the person has a shareholding interest in another company; and

(b) the other company has a shareholding interest in the company (including one resulting from any other application or applications of this subsection).

[The next Division is Division 195.]

7 Section 330-605 (link note)

Repeal the link note, substitute:

[The next Division is Division 373.]

Division 373—Intellectual property

Table of Subdivisions

Guide to Division 373

373-A Deductions for registering items of intellectual property

373-B Deductions for capital expenditure on intellectual property

373-C Partial realisation of item of intellectual property

373-D Balancing adjustments

373-E Application of Common rules

373-F Adjustments affecting your deductions under this Division

Guide to Division 373

373-1 What this Division is about

This Division creates a capital allowance for expenditure on an item of intellectual property that you use (or have used) for the purpose of producing assessable income.

Note 1: In some cases, you get a deduction even if you acquired the item for nothing.

Note 2: Division 40 sets out an overview of capital allowances.

You can also deduct expenditure you incur in being granted a patent or in registering a design or copyright.

In certain cases, this Division includes an amount in your assessable income to reverse the effect of deductions under it.

See Subdivisions 373-C and 373-D.

Subdivision 373-A—Deductions for registering items of intellectual property

Table of sections

373-5 Expenditure incurred in registering an item

373-5 Expenditure incurred in registering an item

(1) You can deduct expenditure you incur in the income year in seeking to obtain, or in obtaining:

(a) the grant of a patent, or the extension of the term of the grant; or

(b) the registration of a design, or the extension of the period of registration; or

(c) the registration of a copyright.

(2) But you can only deduct the expenditure to the extent that you incur it for the *purpose of producing assessable income.

Subdivision 373-B—Deductions for capital expenditure on intellectual property

Table of sections

373-10 Conditions for deduction
373-15 Meaning of item of *intellectual property*
373-20 How much you can deduct
373-25 Meaning of *unrecouped expenditure*
373-30 Meaning of *expenditure* on the item
373-35 *Effective life* of intellectual property

373-10 Conditions for deduction

(1) You can deduct an amount for the *current year for your *expenditure on an item of *intellectual property if you have ever used for the *purpose of producing assessable income either:

(a) the item itself; or

(b) the invention, design, work or other subject matter to which the item relates.

Note 1: In some cases, you may be treated as having incurred expenditure on an item even if you acquired it for nothing: see Cases 5 to 9 in the table in subsection 373-30(2).

Note 2: Your expenditure does not include expenditure covered by Subdivision 373-A (expenditure incurred in registering the item).

(2) However, you cannot deduct an amount under this section if:

(a) during the *current year or an earlier income year, you disposed of the item, or some other *balancing adjustment event happened at a time when you owned the item; or

(b) another entity acquired the item from you during an earlier income year because of a transmission by operation of law.

Note 1: If during the current year you disposed of the item or some other balancing adjustment event happened, you may be able to deduct an amount because of the balancing adjustment that you must make: see Subdivision 373-D.

Note 2: You can deduct an amount under this section even if you have disposed of *part* of the item. The effect of partial realisations is set out in Subdivision 373-C.

Note 3: Once you have a deduction under this section, an amount may be included in your assessable income under Subdivision 373-C or 373-D.

(3) You also cannot deduct an amount under this section if the item relates to a copyright in an Australian film within the meaning of Division 10B of Part III of the *Income Tax Assessment Act 1936*.

Note: In that case you may be able to deduct amounts under that Division.

373-15 Meaning of item of *intellectual property*

(1) An item of ***intellectual property*** consists of the rights (including equitable rights) that an entity holds under a *Commonwealth law as:

(a) the patentee, or a licensee, of a patent; or

(b) the owner, or a licensee, of a registered design; or

(c) the owner, or a licensee, of a copyright;

or of equivalent rights held under a *foreign law.

Extension of licence treated as grant of new licence

(2) This Division applies as if an extension of the term of a licence relating to a patent, design or copyright were the grant of a new licence.

373-20 How much you can deduct

(1) The amount you can deduct for the *current year is:

- your *unrecouped expenditure on the item at the *end* of the current year;

divided by:

- the number of income years from the *start* of the current year to the end of the item's *effective life.

Disposal of the item by transmission by operation of law

(2) But if another entity has acquired the item from you during the *current year because of a transmission by operation of law, the amount you can deduct for the current year is:

- your *unrecouped expenditure on the item *immediately before* the transmission;

divided by:

- the number of income years from the start of the current year to the end of the item's *effective life.

Deduction adjusted if less than $100

(3) If the amount worked out under subsection (1) or (2) is less than $100, you deduct instead the lesser of:

(a) $100; and

(b) your *unrecouped expenditure on the item at the end of the *current year or immediately before the transmission (as appropriate).

Deduction may be reduced by other provisions

(4) Your deduction may be reduced by the provisions shown in the table.

Deductions reduced

Item	For this situation:	See:
1	You obtain a benefit from a right you can exercise outside Australia	section 373-90
2	Any of your commercial debts are forgiven in the income year	Subdivision 245-E of Schedule 2C to the *Income Tax Assessment Act 1936*

373-25 Meaning of *unrecouped expenditure*

(1) Your ***unrecouped expenditure*** on an item of *intellectual property starts as your *expenditure on the item, but is reduced over time. (It can also be increased later.)

Note: If you have owned the item since before the 1998-99 income year: see instead subsection 373-10(2) of the *Income Tax (Transitional Provisions) Act 1997*.

(2) Immediately after the end of an income year, it is reduced by the total of:

(a) the amount you can deduct under section 373-10 for the *expenditure for that income year; and

(b) any amount by which that deduction has been reduced by section 373-90 (about benefits from rights exercised outside Australia).

(3) The table shows the other provisions that reduce or increase your unrecouped expenditure.

Reducing or increasing unrecouped expenditure		
Item	**For this situation:**	**See:**
1	A partial realisation of the item may *reduce* it	Subdivision 373-C
2	A balancing adjustment *reduces* it to nil	section 373-65
3	It may be *increased* if a licence you had granted in relation to the item is surrendered to you	section 373-95

373-30 Meaning of *expenditure* on the item

(1) Your ***expenditure*** incurred on the item is worked out using the table. If more than one Case in the table applies, use the expenditure in the *last* applicable Case. (It does not matter whether an event described happened in the *current year or earlier.)

(2) However, your ***expenditure*** does *not* include an amount that you have deducted or can deduct, or that has been or will be taken into account in working out an amount you have deducted or can deduct:

(a) under this Division in respect of another item of *intellectual property that you acquired before the item; or

(b) under Subdivision 373-A (about deductions for expenditure on registration of items of intellectual property); or

(c) under another Division of this Act.

Your *expenditure* on the item			
Case	**If you own it at the end of the current year because:**	**Your expenditure on the item is:**	**But your expenditure may be adjusted by:**
1	you are the original owner: • as the inventor and grantee of a patent; or • as the author and owner of a registered design; or • as the author or creator of a copyright	the capital expenditure you incurred directly in: • devising the invention; or • producing the design; or • producing the subject matter of the copyright; before the item came into existence	Common rule 2 (non-arm's length transactions: see section 373-80)
2	you are the original owner as assignee of: • a patent from the inventor; or • a registered design from the author; or • a copyright from the author or creator	the capital expenditure you incurred in obtaining the assignment	section 373-100 (non-arm's length transactions)
3	you bought the item	the capital expenditure you incurred in buying the item	section 373-100 (non-arm's length transactions)

Your *expenditure* on the item			
Case	**If you own it at the end of the current year because:**	**Your expenditure on the item is:**	**But your expenditure may be adjusted by:**
4	you bought the item with other property and no separate consideration was allocated to the item	so much of the capital expenditure you incurred in buying the item with the other property as is reasonably attributable to the item	section 373-100 (non-arm's length transactions)
5	you *acquired the item from an entity for no consideration	that entity's *unrecouped expenditure on the item immediately before disposing of it to you	(a) subsection 373-105(1), if the item was only a percentage interest of another item of *intellectual property owned by that entity; (b) subsection 373-105(2), if the item is a licence

Your *expenditure* on the item			
Case	**If you own it at the end of the current year because:**	**Your expenditure on the item is:**	**But your expenditure may be adjusted by:**
6	you *acquired the item from an entity because of a transmission by operation of law	that entity's *unrecouped expenditure on the item immediately before the transmission, less any amount that entity can deduct for it under this Division for the income year of the transmission	subsection 373-105(1), if the item was only a percentage interest of another item of *intellectual property owned by that entity

Your *expenditure* on the item			
Case	**If you own it at the end of the current year because:**	**Your expenditure on the item is:**	**But your expenditure may be adjusted by:**
7	you *acquired the item for no consideration, or because of a transmission by operation of law, from an entity that: (a) used the item while it owned it, but never for the *purpose of producing assessable income; or (b) never used the item while it owned it, but if it had, would never have used it for the *purpose of producing assessable income	a nil amount	not applicable

Your *expenditure* on the item			
Case	**If you own it at the end of the current year because:**	**Your expenditure on the item is:**	**But your expenditure may be adjusted by:**
8	a *balancing adjustment event happened that is covered by item 4 or 5 (about partial changes of ownership) in the table in subsection 373-60(3)	the item's market value at the time of the event	not applicable
9	a *balancing adjustment event happened to which Common rule 1 applies (see section 373-85)	the transferor's *unrecouped expenditure on the item immediately before the event	not applicable

373-35 *Effective life* of intellectual property

The ***effective life*** of an item of *intellectual property begins at the *start* of the first income year (the ***starting year***) for which you can deduct an amount for the item under this Subdivision. It ends at the *end* of the income year specified in the table.

Note: If you have owned the item since before the 1998-99 income year: see instead subsection 373-10(3) of the *Income Tax (Transitional Provisions) Act 1997*.

***Effective life* of an item of intellectual property**		
Item	**For this item:**	**The effective life ends at the end of:**
1	standard patent	the income year of the 20th anniversary of the date of the patent

***Effective life* of an item of intellectual property**		
Item	**For this item:**	**The effective life ends at the end of:**
2	petty patent	the income year of the 6th anniversary of the date of the patent
3	registered design	the income year of the 15th anniversary of registration of the design
4	copyright	the earlier of: (a) the income year of the 25th anniversary of you becoming owner of the copyright; or (b) the income year in which the copyright ends
5	a licence (except one relating to a copyright)	the income year in which the licence ends
6	a licence relating to a copyright	the earlier of: (a) the income year in which the licence ends; or (b) the income year of the 25th anniversary of you becoming the licensee

Subdivision 373-C—Partial realisation of item of intellectual property

Guide to Subdivision 373-C

373-40 What this Subdivision is about

If you partially realise an item of intellectual property, the amount arising:

(a) reduces your unrecouped expenditure on the item, and so reduces your future deductions; and

(b) if it exceeds your unrecouped expenditure, is included in your assessable income, but only to the extent of your past deductions for the item.

Table of sections

Operative provisions

373-45 Amount arising from a partial realisation of the item
373-50 How to work out the effects of the partial realisation
373-55 Item of intellectual property left after partial realisation

[This is the end of the Guide.]

Operative provisions

373-45 Amount arising from a partial realisation of the item

A ***partial realisation*** of an item of *intellectual property is an event described in column 2 of an item in the table.

The ***amount arising*** from the partial realisation is the amount described in column 3 of that item. (If more than one item applies, use the amount arising described in the *last* applicable item.)

Partial realisation of an item of intellectual property

Item	Event that is a *partial realisation*	*Amount arising* from it
1	you dispose of a part interest in the item (except by transmission by operation of law)	the amount (if any) paid to you for the part interest

Partial realisation of an item of intellectual property		
Item	**Event that is a *partial realisation***	***Amount arising* from it**
2	you dispose of a part interest in the item (except by transmission by operation of law), to an entity with which you are *not* dealing at *arm's length, for less than the market value of the part interest at the time of the disposal	that market value
3	you dispose of a part interest in the item (except by transmission by operation of law) for no consideration	so much of your *unrecouped expenditure on the item as is reasonably attributable to that part interest
4	you dispose of a part interest in the item (except by transmission by operation of law) for no consideration to an entity with which you are *not* dealing at *arm's length	the greater of: • so much of your *unrecouped expenditure on the item as is reasonably attributable to that part interest; and • the market value of the part interest at the time of the disposal
5	you grant by licence an interest in the patent, registered design or copyright to which the item relates	the amount (if any) paid to you for the grant of the licence
6	you grant by licence, to an entity with which you are *not* dealing at *arm's length, an interest in the patent, registered design or copyright to which the item relates, for less than the market value of the licence at the time of the grant	that market value

Partial realisation of an item of intellectual property		
Item	**Event that is a *partial realisation***	***Amount arising* from it**
7	you grant by licence for no consideration an interest in the patent, registered design or copyright to which the item relates	so much of your *unrecouped expenditure on the item as is reasonably attributable to the licence
8	you grant by licence for no consideration, to an entity with which you are *not* dealing at *arm's length, an interest in the patent, registered design or copyright to which the item relates	the greater of: • so much of your *unrecouped expenditure on the item as is reasonably attributable to the licence; and • the market value of the licence at the time of the grant
9	the item relates to a patent, and an amount is paid to you (as the owner or former owner of the item) for the exploitation of the invention by: (a) the Commonwealth or a State; or (b) an entity authorised by the Commonwealth or a State	the amount paid to you
10	an amount is paid to you (as the owner or former owner of the item) for infringement or alleged infringement of the patent, registered design or copyright to which the item relates	the amount paid to you

Note: There can be a partial realisation of an item even *after* a balancing adjustment event has happened. For example, if after disposing of a patent the former owner receives damages for infringement of the patent.

373-50 How to work out the effects of the partial realisation

(1) You work out the effects of a *partial realisation by comparing:

- the *amount arising from the partial realisation;

with:

- your *unrecouped expenditure on the item immediately before the partial realisation.

(2) If the *amount arising from the *partial realisation is *less than* your *unrecouped expenditure on the item, your unrecouped expenditure is *reduced* by that amount at the time of the *partial realisation.

(3) On the other hand, if the *amount arising from the *partial realisation *exceeds* your *unrecouped expenditure on the item, then:

(a) your unrecouped expenditure is *reduced* to nil at the time of the partial realisation (if it is not nil already); and

(b) the excess is included in your assessable income for the income year of the partial realisation.

(4) However, the amount included in your assessable income cannot exceed:

- the total of each amount (if any) you can deduct or have deducted for the item for the *current year or an earlier income year under this Division (except Subdivision 373-A (about registration expenditure));

reduced by:

- the total of each amount (if any) included in your assessable income for an income year, either under this section because of a previous *partial realisation of the item, or under section 373-65 because of a *balancing adjustment event.

Note: If you have owned the item since before the 1998-99 income year: see subsection 373-10(4) of the *Income Tax (Transitional Provisions) Act 1997*.

(5) If some or all of the *amount arising from the *partial realisation is *ordinary income, apply this section as if the amount arising were reduced by the amount of ordinary income.

373-55 Item of intellectual property left after partial realisation

This Division applies as if what is left of the item after the *partial realisation were the same item of *intellectual property as before the partial realisation.

Subdivision 373-D—Balancing adjustments

Table of sections

373-60 When balancing adjustment is required
373-65 How to do the adjustment
373-70 Meaning of *termination value*
373-75 Meaning of *written down value*

373-60 When balancing adjustment is required

(1) A balancing adjustment is required if:

(a) you have incurred *expenditure on an item of *intellectual property; and

(b) you have ever used for the *purpose of producing assessable income either the item itself or the invention, design, work or other subject matter to which the item relates; and

(c) a *balancing adjustment event happens during the *current year at a time when you own the item.

(2) A ***balancing adjustment event*** is an event listed in the table.

Balancing adjustment events

Item	Event
1	You dispose of the item (except by transmission by operation of law or by a *partial realisation).

Balancing adjustment events	
Item	**Event**
2	The item ceases to exist because: (a) the patent ceases to be in force; or (b) the registration of the design ceases to be in force; or (c) the copyright ceases to be in force; or (d) the item is a licence and expires.
3	The item is a licence and you surrender it (whether for consideration or not).
4	Another entity becomes the owner of the item (except as mentioned in item 1 or 5 or by transmission by operation of law), but an entity that owned the item (alone or with others) immediately beforehand still has an interest in the item immediately afterwards.
5	A partnership owns the item and: (a) the interests of the partners in the partnership change; and (b) a partner that owned the item (alone or with others) immediately before the change in interests still has an interest in the item immediately afterwards; and (c) the change in interests does not involve a disposal of the item nor its transmission to another entity by operation of law.

For partial realisations: see Subdivision 373-C.

For transmissions by operation of law: see subsection 373-20(2).

Note: An example of item 4 is if the owner of a copyright becomes a partner and contributes the copyright to the partnership assets.

(3) A balancing adjustment is not required if roll-over relief is available under Common rule 1.

For the application of Common rule 1: see Subdivision 373-E.

(4) A balancing adjustment is not required if the item relates to a copyright in an Australian film within the meaning of Division 10B of Part III of the *Income Tax Assessment Act 1936*.

Note: In that case, see that Division.

373-65 How to do the adjustment

(1) You make the adjustment by comparing:

- the item's *termination value;

with:

- the item's *written down value.

(2) If the *termination value *exceeds* the *written down value, the excess is included in your assessable income. However, the amount included cannot be more than:

- the total of the amounts (if any) you have deducted or can deduct for earlier income years under Subdivision 373-B for your *expenditure on the item;

less:

- the total of each amount (if any) that section 373-50 has included in your assessable income for an income year because of a *partial realisation of the item.

Note 1: If roll-over relief under Common rule 1 has previously applied to the item: see section 41-40 and subsections 373-85(3) and (4).

Note 2: If you have owned the item since before the 1998-99 income year: see subsection 373-10(4) of the *Income Tax (Transitional Provisions) Act 1997*.

Note 3: If there has been an earlier balancing adjustment event for which roll-over relief was available under section 124PA of the *Income Tax Assessment Act 1936*: see section 373-65 of the *Income Tax (Transitional Provisions) Act 1997*.

(3) If the *termination value is *less than* the *written down value, you can deduct the difference.

Note: The deduction may be reduced if you obtain a benefit from a right you can exercise outside Australia: see section 373-90.

(4) Your *unrecouped expenditure on the item is reduced to nil at the time of the *balancing adjustment event (even if the *termination value equals the *written down value).

Note: If the termination value equals the written down value, the balancing adjustment has no effect on your assessable income or deductions. (One case where this can happen is if you dispose of the item for no consideration: see section 373-70.)

373-70 Meaning of *termination value*

(1) The item's ***termination value*** is worked out using the table. If more than one Case in the table applies, use the termination value in the *last* applicable Case.

***Termination value* of an item of intellectual property**		
Case	**In this situation:**	**The termination value is:**
1	you sell the item	the sale price less your expenses reasonably attributable to the sale
2	you sell the item with other property, and no separate consideration is allocated to the item	the part of the sale price that is reasonably attributable to the item, less the same part of your expenses reasonably attributable to the sale
3	you sell the item, to an entity with which you are *not* dealing at *arm's length, for less than the item's market value at the time of the *balancing adjustment event	that market value
4	you dispose of the item to another entity for no consideration	the item's *written down value
5	you dispose of the item for no consideration to an entity with which you are *not* dealing at *arm's length	the greater of: • the item's *written down value; and • its market value at the time of the *balancing adjustment event

***Termination value* of an item of intellectual property**		
Case	**In this situation:**	**The termination value is:**
6	the item ceases to exist because: (a) the patent ceases to be in force; or (b) the registration of the design ceases to be in force; or (c) the copyright ceases to be in force; or (d) the item is a licence and expires.	a nil amount
7	the item is a licence, and you surrender it for consideration	the amount paid to you for surrendering it
8	the item is a licence and you surrender it, to an entity with which you are *not* dealing at *arm's length, for less than the item's market value at the time of the surrender	that market value
9	the item is a licence and you surrender it for no consideration	a nil amount
10	the balancing adjustment is required because of item 4 or 5 (about partial changes of ownership) in the table in subsection 373-60(2)	the item's market value at the time of the *balancing adjustment event

Note: If Case 10 applies and the parties jointly elect for roll-over relief under subsection 373-85(2), a balancing adjustment is not required.

(2) The ***termination value*** is reduced if:

(a) the *balancing adjustment event is a disposal of the item; and

(b) some or all of what you receive for the disposal is *ordinary income.

It is reduced by the amount of ordinary income.

373-75 Meaning of *written down value*

The item's ***written down value*** is your *unrecouped expenditure on the item immediately before the *balancing adjustment event.

Subdivision 373-E—Application of the Common rules

Table of sections

373-80 Application of Common rules in Division 41
373-85 Common rule 1 (roll-over relief for related entities)

373-80 Application of Common rules in Division 41

These Common rules apply to your *expenditure on an item of *intellectual property:

(a) Common rule 1 (roll-over relief for related entities), but with the qualifications and modifications set out in section 373-85;

(b) Common rule 2 (non-arm's length transactions), but only if that expenditure is worked out using Case 1 in the table in subsection 373-30(2).

Note 1: Non-arm's length transactions are also dealt with in section 373-100.

Note 2: If you have owned the item since before the 1998-99 income year: see subsection 373-10(4) of the *Income Tax (Transitional Provisions) Act 1997*.

373-85 Common rule 1 (roll-over relief for related entities)

Application of Common rule 1

(1) Common rule 1 does not apply to a *partial realisation, or to a transmission by operation of law.

(2) Roll-over relief is also available if:

(a) a *balancing adjustment event happens that is covered by item 4 or 5 (about partial changes of ownership) in the table in subsection 373-60(2); and

(b) the owner or owners of the item immediately before the change (the ***transferor***) and the owner or owners of the item immediately after the change (the ***transferee***) jointly elect for roll-over relief.

Note: For the conditions relating to the election: see section 41-55.

Modifications of Common rule 1

(3) Disregard subsection 41-40(3) (about the transferee being taken to have incurred the transferor's expenditure).

Note: This is because the transferee's expenditure on the item is dealt with in the table in subsection 373-30(2) and is based on the transferor's unrecouped expenditure immediately before the roll-over event.

(4) Instead, the balancing adjustment is affected in this way:

(a) the total of each amount (if any) that section 373-50 has included in the transferor's assessable income for an income year (because of a *partial realisation of the item); or

(b) if there have been 2 or more prior applications of Common rule 1—the total of each amount (if any) that section 373-50 has included in the assessable income of any of the transferors for an income year;

is taken to have been included by that section in the assessable income of the transferee for that income year.

Note: If you have owned the item since before the 1998-99 income year: see subsection 373-10(4) of the *Income Tax (Transitional Provisions) Act 1997*.

(5) The obligation in subsection 41-50(4) applies to the transferee as if the period for keeping the notice referred to in subsection 41-50(2) were until the end of 5 years after the next *balancing adjustment event occurs for the item.

(6) The obligation in subsection 41-55(5) applies to the transferee as if the period for keeping the election referred to in subsection 41-55(2) or a copy of it were until the end of 5

years after the next *balancing adjustment event occurs for the item.

Subdivision 373-F—Adjustments affecting your deductions under this Division

Table of sections

Adjusting the amount you can deduct

373-90 Benefits from rights exercised outside Australia

Increasing your unrecouped expenditure on the item

373-95 Expenditure incurred in obtaining the surrender of a licence

Adjusting your expenditure on the item

373-100 If the item is acquired in a non-arm's length transaction

373-105 Some cases where the item is a percentage interest of another item, or is a licence

Adjusting the amount you can deduct

373-90 Benefits from rights exercised outside Australia

The amounts you can deduct under Subdivision 373-B or 373-D for *expenditure on an item of *intellectual property are reduced if:

(a) you have a right relating to the invention, design, work or other subject matter to which the item relates; and

(b) you can exercise the right outside Australia; and

(c) you obtain a benefit from that right at any time.

They are reduced by amounts that are reasonable having regard to the benefit.

Increasing your unrecouped expenditure on the item

373-95 Expenditure incurred in obtaining the surrender of a licence

(1) If:

(a) you grant a licence (for consideration) in relation to an item of *intellectual property; and

(b) the licence is later surrendered to you;

your *unrecouped expenditure on the item is increased, at the time of the surrender, by the amount of any capital expenditure you incurred in obtaining the surrender.

(2) However, the increase is less if you and the licensee were not dealing with each other at *arm's length, and the consideration for the surrender is greater than:

(a) the licence's market value when it is surrendered to you; or

(b) the capital expenditure the licensee incurred in obtaining the licence.

In that case, your *unrecouped expenditure on the item is only increased by the lesser of those amounts.

(3) If the surrender happens after the end of the item's *effective life, section 373-20 applies to the income year of the surrender as if the number of income years referred to in that section were one.

Note: This means that if you can deduct an amount for the item under Subdivision 373-B for the income year of the surrender, that amount is the whole of any capital expenditure you incurred in obtaining the surrender.

Adjusting your expenditure on the item

373-100 If the item is acquired in a non-arm's length transaction

(1) Your *expenditure on an item of *intellectual property may be adjusted as set out in this section if:

(a) that expenditure would otherwise be worked out using Case 2, 3 or 4 in the table in subsection 373-30(2); and

(b) you and the entity from which you *acquired the item did not deal with each other at *arm's length.

Note: If that entity had owned the item since before the 1998-99 income year: see section 373-100 of the *Income Tax (Transitional Provisions) Act 1997*.

(2) Compare your *expenditure on the item as worked out using that Case with:

(a) that entity's *expenditure on the item; and

(b) the item's market value when you acquired it.

(3) If your *expenditure on the item as worked out using that Case is greater than one or other of those amounts, your *expenditure on the item is instead taken to be the lesser of them.

Special rules if you bought only part of another item

(4) However, if you bought the item from that entity (Case 3 or 4 in the table in subsection 373-30(2)) and an item in the table below applies, instead compare your *expenditure on the item as worked out using that Case with each amount described in the last column of that item.

Your expenditure if you bought only part of another item

Item	If:	The comparison amounts are:
1	the item was only a percentage interest of another item of *intellectual property owned by the entity	(a) the item's market value when you *acquired it; and (b) that percentage of the entity's *expenditure on the other item

Your expenditure if you bought only part of another item		
Item	**If:**	**The comparison amounts are:**
2	the item is a licence and the entity was, immediately before you *acquired the item, the owner of another item of *intellectual property to which the licence relates	(a) the licence's market value when you *acquired it; and (b) so much of the entity's *expenditure on the other item as is reasonably attributable to the licence

Note: If that entity had owned the other item since before the 1998-99 income year: see section 373-100 of the *Income Tax (Transitional Provisions) Act 1997*.

373-105 Some cases where the item is a percentage interest of another item, or is a licence

(1) If:

(a) you would otherwise work out your *expenditure on the item under Case 5 or 6 in the table in section 373-30; and

(b) the item was only a percentage interest of another item of *intellectual property owned by the entity from which you *acquired the item;

your ***expenditure*** on the item is instead that percentage of the expenditure worked out under that Case.

(2) If:

(a) the item is a licence; and

(b) you would otherwise work out your *expenditure on it under Case 5 in the table in section 373-30; and

(c) immediately before you *acquired it, the entity from which you acquired it was the owner of another item of *intellectual property to which the licence relates;

your ***expenditure*** on the item is instead so much of that entity's *unrecouped expenditure on the item (immediately

before disposing of it to you) as is reasonably attributable to the licence.

[The next Division is Division 375.]

8 Section 387-150 (link note)

Repeal the link note, substitute:

Subdivision 387-C—Establishing horticultural plants

Guide to Subdivision 387-C

387-160 What this Subdivision is about

You can deduct capital expenditure on establishing a horticultural plant that you own and use for commercial horticulture. The period over which you can deduct the expenditure depends on the effective life of the plant.

Table of sections

Deductions

387-162 Simplified outline
387-165 Deduction for expenditure relating to establishment of a horticultural plant
387-170 Meaning of *horticultural plant*, *horticulture business*, *horticulture* and *commercial horticulture*
387-175 Meaning of *effective life*
387-177 Determination of effective life by the Commissioner
387-180 Immediate write-off for a horticultural plant with an effective life under 3 years
387-185 Deduction for a horticultural plant with an effective life of 3 years or more
387-190 Extra deduction for income year of destruction of a horticultural plant with an effective life of 3 years or more
387-195 Expenditure you cannot deduct

Change of ownership

387-205 Getting tax information if you acquire a horticultural plant (regardless of its effective life)

Lessees and licensees of land with horticultural plants are treated as owners

387-210 Lessees and licensees of land are treated as if they own horticultural plants on the land

387-162 Simplified outline

(1) To get a deduction:

(a) you must own the horticultural plant and use it (or hold it ready for use) for commercial horticulture; and

(b) the expenditure must not be otherwise deductible.

It does not matter who incurred the expenditure.

(2) If the plant's effective life is less than 3 years, you can deduct all the expenditure in the income year when the plant is first used (or held ready for use) for commercial horticulture.

(3) If the effective life is 3 years or more:

(a) you get an annual deduction for the expenditure, worked out on a prime cost basis; and

(b) you can get a special deduction if the plant is destroyed before you have deducted all the expenditure.

(4) If a horticultural plant changes hands, the new owner can require the old owner to provide information to help the new owner work out his or her deductions.

[This is the end of the Guide.]

Deductions

387-165 Deduction for expenditure relating to establishment of a horticultural plant

(1) You can deduct an amount for the *current year for capital expenditure attributable to the establishment of a *horticultural plant in Australia for use in a *horticulture business. (It does not matter who incurred the expenditure.)

Note: Section 387-195 prevents you deducting:

- expenditure on draining swamps or low-lying land; and
- expenditure for which you can get a deduction under other provisions.

First entity to use the plant for commercial horticulture

(2) To get the deduction:

(a) you must be the first entity to use the *horticultural plant (or hold it ready for use) for *commercial horticulture; and

(b) you must own the plant when it is first used (or held ready for use) for commercial horticulture.

(This allows you to choose how the plant's *effective life is fixed.)

Note: You may be treated as owning a horticultural plant if it is on land you hold under a lease, quasi-ownership right or licence: see section 387-210.

Later owner

(3) If the *horticultural plant's *effective life is 3 years or more, you can deduct under this section even if you do not satisfy subsection (2). You can deduct what you could have deducted under this section if you *had* owned and used the plant for *commercial horticulture when it was first used (or held ready for use) for commercial horticulture.

(However, the other requirements for deductions under this section must still be satisfied, and the plant's effective life is not affected.)

Note: You can get from the last owner of the plant information relevant to working out your deduction for the plant: see section 387-205.

Ownership during current year

(4) If the *horticultural plant's *effective life is 3 years or more, you must also own and use the plant during the *current year as described in subsection 387-185(1).

Amount and timing of deduction

(5) You work out the amount and timing of your deduction:

(a) under section 387-180 if the *effective life of the *horticultural plant is under 3 years; or

(b) under section 387-185 if the *effective life of the *horticultural plant is 3 years or more.

Note 1: Various provisions may prevent or reduce your deduction. For example, see:

- Division 26 of this Act (limiting deductions generally);
- Division 245 of Schedule 2C to the *Income Tax Assessment Act 1936* (which may affect your entitlement to a deduction for a horticultural plant with an effective life of 3 years or more if your debts are forgiven).

Note 2: If an amount of the expenditure is recouped, the amount may be included in your assessable income: see Subdivision 20-A.

387-170 Meaning of *horticultural plant*, horticulture business, horticulture and commercial horticulture

(1) A ***horticultural plant*** is a live member of the plant kingdom or fungus kingdom that is cultivated or propagated for any of its products or parts (including foliage, flowers, fruit, fruiting bodies, seeds, bulbs and spores).

(2) A ***horticulture business*** is a *business of *horticulture.

(3) ***Horticulture*** includes:

(a) propagation and cultivation of a *horticultural plant in any environment (whether natural or artificial); and

(b) propagation and cultivation of seeds, bulbs, spores and similar things; and

(c) propagation and cultivation of fungi.

(4) Use for ***commercial horticulture*** means use for the *purpose of producing assessable income in a *horticulture business.

387-175 Meaning of *effective life*

(1) If you own a *horticultural plant at the time (the ***starting time***) when it is first used (or held ready for use) for *commercial horticulture, the ***effective life*** of the plant is worked out under whichever one of subsections (2) and (3) you choose.

(2) If you choose this subsection, the plant's *effective life is the period for which the plant could reasonably be expected to be used for *commercial horticulture, worked out as at the starting time.

(3) If you choose this subsection, the plant's *effective life is the period specified for that kind of *horticultural plant in a determination:

(a) made by the Commissioner under section 387-177; and

(b) operating at the starting time.

You can choose this subsection only if any conditions that the determination specifies for that kind of horticultural plant are met at the starting time.

(4) You make the choice for the first income year for which you can deduct under this Subdivision an amount relating to the *horticultural plant. You cannot change the choice (except under subsection 387-177(3) because of a retrospective determination).

Note: If the plant's effective life was determined under section 124ZZK of the *Income Tax Assessment Act 1936*, it has the same effective life for

the purposes of this Subdivision: see subsection 387-160(3) of the *Income Tax (Transitional Provisions) Act 1997*.

387-177 Determination of effective life by the Commissioner

(1) The Commissioner may make written determinations for the purposes of subsection 387-175(3). They may specify conditions relating to *horticultural plants.

Note: This subsection also allows the Commissioner to revoke or vary determinations: see subsection 33(3) of the *Acts Interpretation Act 1901*.

(2) A determination relating to a kind of *horticultural plant may operate retrospectively, but only if:

(a) it is the first determination relating to that kind of plant; or

(b) the retrospectivity works to the advantage of entities in working out the effective life of that kind of plant.

(3) If a determination operates retrospectively, you can choose to work out under subsection 387-175(3) the *effective life of a *horticultural plant to which the determination applies, even if you have previously chosen to work out the plant's effective life under subsection 387-175(2).

(4) You must make the choice by the day when you lodge your first *income tax return after the retrospective determination is made. (However, the Commissioner can allow you to make it later.) You cannot change the choice.

387-180 Immediate write-off for a horticultural plant with an effective life under 3 years

If the *effective life of the *horticultural plant is *under* 3 years, you deduct the whole of the capital expenditure attributable to the establishment of the plant. The deduction is for the income year in which you first use the plant for *commercial horticulture (or hold it ready for that use).

For a list of some limits on deductions: see Note 1 to subsection 387-165(4).

387-185 Deduction for a horticultural plant with an effective life of 3 years or more

(1) If the *effective life of the *horticultural plant is 3 years or more, your deduction for the income year is worked out using the formula:

$$\text{Establishment expenditure} \times \frac{\text{Write-off days in income year}}{365} \times \text{Write-off rate}$$

where:

establishment expenditure is the amount of the capital expenditure that is attributable to the establishment of the *horticultural plant.

write-off days in income year is the number of days in the income year on which you owned the *horticultural plant and either used it for *commercial horticulture or held it ready for that use.

write-off rate is the rate shown in the table for the *horticultural plant, according to its *effective life:

Write-off rate for horticultural plant

Item	For a *horticultural plant with an *effective life of:	The write-off rate is:
1	3 to fewer than 5 years	40%
2	5 to fewer than 6 2/3 years	27%
3	6 2/3 to fewer than 10 years	20%
4	10 to fewer than 13 years	17%
5	13 to fewer than 30 years	13%

Write-off rate for horticultural plant		
Item	**For a *horticultural plant with an *effective life of:**	**The write-off rate is:**
6	30 years or more	7%

For a list of some limits on deductions: see Note 1 to subsection 387-165(4).

Limit on write-off days

(2) Disregard your ownership and use of the *horticultural plant on a day outside the period that:

(a) starts when the plant *can* first be used for *commercial horticulture; and

(b) extends for the time shown in the table (depending on the plant's *effective life).

Period after which you cannot count use of horticultural plant		
Item	**For a *horticultural plant with an *effective life of:**	**You cannot deduct an amount for your use of the plant after a period of:**
1	3 to fewer than 5 years	2 years and 183 days
2	5 to fewer than $6^2/_3$ years	3 years and 257 days
3	$6^2/_3$ to fewer than 10 years	5 years
4	10 to fewer than 13 years	5 years and 323 days
5	13 to fewer than 30 years	7 years and 253 days
6	30 years or more	14 years and 105 days

387-190 Extra deduction for income year of destruction of a horticultural plant with an effective life of 3 years or more

(1) You can deduct the amount worked out under subsection (2) for an income year if:

(a) the *effective life of the *horticultural plant is 3 years or more; and

(b) the plant is destroyed during the income year while you own it and use it for *commercial horticulture.

(2) Work out your deduction as follows:

Method statement

Step 1. Work out the total of the amounts you could have deducted under section 387-165 for the expenditure if you had owned the *horticultural plant and used it for *commercial horticulture for the whole of the period:

(a) starting when the plant could first be used for commercial horticulture; and

(b) ending when the plant was destroyed.

Step 2. Subtract from the establishment expenditure worked out under section 387-185:

(a) the result from Step 1; and

(b) any amount you received (under an insurance policy or otherwise) for the destruction of the *horticultural plant.

The remaining amount (if any) is your deduction under subsection (1).

Note: In Step 1 you must take into account any amounts you could have deducted if section 387-165 had applied to assessments for income

years before the 1998-99 income year: see section 387-190 of the *Income Tax (Transitional Provisions) Act 1997*.

(3) This deduction is in addition to any deduction for the income year under section 387-165 for expenditure on establishing the *horticultural plant.

387-195 Expenditure you cannot deduct

Expenditure on draining swamps or clearing land

(1) You cannot deduct an amount for any income year under this Subdivision for expenditure incurred:

(a) in draining swamp or low-lying land; or

(b) in clearing land.

Expenditure deductible under other provisions

(2) You cannot deduct an amount under this Subdivision for any income year for expenditure to the extent that:

(a) you or another entity can deduct an amount for the expenditure under a provision of this Act (outside this Subdivision) for any income year; or

(b) the expenditure is taken into account in working out a deduction for depreciation; or

(c) the expenditure is part of a pool of *construction expenditure.

Note 1: However, a deduction for an income year before 1998-99 under Division 10F of Part III of the *Income Tax Assessment Act 1936* (which deals with horticultural plants) does not prevent you from deducting an amount under this Subdivision: see section 387-195 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 2: Deductions for depreciation are worked out under Division 42.

Note 3: Construction expenditure in a pool of construction expenditure is deducted under Division 43.

Change of ownership

387-205 Getting tax information if you acquire a horticultural plant (regardless of its effective life)

(1) If you become the owner of a *horticultural plant, you may give the last owner (if any) of the plant a written notice within 60 days after you become the owner, requiring the last owner to give you any or all of the following information within a specified period of at least 60 days:

(a) the amount of establishment expenditure (as defined in section 387-185) for the plant;

(b) the *effective life of the plant;

(c) the day on which the plant could first be used for *commercial horticulture.

The notice must also set out the effect of subsection (2).

Note 1: You may become the owner of a horticultural plant that is on land when it is leased to you, or when you start to hold it under a licence: see section 387-210.

Note 2: Subsections (3) and (4) explain how this subsection operates if the last owner is a partnership.

Requirement to comply with notice

(2) The last owner must not, without reasonable excuse, intentionally refuse or fail to comply with the notice.

Penalty: 10 penalty units.

Giving the notice to a partnership

(3) If the last owner is a partnership:

(a) you may give the notice to the partnership by giving it to any of the partners (this does not limit how else you can give it); and

(b) the obligation to comply with the notice is imposed on each of the partners (not on the partnership), but may be discharged by any of them; and

(c) a partner must not, without reasonable excuse, intentionally refuse or fail to comply with that obligation, unless another partner has already complied with it.

Penalty: 10 penalty units.

Limits on giving a notice

(4) Only one notice can be given in relation to the same acquisition of a *horticultural plant.

Lessees and licensees of land with horticultural plants are treated as owners

387-210 Lessees and licensees of land are treated as if they own horticultural plants on the land

Lessees

(1) You are treated for the purposes of this Subdivision as if you own a *horticultural plant so long as:

(a) the plant is attached to land you hold under:

(i) a lease; or

(ii) a *quasi-ownership right granted by an *exempt Australian government agency or an *exempt foreign government agency; and

(b) the lease or quasi-ownership right enables you to carry on a *horticulture business on the land; and

(c) any holder of a lesser interest or licence relating to the land does not carry on a *horticulture business on the land; and

(d) apart from this section, you do not own the plant.

Licensees

(2) You are treated for the purposes of this Subdivision as if you own a *horticultural plant so long as:

(a) you hold a licence relating to the land to which the plant is attached; and

(b) you carry on a *horticulture business on the land as a result of holding the licence; and

(c) apart from this section, you do not own the plant.

(3) It does not matter who planted the *horticultural plant, for the purposes of working out who its owner is.

9 Section 387-505 (link note)

Repeal the link note, substitute:

[The next Division is Division 392.]

Division 392—Long-term averaging of primary producers' tax liability

Table of Subdivisions

Guide to Division 392

392-A Is your income tax affected by averaging?

392-B What kind of averaging adjustment must you make?

392-C How big is your averaging adjustment?

392-D Effect of permanent reduction of your basic taxable income

Guide to Division 392

392-1 What this Division is about

If you are a primary producer for 2 or more years in a row, this Division evens out your income tax liability from year to year. (It does so by reducing the effect that fluctuations in

your taxable income have on the marginal rates of tax that apply to you from year to year.)

Table of sections

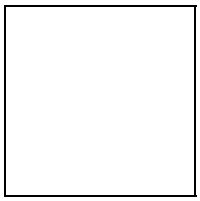
392-5 Overview of averaging process

392-5 Overview of averaging process

How averaging adjustments work

(1) This Division reduces or increases your income tax liability to bring it closer to what it would have been if worked out using a special rate of income tax. That rate (the *comparison rate) is based on the income tax that you would pay for the *current year on the average of your taxable income for up to the last 5 income years.

Example: The graph shows how averaging taxable income reduces the effect of variations in taxable income (giving a fairly steady comparison rate from year to year).



Tax offset as averaging adjustment

(2) You may be entitled to a *tax offset if the income tax you would pay on your *basic taxable income for the *current year at the *comparison rate is *less* than the income tax you would pay on that income (apart from this Division and certain other provisions).

See the examples of years 5, 6, 7 and 9 in the graph in subsection (4).

Extra income tax as averaging adjustment

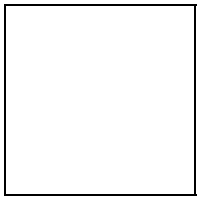
(3) You may be liable to extra income tax on some or all of your *basic taxable income for the *current year if the income tax you would pay on your basic taxable income for the current

year at the *comparison rate is *more* than the income tax on that income (apart from this Division and certain other provisions).

See the examples of years 8 and 10 in the graph in subsection (4).

Example of the effect of averaging

(4) The graph shows an example of the effect of averaging, using the same income figures as the graph in the example in subsection (1).



Note: The example assumes that all the basic taxable income was from a primary production business, and that the taxpayer's tax-free threshold was not affected by family tax assistance (under Division 5 of Part II of the *Income Tax Rates Act 1986*).

Effect of non-primary production income on averaging adjustment

(5) Your income from sources other than your *primary production business may affect the adjustment of your income tax. If more than $5,000 of your *basic taxable income is attributable to those sources, your *averaging adjustment will be reduced to reflect the proportion of your basic taxable income attributable to primary production. (There are special shading-out arrangements if your taxable income from other sources is between $5,000 and $10,000.)

No adjustment in certain cases

(6) Your income tax will not be adjusted under this Division in certain cases. In particular, you can choose not to have your income tax adjusted under this Division for the rest of your life.

Subdivision 392-A—Is your income tax affected by averaging?

Table of sections

392-10 Individuals who carry on a primary production business
392-15 Meaning of *basic taxable income*
392-20 Trust beneficiaries taken to be carrying on primary production business
392-25 Choosing not to have your income tax averaged

392-10 Individuals who carry on a primary production business

(1) This Division applies to your assessment for the *current year if:

(a) you are an individual; and

(b) you have carried on a *primary production business in Australia for 2 or more income years in a row (the last of which is the current year); and

(c) for at least one of those income years your *basic taxable income is less than or equal to your basic taxable income for the next of those income years.

Note 1: It follows that this Division does *not* apply if your basic taxable income has decreased every income year since you started carrying on a primary production business.

Note 2: In working out whether this Division applies to your assessment for an income year, you may need to take account of income years before the 1998-99 income year: see section 392-1 of the *Income Tax (Transitional Provisions) Act 1997*.

Continued application of this Division after you stop carrying on a primary production business

(2) This Division also applies to your assessment for the *current year if:

(a) this Division applied to your assessment for an earlier income year during which you carried on a *primary production business in Australia; and

(b) you do not carry on that business during the current year; and

(c) at least one of the following conditions is met for each income year (including the current year) after the

income year in which you stopped carrying on that business:

(i) your assessable income for the income year included assessable income that was *derived from, or resulted from, your having carried on that business;

(ii) you carried on a *primary production business in Australia during the income year.

Note: In working out whether this Division applies to your assessment for an income year, you may need to take account of income years before the 1998-99 income year. See section 392-1 of the *Income Tax (Transitional Provisions) Act 1997*.

392-15 Meaning of *basic taxable income*

(1) Work out your ***basic taxable income*** for an income year as follows:

Method statement

Step 1. Work out what would have been your taxable income for the income year if your assessable income for the income year:

(a) had *not* included any amount under subsection 27B(1A) or (3) (Assessable income to include certain superannuation and kindred payments) of the *Income Tax Assessment Act 1936*; and

Note: This means that certain deductions will also be excluded.

(b) had *not* included any *net capital gain for the income year.

Step 2. Subtract from the Step 1 amount any *above-average special professional income included in your taxable income for the income year under Division 405.

(2) However, your ***basic taxable income*** for an income year is nil if:

(a) you do not have a taxable income for the income year; or

(b) the amount worked out under subsection (1) for the income year is *less* than nil.

392-20 Trust beneficiaries taken to be carrying on primary production business

(1) You are taken to carry on a *primary production business carried on by a trust during an income year if you are a beneficiary presently entitled to all or part of the trust income for the income year.

(2) However, you are not taken to carry on the *primary production business if you are presently entitled to less than $1,040 of the trust income for the income year, unless the Commissioner is satisfied that your interest in the trust was not acquired or granted wholly or primarily to enable your income tax to be adjusted under this Division.

(3) You are not taken to carry on a *primary production business carried on by the trustee of:

(a) a corporate unit trust (as defined in section 102J of the *Income Tax Assessment Act 1936*, which deals with corporate unit trusts); or

(b) a public trading trust (as defined in section 102R of the *Income Tax Assessment Act 1936*, which deals with public trading trusts).

392-25 Choosing not to have your income tax averaged

(1) You can choose that this Division (except this section) not apply to your assessment for an income year. If you make this choice, this Division (except this section) does not apply to your assessment for the income year *or any later income year*.

(2) You must make your choice in writing and give it to the Commissioner by the time you lodge your *income tax return

for the income year to which your choice relates. However, the Commissioner may allow you to give the choice later.

(3) Your choice cannot be revoked after it is given to the Commissioner.

Subdivision 392-B—What kind of averaging adjustment must you make?

Guide to Subdivision 392-B

392-30 What this Subdivision is about

This Subdivision explains how to work out whether you are entitled to a tax offset for the current year or whether you must pay extra income tax for the current year.

Table of sections

Tax offset or extra income tax

392-35 Will you get a tax offset or have to pay extra income tax?

How to work out the comparison rate

392-40 Identify income years for averaging your basic taxable income
392-45 Work out your average income for those years
392-50 Work out the income tax on your average income at basic rates
392-55 Work out the comparison rate

Tax offset or extra income tax

392-35 Will you get a tax offset or have to pay extra income tax?

(1) Compare:

(a) the amount (the ***income tax you would pay at the comparison rate***) worked out using the formula:

$$\text{*Basic taxable income for *current year} \times \text{*Comparison rate}$$

(b) the amount of income tax that you would pay on your *basic taxable income for the *current year at *basic rates.

Note: You must disregard some provisions of this Act in working out amounts of income tax for the purposes of this subsection: see subsection (5).

Tax offset

(2) You are entitled to a *tax offset equal to the *averaging adjustment worked out under Subdivision 392-C if the income tax you would pay at the comparison rate is *less* than the amount of income tax you would pay at *basic rates.

Extra income tax

(3) You must pay extra income tax on the *averaging component of your *basic taxable income if the income tax you would pay at the comparison rate is *more* than the amount of income tax you would pay at *basic rates.

Note 1: Section 12A of the *Income Tax Rates Act 1986* sets the rate at which you must pay extra income tax on the averaging component of your basic taxable income.

Note 2: It does so in such a way that, generally, the extra income tax you must pay equals the averaging adjustment worked out under Subdivision 392-C.

Note 3: If family tax assistance raises your tax-free threshold above your taxable income, subsections 12A(3) and (4) of that Act set a lower rate, so that the extra income tax you must pay is reduced by the amount of income tax that family tax assistance would have saved you had your taxable income been increased to equal your tax-free threshold.

Meaning of basic rates

(4) The ***basic rates*** at which you would pay income tax are:

(a) if you are a resident taxpayer as defined in the *Income Tax Rates Act 1986*—the rates of income tax in paragraph 1(b) of Part I of Schedule 7 to that Act:

(i) taking into account the way it would apply with any changes to your tax-free threshold under section 20 of that Act; and

(ii) disregarding the effect of Division 5 of Part II of that Act (which provides family tax assistance); or

(b) if you are a non-resident taxpayer as defined in the *Income Tax Rates Act 1986*—the rates of income tax in paragraph 1(b) of Part II of Schedule 7 to that Act.

Disregard certain provisions in working out amounts

(5) Work out the amount of income tax mentioned in paragraph (1)(b) as if:

(a) the following provisions did not apply:

(i) this Division;

(ii) section 94 (Partner not having control and disposal of share in partnership income) of the *Income Tax Assessment Act 1936*;

(iii) Division 6AA (Income of certain children) of Part III of the *Income Tax Assessment Act 1936*;

(iv) Part VIIB (Medicare levy) of the *Income Tax Assessment Act 1936*; and

(b) you were not entitled to any rebate or credit under the *Income Tax Assessment Act 1936* or to any *tax offset under this Act.

No adjustment

(6) This Division does not affect your income tax for the *current year if the income tax you would pay at the *comparison rate equals the amount of income tax you would pay at *basic rates.

Note: The 2 amounts will be equal if:

- your basic taxable income and your average income are both below the tax-free threshold (disregarding any alteration of the threshold by way of family tax assistance); or
- your average income equals your basic taxable income for the current year.

How to work out the comparison rate

392-40 Identify income years for averaging your basic taxable income

The income years over which you must average your *basic taxable income are:

(a) if this Division has applied to your assessment for at least 4 income years in a row (including the *current year)—the current year and the 4 previous income years; or

(b) if this Division has applied to your assessment for less than 4 income years in a row (including the *current year)—those income years and the last income year before them.

Note: You may need to average your basic taxable income for one or more income years before the 1998-99 income year. See section 392-1 of the *Income Tax (Transitional Provisions) Act 1997*.

392-45 Work out your average income for those years

(1) Work out your ***average income*** in this way:

Method statement

Step 1. Add up your *basic taxable income for each of the income years over which you must average your basic taxable income.

Step 2. Divide the sum by the number of those income years.

Step 3. Round the result down to the nearest whole dollar if the result is not already a number of whole dollars.

(2) Your ***basic assessable income*** for an income year is your assessable income for the income year, less:

(a) any amount included in your assessable income under subsection 27B(1A) or (3) (Assessable income to include certain superannuation and kindred payments) of the *Income Tax Assessment Act 1936*; and

(b) any *net capital gain included in your assessable income under Division 102 of the *Income Tax Assessment Act 1997*.

392-50 Work out the income tax on your average income at basic rates

Work out the amount of income tax that you would pay on your *average income for the *current year at *basic rates.

392-55 Work out the comparison rate

Work out the ***comparison rate*** using the formula:

$$\frac{\text{Income tax on *average income, as worked out under section 392-50}}{\text{*Average income}}$$

Subdivision 392-C—How big is your averaging adjustment?

Guide to Subdivision 392-C

392-60 What this Subdivision is about

This Subdivision explains how to work out the amount of the averaging adjustment of your income tax for the current year (whether it is a tax offset or is used by the *Income Tax Rates Act 1986* to set the rate at which you must pay extra income tax).

Table of sections

392-65 What your averaging adjustment reflects

Your gross averaging amount

392-70 Working out your gross averaging amount

Your averaging adjustment

392-75 Working out your averaging adjustment

How to work out your averaging component

392-80 Work out your taxable primary production income
392-85 Work out your taxable non-primary production income
392-90 Work out your averaging component

392-65 What your averaging adjustment reflects

(1) Your *averaging adjustment is a proportion of your *gross averaging amount, taking account of:

(a) your *taxable primary production income (the part of your *basic taxable income from your *primary production business); and

(b) your *taxable non-primary production income (the part of your *basic taxable income from other sources).

Your *averaging component is the means of taking into account the different parts of your basic taxable income in working out your averaging adjustment.

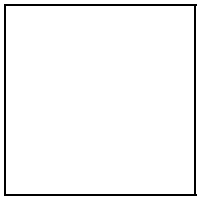
(2) If your *taxable non-primary production income is less than or equal to $5,000, your *averaging component equals the whole of your *basic taxable income. (In other words, your averaging component includes all of your *taxable primary production income and all of your taxable non-primary production income.)

(3) If your *taxable non-primary production income is between $5,000 and $10,000, a shading-out system applies so that your *averaging component includes some of your taxable non-primary production income as well as all of your *taxable primary production income.

(4) If your *taxable non-primary production income is $10,000 or more, your *averaging component equals your *taxable

primary production income. Your averaging component does not include any of your taxable non-primary production income.

(5) The following diagram shows examples of these relationships.



The second and third columns show that as taxable non-primary production income increases above $5,000 (up to a maximum of $10,000), less of it is counted in the averaging component.

Your gross averaging amount

392-70 Working out your gross averaging amount

Your ***gross averaging amount*** is the amount of the difference between the following amounts worked out under section 392-35:

(a) the income tax you would pay at the comparison rate;

(b) the amount of income tax that you would pay on your *basic taxable income for the *current year at *basic rates.

Your averaging adjustment

392-75 Working out your averaging adjustment

Work out your ***averaging adjustment*** for the *current year using the formula:

$$\text{*Gross averaging amount} \times \frac{\text{*Averaging component}}{\text{*Basic taxable income}}$$

How to work out your averaging component

392-80 Work out your taxable primary production income

(1) Work out your ***taxable primary production income*** for the *current year in this way:

Method statement

Step 1. Compare your *assessable primary production income for the *current year with your *primary production deductions for the current year.

Step 2. If your assessable primary production income is larger than your primary production deductions, your ***taxable primary production income*** is the difference between them.

Step 3. If your primary production deductions are larger than (or equal to) your assessable primary production income, your ***taxable primary production income*** is nil.

Assessable primary production income

(2) Your ***assessable primary production income*** for the *current year is the amount of your *basic assessable income for the current year that was *derived from, or resulted from, your carrying on a *primary production business.

Primary production deductions

(3) Work out your ***primary production deductions*** for the *current year in this way:

Method statement

Step 1. Add any amounts you can deduct (except *apportionable deductions) for the *current year, so far as they reasonably relate to your *assessable primary production income for an income year.

Step 2. Work out the result of applying the formula:

$$\text{*Apportionable deductions} \times \frac{\text{(Assessable PP income} - \text{Sum from Step 1)}}{\text{*Basic taxable income} + \text{*Apportionable deductions}}$$

where:

assessable PP income means your *assessable primary production income for the *current year.

Step 3. Add the sum from Step 1 to the result from Step 2 (which may be negative): the total is your ***primary production deductions***.

392-85 Work out your taxable non-primary production income

(1) Work out your ***taxable non-primary production income*** for the *current year in this way:

Method statement

Step 1. Compare your *assessable non-primary production income for the *current year with your *non-primary production deductions for the current year.

Step 2. If your assessable non-primary production income is larger than your non-primary production deductions, your ***taxable non-primary production income*** is the difference between them.

Step 3.	If your non-primary production deductions are larger than (or equal to) your assessable non-primary production income, your ***taxable non-primary production income*** is nil.

Assessable non-primary production income

(2) Your ***assessable non-primary production income*** for the *current year is the difference between:

(a) your *basic assessable income for the current year; and

(b) your *assessable primary production income for the current year.

Non-primary production deductions

(3) Your ***non-primary production deductions*** for the *current year are the difference between:

(a) the sum of your deductions for the current year; and

(b) your *primary production deductions for the current year.

392-90 Work out your averaging component

(1) Work out your ***averaging component*** for the *current year using the following table, taking into account:

(a) your *taxable primary production income for the current year; and

(b) your *taxable non-primary production income for the current year.

Averaging component			
Item	**If *taxable non-primary production income:**	**The averaging component equals: for *taxable primary production income > 0**	**for *taxable primary production income = 0**
1	is nil	*Basic taxable income	Nil
2	is more than nil but does not exceed $5,000	*Basic taxable income	*Basic taxable income
3	exceeds $5,000 but does not exceed $10,000	*Taxable primary production income plus *non-primary production shade-out amount	*Non-primary production shade-out amount
4	is $10,000 or more	*Taxable primary production income	Nil

Note: Subsections (2) and (3) explain how to work out your non-primary production shade-out amount if your taxable non-primary production income is between $5,000 and $10,000.

Non-primary production shade-out amount if your taxable primary production income is more than nil

(2) If your *taxable primary production income is more than nil, your ***non-primary production shade-out amount*** is the amount worked out using the formula:

$10,000 – Taxable non-PP income

Non-primary production shade-out amount if your taxable primary production income is nil

(3) If your *taxable primary production income is nil, your ***non-primary production shade-out amount*** is the amount worked out using the formula:

$$\$10{,}000 - \text{Taxable non-PP income} - \left(\text{PP deductions} - \text{Assessable PP income}\right)$$

However, if that amount is *less* than nil, your ***non-primary production shade-out amount*** is nil.

(4) In this section:

Assessable PP income means your *assessable primary production income for the *current year.

PP deductions means your *primary production deductions for the *current year.

Taxable non-PP income your *taxable non-primary production income for the *current year.

Subdivision 392-D—Effect of permanent reduction of your basic taxable income

Table of sections

392-95 You are treated as if you had not carried on business before

392-95 You are treated as if you had not carried on business before

Choosing to discontinue and restart averaging

(1) You can choose that this Division *not* affect your income tax liability for an income year (the ***reduction year***) if you show the Commissioner that, because of retirement from your occupation or from any other cause, your *basic taxable income for the reduction year is permanently reduced during that year to less than two thirds of your *average income for that year.

(1A) You must make the choice by notifying the Commissioner in writing by the day you lodge your *income tax return for the reduction year. However, the Commissioner can allow you to make it later.

(1B) If you make a choice under subsection (1), this Division applies to assessments for later income years as if you had never carried on a *primary production business before the reduction year.

Working out the extent of the permanent reduction

(2) In working out the extent of the permanent reduction, you must work out your *average income for the reduction year on the basis that your *basic assessable income for an income year taken into account in working out your average income did *not* include any assessable income from sources from which you do not usually receive assessable income.

(3) In working out the extent of the permanent reduction, disregard a reduction in *basic taxable income to the extent that it results from a change of assets from which assessable income was *derived into assets from which you derive income that is not assessable income.

[The next Division is Division 400.]

Division 400—Environmental impact assessment and environmental protection

Table of Subdivisions

Guide to Division 400

400-A Deducting expenditure on environmental impact assessment

400-B Deducting expenditure on environmental protection activities

400-C Property taken to be used for producing assessable income

Guide to Division 400

400-1 What this Division is about

This Division creates 2 capital allowances.

Note: Division 40 sets out an overview of capital allowances.

Under Subdivision 400-A you can deduct expenditure on assessing the environmental impact of an income-producing project. Generally, you deduct the expenditure over 10 years, but the period may be shorter, depending on the project's estimated life.

Under Subdivision 400-B you can deduct expenditure on preventing or treating waste and pollution of the environment connected with your income-producing activities or the site of those activities. You deduct in the income year in which you incur the expenditure.

Subdivision 400-C treats your use of property for certain environmental activities as use for the purpose of producing

assessable income. (This may let you deduct expenditure on the property under other provisions).

Subdivision 400-A—Deducting expenditure on environmental impact assessment

Table of sections

400-15 Deducting your expenditure on environmental impact assessment of your project
400-20 Limits on deductions

400-15 Deducting your expenditure on environmental impact assessment of your project

(1) You can deduct amounts for expenditure to the extent that you incur it on carrying out an activity for the sole or dominant purpose of evaluating the impact on the environment (or the likely impact) of a project that is carried out, or is proposed to be carried out:

(a) for the *purpose of producing your assessable income for an income year (except a *net capital gain); or

(b) for purposes that include that purpose.

(2) However, you cannot deduct expenditure under this section to the extent that you incur it for the purpose of determining the economic feasibility of your project.

(3) The table shows the amount and timing of your deductions.

Amount and timing of deductions for expenditure

Item	If at the end of the income year in which you incur the expenditure ...	You can deduct ...	For ...

Amount and timing of deductions for expenditure			
Item	**If at the end of the income year in which you incur the expenditure ...**	**You can deduct ...**	**For ...**
1	it is estimated that your project will end more than 9 income years later	10% of the expenditure	the income year in which you incur the expenditure and each of the next 9 income years
2	it cannot readily be estimated when your project will end	10% of the expenditure	the income year in which you incur the expenditure and each of the next 9 income years
3	it is estimated that your project will end during one of the next 9 income years (the ***final year***)	the expenditure divided by the number of income years from the income year you incur the expenditure to the final year (inclusive)	the income year you incur the expenditure and each income year up to and including the final year
4	your project has ended	all the expenditure	the income year in which you incur it
5	it has been decided to abandon your project	all the expenditure	the income year in which you incur it

Note 1: Various provisions may reduce the amount you can deduct or stop you deducting. For example, see:

- section 400-20 of this Act (specifying amounts you cannot deduct under this Subdivision);
- Division 26 of this Act (limiting deductions generally);

- Division 245 of Schedule 2C to the *Income Tax Assessment Act 1936* (which may affect your entitlement to a deduction if your debts are forgiven).

Note 2: If an amount of the expenditure is recouped, the amount may be included in your assessable income: see Subdivision 20-A.

400-20 Limits on deductions

No deduction for expenditure deductible under other provisions

(1) You cannot deduct an amount under this Subdivision for an income year for expenditure to the extent to which:

(a) you can deduct an amount for it under a provision of this Act outside this Subdivision for an income year; or

(b) it is taken into account in calculating an amount of depreciation that is deductible under Division 42.

Note: The fact that you can deduct an amount under section 82BB of the *Income Tax Assessment Act 1936* for the expenditure does not prevent you from deducting under this Subdivision: see section 400-20 of the *Income Tax (Transitional Provisions) Act 1997*.

Common rule 2 applies

(2) Subdivision 41-B (which sets out Common rule 2 dealing with non-arm's length transactions) applies to expenditure for which you can deduct amounts under this Subdivision, but with the modification in subsection (3) of this section.

(3) If subsection 41-65(1) applies, it has a wider operation in 2 ways.

First, it also operates if the amount of the expenditure is *less* than the market value of what the expenditure is for.

Second, if the amount of the expenditure is greater than or less than that market value, the amount of the expenditure is taken, for the purposes of applying this Act to both parties, to be that market value.

No deduction for expenditure excluded from general deductions

(4) You cannot deduct expenditure under section 400-15 to the extent that a provision of this Act (except section 8-1 itself) expressly prevents or limits your deducting it under section 8-1 (about general deductions). It does not matter whether the provision specifically refers to section 8-1.

Subdivision 400-B—Deducting expenditure on environmental protection activities

Table of sections

400-55 Deducting your expenditure on environmental protection activities
400-60 Meaning of *environmental protection activities*
400-65 Limits on deductions

400-55 Deducting your expenditure on environmental protection activities

(1) You can deduct expenditure to the extent that you incur it for the sole or dominant purpose of carrying on *environmental protection activities.

(2) You deduct the expenditure for the income year in which you incur it.

Note 1: Various provisions may reduce the amount you can deduct or stop you deducting. For example, see:

- section 400-65 of this Act (specifying amounts you cannot deduct under this Subdivision);
- Division 26 of this Act (limiting deductions generally).

Note 2: If an amount of the expenditure is recouped, the amount may be included in your assessable income: see Subdivision 20-A.

400-60 Meaning of *environmental protection activities*

(1) ***Environmental protection activities*** are any of the following activities that are carried on by or for you:

(a) preventing, fighting or remedying:

(i) pollution resulting, or likely to result, from *your earning activity; or

(ii) pollution of or from the site of *your earning activity; or

(iii) pollution of or from a site where an entity was carrying on any *business that you have acquired and carry on substantially unchanged as *your earning activity;

(b) treating, cleaning up, removing or storing:

(i) waste resulting, or likely to result, from *your earning activity; or

(ii) waste that is on or from the site of *your earning activity; or

(iii) waste that is on or from a site where an entity was carrying on any *business that you have acquired and carry on substantially unchanged as *your earning activity.

No other activities are environmental protection activities.

(2) ***Your earning activity*** is an activity you carried on, carry on, or propose to carry on:

(a) for the *purpose of producing your assessable income for an income year (except a *net capital gain); or

(b) for purposes that include that purpose.

(3) If *your earning activity is:

(a) leasing a site you own; or

(b) granting a right to use a site you own or control; or

(c) a similar activity involving a site;

that site is taken to be the site of your earning activity.

Note: This means you can deduct your expenditure on environmental protection activities relating to the site, even if the pollution or waste is caused by another entity that uses the site.

400-65 Limits on deductions

Expenditure you cannot deduct

(1) You cannot deduct an amount under this Subdivision for an income year for:

(a) expenditure for acquiring land; or

(b) expenditure to the extent to which it is taken into account in calculating an amount of depreciation that is deductible under Division 42; or

(c) capital expenditure for constructing a building, structure or structural improvement; or

(d) capital expenditure for constructing an extension, alteration or improvement to a building, structure or structural improvement; or

(e) a bond or security (however described) for performing *environmental protection activities; or

(f) expenditure to the extent that you can deduct an amount for it under a provision of this Act outside this Subdivision.

Note: You may be able to deduct expenditure described in paragraph (1)(c) or (d) under Division 43 (which deals with capital works).

(2) In particular, you cannot deduct under this Subdivision expenditure to the extent that you incur it on carrying out an activity as mentioned in subsection 400-15(1) (about deductions for environmental impact assessment of your project).

Common rule 2 applies

(3) Subdivision 41-B (which sets out Common rule 2 dealing with non-arm's length transactions) applies to expenditure for which you can deduct amounts under this Subdivision, but with the modification in subsection (4) of this section.

(4) If subsection 41-65(1) applies, it has a wider operation in 2 ways.

First, it also operates if the amount of the expenditure is *less* than the market value of what the expenditure is for.

Second, if the amount of the expenditure is greater than or less than that market value, the amount of the expenditure is taken, for the purposes of applying this Act to both parties, to be that market value.

No deduction for expenditure excluded from general deductions

(5) You cannot deduct expenditure under section 400-55 to the extent that a provision of this Act (except section 8-1 itself) expressly prevents or limits your deducting it under section 8-1 (about general deductions). It does not matter whether the provision specifically refers to section 8-1.

Subdivision 400-C—Property taken to be used for producing assessable income

Table of sections

400-100 Use for environmental impact assessment or environmental protection activities taken to be use for purpose of producing assessable income

400-100 Use for environmental impact assessment or environmental protection activities taken to be use for purpose of producing assessable income

(1) For the purposes of this Act, you are taken to use property for the *purpose of producing assessable income if you use it for:

(a) carrying out an activity as mentioned in subsection 400-15(1) (about environmental impact assessment of your project); or

(b) *environmental protection activities.

Note: This may let you get a deduction relating to the property under a provision of this Act outside this Division (such as Division 42, which allows deductions for depreciation of plant used for the purpose of producing assessable income).

(2) However, subsection (1) is subject to a provision of this Act that expressly provides that a particular use of property is taken not to be for the *purpose of producing assessable income.

Note: There is a list of some provisions of that kind in Note 2 to the definition of ***purpose of producing assessable income*** in subsection 995-1(1).

[The next Division is Division 405.]

Division 405—Above-average special professional income of authors, inventors, performing artists, production associates and sportspersons

Table of Subdivisions

Guide to Division 405

405-A Above-average special professional income

405-B Assessable professional income

405-C Taxable professional income and average taxable professional income

Guide to Division 405

405-1 What this Division is about

Significant fluctuations can occur in the professional incomes of authors, inventors, performing artists, production associates and sportspersons.

To lessen the impact of these fluctuations on your marginal tax rates, special tax rates apply if your professional income is above your average.

This Division explains how the scheme works and sets out the rules for working out your above-average special professional income.

Table of sections

405-5 Special rate of income tax on your above-average special professional income

405-10 Overview of the Division

405-5 Special rate of income tax on your above-average special professional income

(1) If you have *above-average special professional income, the *Income Tax Rates Act 1986* generally sets a special rate so that the amount of income tax you pay on the top 4/5 of your above-average special professional income is effectively 4 times what you would pay on the bottom 1/5 of that income at *basic rates.

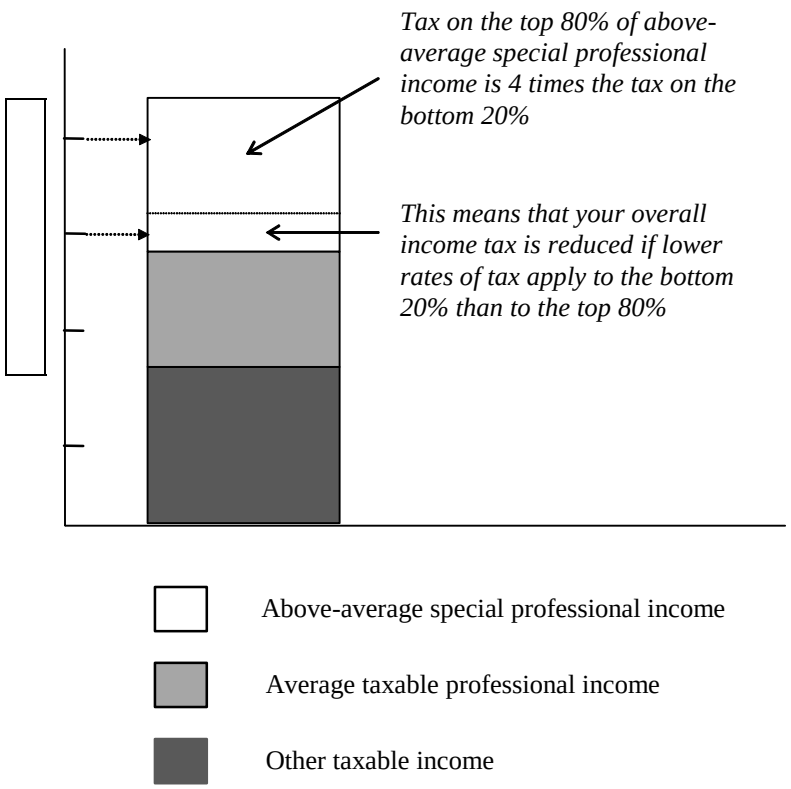
Note 1: Your overall income tax will be less only if 2 marginal rates of income tax would apply to your above-average special professional income if it were treated as the top slice of your taxable income.

Note 2: Section 20F of the *Income Tax Rates Act 1986* sets a different special rate if:

- family tax assistance (under Division 5 of Part II of that Act) would increase your tax-free threshold (apart from that section); and
- any of your above-average special professional income would be below the adjusted tax-free threshold if that income were treated as the top slice of your taxable income.

(2) The following diagram illustrates how the special rate works.

Income tax treatment of above-average special professional income



405-10 Overview of the Division

For which income years do you have above-average special professional income?

(1) The first income year for which you have *above-average special professional income is the first income year (*professional year 1):

(a) for which your *taxable professional income is more than $2,500; and

(b) during all or part of which you are an Australian resident.

(2) After *professional year 1, you have *above-average special professional income for any income year for all or part of which you are an Australian resident.

Note: You need not have been an Australian resident for every income year since professional year 1.

What is above-average special professional income?

(3) Your *above-average special professional income for the *current year is the amount (if any) by which your *taxable professional income *exceeds* your *average taxable professional income.

See Subdivision 405-A.

What is taxable professional income?

(4) Your *taxable professional income depends on your *assessable professional income.

See section 405-45.

(5) Your *assessable professional income is assessable income from your work as an author, inventor, *performing artist, *production associate or *sportsperson.

See Subdivision 405-B.

How do you work out your average taxable professional income?

(6) Generally, your *average taxable professional income for the *current year is the average of your *taxable professional income for the last 4 income years.

See section 405-50.

(7) However, special phasing-in arrangements apply to work out your *average taxable professional income for an income year that is less than 4 income years after *professional year 1.

These arrangements favour people who were Australian residents for at least part of the income year *before* professional year 1.

See section 405-50.

Subdivision 405-A—Above-average special professional income

Table of sections

405-15 When do you have above-average special professional income?

405-15 When do you have above-average special professional income?

(1) Your taxable income for the *current year includes ***above-average special professional income*** if and only if:

(a) you are an individual; and

(b) you have been an Australian resident for all or part of the current year; and

(c) your *taxable professional income for the current year exceeds your *average taxable professional income for the current year; and

(d) either:

(i) your *taxable professional income for the current year is more than $2,500; or

(ii) your *taxable professional income for an earlier income year was more than $2,500 and you were an Australian resident for all or part of that income year.

Note: Your taxable income for an income year can include above-average special professional income even if you meet the requirement in subparagraph (1)(d)(ii) for an income year before the 1998-99 income year: see section 405-1 of the *Income Tax (Transitional Provisions) Act 1997*.

How much above-average special professional income do you have?

(2) The amount of *above-average special professional income in your taxable income for the *current year is the difference between:

(a) your *taxable professional income for the current year; and

(b) your *average taxable professional income for the current year.

Subdivision 405-B—Assessable professional income

Table of sections

405-20 What you count as assessable professional income

405-25 Meaning of *special professional*, *performing artist*, *production associate*, *sportsperson* and *sporting competition*

405-30 What you *cannot* count as assessable professional income

405-35 Limits on counting amounts as assessable professional income

405-40 Joint author or inventor treated as sole author or inventor

405-20 What you count as assessable professional income

(1) Work out your ***assessable professional income*** for an income year by adding up all your assessable income for the income year that you count under this Subdivision.

Note 1: Section 405-30 may stop you counting an amount.

Note 2: Subsection 405-35(1) stops you counting an amount more than once, even if it is described in more than one subsection of this section.

Note 3: Subsection 405-35(2) may affect the amount you count.

Assessable income from professional services

(2) You count any assessable income that you *derive as a reward for providing services relating to your activities as a *special professional.

Assessable income from prizes

(3) You also count any assessable income that you *derive as a prize for your activities as a *special professional.

Assessable income from promotions and commentary

(4) You also count any assessable income that you *derive, because you are or were a *special professional, for:

(a) endorsing or promoting goods or services; or

(b) appearing or participating in an advertisement; or

(c) appearing or participating in an interview; or

(d) providing services as a commentator; or

(e) providing similar services.

Assessable income from assigning copyright or granting a licence

(5) You also count any assessable income that you *derive:

(a) as consideration for:

(i) assigning all or part of the copyright in a literary, dramatic, musical or artistic work of which you are the author; or

(ii) granting an interest in the copyright in such a work by granting a licence; or

(b) as an advance on account of royalties relating to such a copyright.

Assessable income from assigning or granting patent rights

(6) You also count any assessable income that you *derive:

(a) as consideration for:

(i) assigning all or part of the patent for an invention that you invented; or

(ii) granting an interest in the patent for such an invention by granting a licence; or

(iii) assigning the right to apply for a patent for such an invention; or

(b) as an advance on account of royalties relating to such a patent.

Other assessable income from works or inventions

(7) You also count any assessable income that you *derive (as *royalties or otherwise):

(a) for a literary, dramatic, musical or artistic work of which you are the author; or

(b) in relation to copyright in such a work; or

(c) for an invention that you invented; or

(d) in relation to a patent for such an invention.

405-25 Meaning of *special professional*, performing artist, production associate, sportsperson and sporting competition

Special professional

(1) You are a ***special professional*** if you are:

(a) the author of a literary, dramatic, musical or artistic work; or

Note: The expression "author" is a technical term from copyright law. In general, the "author" of a musical work is its composer and the "author" of an artistic work is the artist, sculptor or photographer who created it.

(b) the inventor of an invention; or

(c) a *performing artist; or

(d) a *production associate; or

(e) a *sportsperson.

Performing artist

(2) You are a ***performing artist*** if you exercise intellectual, artistic, musical, physical or other personal skills in the presence of an audience by performing or presenting:

(a) music; or

(b) a play; or

(c) dance; or
(d) an entertainment; or
(e) an address; or
(f) a display; or
(g) a promotional activity; or
(h) an exhibition; or
(i) any similar activity.

(3) You are also a ***performing artist*** if you perform or appear in or on a film, tape, disc or television or radio broadcast.

Production associate

(4) You are a ***production associate*** if you provide *artistic support for:
(a) an activity described in subsection (2); or
(b) the activity of making a film, tape, disc or television or radio broadcast.

(5) You provide ***artistic support*** for an activity if:
(a) you provide services relating to the activity as:
(i) an art director; or
(ii) a choreographer; or
(iii) a costume designer; or
(iv) a director; or
(v) a director of photography; or
(vi) a film editor; or
(vii) a lighting designer; or
(viii) a musical director; or
(ix) a producer; or
(x) a production designer; or
(xi) a set designer; or
(b) you provide similar services relating to the activity.

Sportsperson

(6) You are a ***sportsperson*** if you compete in a *sporting competition.

(7) A ***sporting competition*** is a sporting activity to the extent that:

(a) human beings are the only competitors in it, or it is one in which human beings:

(i) compete by riding animals or exercising other skills in relation to animals; or

(ii) compete by driving, piloting or crewing *motor vehicles, boats, aircraft or other forms of transport; or

(iii) compete with natural obstacles or natural forces, or by overcoming them; and

(b) participation in it by human competitors involves primarily their exercising physical prowess, physical strength or physical stamina.

(8) However, the participation:

(a) of a navigator in the activity of car rallying; or

(b) of a coxswain in the activity of rowing; or

(c) of a competitor in a similar role in some other activity;

need not involve primarily exercising physical prowess, physical strength or physical stamina for the activity to be a ***sporting competition***.

405-30 What you *cannot* count as assessable professional income

Assessable income from continuous service as author or inventor

(1) You cannot count as *assessable professional income any assessable income you *derive for meeting your obligations under a *scheme to provide services to another person by engaging in activities as the author of a literary, dramatic,

musical or artistic work, or as the inventor of an invention, unless:

(a) the scheme was entered into solely to require you to provide services by:

(i) making one or more specified literary, dramatic, musical or artistic works; or

(ii) inventing one or more specified inventions; and

(b) you have not been providing services, and may not reasonably be expected to provide services, to that person or his or her *associates under successive *schemes that result in substantial continuity of your providing services.

Assessable income from certain activities

(2) You cannot count as *assessable professional income any assessable income that you *derive for:

(a) coaching or training *sportspersons; or

(b) umpiring or refereeing a *sporting competition; or

(c) administering a *sporting competition; or

(d) being a member of the pit crew in motor sport; or

(e) being a theatrical or sports entrepreneur; or

(f) owning or training animals.

Payments at end of employment, and capital gains

(3) You cannot count as *assessable professional income:

(a) an eligible termination payment as defined in Subdivision AA (Superannuation and kindred payments) of Division 2 of Part III of the *Income Tax Assessment Act 1936*; or

(b) a payment for leave that is covered by section 26AC or 26AD of the *Income Tax Assessment Act 1936*; or

(c) a net capital gain under Part IIIA (Capital gains and capital losses) of the *Income Tax Assessment Act 1936*.

This section prevails over section 405-20

(4) You cannot count particular assessable income as *assessable professional income if this section says you cannot, even if section 405-20 says you count it.

405-35 Limits on counting amounts as assessable professional income

No double-counting

(1) You cannot count the same amount as *assessable professional income more than once, even if it is described in more than one subsection of section 405-20.

Amounts that are partly assessable professional income

(2) If:

(a) you *derive assessable income under or as a result of a *scheme; and

(b) the assessable income consists of a part that is counted as *assessable professional income and another part that cannot be; and

(c) one component is unreasonably large and the other component is unreasonably small, for reasons that are directly or indirectly related to one another;

you must work out your *assessable professional income as if the unreasonably large component were reduced by a reasonable amount and the unreasonably small component were increased by the same amount.

(3) Subsection (2) affects your *assessable professional income:

(a) whether you *derived the assessable income directly or indirectly under or as a result of the *scheme; and

(b) whether or not a reason mentioned in paragraph (2)(c) is the only reason why a component is unreasonably large or small.

405-40 Joint author or inventor treated as sole author or inventor

(1) If you are a joint author of a literary, dramatic, musical or artistic work, work out your *assessable professional income as if you were the author of that work.

Note: This section means that you are treated as a special professional, even if you have never been the sole author of a work.

(2) If you are a joint inventor of an invention, work out your *assessable professional income as if you were the inventor of that invention.

Note: This section means that you are treated as a special professional, even if you have never been the sole inventor of an invention.

Subdivision 405-C—Taxable professional income and average taxable professional income

Table of sections

405-45 Working out your taxable professional income
405-50 Working out your average taxable professional income

405-45 Working out your taxable professional income

Your ***taxable professional income*** for an income year is the amount (if any) by which your *assessable professional income for that year exceeds the amount of your deductions for that year worked out as follows:

Method statement

Step 1. Add up any amounts you can deduct for that year (except *apportionable deductions), so far as they reasonably relate to your *assessable professional income for the year.

Step 2. Work out the amount using the formula:

$$\text{*Apportionable deductions} \times \frac{\left(\text{*Assessable professional income} - \text{Sum from Step 1}\right)}{\text{Taxable income} - \text{*Apportionable deductions}}$$

Note: The result may be greater than the apportionable deductions. Also, it may be negative.

Step 3. Add the sum from Step 1 to the result from Step 2. If the result is more than nil, it is the amount of your deductions to be subtracted from your *assessable professional income.

Note: To work out your taxable professional income for income years before the 1998-99 income year: see section 405-1 of the *Income Tax (Transitional Provisions) Act 1997*.

405-50 Working out your average taxable professional income

It is generally a 4-year average

(1) Work out your ***average taxable professional income*** for the *current year by:

(a) adding up your *taxable professional income for each of the last 4 income years before the current year; and

(b) dividing the total by 4.

Note: You may need to work out your average taxable professional income taking into account your taxable professional income for income years before the 1998-99 income year: see section 405-1 of the *Income Tax (Transitional Provisions) Act 1997*.

Phasing-in arrangements for new professionals

(2) However, if the *current year is less than 4 income years after *professional year 1, work out your ***average taxable professional income*** using the table in subsection (5).

(3) ***Professional year 1*** is the first income year:

(a) during which you were an Australian resident (for all or part of the income year); and

(b) for which your *taxable professional income was more than $2,500.

Note: Your professional year 1 may be before the 1998-99 income year: see section 405-1 of the *Income Tax (Transitional Provisions) Act 1997*.

(4) ***Professional year 2***, ***professional year 3*** and ***professional year 4*** are respectively the next 3 income years after *professional year 1.

(5) The table is as follows:

Average taxable professional income during phase-in period

Item	Current year	Average taxable professional income if you were an Australian resident for all or part of the income year immediately before professional year 1	Average taxable professional income if you were *not* an Australian resident for any of the income year immediately before professional year 1
1	Professional year 1	Nil	Your *taxable professional income for *professional year 1
2	Professional year 2	1/3 of your *taxable professional income for *professional year 1	Your *taxable professional income for *professional year 1
3	Professional year 3	1/4 of the sum of your *taxable professional income for each of *professional years 1 and 2	1/2 of the sum of your *taxable professional income for each of *professional years 1 and 2
4	Professional year 4	1/4 of the sum of your *taxable professional income for each of *professional years 1, 2 and 3	1/3 of the sum of your *taxable professional income for each of *professional years 1, 2 and 3

Note: If you were not an Australian resident for any part of the income year immediately before professional year 1, the effect of item 1 of the table is that your taxable income for professional year 1 will not include above-average special professional income.

[The next Chapter is Chapter 4.]

Schedule 2—CGT (new Parts 3-1, 3-3 and 3-5)

Part 1—Amendment of the Income Tax (Transitional Provisions) Act 1997

1 Chapter 3 (link note after heading)

Repeal the link note.

2 Before Part 3-45

Insert:

Part 3-1—Capital gains and losses: general topics

Division 102—Application of Parts 3-1 and 3-3 of the Income Tax Assessment Act 1997

102-1 Application of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*

Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* (about capital gains and capital losses) apply to assessments for the 1998-99 income year and later income years.

102-5 Working out capital gains and capital losses

General rule

(1) In working out whether you have made a capital gain or a capital loss from a CGT event that happens in relation to a CGT asset in the 1998-99 income year or a later income year, you use only the provisions of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* (or a provision of an Act that modifies the operation of those Parts) unless a provision of this Part or Part 3-3 of this Act also requires you to use another provision.

Note 1: This means that, for example, in working out your cost base of the asset, you will apply the new law to circumstances that occurred before the 1998-99 income year (except where this Act requires you to use another provision).

Note 2: In most cases, the other provision is a provision of this Act. However, in some cases, other provisions may be relevant (for example, provisions of the *Income Tax Assessment Act 1936*).

Note 3: Part X of the *Income Tax Assessment Act 1936* includes provisions that modify the operation of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*.

Roll-overs

(2) If:

(a) an entity acquired a CGT asset before the start of the 1998-99 income year as part of a transaction or event or series of transactions or events in respect of which there was a same-asset roll-over or replacement-asset roll-over under the *Income Tax Assessment Act 1936*; and

(b) the entity owned the asset just before the start of that income year; and

(c) a CGT event happens in relation to the asset in that income year or a later one;

the provisions of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* apply to the asset from the time when the roll-over happened except that the first element of the cost base and reduced cost base of the asset (when the roll-over happened) is the amount the entity is taken to have paid as consideration in respect of the acquisition of the asset under the relevant provision of the *Income Tax Assessment Act 1936*.

102-15 Applying net capital losses

(1) In working out whether you have a net capital gain for the 1998-99 income year, the amount of any net capital loss for the 1997-98 income year or an earlier income year must be worked out under the *Income Tax Assessment Act 1936*.

(2) If you had a net capital loss for the 1997-98 income year, or some unapplied net capital loss for either of the 2 preceding income years, under Part IIIA of the *Income Tax Assessment Act 1936*, it can be carried forward to a later income year to be applied under the *Income Tax Assessment Act 1997*.

Note: The way in which capital losses can be applied may be affected by other provisions: see section 102-30 of the *Income Tax Assessment Act 1997*.

(3) If you had a net listed personal-use asset loss for the 1997-98 income year under Part IIIA of the *Income Tax Assessment Act 1936*, it is taken for the purposes of the *Income Tax Assessment Act 1997* to be a net capital loss from collectables for that income year.

102-20 Net capital gains, capital gains and capital losses for income years before 1998-99

For the 1997-98 income year or an earlier income year:

capital gain has the meaning given by Part IIIA of the *Income Tax Assessment Act 1936*.

capital loss has the meaning given by Part IIIA of the *Income Tax Assessment Act 1936*.

net capital gain has the meaning given by Part IIIA of the *Income Tax Assessment Act 1936*.

Division 104—CGT events

Table of Subdivisions

104-B Use and enjoyment before title passes

104-E Trusts

104-J Reversal of roll-overs

104-K Other CGT events

Subdivision 104-B—Use and enjoyment before title passes

104-15 Use and enjoyment before title passes

A capital gain or capital loss is disregarded if:

(a) you made the capital gain or capital loss for the 1997-98 income year or an earlier income year under Part IIIA of the *Income Tax Assessment Act 1936* because of an agreement to which paragraph 160M(3)(d) of that Act applies with another entity in relation to an asset; and

(b) the agreement ends in the 1998-99 income year or a later income year; and

(c) title in the asset does not pass to the other entity when the agreement ends.

Subdivision 104-E—Trusts

104-70 Capital payment before 18 December 1986 for trust interest

(1) This section applies for the purpose of working out the cost base of a unit or an interest you own in a trust if these conditions are satisfied:

(a) CGT event E4 happens in relation to the unit; and

(b) you were taken to have disposed of the unit or interest under section 160ZM of the *Income Tax Assessment Act 1936* (the former equivalent of CGT event E4) because of a payment made by the trustee before 18 December 1986; and

(c) some or all of the payment (the ***non-assessable part***) was not included in your assessable income; and

(d) some or all of the non-assessable part (the ***attributable part***) was attributable to a deduction under Division 10C or 10D of Part III of the *Income Tax Assessment Act 1936* (about capital works).

(2) The cost base of the unit or interest is also reduced by the attributable part.

104-72 Application to Divisions 10C and 10D of Part III of the *Income Tax Assessment Act 1936*

Paragraph 104-70(7)(a) applies to deductions under Divisions 10C and 10D of Part III of the *Income Tax Assessment Act 1936* (about capital works) in the same way that it applies to deductions under Division 43 of the *Income Tax Assessment Act 1997*.

Subdivision 104-J—Reversal of roll-overs

104-175 Company ceasing to be member of wholly-owned group after roll-over

(1) This section applies if there was a roll-over under section 160ZZO of the *Income Tax Assessment Act 1936* for a disposal of an asset from one company to another company (the ***transferee***).

(2) If CGT event J1 would happen in relation to the roll-over in a situation involving something happening in relation to the transferee, that event does not happen if there would have been no deemed disposal and re-acquisition of the asset by the transferee in that situation under whichever of these provisions would have been relevant for that situation if it had happened before the start of the 1998-99 income year:

(a) section 160ZZOA of that Act; or

(b) paragraphs 160ZZO(1)(g) and (h) of that Act.

(3) In working out whether subsection (2) affects you, take into account provisions of other Acts that amended Part IIIA of the *Income Tax Assessment Act 1936* and that affect the situation referred to in that subsection.

Subdivision 104-K—Other CGT events

104-210 Bankrupt pays amount in relation to debt

Subsection 104-210(1) of the *Income Tax Assessment Act 1997* applies to a net capital loss mentioned in subsection 160ZC(4A) of the *Income Tax Assessment Act 1936* in the same way as it applies to a net capital loss referred to in subsection 102-5(2) of the *Income Tax Assessment Act 1997*.

Note: This provision covers the case where the net capital loss was for the 1997-98 income year or an earlier one and the payment in respect of the debt was made in the 1998-99 income year or a later one.

Division 108—CGT assets

Table of Subdivisions

108-A What a CGT asset is

108-B Collectables

108-D Separate CGT assets

Subdivision 108-A—What a CGT asset is

108-5 CGT assets

If:

(a) an entity owned a thing that is not a form of property before 26 June 1992 and at all times from that day to the start of the entity's 1998-99 income year; and

(b) that thing was not, before 26 June 1992, an ***asset*** as defined in section 160A of the *Income Tax Assessment Act 1936*;

any capital gain or capital loss the entity makes from the asset is disregarded.

Subdivision 108-B—Collectables

108-15 Sets of collectables

Section 108-15 of the *Income Tax Assessment Act 1997* does not apply to a collectable you own that you last acquired before 16 December 1995.

Note: That section has special rules for the separate disposal of collectables that are a set.

Subdivision 108-D—Separate CGT assets

108-75 Capital improvements to CGT assets for which a roll-over may be available

(1) Subsection 108-75(2) of the *Income Tax Assessment Act 1997* applies to a roll-over under section 160ZWA of the *Income Tax Assessment Act 1936* in the same way that it applies to a roll-over under Subdivision 124-J of the *Income Tax Assessment Act 1997*.

(2) Subsection 108-75(2) of the *Income Tax Assessment Act 1997* applies to a roll-over under section 160ZZF of the *Income Tax Assessment Act 1936* in the same way that it applies to a roll-over under Subdivision 124-L of the *Income Tax Assessment Act 1997*.

(3) Subsection 108-75(2) of the *Income Tax Assessment Act 1997* applies to a roll-over under section 160ZZPE of the *Income Tax Assessment Act 1936* in the same way that it applies to a roll-over under Subdivision 124-C of the *Income Tax Assessment Act 1997*.

(4) Subsection 108-75(2) of the *Income Tax Assessment Act 1997* applies to a roll-over under section 160ZWC of the *Income Tax Assessment Act 1936* in the same way that it applies to a roll-over under Subdivision 124-K of the *Income Tax Assessment Act 1997*.

Note: This provision covers the case where the roll-over occurred in the 1997-98 income year or an earlier one and the relevant CGT event in the 1998-99 income year or a later one.

108-85 Improvement threshold

Despite section 108-85 of the *Income Tax Assessment Act 1997*, the Commissioner is entitled to publish the improvement threshold for the 1998-99 income year:

(a) before the beginning of that year; or

(b) within a reasonable time after the beginning of that year.

Division 109—Acquisition of CGT assets

Table of Subdivisions

109-A Operative rules

Subdivision 109-A—Operative rules

109-5 General acquisition rules

(1) If:

(a) the circumstances specified in the second column of the table in subsection 109-5(2) of the *Income Tax Assessment Act 1997* for CGT event E1, E2 or E3 happened in relation to an asset before 12 noon, by legal time in the Australian Capital Territory, on 12 January 1994; and

(b) the trustee that owned the asset just after those circumstances happened also owned it at all times from then until the start of the trustee's 1998-99 income year;

the question whether those circumstances resulted in an acquisition of an asset by the trustee is to be determined under the *Income Tax Assessment Act 1936* as in force just before 12 noon, by legal time in the Australian Capital Territory, on 12 January 1994.

(2) The acquisition rule for CGT event E9 (about an entity creating a trust over future property) in the table in subsection 109-5(2) of the *Income Tax Assessment Act 1997* does not apply to you as trustee if the agreement to create the trust was made before 12 noon, by legal time in the Australian Capital Territory, on 12 January 1994.

Division 110—Cost base and reduced cost base

Table of Subdivisions

110-A Cost base

Subdivision 110-A—Cost base

110-35 Incidental costs

Despite subsection 110-35(2) of the *Income Tax Assessment Act 1997*, expenditure for professional advice about taxation incurred before 1 July 1989 does *not* form part of the cost base of a CGT asset.

Division 112—Modifications to cost base and reduced cost base

Table of Subdivisions

112-A General rules

Subdivision 112-A—General rules

112-20 Market value substitution rule

In working out the cost base and reduced cost base of a CGT asset:

(a) that you acquired before 16 August 1989; and

(b) to which paragraph 112-20(2)(b) or (c), or item 5 or 6 in the table in subsection 112-20(3), of the *Income Tax*

Assessment Act 1997 would apply (apart from this section);

disregard subsections 112-20(2) and (3) of that Act.

Note: This section preserves the pre-16 August 1989 position for, among other things, shares or units issued or allotted to you by allowing the market value substitution rule to apply.

Division 118—Exemptions

Table of Subdivisions

118-A General exemptions

118-B Main residence

118-C Goodwill

Subdivision 118-A—General exemptions

118-10 Interests in collectables

(1) This section applies to a collectable you own that:

(a) is an interest in:

(i) artwork, jewellery, an antique or a coin or medallion; or

(ii) a rare folio, manuscript or book; or

(iii) a postage stamp or first day cover; and

(b) you last acquired before 16 December 1995.

(2) A capital gain or capital loss you make from the interest is disregarded if what you paid or gave to acquire it was $500 or less.

Subdivision 118-B—Main residence

118-195 Exemption—dwelling acquired from deceased estate

(1) This section applies to an entity:

(a) that acquired an ownership interest in a dwelling as trustee of a deceased estate on or before 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996; or

(b) to whom an ownership interest in a dwelling passed as a beneficiary in a deceased estate on or before that time.

(2) Item 1 in the table in subsection 118-195(1) of the *Income Tax Assessment Act 1997* applies to the entity in relation to the dwelling as if that item required the dwelling to be the deceased's main residence throughout the deceased's ownership period.

(3) Section 118-192 and subsections 118-190(4) and 118-200(4) do not apply to the entity in relation to the dwelling.

Subdivision 118-C—Goodwill

118-260 Business exemption threshold

Despite section 118-260 of the *Income Tax Assessment Act 1997*, the Commissioner is entitled to publish the business exemption threshold for the 1998-99 income year:

(a) before the beginning of that year; or

(b) within a reasonable time after the beginning of that year.

Division 121—Record keeping

Table of sections

121-15 Retaining records under Division 121

121-25 Records for mergers between qualifying superannuation funds

121-15 Retaining records under Division 121

If you were retaining records under section 160ZZU of the *Income Tax Assessment Act 1936* for an asset, you must

continue to retain them in accordance with Division 121 of the *Income Tax Assessment Act 1997*.

121-25 Records for mergers between qualifying superannuation funds

(1) A superannuation fund to which subsection 160ZZU(6A) of the *Income Tax Assessment Act 1936* applied just before the start of the 1998-99 income year must keep the records referred to in that subsection, and retain them until the end of 30 June 2002.

(2) A superannuation fund to which subsection 160ZZU(6B) of the *Income Tax Assessment Act 1936* applied just before the start of the 1998-99 income year in relation to a CGT asset must keep the records referred to in that subsection for the asset, and retain them until the end of 5 years after CGT event A1, B1, C1, C2, G1 or G3 happens in relation to the asset.

Note: The full list of CGT events is in section 104-5 of the *Income Tax Assessment Act 1997*.

Maximum penalty:30 penalty units.

(3) Subsection (1) or (2) does not require a fund to retain records if the Commissioner notifies the fund that the retention of the records is not required.

[The next Part is Part 3-3.]

Part 3-3—Capital gains and losses: special topics

Division 126—Same asset roll-overs

126-100 Merger of qualifying superannuation funds

(1) This section applies to a CGT asset of a superannuation fund (the ***transferee***) if:

(a) the transferee acquired the asset from another superannuation fund in circumstances to which section 160ZZPI of the *Income Tax Assessment Act 1936* applied; and

(b) the transferee owned the asset just before the start of the 1998-99 income year; and

(c) CGT event A1, B1, C1, C2, G1 or G3 happens in relation to the asset in that income year or a later one.

Note: The full list of CGT events is in section 104-5 of the *Income Tax Assessment Act 1997*.

(2) The first element of the cost base of the asset in the hands of the transferee (at the time the transferee acquired the asset) is the asset's cost base (in the hands of the other fund) at that time.

(3) The reduced cost base of the asset in the hands of the transferee is worked out similarly.

Division 128—Effect of death

128-15 Effect on the legal personal representative or beneficiary

The rule in item 3 in the table in subsection 128-15(4) of the *Income Tax Assessment Act 1997* (about a dwelling that was your main residence just before you died and was not being used for the purpose of producing assessable income) does not apply to a dwelling that devolved to your legal personal representative, or passed to a beneficiary in your estate, on or before 7.30 pm, by legal time in the Australian Capital Territory, on 20 August 1996.

Division 130—Investments

Table of Subdivisions

130-A Bonus shares and units

130-B Rights

130-C Convertible notes

130-D Employee share schemes

Subdivision 130-A—Bonus shares and units

130-20 Issue of bonus shares or units

(1) This section modifies some of the rules in section 130-20 of the *Income Tax Assessment Act 1997* if:

(a) you own shares in a company or units in a unit trust (the ***original equities***); and

(b) on or before the day specified in subsection (2) or (3), the company issues other shares, or the trustee issues other units, (the ***bonus equities***) to you because it owes an amount to you in relation to the original equities.

(2) If the bonus equities are shares and they were issued on or before 30 June 1987:

(a) subsection 130-20(2) of the *Income Tax Assessment Act 1997* does not apply to you; and

(b) you work out the cost base and reduced cost base of the bonus equities under subsection 130-20(3) of that Act regardless of whether any part of the amount owed to you by the company is a dividend.

(3) The rule in item 2 of the table in subsection 130-20(3) of the *Income Tax Assessment Act 1997* does not apply if the bonus equities were issued on or before 1 pm, by legal time in the Australian Capital Territory, on 10 December 1986 and you were required to pay or give something for them. Instead, you are taken to have acquired the bonus equities when you acquired the original equities.

Subdivision 130-B—Rights

130-40 Exercise of rights

(1) The modifications in section 130-40 of the *Income Tax Assessment Act 1997* apply to you for rights (issued to you by a company before 16 August 1989) to acquire shares, or options to acquire shares, in that company, only if you were a shareholder of that company.

(2) The modifications in section 130-40 of the *Income Tax Assessment Act 1997* apply to you for rights (issued to you by a company after 15 August 1989 and before the start of the 1993-94 income year) to acquire shares, or options to acquire shares in the company because you were a shareholder of another company, only if the companies were members of the same wholly-owned group for the whole of the income year in which the issue occurred.

(3) The modification in item 3 of the table in section 130-40 of the *Income Tax Assessment Act 1997* applies also to your exercise of rights (that you acquired before 20 September 1985) to acquire shares, or options to acquire shares, in a company.

Subdivision 130-C—Convertible notes

130-60 Shares or units acquired by converting a convertible note

(1) The modification in item 1 of the table in subsection 130-60(1) of the *Income Tax Assessment Act 1997* does not apply to shares or units in a unit trust you acquire by converting a convertible note (that is a traditional security) that you acquired after 10 May 1989 and before 16 August 1989. Instead, the first element of the cost base and reduced cost base of the shares or units is the sum of:

(a) what you paid or gave to acquire the note; and

(b) any amount you paid in relation to the conversion;

if that sum is more than the market value of the shares or units (at the time of conversion).

(2) The modification in item 2 of the table in subsection 130-60(1) of the *Income Tax Assessment Act 1997* does not apply to shares you acquire by converting a convertible note (that is not a traditional security) that you acquired before 20 September 1985 where you paid or gave something in relation to the conversion. Instead, the first element of the cost base and reduced cost base of the shares is the sum of:

(a) the market value of the note at the time of the conversion; and

(b) what you paid or gave in relation to the conversion.

(3) Subsection 130-60(2) of the *Income Tax Assessment Act 1997* does not apply to the acquisition of shares by the conversion of a convertible note that you acquired before 20 September 1985 if you did not pay or give anything in relation to the conversion. Instead, you are taken to have acquired them when you acquired the convertible note.

Subdivision 130-D—Employee share schemes

130-95 Application of Division

(1) This Subdivision applies to shares, or rights to acquire shares, you acquired under an employee share scheme if:

(a) the acquisition occurred on or before 6 pm, by legal time in the Australian Capital Territory, on 28 March 1995; or

(b) the acquisition occurred before 1 July 1995 as a result of an offer or invitation made on or before the time referred to in paragraph (a) made to employees of a company to acquire shares or rights in the company or in another company of which the first company was a 100% subsidiary; or

(c) for shares in a public company—the acquisition occurred before 1 July 1996 where:

(i) an offer or invitation to acquire the shares or rights was made to employees of the company or of another company that was a subsidiary of that company within the meaning of the *Corporations Law*; and

(ii) if approval of shareholders was required for the scheme—that approval was given on or before the time referred to in paragraph (a); or

(d) you elected under subitem 11(5) of Part 4 of Schedule 2 to the *Taxation Laws Amendment Act (No. 2) 1995* that the amendments made by that Schedule not apply to the acquisition;

and an amount was included in your assessable income under section 26AAC of the *Income Tax Assessment Act 1936* because of the acquisition.

(2) Despite subsection (1), this Subdivision does not apply to the shares or rights if you elected under item 12 or 13 of Part 4 of Schedule 2 to the *Taxation Laws Amendment Act (No. 2) 1995* that the amendments made by that Schedule apply to their acquisition.

130-100 Cost base modification

The first element of the cost base and reduced cost base of the shares or rights is their market value (at the time of acquisition) reduced by any amount that is excluded from being included in your assessable income under paragraph 26AAC(4F)(c) of the *Income Tax Assessment Act 1936.*

130-105 Time of acquisition

If subsection 26AAC(15) of the *Income Tax Assessment Act 1936* applies to the acquisition, you are taken to have acquired the shares or rights at the time set out in that subsection.

Note: That subsection deals with the case where there are conditions or restrictions on your disposal of the shares or rights. The time of acquisition is when the conditions or restrictions end.

130-110 Disposals by trustees

(1) A capital gain or a capital loss a trustee makes when a beneficiary becomes absolutely entitled to a share or right in a company is disregarded if these conditions are satisfied.

(2) The beneficiary must be:

(a) a PAYE earner of the company or of another company (at the time the beneficiary first became beneficially entitled to the share or right); or

(b) an associate or affiliate company of such a PAYE earner.

(3) The terms of the trust must have required or authorised the trustee to transfer the share or right to the PAYE earner or associate.

(4) The PAYE earner or associate must not have acquired the share or right for more than the cost base of the share or right (in the hands of the trustee) at the time of the transfer.

(5) There must have been an acquisition of a share or a right to acquire a share by the PAYE earner or associate under a scheme for the acquisition of shares by employees to which section 26AAC of the *Income Tax Assessment Act 1936* applies.

130-115 Deceased estates

A capital gain or capital loss a trustee makes from transferring a right to acquire shares in a company to an individual is disregarded if:

(a) the individual dies and an amount is included in the assessable income of the trustee of the deceased's estate under subsection 26AAC(9) of the *Income Tax Assessment Act 1936* as a result of that trustee acquiring shares because of the exercise or operation of the right; and

(b) the deceased acquired the right under a trust the trustee of which is required or authorised to transfer shares in a company to employees of the company or another company or to relatives of those employees; and

(c) the deceased did not acquire the right for more than the right's cost base (in the hands of the trustee) at the time of the transfer.

130-120 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment at any time for the purpose of giving effect to this Subdivision.

Division 134—Options

134-1 Exercise of options

The modification in item 1 in the table in subsection 134-1(1) of the *Income Tax Assessment Act 1997* does not apply to an option (that was granted before 20 September 1985 and exercised after that day) that binds the grantor to dispose of a CGT asset. Instead, the first element of the cost base and reduced cost base of the CGT asset acquired by the grantee by exercising the option includes the market value of the option when it was exercised.

Division 136—Non-residents

Subdivision 136-A—Making a capital gain or loss

136-25 When an asset has the necessary connection with Australia

A CGT asset a company owns has the necessary connection with Australia if:

(a) the company acquired the asset after 28 January 1988 and on or before 25 May 1988; and

(b) it acquired the asset as a result of a disposal (for the purposes of Part IIIA of the *Income Tax Assessment Act 1936*) for which there was a roll-over under section 160ZZN or 160ZZO of that Act; and

(c) that disposal was by:

(i) an entity that was not a trustee, and not a resident of Australia for the purposes of that Act; or

(ii) an entity that was a trustee of a trust that was not a resident trust estate, or a resident unit trust, for the purposes of that Act.

Division 140—Share value shifting

Subdivision 140-A—When is there share value shifting?

140-7 Pre-1994 share value shifts irrelevant

You make adjustments to the cost base and reduced cost base of shares under Division 140 of the *Income Tax Assessment Act 1997* only in relation to schemes where the decrease in market value and increase in market value occur after 12 noon, by legal time in the Australian Capital Territory, on 12 January 1994.

140-15 Off-market buy backs

(8) A share value shift is disregarded under subsection 140-15(8) of the *Income Tax Assessment Act 1997* only if:

(a) the company concerned buys back the shares after 7.30 pm, by legal time in the Australian Capital Territory, on 9 May 1995; and

(b) the buy back is not done under an arrangement that is an excluded transitional arrangement within the meaning of subsection 12(2) of the *Taxation Laws Amendment Act (No. 1) 1996*.

Division 149—When an asset stops being a pre-CGT asset

149-5 Assets that stopped being pre-CGT assets under old law

(1) This section applies to a CGT asset that:

(a) an entity last acquired before 20 September 1985; and

(b) the entity owned just before the start of the 1998-99 income year; and

(c) the entity was taken to have acquired on a day (the ***acquisition day***) on or after 20 September 1985 under Division 20 of Part IIIA of the *Income Tax Assessment Act 1936*.

(2) In applying Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* to the entity:

(a) the entity is taken to have acquired the asset on the acquisition day; and

(b) the first element of the cost base and reduced cost base of the asset on the acquisition day is the amount for which the entity is taken to have acquired it under Division 20 of Part IIIA of the *Income Tax Assessment Act 1936*.

[The next Part is Part 3-5.]

Part 3-5—Corporate taxpayers and corporate distributions

[The next Division is Division 165.]

Division 165—Income tax consequences of changing ownership or control of a company

Table of Subdivisions

165-CA Applying net capital losses of earlier income years

165-CB Working out the net capital gain and the net capital loss for the income year of the change

Subdivision 165-CA—Applying net capital losses of earlier income years

165-95 Application of Subdivision 165-CA of the *Income Tax Assessment Act 1997*

Subdivision 165-CA of the *Income Tax Assessment Act 1997* (about companies applying net capital losses of earlier income years) applies to assessments for the 1998-99 income year and later income years.

Subdivision 165-CB—Working out the net capital gain and the net capital loss for the income year of the change

165-105 Application of Subdivision 165-CB of the *Income Tax Assessment Act 1997*

Subdivision 165-CB of the *Income Tax Assessment Act 1997* (about companies working out the net capital gain and the net capital loss for the income year of the change) applies to assessments for the 1998-99 income year and later income years.

[The next Division is Division 170.]

Division 170—Treatment of company groups for income tax purposes

Table of Subdivisions

170-B Transfer of net capital losses within wholly-owned groups of companies

Subdivision 170-B—Transfer of net capital losses within wholly-owned groups of companies

170-101 Application of Subdivision 170-B of the *Income Tax Assessment Act 1997*

Subdivision 170-B of the *Income Tax Assessment Act 1997* (about transfer of net capital losses within wholly-owned groups of companies) applies to assessments for the 1998-99 income year and later income years.

170-175 Direct and indirect interests in the loss company

Any reduction in the cost base and reduced cost base of a share or debt that has been made or is required to be made under subsection 160ZP(13) of the *Income Tax Assessment Act 1936* (as that subsection applied from time to time) is taken to have been made or to have been required to be made under section 170-175 of the *Income Tax Assessment Act 1997*.

170-180 Direct and indirect interests in the gain company

Any increase in the cost base and reduced cost base of a share or debt that has been made or is authorised to be made under subsections 160ZP(14) and (15) of the *Income Tax Assessment Act 1936* (as those subsections applied from time to time) is taken to have been made or to have been authorised to be made under section 170-175 of the *Income Tax Assessment Act 1997*.

[The next Division is Division 175.]

Division 175—Use of a company's losses, deductions or bad debts to avoid income tax

Table of Subdivisions

175-CA Tax benefits from unused net capital losses of earlier income years

175-CB Tax benefits from unused capital losses of the current year

Subdivision 175-CA—Tax benefits from unused net capital losses of earlier income years

175-40 Application of Subdivision 175-CA of the *Income Tax Assessment Act 1997*

Subdivision 175-CA of the *Income Tax Assessment Act 1997* (about companies obtaining tax benefits from unused net capital losses of earlier income years) applies to assessments for the 1998-99 income year and later income years.

Subdivision 175-CB—Tax benefits from unused capital losses of the current year

175-55 Application of Subdivision 175-CB of the *Income Tax Assessment Act 1997*

Subdivision 175-CB of the *Income Tax Assessment Act 1997* (about companies obtaining tax benefits from unused capital losses of the current income year) applies to assessments for the 1998-99 income year and later income years.

[The next Part is Part 3-45.]

3 At the end of the Act

Add:

[The next Chapter is Chapter 6.]

Chapter 6—The Dictionary

Part 6-1—Concepts and topics

[The next Division is Division 960.]

Division 960—General

Table of Subdivisions

960-M Indexation

Subdivision 960-M—Indexation

960-262 Application of Subdivision 960-M of the *Income Tax Assessment Act 1997*

(1) Subdivision 960-M of the *Income Tax Assessment Act 1997* (about indexation) applies to assessments for the 1998-99 income year and later income years (except so far as it affects the car depreciation limit).

(2) For the car depreciation limit (see section 42-80 of the *Income Tax Assessment Act 1997*), that Subdivision applies to the 1998-99 financial year and later financial years.

960-275 *Indexation factor*

(1) This section applies to a CGT asset that:

(a) is a share in a company that was issued or allotted to you by the company or a unit in a unit trust that was issued to you by the trustee; and

(b) you acquired before 16 August 1989; and

(c) you owned just before the start of the 1998-99 income year.

(2) In working out the cost base of the cost base of the asset, you ignore subsection 960-275(3) and use the indexation factor in subsection 960-275(2).

Part 2—Consequential amendment of the Income Tax Assessment Act 1997

4 Section 10-5 (table item headed "capital gains")

Omit "**160ZO**", substitute "102-5".

5 Section 12-5 (table item headed "capital loss")

Omit "**160ZO**", substitute "102-10".

6 Section 12-5 (table item headed "capital loss")

Omit "**160ZP**", substitute "Subdivision 170-B".

7 Section 12-5 (table item headed "insurance and annuity business")

Omit "notional Part IIIA disposal of", substitute "notional CGT event relating to".

8 Paragraphs 41-20(1)(b) and (c)

Repeal the paragraphs, substitute:

(b) the disposal involves a *CGT event; and

(c) the conditions in an item in the table are satisfied.

CGT roll-overs that qualify transferor for relief under Common rule 1

Item	Type of CGT roll-over	Conditions
1	Disposal of asset to wholly-owned company	There is a roll-over under Subdivision 122-A for the *CGT event.

CGT roll-overs that qualify transferor for relief under Common rule 1		
Item	**Type of CGT roll-over**	**Conditions**
2	Disposal of asset by partnership to wholly-owned company	The transferor is a partnership, the property is partnership property, and there is a roll-over under Subdivision 122-B for the *disposal by the partners of the *CGT assets consisting of their interests in the property.
3	Marriage breakdown	There is a roll-over under Subdivision 126-A for the *CGT event.
4	Disposal of asset to another member of the same wholly-owned group	There is a roll-over under Subdivision 126-B for the *CGT event.

9 At the end of section 41-20

Add:

(2) In applying an item in the table in subsection (1), disregard the following so far as they relate to a *car, motor cycle or similar vehicle, or to an interest in one:

(a) the exemption in section 118-5; and

(b) subsection 122-25(3) (which excludes certain assets from roll-over relief).

10 Section 42-395

Repeal the section, substitute:

42-395 How CGT applies to pooled plant

Sections 110-55 and 110-60 (about reduced cost base) apply to a *CGT event in relation to *plant as if, for a period for

which the plant was in a *pool, you had deducted amounts for depreciation of it using the pool percentage as your rate and the *diminishing value method.

11 Subsection 43-50(3)

Omit "that you have elected to treat as a disposal of an asset under section 160ZSA of the *Income Tax Assessment Act 1936*", substitute "to which you have chosen to apply section 104-115 (CGT event F2)".

12 Subsection 43-50(3) (note 1)

Repeal the Note, substitute:

Note 1: Choosing to apply section 104-115 results in the lease being treated for CGT purposes more like an outright disposal.

13 Subsection 43-180(3)

Omit "that you are taken to have disposed of under section 160ZSA of the *Income Tax Assessment Act 1936*", substitute "in relation to which CGT event F2 has happened".

14 Subsection 43-180(3) (note 1)

Repeal the Note, substitute:

Note 1: CGT event F2 results in a lease with a term of 50 years or more being treated for CGT purposes more like an outright disposal.

15 Subsection 70-30(1) (note)

Omit "Part IIIA (Capital gains and capital losses) of the *Income Tax Assessment Act 1936*", substitute "Parts 3-1 and 3-3 (about CGT)".

16 Subsection 70-30(1) (note)

Omit "160ZB(7) of that Act", substitute "118-25(2)".

17 Subsection 70-30(4)

Repeal the subsection, substitute:

(4) However, if you last acquired the item for no consideration, its cost is worked out using this table:

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

Cost of item acquired for no consideration		
Item	**In this case:**	**The cost is:**
4	any other case where you last acquired the item for no consideration	a nil amount

18 Chapter 3 (link note after heading)

Repeal the link note.

19 Section 165-5

Omit "entered no new transactions and conducted no additional business", substitute "entered no new kinds of transactions and conducted no new kinds of business".

20 Subsection 165-60(2A)

Repeal the subsection, substitute:

(2A) However, so much of an amount included in the company's assessable income under section 97 or 98A of the *Income Tax Assessment Act 1936* as is a *capital gain that forms part of a *net capital gain is not attributed to a period.

21 Subsection 165-60(6A)

Repeal the subsection, substitute:

(6A) A *net capital gain is not attributed to a period.

Note: This is because Subdivision 165-CB provides for how the company must work out its net capital gain for the income year.

22 Subsection 165-60(7)

Omit "capital gain that forms part of a net capital gain", substitute "*capital gain that forms part of a *net capital gain".

23 Subsection 165-65(3)

Omit "net capital gain that accrued to the company in respect of", substitute "*net capital gain of the company for".

24 Paragraph 165-70(3)(f)

Omit "net capital gain that accrued to the company in respect of", substitute "*net capital gain of the company for".

25 Subdivision 166-B (heading)

Repeal the heading, substitute:

Subdivision 166-B—Working out the taxable income, tax loss, net capital gain and net capital loss for the income year of the change

26 Section 166-20 (heading)

Omit "**Subdivision 165-B applies**", substitute "**Subdivisions 165-B and 165-CB apply**".

27 Subsection 166-20(1)

Omit "the way Subdivision 165-B applies", substitute "how Subdivisions 165-B and 165-CB apply".

28 Subsection 166-20(1) (after note 1)

Insert:

Note 1A: Subdivision 165-CB is about when a company must calculate its net capital gain and net capital loss for the income year in a special way.

29 Subsection 166-20(1) (note 2)

Omit "Subdivision 165-B applies", substitute "Subdivisions 165-B and 165-CB apply".

30 Section 166-25 (heading)

Omit "**and tax loss**", substitute "**, tax loss, net capital gain and net capital loss**".

31 Subsection 166-25(1)

After "Subdivision 165-B,", insert "and its *net capital gain and *net capital loss under Subdivision 165-CB,".

32 Section 166-30 (heading)

Omit "**Subdivision 165-B applies**", substitute "**Subdivisions 165-B and 165-CB apply**".

33 At the end of subsection 166-30(1)

Add:

Note 2: Subdivision 165-CB is about when a company must calculate its net capital gain and net capital loss for the income year in a special way.

34 Subsection 166-30(4)

Omit "Subdivision 165-B", substitute "Subdivisions 165-B and 165-CB".

35 Subsection 166-35(1)

Omit "Subdivision 165-B is to", substitute "Subdivisions 165-B and 165-CB are to".

36 Subsection 166-240(1)

Omit "the *head company or *interposed company", substitute "a company".

37 Subsection 166-240(1)

Omit "the *ownership test time", substitute "a particular time".

38 Subsection 166-240(2)

Omit "the *head company or *interposed company", substitute "a company".

39 Subsection 166-240(2)

Omit "the *ownership test time", substitute "a particular time".

40 Subsection 166-240(3)

Omit "the *head company or *interposed company", substitute "a company".

41 Subsection 166-240(3)

Omit "the *ownership test time", substitute "a particular time".

42 Subsection 166-270(3)

After "an equal proportion of", insert "that percentage of".

43 Section 175-25 (heading)

Repeal the heading, substitute:

175-25 Deduction injected into company because of available income or capital gain

44 At the end of subsection 175-25(1)

Add ", or had not made some or all of a *capital gain it made in that income year".

45 Section 195-1

Omit "Division", substitute "Subdivision".

46 Subsection 195-15(6) (link note)

Repeal the link note.

47 After section 195-15

Insert:

Working out a PDF's net capital gain and net capital loss

195-25 Applying a PDF's net capital losses

If a company is a *PDF at the end of an income year for which it has a *net capital loss, it can apply the loss in working out its *net capital gain for a later income year only if it is a PDF throughout the last day of the later income year.

195-30 PDF cannot transfer net capital loss

If a company is a *PDF at the end of an income year for which it has a *net capital loss, it cannot transfer any amount of the loss under Subdivision 170-B (which is about the

transfer of net capital losses within wholly-owned groups of companies).

195-35 Net capital loss for year in which company becomes a PDF

(1) This section applies if a company becomes a *PDF during an income year and is still a PDF at the end of it.

(2) Divide the income year into periods according to subsection 195-15(2) (about working out the company's tax loss for the income year).

(3) For each period, work out whether the company has a *net capital gain or a *net capital loss (or both), treating each period as if it were an income year.

(4) If the company has:

(a) a *net capital gain for the non-PDF period; and

(b) a *net capital loss for the PDF period;

that loss is a net capital loss of the company for the income year.

Note: The company can only apply the loss while it is a PDF: see section 195-25.

(5) If the company has a *net capital loss for the non-PDF period:

(a) section 195-25 does *not* prevent the company from applying its *net capital loss for the income year in working out its *net capital gain for a later income year; and

(b) section 195-30 does *not* prevent the company from transferring an amount of its net capital loss for the income year under Subdivision 170-B (which is about the transfer of net capital losses within wholly-owned groups of companies);

to the extent that its net capital loss for the income year does not exceed its net capital loss for the non-PDF period.

(6) These rules apply in addition to the other rules about how *net capital losses are applied or transferred.

The other rules start in Division 102 (about net capital gains and losses).

[The next Part is Part 3-45.]

48 After paragraph 387-490(2)(a)

Insert:

(ba) if a *net capital gain is or will be included in your assessable income for any income year—the part of the net capital gain that is attributable to a premium on the grant or assignment of the lease; or

Part 3—Consequential amendment of the Income Tax Assessment Act 1936

49 Subsection 6(1)

Insert:

100% subsidiary has the same meaning as in the *Income Tax Assessment Act 1997*.

50 Subsection 6(1) (definition of *capital gain*)

Repeal the definition, substitute:

capital gain has the same meaning as in the *Income Tax Assessment Act 1997*.

51 Subsection 6(1) (definition of *capital loss*)

Repeal the definition, substitute:

capital loss has the same meaning as in the *Income Tax Assessment Act 1997*.

52 Subsection 6(1)

Insert:

capital proceeds has the same meaning as in the *Income Tax Assessment Act 1997*.

53 Subsection 6(1)

Insert:

CGT asset has the same meaning as in the *Income Tax Assessment Act 1997*.

54 Subsection 6(1)

Insert:

CGT event has the same meaning as in the *Income Tax Assessment Act 1997*.

55 Subsection 6(1)

Insert:

cost base of a CGT asset has the same meaning as in the *Income Tax Assessment Act 1997*.

56 Subsection 6(1)

Insert:

exempt entity has the same meaning as in the *Income Tax Assessment Act 1997*.

57 Subsection 6(1)

Insert:

necessary connection with Australia has the same meaning as in the *Income Tax Assessment Act 1997*.

58 Subsection 6(1) (definition of *net capital gain*)

Repeal the definition, substitute:

net capital gain has the same meaning as in the *Income Tax Assessment Act 1997*.

59 Subsection 6(1) (definition of *net capital loss*)

Repeal the definition, substitute:

net capital loss has the same meaning as in the *Income Tax Assessment Act 1997*.

60 Subsection 6(1)

Insert:

ordinary income has the same meaning as in the *Income Tax Assessment Act 1997*.

61 Subsection 6(1)

Insert:

reduced cost base of a CGT asset has the same meaning as in the *Income Tax Assessment Act 1997*.

62 Subsection 6(1)

Insert:

resident trust for CGT purposes has the same meaning as in the *Income Tax Assessment Act 1997*.

63 Subsection 23AH(4)

Omit "subsection 160ZA(4)", substitute "section 118-20 of the *Income Tax Assessment Act 1997*".

64 Subsection 23AH(6)

Omit "the disposal of an asset by a taxpayer", substitute "a CGT event that happens in relation to a CGT asset of a taxpayer".

65 Paragraph 23AH(6)(a)

Omit "the asset is disposed of during", substitute "the CGT event happens during".

66 Paragraph 23AH(6)(d)

Repeal the paragraph, substitute:

(d) the asset does not have the necessary connection with Australia;

67 Paragraph 23AH(6)(e)

Omit "the disposal of the asset", substitute "the CGT event".

68 Subsection 23AH(7)

Omit "the disposal of an asset of a taxpayer", substitute "a CGT event that happens in relation to a CGT asset of a taxpayer".

69 Paragraph 23AH(7)(a)

Omit "the taxpayer's asset is disposed of during", substitute "the CGT event happens during".

70 Paragraph 23AH(7)(d)

Repeal the paragraph, substitute:

(d) the taxpayer's asset does not have the necessary connection with Australia;

71 Paragraph 23AH(7)(e)

Omit "the disposal of the taxpayer's asset", substitute "the CGT event".

72 Subsection 23AH(8)

Repeal the subsection, substitute:

(8) If the original taxpayer in relation to the foreign branch capital gain is a company, any capital gain (for the purposes of Part 3-1 of the *Income Tax Assessment Act 1997*) made by the company from the CGT asset is disregarded.

73 Paragraph 23AH(8A)(a)

Repeal the paragraph, substitute:

(a) a CGT event happens in relation to a CGT asset of a company; and

74 Paragraph 23AH(8A)(b)

Omit "the disposal", substitute "the CGT event".

75 Paragraph 23AH(8A)(c)

Omit "the disposal", substitute "the CGT event".

76 Subsection 23AH(8A)

Omit "no capital loss is incurred by the taxpayer under Part IIIA in respect of the disposal of the asset", substitute "any capital loss (for the purposes of Part 3-1 of the *Income Tax Assessment Act 1997*) made by the taxpayer from the CGT event is disregarded".

77 Subparagraph 23AH(9)(c)(iii)

Repeal the subparagraph, substitute:

(iii) the original taxpayer had no capital loss (for the purposes of Part 3-1 of the *Income Tax Assessment Act 1997*) for that year of income; and

78 Sub-subparagraph 23AH(9)(c)(iv)(C)

Repeal the sub-subparagraph, substitute:

(C) none of the interposed partnerships or trusts had a capital loss (for the purposes of Part 3-1 of the *Income Tax Assessment Act 1997*);

79 Paragraph 23AH(9A)(a)

Repeal the paragraph, substitute:

(a) a CGT event happens in relation to a CGT asset of a taxpayer (the ***original taxpayer***), being the trustee of a trust estate; and

80 Paragraph 23AH(9A)(b)

Omit "the disposal", substitute "the CGT event".

81 Paragraph 23AH(9A)(c)

Omit "the disposal", substitute "the CGT event".

82 Paragraph 23AH(9A)(d)

Repeal the paragraph, substitute:

(d) the original taxpayer had made a capital loss (for the purposes of Part 3-1 of the *Income Tax Assessment Act 1997*) from the CGT event; and

83 Subparagraph 23AH(9A)(f)(iii)

Repeal the subparagraph, substitute:

(iii) the original taxpayer had no capital loss (for the purposes of Part 3-1 of the *Income Tax Assessment Act 1997*) for that year of income; and

84 Sub-subparagraph 23AH(9A)(f)(iv)(C)

Repeal the sub-subparagraph, substitute:

(C) none of the interposed partnerships or trusts had a capital loss (for the purposes of Part 3-1 of the *Income Tax Assessment Act 1997*);

85 Subsection 23AH(9A)

Omit "no such capital loss had been incurred by the original taxpayer", substitute "the original taxpayer had made no such capital loss (for the purposes of Part 3-1 of the *Income Tax Assessment Act 1997*)".

86 Subsection 23AH(10)

Repeal the subsection.

87 Subsection 23AH(12) (paragraph (a) of the definition of *foreign income*)

Omit "Part IIIA", substitute "Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997* (about CGT)".

88 Subsection 24P(1)

Omit "an asset", substitute "a CGT asset".

89 Subsection 24P(2)

Omit "Part IIIA", substitute "Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*".

90 Paragraphs 24P(2)(b) and (c)

Repeal the paragraphs, substitute:

(b) the first element of the asset's cost base in the hands of the taxpayer (at the end of 30 June 1991) is its market value at that time.

91 Subsections 24P(3) and (4)

Repeal the subsections, substitute:

(3) Despite Division 121 of the *Income Tax Assessment Act 1997*, the taxpayer is not required to keep records of the date of acquisition of the asset, or its cost base on 30 June 1991.

92 Subsection 24P(5)

Omit "a taxpayer disposes of an asset", substitute "a CGT event happens in relation to the asset".

93 Subsection 24P(5)

After "160ZZU", insert "of this Act and Division 121 of the *Income Tax Assessment Act 1997*".

96 Subsection 24AX(1)

Omit "Part IIIA", substitute "Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*".

97 Subsection 26AAC(11A)

Repeal the subsection, substitute:

(11A) Subsection (11) does not apply to a disposal of a right to acquire a share in a company if that disposal would result in a capital gain or capital loss for the purposes of Part 3-1 of the *Income Tax Assessment Act 1997*.

98 Subsection 26AAC(12A)

Repeal the subsection, substitute:

(12A) Subsection (12) does not apply to a disposal of a right to acquire a share in a company if that disposal would result in a capital gain or capital loss for the purposes of Part 3-1 of the *Income Tax Assessment Act 1997*.

99 Subsection 26AAC(13A)

Repeal the subsection, substitute:

(13A) Subsection (13) does not apply to a disposal of a right to acquire a share in a company if that disposal would result in a capital gain or capital loss for the purposes of Part 3-1 of the *Income Tax Assessment Act 1997*.

100 Subsection 26AB(1A) (note)

Repeal the Note, substitute:

Note: The *Income Tax Assessment Act 1997* does not contain a rewritten version of this section.

For the 1998-99 year of income and later years of income, Parts 3-1 and 3-3 (about CGT) deal with the income tax treatment of premiums for:

- granting leases; and
- assigning leases granted on or after 20 September 1985.

For the 1997-98 year of income, Part IIIA of this Act (about CGT) deals with the income tax treatment of such premiums.

101 Subsection 26BC(1) (paragraph (e) of the definition of *distribution*)

Repeal the paragraph, substitute:

(e) a unit issued by the trustee of a unit trust to which section 130-20 of the *Income Tax Assessment Act 1997* applies (apart from subsection (4) of that section).

102 Subsection 26BC(1) (paragraph (d) of the definition of *public company*)

Omit "subsidiary", substitute "100% subsidiary".

103 Subsection 26BC(1) (definition of *subsidiary*)

Repeal the definition.

104 Paragraph 26BC(4)(a)

Omit "Part IIIA", substitute "Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997* (about CGT)".

105 Subsection 26BC(4A)

Omit "Part IIIA", substitute "Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997*".

106 Subsection 26BC(4B)

Omit "Part IIIA", substitute "Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997*".

107 Paragraph 26BC(5)(a)

Omit "Part IIIA", substitute "Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997*".

108 Subsections 26BC(6) and (7)

Repeal the subsections, substitute:

(6) Any capital gain or capital loss from the disposal of the borrowed security by the lender is disregarded.

(6A) If the lender acquired the borrowed security before 20 September 1985, the lender is taken (for the purposes of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*) to have acquired the replacement security before that day.

(6B) If the lender acquired the borrowed security on or after 20 September 1985, the first element of the cost base of the replacement security is the cost base of the borrowed security just before the acquisition of the replacement security. The reduced cost base of the replacement security is worked out similarly.

(7) If:

(a) the borrowed security was acquired on or after 20 September 1985; and

(b) a CGT event (other than one involving a transaction covered by subsection (3)) happens in relation to the replacement security at least 12 months after the lender acquired a paired security in relation to the replacement security (otherwise than under a transaction covered by subsection (3));

section 114-10 of the *Income Tax Assessment Act 1997* (about the requirement for 12 months ownership) does not apply to the CGT event.

109 Paragraph 26BC(8)(a)

Repeal the paragraph, substitute:

(a) if CGT event A1 happens (involving a transaction covered by subsection (3)) by the lender disposing of an eligible security to the borrower, that security is a paired security in relation to the replacement security subsequently acquired or re-acquired by the lender; and

110 Subsections 26BC(9) and (9A)

Repeal the subsections, substitute:

(9) For the purpose of applying Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* to the borrower:

(a) if the borrower disposes of the borrowed security to a third party:

(i) the first element of the cost base and reduced cost base of the borrowed security (in the hands of the borrower) is taken to be its market value when the borrower acquired it; and

(ii) when the borrower disposes of a replacement security to the lender, the capital proceeds from that CGT event are taken to be that market value; and

(b) if no third party is involved—the transactions referred to in paragraph (3)(a) are ignored.

(9A) For the purpose of applying Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* to the borrower, the incidental costs to the borrower of the acquisition of an eligible security covered by sub-subparagraph (3)(a)(ii)(B) include a compensatory payment incurred by the borrower (to the extent that the borrower has not deducted and cannot deduct it).

111 Subsection 26BC(9B)

Omit "Part IIIA", substitute "Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*".

112 Subsection 26BC(9C)

Omit "Part IIIA", substitute "Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*".

113 Subsection 26BC(9D)

Omit "Part IIIA", substitute "Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*".

114 Subsection 26BC(9E)

Omit "section 160ZYC" (wherever occurring), substitute "section 130-20 of the *Income Tax Assessment Act 1997*".

115 Subsection 26BC(9E)

Omit "Part IIIA", substitute "Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*".

116 Subsection 26BC(9F)

Omit "Part IIIA", substitute "Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*".

117 Paragraph 26BC(9F)(c)

Repeal the paragraph, substitute:

(c) the lender had disposed of the right or option immediately after its issue and had received capital proceeds of an amount equal to the compensatory payment.

118 Subsection 26BC(9G)

Omit "Part IIIA", substitute "Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*".

119 Paragraph 26BC(9G)(c)

Repeal the paragraph, substitute:

(c) the lender had immediately disposed of the shares, units, bonds, debentures or financial instruments that resulted from exercising the right or option and had

received capital proceeds of an amount equal to the compensatory payment.

120 Subsections 26BC(10) and (11)

Repeal the subsections.

121 Paragraph 27CB(1)(d)

Omit "a capital gain accrues to the taxpayer", substitute "the taxpayer makes a capital gain".

122 Subparagraph 46A(12A)(a)(i)

Omit "if the relevant property was disposed of by the shareholder", substitute "if a CGT event happened in relation to the relevant property".

123 Sub-subparagraph 46A(12A)(a)(i)(A)

Omit "disposal", substitute "event".

124 Subparagraph 46A(12A)(b)(i)

Omit "if the relevant property is disposed of by the shareholder", substitute "if a CGT event happens in relation to the relevant property".

125 Sub-subparagraph 46A(12A)(b)(i)(A)

Omit "disposal", substitute "event".

126 Before subsection 46A(12B)

Insert:

(12BA) If there was a roll-over under Division 122, 124 or 126 of the *Income Tax Assessment Act 1997* (except under Subdivision 124-J, 124-K or 124-L of that Act) for a CGT event that resulted in a shareholder acquiring relevant property, then, for the purposes of subsection (12A), the property's cost base to the shareholder is worked out as if the shareholder had acquired the property for what would, but for the roll-over, have been its cost base for the purpose of

working out the amount of a capital gain arising from the event.

127 Subsection 46A(12C)

Repeal the subsection.

128 Subsection 46A(13CA)

Omit "whether an asset was acquired on or after that date is determined under Part IIIA", substitute "when a CGT asset was acquired is determined for the purposes of the *Income Tax Assessment Act 1997*".

129 Subsection 46B(5A)

Omit "whether an asset was acquired on or after that date is determined under Part IIIA", substitute "when a CGT asset was acquired is determined for the purposes of the *Income Tax Assessment Act 1997*".

130 Sub-subparagraph 46E(2)(a)(v)(B)

Repeal the sub-subparagraph, substitute:

(B) the asset-holding company acquired the asset on or after 20 September 1985, the disposal would have been a CGT event, and a capital gain or capital loss arising from the event would *not* have had to be disregarded (apart from a roll-over under Division 122, 124 or 126 of the *Income Tax Assessment Act 1997* (except under Subdivision 124-J, 124-K or 124-L of that Act)); and

131 Subsection 46E(5)

Omit "whether an asset was acquired on or after that date is determined under Part IIIA", substitute "when a CGT asset was acquired is determined for the purposes of the *Income Tax Assessment Act 1997*".

132 Subparagraph 46E(6)(b)(ii)

Repeal the subparagraph, substitute:

(ii) the company acquired the asset on or after 20 September 1985, the disposal would have been a CGT event, and a capital gain or capital loss arising from the event would *not* have had to be disregarded (apart from a roll-over under Division 122, 124 or 126 of the *Income Tax Assessment Act 1997* (except under Subdivision 124-J, 124-K or 124-L of that Act)).

133 Paragraph 46E(11)(b)

Repeal the paragraph, substitute:

(b) the taxpayer not making a capital gain during the year of income that the taxpayer would have made (or might reasonably be expected to have made) if the arrangement had not been entered into or carried out.

134 Paragraphs 47(1A)(a) and (b)

Repeal the paragraphs, substitute:

(a) an amount (except a net capital gain) included in the company's assessable income for a year of income; or

(b) a net capital gain that would be included in the company's assessable income for a year of income if the *Income Tax Assessment Act 1997* required a net capital gain to be worked out as follows:

Method statement

Step 1. Work out each capital gain that the company made during that year of income. Do so *without indexing* any amount used to work out the cost base of a CGT asset.

Step 2. Total the capital gain or gains worked out under Step 1. The result is the net capital gain for that year of income.

135 Paragraph 51AAA(1)(a)

Omit "160ZO", substitute "102-5 of the *Income Tax Assessment Act 1997* (about net capital gains) or subsection 116CD(2), 116GB(2) or 124ZZB(1) of this Act (about notional capital gains of life assurance companies, registered organisations or PDFs)".

136 Subparagraph 54AA(7A)(b)(ii)

Omit "because of a relevant exempting provision (within the meaning of section 160K)", substitute "because the authority is an exempt entity".

137 Subsection 63D(1) (paragraph (d) of the definition of *Eligible debt term*)

Omit "Part IIIA", substitute "section 318".

138 Paragraph 73AA(1)(a)

Repeal the paragraph.

139 At the end of subsection 73AA(1)

Add:

; and (c) the disposal involves a CGT event; and

(d) the conditions in an item in the table are satisfied.

CGT roll-overs that qualify transferor for relief

Item	Type of CGT roll-over	Conditions
1	Disposal of asset to wholly-owned company	There is a roll-over under Subdivision 122-A of the *Income Tax Assessment Act 1997* for the CGT event.

CGT roll-overs that qualify transferor for relief		
Item	**Type of CGT roll-over**	**Conditions**
2	Disposal of asset by partnership to wholly-owned company	The transferor is a partnership, the building or part is partnership property, and there is a roll-over under Subdivision 122-B of the *Income Tax Assessment Act 1997* for the disposal by the partners of the CGT assets consisting of their interests in the building or part.
3	Marriage breakdown	There is a roll-over under Subdivision 126-A of the *Income Tax Assessment Act 1997* for the CGT event.
4	Disposal of asset to another member of the same wholly-owned group	There is a roll-over under Subdivision 126-B of the *Income Tax Assessment Act 1997* for the CGT event.

Note: The heading to section 73AA is replaced by the heading "**Section 73A roll-over relief in the case of certain CGT roll-overs**".

140 Paragraph 73E(1)(a)

Repeal the paragraph, substitute:

(a) the disposal involves a CGT event for which there is a roll-over under Subdivision 126-B of the *Income Tax Assessment Act 1997* (or would be, disregarding the exemption in section 118-5 of that Act, so far as it relates to a car, motor cycle or similar vehicle, or to an interest in one); and

Note: The heading to section 73E is replaced by the heading "**Section 73B roll-over relief on disposal of unit of plant to another member of same wholly-owned group**".

141 Subsection 73E(12)

Repeal the subsection.

142 Paragraph 73F(2)(a)

Repeal the paragraph, substitute:

(a) the disposal involves a CGT event for which there is a roll-over under Subdivision 126-B of the *Income Tax Assessment Act 1997*; and

Note: The heading to section 73F is replaced by the heading "**Section 73B roll-over relief on disposal of building etc. to another member of same wholly-owned group**".

143 Paragraph 73G(1)(a)

Repeal the paragraph, substitute:

(a) the disposal involves a CGT event for which there is a roll-over under Subdivision 126-B of the *Income Tax Assessment Act 1997*; and

Note: The heading to section 73G is replaced by the heading "**Section 73B roll-over relief on disposal of item of intellectual property to another member of same wholly-owned group**".

144 Subsection 82V(1) (definition of *associate*)

Omit "Part IIIA", substitute "section 318".

145 Section 102AAZB

Repeal the section, substitute:

102AAZB General modifications—CGT

For the purposes of applying this Act in calculating the attributable income of a trust estate, Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* (about CGT) apply as if:

(a) sections 118-12 (about assets used to produce exempt income) and 136-45 (about a trust becoming a resident trust) were disregarded; and

(b) the trust estate were a resident trust for CGT purposes.

146 Paragraph 102AAZBA(a)

Omit "resident trust estate or a resident unit trust, as the case may be, within the meaning of Part IIIA", substitute "resident trust for CGT purposes".

Note: The heading to section 102AAZBA is replaced by the heading "**Modified application of CGT—effect of certain changes of residence**".

147 Paragraphs 102AAZBA(b), (c) and (d)

Repeal the paragraphs, substitute:

(b) the trust estate owned a CGT asset at the residence-change time; and

(c) a CGT event happens in relation to the asset during the attributable income year; and

(d) subsection 160M(9) or (10) of this Act, or section 104-170 of the *Income Tax Assessment Act 1997* (CGT event I2), applies to the asset in respect of the change of residence for the purposes of the application of this Act apart from this Subdivision;

148 Section 102AAZBA

Omit "to 417", substitute "to 414".

149 Paragraph 102AAZBA(g)

Omit "non-taxable Australian".

150 Paragraph 102AAZBA(j)

Repeal the paragraph, substitute:

(j) subsections 412(2) and (3), and paragraphs 414(3)(b) and (4)(b), referred only to the market value of the asset concerned.

151 Subsection 110(1)

Insert:

accumulated net capital loss for a year of income (the ***loss year***) means the amount (if any) by which the total of:

(a) the total of the overall capital losses for all classes of assessable income for the loss year; and

(b) any accumulated net capital loss for the last year of income *before* the loss year;

exceeds:

(c) the total of the overall non-exempt capital gains for all classes of assessable income for the loss year (before section 116CD is applied).

152 Subsection 110(1) (paragraph (a) of the definition of *current year deduction*)

Omit "Part IIIA disposals", substitute "CGT event".

153 Subsection 110(1) (definition of *fund asset*)

Repeal the definition, substitute:

fund asset, in relation to a notional CGT event, means a CGT asset that was included in any of the insurance funds immediately before the event.

154 Subsection 110(1) (definition of *modified 25/25A amount*)

Repeal the definition.

155 Subsection 110(1) (definition of *modified 51/52 amount*)

Repeal the definition.

156 Subsection 110(1) (definition of *modified 160Z gain amount*)

Repeal the definition.

157 Subsection 110(1) (definition of *modified 160Z loss amount*)

Repeal the definition.

158 Subsection 110(1)

Insert:

modified capital loss for a notional CGT event means any capital loss that would (apart from this Division) arise from the event if Division 10 of Part IX applied in respect of the event.

159 Subsection 110(1)

Insert:

modified general deduction for a notional CGT event means an amount that (apart from sections 116CB and 116CC) could be deducted under:

(a) section 8-1 or 25-40 of the *Income Tax Assessment Act 1997*; or

(b) section 52 of this Act;

in respect of the event if Division 10 of Part IX of this Act applied in respect of the event.

160 Subsection 110(1)

Insert:

modified ordinary income amount for a notional CGT event means an amount that (apart from sections 116CB and 116CC) would be included in assessable income under:

(a) section 6-5 or 15-15 of the *Income Tax Assessment Act 1997*; or

(b) section 25A of this Act;

in respect of the event if Division 10 of Part IX of this Act applied in respect of the event.

161 Subsection 110(1)

Insert:

non-exempt modified capital gain for a notional CGT event means any capital gain that would (apart from this Division) arise from the event if Division 10 of Part IX applied in respect of the event, reduced as follows:

(a) if, had the gain instead been ordinary income derived when the gain was made, some or all of the ordinary income would have been exempt income under section 112C:

(i) reduce the gain by so much of that ordinary income as would have been so exempt; and

(ii) further reduce the rest of the gain (if any) by the proportion worked out using the formula in section 112A;

(b) otherwise—reduce the gain by the proportion worked out using the formula in section 112A.

162 Subsection 110(1)

Insert:

non-exempt ordinary capital gain for a notional CGT event means any capital gain that would (apart from this Division) arise from the event, reduced as follows:

(a) if, had the gain instead been ordinary income derived when the gain was made, some or all of the ordinary income would have been exempt income under section 112C:

(i) reduce the gain by so much of that ordinary income as would have been so exempt; and

(ii) further reduce the rest of the gain (if any) by the proportion worked out using the formula in section 112A; and

(b) otherwise—reduce the gain by the proportion worked out using the formula in section 112A.

163 Subsection 110(1) (definition of *non-fund asset*)

Repeal the definition, substitute:

non-fund asset, in relation to a notional CGT event, means a CGT asset that was *not* included in any of the insurance funds immediately before the event.

164 Subsection 110(1) (definition of *notional Part IIIA disposal*)

Repeal the definition.

165 Subsection 110(1) (definition of *notional Part IIIA disposals deduction*)

Repeal the definition.

166 Subsection 110(1) (definition of *notional Part IIIA disposals income*)

Repeal the definition.

167 Subsection 110(1)

Insert:

notional CGT event means:

(a) a CGT event that involves a CGT asset (unless a capital gain or capital loss arising from the event is to be disregarded); or

(b) a CGT event:

(i) that involves a CGT asset; and

(ii) for which there would be a roll-over under Part 3-3 of the *Income Tax Assessment Act 1997* if subsection 306(1) of this Act applied to that asset;

(unless a capital gain or capital loss arising from the event would have to be disregarded even without the roll-over).

168 Subsection 110(1)

Insert:

notional CGT event deduction means so much of any unmodified or modified general deduction as can be deducted.

169 Subsection 110(1)

Insert:

notional CGT event income means:

(a) so much of any unmodified or modified ordinary income amount as is included in assessable income; or

(b) any amount included in assessable income under section 116CD.

170 Subsection 110(1) (definition of *ordinary 25/25A amount*)

Repeal the definition.

171 Subsection 110(1) (definition of *ordinary 51/52 amount*)

Repeal the definition.

172 Subsection 110(1) (definition of *ordinary 160Z gain amount*)

Repeal the definition.

173 Subsection 110(1) (definition of *ordinary 160Z loss amount*)

Repeal the definition.

174 Subsection 110(1)

Insert:

> ***ordinary capital loss*** for a notional CGT event means any capital loss that would (apart from this Division) arise from the event.

175 Subsection 110(1) (definition of *overall 160Z gain*)

Repeal the definition.

176 Subsection 110(1) (definition of *overall 160Z loss*)

Repeal the definition.

177 Subsection 110(1)

Insert:

> ***overall capital loss*** means:
>
> (a) for the general fund class—the amount by which the total of the non-exempt ordinary capital gains for that class is less than the total of the ordinary capital losses for that class; or

(b) for the CS/RA class—the amount by which the total non-exempt modified capital gain for that class is less than the total modified capital loss for that class; or

(c) for any other class—the amount by which the total non-exempt ordinary capital gain for that class is less than the total ordinary capital loss for that class.

178 Subsection 110(1)

Insert:

overall non-exempt capital gain means:

(a) for the general fund class—the amount by which the total of the non-exempt ordinary capital gains for that class exceeds the total of the ordinary capital losses for that class; or

(b) for the CS/RA class—the amount by which the total non-exempt modified capital gain for that class exceeds the total modified capital loss for that class; or

(c) for any other class—the amount by which the total non-exempt ordinary capital gain for that class exceeds the total ordinary capital loss for that class;

or, if an amount has been applied under subsection 116CD(3) to reduce an overall non-exempt capital gain previously worked out under this definition, that gain as so reduced.

179 Subsection 110(1) (definition of *prior year Part IIIA loss*)

Repeal the definition.

180 Subsection 110(1) (definition of *residual overall 160Z gain*)

Repeal the definition.

181 Subsection 110(1)

Insert:

residual overall non-exempt capital gain means so much of an overall non-exempt capital gain as remains after applying subsection 116CD(3).

182 Subsection 110(1) (definition of *total modified 160Z gain amount*)

Repeal the definition.

183 Subsection 110(1) (definition of *total modified 160Z loss amount*)

Repeal the definition.

184 Subsection 110(1)

Insert:

> ***total modified capital loss*** for the CS/RA class means the total of so much of any modified capital losses as has been allocated to that class under section 116CB.

185 Subsection 110(1)

Insert:

> ***total non-exempt modified capital gain*** for the CS/RA class means the total of so much of any non-exempt modified capital gains as has been allocated to that class under section 116CB.

186 Subsection 110(1)

Insert:

> ***total non-exempt ordinary capital gain*** for a class means the total of so much of any non-exempt ordinary capital gains as has been allocated to that class under section 116CB.

187 Subsection 110(1) (definition of *total ordinary 160Z gain amount*)

Repeal the definition.

188 Subsection 110(1) (definition of *total ordinary 160Z loss amount*)

Repeal the definition.

189 Subsection 110(1)

Insert:

total ordinary capital loss for a class means the total of so much of any ordinary capital losses as has been allocated to that class under section 116CB.

190 Subsection 110(1)

Insert:

unmodified general deduction for a notional CGT event means an amount that (apart from sections 116CB and 116CC) could be deducted in respect of the event under:

(a) section 8-1 or 25-40 of the *Income Tax Assessment Act 1997*; or

(b) section 52 of this Act.

191 Subsection 110(1)

Insert:

unmodified ordinary income amount for a notional CGT event means an amount that (apart from sections 116CB and 116CC) would be included in assessable income in respect of the event under:

(a) section 6-5 or 15-15 of the *Income Tax Assessment Act 1997*; or

(b) section 25A of this Act.

192 Subsection 116CB(1)

Repeal the subsection, substitute:

(1) The ***core amounts*** for a notional CGT event for a fund asset are as follows:

(a) any *un*modified ordinary income amount;

(b) any *un*modified general deduction;

(c) any modified ordinary income amount;

(d) any modified general deduction;

(e) any non-exempt ordinary capital gain;

(f) any ordinary capital loss;
(g) any non-exempt modified capital gain;
(h) any modified capital loss.

Note: The heading to section 116CB is replaced by the heading "**Notional CGT events for fund assets**".

193 Subsection 116CB(2)

Omit "Part IIIA disposal of a fund asset shall be", substitute "CGT even for a fund asset are".

194 Subsection 116CB(2) (definitions of *average calculated liabilities (all non-exempt resident policies)* and average calculated liabilities (categories of policies))

Omit "disposal", substitute "the CGT event".

195 Subsection 116CB(3)

Omit "Part IIIA disposal of", substitute "CGT event for".

196 Paragraph 116CB(3)(a)

Omit "ordinary 25/25A amount", substitute "*un*modified ordinary income amount".

197 Paragraph 116CB(3)(b)

Omit "ordinary 51/52 amount", substitute "*un*modified general deduction".

198 Paragraph 116CB(3)(c)

Omit "modified 25/25A amount", substitute "modified ordinary income amount".

199 Paragraph 116CB(3)(d)

Omit "modified 51/52 amount", substitute "modified general deduction".

200 Paragraphs 116CB(3)(e) and (f)

Repeal the paragraphs, substitute:

(e) so much of any non-exempt ordinary capital gain or ordinary capital loss as is distributed to a class other than the CS/RA class is taken into account in determining the overall non-exempt capital gain or overall capital loss for the class concerned;

(f) so much of any non-exempt modified capital gain or modified capital loss as is distributed to the CS/RA class is taken into account in determining the overall non-exempt capital gain or overall capital loss for that class.

201 Subsection 116CC(1)

Repeal the subsection, substitute:

(1) The ***core amounts*** for a notional CGT event for a non-fund asset are as follows:

(a) any *un*modified ordinary income amount;

(b) any *un*modified general deduction;

(c) any non-exempt ordinary capital gain;

(d) any ordinary capital loss.

Note: The heading to section 116CC is replaced by the heading "**Notional CGT events for non-fund assets**".

202 Subsection 116CC(2)

Omit "Part IIIA disposal of", substitute "CGT event for".

203 Paragraph 116CC(2)(a)

Omit "ordinary 25/25A amount", substitute "*un*modified ordinary income amount".

204 Paragraph 116CC(2)(b)

Omit "ordinary 51/52 amount", substitute "*un*modified general deduction".

205 Paragraph 116CC(2)(c)

Repeal the paragraph, substitute:

(c) the whole of any non-exempt ordinary capital gain or ordinary capital loss is taken into account in determining the overall non-exempt capital gain or the overall capital loss for the general fund class.

206 Subsection 116CD(1)

Omit "160ZO", substitute "102-5 of the *Income Tax Assessment Act 1997* (about net capital gains)".

Note: The heading to section 116CD is replaced by the heading "**Treatment of capital gains and losses**".

207 Subsection 116CD(2)

Omit "160Z gain", substitute "non-exempt capital gain".

208 Subsection 116CD(3)

Omit "160Z loss", substitute "capital loss".

209 Subsection 116CD(3)

Omit "160Z gains", substitute "non-exempt capital gains".

210 Subsection 116CD(3)

Omit "160Z gain" (wherever occurring), substitute "non-exempt capital gain".

211 Subsection 116CD(4)

Omit "160Z losses", substitute "capital losses".

212 Subsection 116CD(5)

Omit "prior year Part IIIA loss", substitute "accumulated net capital loss".

213 Subsection 116CD(5)

Omit "160Z gains", substitute "non-exempt capital gains".

214 Subsection 116CD(6)

Omit "prior year Part IIIA loss", substitute "accumulated net capital loss".

215 Subsection 116CD(6)

Omit "160Z gains", substitute "non-exempt capital gains".

216 Subsection 116CD(7)

Repeal the subsection.

217 Subsection 116CD(8)

Repeal the subsection, substitute:

(8) A life assurance company cannot make a net capital loss for a year of income, despite section 102-10 of the *Income Tax Assessment Act 1997*.

218 Subsection 116CE(5)

Omit "Part IIIA disposals", substitute "CGT event".

219 Subsection 116CF(1)

Omit "Part IIIA disposals", substitute "CGT event".

220 Paragraph 116DK(g)

Omit "other than this Subdivision or Part IIIA", substitute "(except this Subdivision and Parts 3-1 and 3-3 (about CGT) of the *Income Tax Assessment Act 1997*)".

221 Paragraph 116DK(i)

Repeal the paragraph, substitute:

(i) whether a CGT event has happened, or whether a capital gain or capital loss from a CGT event is to be disregarded.

222 Subsection 116E(1)

Insert:

accumulated net capital loss for a year of income (the ***loss year***) means the amount (if any) by which the total of:

(a) the total of the overall capital losses for all classes of assessable income for the loss year; and

(b) any accumulated net capital loss for the last year of income *before* the loss year;

exceeds:

(c) the total of the overall capital gains for all classes of assessable income for the loss year (before section 116GB is applied).

223 Subsection 116E(1) (paragraph (a) of the definition of *current year deduction*)

Omit "Part IIIA disposals", substitute "CGT event".

224 Subsection 116E(1) (definition of *modified 25/25A amount*)

Repeal the definition.

225 Subsection 116E(1) (definition of *modified 51/52 amount*)

Repeal the definition.

226 Subsection 116E(1) (definition of *modified 160Z gain amount*)

Repeal the definition.

227 Subsection 116E(1) (definition of *modified 160Z loss amount*)

Repeal the definition.

228 Subsection 116E(1)

Insert:

modified capital gain for a notional CGT event means any capital gain that would (apart from this Division) arise from the event if Division 10 of Part IX applied in respect of the event.

229 Subsection 116E(1)

Insert:

modified capital loss for a notional CGT event means any capital loss that would (apart from this Division) arise from the event if Division 10 of Part IX applied in respect of the event.

230 Subsection 116E(1)

Insert:

modified general deduction for a notional CGT event means an amount that (apart from section 116GA) could be deducted under:

(a) section 8-1 or 25-40 of the *Income Tax Assessment Act 1997*; or

(b) section 52 of this Act;

in respect of the event if Division 10 of Part IX of this Act applied in respect of the event.

231 Subsection 116E(1)

Insert:

modified ordinary income amount for a notional CGT event means an amount that (apart from section 116GA) would be included in assessable income under:

(a) section 6-5 or 15-15 of the *Income Tax Assessment Act 1997*; or

(b) section 25A of this Act;

in respect of the event if Division 10 of Part IX of this Act applied in respect of the event.

232 Subsection 116E(1) (definition of *notional Part IIIA disposal*)

Repeal the definition.

233 Subsection 116E(1) (definition of *notional Part IIIA disposals deduction*)

Repeal the definition.

234 Subsection 116E(1)

Insert:

notional CGT event means:

(a) a CGT event that involves a CGT asset (unless a capital gain or capital loss arising from the event is to be disregarded); or

(b) a CGT event:

(i) that involves a CGT asset; and

(ii) for which there would be a roll-over under Part 3-3 of the *Income Tax Assessment Act 1997* if subsection 306(1) of this Act applied to that asset;

(unless a capital gain or capital loss arising from the event would have to be disregarded even without the roll-over).

235 Subsection 116E(1)

Insert:

notional CGT event deduction means so much of any unmodified or modified general deduction as can be deducted.

236 Subsection 116E(1) (definition of *ordinary 25/25A amount*)

Repeal the definition.

237 Subsection 116E(1) (definition of *ordinary 51/52 amount*)

Repeal the definition.

238 Subsection 116E(1) (definition of *ordinary 160Z gain amount*)

Repeal the definition.

239 Subsection 116E(1) (definition of *ordinary 160Z loss amount*)

Repeal the definition.

240 Subsection 116E(1)

Insert:

ordinary capital gain for a notional CGT event means any capital gain that would (apart from this Division) arise from the event.

241 Subsection 116E(1)

Insert:

ordinary capital loss for a notional CGT event means any capital loss that would (apart from this Division) arise from the event.

242 Subsection 116E(1) (definition of *overall 160Z gain*)

Repeal the definition.

243 Subsection 116E(1) (definition of *overall 160Z loss*)

Repeal the definition.

244 Subsection 116E(1)

Insert:

overall capital gain means:

(a) for the CS/RA class—the amount by which the total modified capital gain for that class exceeds the total modified capital loss for that class; or

(b) for any other class—the amount by which the total ordinary capital gain for that class exceeds the total ordinary capital loss for that class;

or, if an amount has been applied under subsection 116GB(3) to reduce an overall capital gain previously worked out under this definition, that gain as so reduced.

245 Subsection 116E(1)

Insert:

overall capital loss means:

(a) for the CS/RA class—the amount by which the total modified capital gain for that class is less than the total modified capital loss for that class; or

(b) for any other class—the amount by which the total ordinary capital gain for that class is less than the total ordinary capital loss for that class.

246 Subsection 116E(1) (definition of *prior year Part IIIA loss*)

Repeal the definition.

247 Subsection 116E(1) (definition of *residual overall 160Z gain*)

Repeal the definition.

248 Subsection 116E(1)

Insert:

residual overall capital gain means so much of an overall capital gain as remains after applying subsection 116GB(3).

249 Subsection 116E(1) (definition of *total modified 160Z gain amount*)

Repeal the definition.

250 Subsection 116E(1) (definition of *total modified 160Z loss amount*)

Repeal the definition.

251 Subsection 116E(1) (definition of *total ordinary 160Z gain amount*)

Repeal the definition.

252 Subsection 116E(1) (definition of *total ordinary 160Z loss amount*)

Repeal the definition.

253 Subsection 116E(1)

Insert:

total modified capital gain for the CS/RA class means the total of so much of any modified capital gains as has been allocated to that class under section 116GA.

254 Subsection 116E(1)

Insert:

total modified capital loss for the CS/RA class means the total of so much of any modified capital losses as has been allocated to that class under section 116GA.

255 Subsection 116E(1)

Insert:

total ordinary capital gain for a class means the total of so much of any ordinary capital gains as has been allocated to that class under section 116GA.

256 Subsection 116E(1)

Insert:

total ordinary capital loss for a class means the total of so much of any ordinary capital losses as has been allocated to that class under section 116GA.

257 Subsection 116E(1)

Insert:

unmodified general deduction for a notional CGT event means an amount that (apart from section 116GA) could be deducted in respect of the event under:

(a) section 8-1 or 25-40 of the *Income Tax Assessment Act 1997*; or

(b) section 52 of this Act.

258 Subsection 116E(1)

Insert:

unmodified ordinary income amount for a notional CGT event means an amount that (apart from section 116GA) would be included in assessable income in respect of the event under:

(a) section 6-5 or 15-15 of the *Income Tax Assessment Act 1997*; or

(b) section 25A of this Act.

259 Subsection 116GA(1)

Repeal the subsection, substitute:

(1) The ***core amounts*** for a notional CGT event for a CGT asset are as follows:

(a) any *un*modified ordinary income amount;

(b) any *un*modified general deduction;

(c) any modified ordinary income amount;

(d) any modified general deduction;

(e) any ordinary capital gain;

(f) any ordinary capital loss;

(g) any modified capital gain;

(h) any modified capital loss.

Note: The heading to section 116GA is replaced by the heading "**Notional CGT events**".

260 Subsection 116GA(2)

Omit "disposal of", substitute "CGT event for".

261 Paragraph 116GA(2)(a)

Omit "ordinary 25/25A amount", substitute "*un*modified ordinary income amount".

262 Paragraph 116GA(2)(b)

Omit "ordinary 51/52 amount", substitute "*un*modified general deduction".

263 Paragraph 116GA(2)(c)

Omit "modified 25/25A amount", substitute "modified ordinary income amount".

264 Paragraph 116GA(2)(d)

Omit "modified 51/52 amount", substitute "modified general deduction".

265 Paragraphs 116GA(2)(e) and (f)

Repeal the paragraphs, substitute:

(e) any ordinary capital gain or ordinary capital loss is to be disregarded;

(f) any modified capital gain or modified capital loss is taken into account in determining the overall capital gain or overall capital loss for the CS/RA class.

266 Subsection 116GA(3)

Omit "disposal of", substitute "CGT event for".

267 Paragraph 116GA(3)(a)

Omit "ordinary 25/25A amount", substitute "*un*modified ordinary income amount".

268 Paragraph 116GA(3)(b)

Omit "ordinary 51/52 amount", substitute "*un*modified general deduction".

269 Paragraph 116GA(3)(c)

Omit "modified 25/25A amount", substitute "modified ordinary income amount".

270 Paragraph 116GA(3)(d)

Omit "modified 51/52 amount", substitute "modified general deduction".

271 Paragraphs 116GA(3)(e) and (f)

Repeal the paragraphs, substitute:

(e) any ordinary capital gain or ordinary capital loss is taken into account in determining the overall capital gain or overall capital loss for the class concerned;

(f) any modified capital gain or modified capital loss is to be disregarded.

272 Subsection 116GB(1)

Omit "160ZO", substitute "102-5 of the *Income Tax Assessment Act 1997* (about net capital gains)".

Note: The heading to section 116GB is replaced by the heading "**Treatment of capital gains and losses**".

273 Subsection 116GB(2)

Omit "160Z gain", substitute "capital gain".

274 Subsection 116GB(3)

Omit "160Z loss", substitute "capital loss".

275 Subsection 116GB(3)

Omit "160Z gains", substitute "capital gains".

276 Subsection 116GB(3)

Omit "160Z gain" (wherever occurring), substitute "capital gain".

277 Subsection 116GB(4)

Omit "160Z losses", substitute "capital losses".

278 Subsection 116GB(5)

Omit "prior year Part IIIA loss", substitute "accumulated net capital loss".

279 Subsection 116GB(5)

Omit "160Z gains", substitute "capital gains".

280 Subsection 116GB(6)

Repeal the subsection.

281 Subsection 116GB(7)

Repeal the subsection, substitute:

(7) A registered organisation cannot make a net capital loss for a year of income, despite section 102-10 of the *Income Tax Assessment Act 1997*.

282 Subsection 116HB(1)

Omit "Part IIIA disposals", substitute "CGT event".

283 Section 121AS

Omit "Part IIIA" (first occurring), substitute "Parts 3-1 and 3-3 (about CGT) of the *Income Tax Assessment Act 1997*".

284 Section 121AS (table heading)

Omit "PART IIIA", substitute "CGT RULES".

285 Section 121AS (table item 1, column headed "Modification")

Repeal the cell, substitute:

	A capital gain or capital loss arising from a CGT event constituted by the extinguishment is disregarded.

286 Section 121AS (table item 2, column headed "Modification")

Repeal the cell, substitute:

	Subdivision 126-B of the *Income Tax Assessment Act 1997* (about roll-overs for transfers) applies as if the life insurance company and the other company were members of the same wholly-owned group within the meaning of that Act.

287 Section 121AS (table item 3, column headed "Modification")

Omit "The disposer does not incur a capital loss in respect of the disposal", substitute "A capital loss that the disposer makes from the disposal is disregarded".

288 Section 121AS (table item 3, column headed "Modification")

Omit "a capital gain accrued to the disposer, or a capital loss was incurred by the disposer", substitute "the disposer made a capital gain, or made a capital loss".

289 Section 121AS (table item 3, column headed "Modification")

Omit "in respect of" (first occurring), substitute "from".

290 Section 121AS (table item 4, column headed "Modification")

Omit "The disposer does not incur a capital loss in respect of the disposal", substitute "A capital loss that the disposer makes from the disposal is disregarded".

291 Section 121AS (table item 4, column headed "Modification")

Omit "a capital gain accrued to the disposer, or a capital loss was incurred by the disposer", substitute "the disposer made a capital gain, or made a capital loss".

292 Section 121AS (table item 4, column headed "Modification")

Omit "in respect of" (first occurring), substitute "from".

293 Section 121AS (table item 5, column headed "Modification", modification 1)

Omit "The disposer does not incur a capital loss in respect of the disposal of the demutualisation share or interest in such a share,", substitute "A capital loss that the disposer makes from the disposal of the demutualisation share or interest in such a share is disregarded".

294 Section 121AS (table item 5, column headed "Modification", modification 2)

Omit "a capital gain accrued to the disposer, or a capital loss was incurred by the disposer", substitute "the disposer made a capital gain, or made a capital loss".

295 Section 121AS (table item 5, column headed "Modification", modification 2)

Omit "in respect of" (first occurring), substitute "from".

296 Section 121AS (table item 5, column headed "Modification", modification 3)

Omit "a capital gain accrued to the disposer, or a capital loss was incurred by the disposer", substitute "the disposer made a capital gain, or made a capital loss".

297 Section 121AS (table item 5, column headed "Modification", modification 3)

Omit "in respect of" (first occurring), substitute "from".

298 Section 121AS (table item 5, column headed "Modification", modification 3)

Omit "Division 8 of Part IIIA", substitute "section 130-20 (about bonus shares) of the *Income Tax Assessment Act 1997*".

299 Section 121AS (table item 5, column headed "Modification", modification 3)

Omit "that Division", substitute "that section".

300 Section 121AS (table item 6, column headed "Event")

Omit "Division 8 of Part IIIA" (first occurring), substitute "section 130-20 (about bonus shares) of the *Income Tax Assessment Act 1997*".

301 Section 121AS (table item 6, column headed "Event")

Omit "that Division", substitute "that section".

302 Section 121AS (table item 6, column headed "Event")

Omit "Division 8 of Part IIIA" (second occurring), substitute "that section".

303 Section 121AS (table item 6, column headed "Modification", modification 1)

Omit "The disposer does not incur a capital loss in respect of the disposal of the demutualisation share or interest in such a share,", substitute "A capital loss that the disposer makes from the disposal of the demutualisation share or interest in such a share is disregarded".

304 Section 121AS (table item 6, column headed "Modification", modification 2)

Omit "a capital gain accrued to the disposer, or a capital loss was incurred by the disposer", substitute "the disposer made a capital gain, or made a capital loss".

305 Section 121AS (table item 6, column headed "Modification", modification 2)

Omit "in respect of" (first occurring), substitute "from".

306 Section 121AS (table item 6, column headed "Modification", modification 3)

Omit "a capital gain accrued to the disposer, or a capital loss was incurred by the disposer", substitute "the disposer made a capital gain, or made a capital loss".

307 Section 121AS (table item 6, column headed "Modification", modification 3)

Omit "in respect of" (first occurring), substitute "from".

308 Section 121AS (table item 6, column headed "Modification", modification 3)

Omit "Division 8 of Part IIIA", substitute "section 130-20 (about bonus shares) of the *Income Tax Assessment Act 1997*".

309 Section 121AS (table item 6, column headed "Modification", modification 3)

Omit "that Division", substitute "that section".

310 Section 121AS (table item 7, column headed "Event")

Omit "Division 8 of Part IIIA" (first and second occurring), substitute "section 130-20 (about bonus shares) of the *Income Tax Assessment Act 1997*".

311 Section 121AS (table item 7, column headed "Event")

Omit "that Division" (wherever occurring), substitute "that section".

312 Section 121AS (table item 7, column headed "Event")

Omit "Division 8 of Part IIIA" (third occurring), substitute "that section".

313 Section 121AS (table item 8, column headed "Modification")

Repeal the cell, substitute:

	A capital gain or capital loss arising from a CGT event constituted by the change in the rights is disregarded.

314 Section 121AS (table item 9, column headed "Event")

Omit "Division 8 of Part IIIA" (first occurring), substitute "section 130-20 (about bonus shares) of the *Income Tax Assessment Act 1997*".

315 Section 121AS (table item 9, column headed "Event")

Omit "that Division", substitute "that section".

316 Section 121AS (table item 9, column headed "Event")

Omit "Division 8 of Part IIIA" (second occurring), substitute "that section".

317 Section 121AS (table item 10, column headed "Modification")

Repeal the cell, substitute:

	A capital gain or capital loss arising from a CGT event constituted by the distribution is disregarded.

318 Section 121AS (table item 11, column headed "Event")

Omit "Division 8 of Part IIIA" (first occurring), substitute "section 130-20 (about bonus shares) of the *Income Tax Assessment Act 1997*".

319 Section 121AS (table item 11, column headed "Event")

Omit "that Division", substitute "that section".

320 Section 121AS (table item 11, column headed "Event")

Omit "Division 8 of Part IIIA" (second occurring), substitute "that section".

321 Section 121AS (table item 12, column headed "Modification")

Omit "the person does not incur a capital loss in respect of that disposal", substitute "a capital loss that the person makes from the disposal is disregarded".

322 Section 121AS (table) (note 5)

Repeal the note, substitute:

5. A ***roll-over provision*** is:

- any of these Subdivisions of the *Income Tax Assessment Act 1997*: 122-A, 122-B, 124-B, 124-C, 124-D, 124-E, 124-F, 124-G, 124-H, 124-I, 126-A, 126-B; or
- section 128-10 or 128-15 of that Act.

323 Section 121AT

Omit "other than Part IIIA", substitute "except Parts 3-1 and 3-3 (about CGT) of the *Income Tax Assessment Act 1997*".

324 Section 121AT (table heading)

Omit "other than Part IIIA", substitute "except CGT rules".

325 Section 121AT (table item 3, column headed "Event")

Omit "Division 8 of Part IIIA" (first occurring), substitute "section 130-20 (about bonus shares) of the *Income Tax Assessment Act 1997*".

326 Section 121AT (table item 3, column headed "Modification")

Omit "Division 8 of Part IIIA" (first occurring), substitute "section 130-20 (about bonus shares) of the *Income Tax Assessment Act 1997*".

327 Section 121AT (table item 4, column headed "Event")

Omit "Division 8 of Part IIIA" (first occurring), substitute "section 130-20 (about bonus shares) of the *Income Tax Assessment Act 1997*".

328 Section 121AT (table item 4, column headed "Modification")

Omit "Division 8 of Part IIIA" (first occurring), substitute "section 130-20 (about bonus shares) of the *Income Tax Assessment Act 1997*".

329 Section 121AT (table item 5, column headed "Event")

Omit "Division 8 of Part IIIA" (first occurring), substitute "section 130-20 (about bonus shares) of the *Income Tax Assessment Act 1997*".

330 Section 121AT (table item 7, column headed "Event")

Omit "Division 8 of Part IIIA" (first occurring), substitute "section 130-20 (about bonus shares) of the *Income Tax Assessment Act 1997*".

331 Section 121AT (table item 8, column headed "Event")

Omit "Division 8 of Part IIIA" (first occurring), substitute "section 130-20 (about bonus shares) of the *Income Tax Assessment Act 1997*".

332 Subsection 121EE(2)

Omit "Part IIIA", substitute "Part 3-1 of the *Income Tax Assessment Act 1997*".

333 Paragraph 121EL(e)

Repeal the paragraph, substitute:

(e) any capital gain or capital loss made by the trust estate from a CGT event happening in relation to a CGT asset of the trust estate in the course of, or in connection with, an investment activity covered by subsection 121D(6) is disregarded; and

334 Paragraph 121EL(g)

Repeal the paragraph, substitute:

(g) if, apart from this section, the trust estate would make a capital gain or capital loss from a CGT event happening in relation to a CGT asset of the trust estate in the course of, or in connection with, an investment activity covered by subsection 121D(6A)—the trust estate makes only the average Australian asset percentage (for the portfolio investment concerned) of the gain or loss.

335 Section 121EM (paragraph (d) of the definition of *asset*)

Repeal the paragraph, substitute:

(d) a CGT asset, and a car, motor cycle or similar vehicle.

336 Subsection 121F(1) (paragraph (ca) of the definition of *relevant exempting provision*)

Repeal the paragraph.

337 Paragraph 124PA(1)(a)

Repeal the paragraph.

338 At the end of subsection 124PA(1)

Add:

; and (d) the disposal involves a CGT event; and

(e) the conditions in an item in the table are satisfied.

CGT roll-overs that qualify transferor for relief

Item	Type of CGT roll-over	Conditions
1	Disposal of asset to wholly-owned company	There is a roll-over under Subdivision 122-A of the *Income Tax Assessment Act 1997* for the CGT event.
2	Disposal of asset by partnership to wholly-owned company	The transferor is a partnership, the unit is partnership property, and there is a roll-over under Subdivision 122-B of the *Income Tax Assessment Act 1997* for the disposal by the partners of the CGT assets consisting of their interests in the unit.
3	Marriage breakdown	There is a roll-over under Subdivision 126-A of the *Income Tax Assessment Act 1997* for the CGT event.

CGT roll-overs that qualify transferor for relief		
Item	**Type of CGT roll-over**	**Conditions**
4	Disposal of asset to another member of the same wholly-owned group	There is a roll-over under Subdivision 126-B of the *Income Tax Assessment Act 1997* for the CGT event.

Note: The heading to section 124PA is replaced by the heading "**Roll-over relief**".

339 At the end of section 124ZN

Add:

Note: Any capital gain or capital loss from a disposal of shares in a PDF is disregarded: see section 118-13 of the *Income Tax Assessment Act 1997*.

340 Section 124ZP

Repeal the section.

341 Subsection 124ZR(2)

Omit "other than Part IIIA", substitute "except Parts 3-1 and 3-3 (about CGT) of the *Income Tax Assessment Act 1997*".

342 Subsection 124ZR(3)

Repeal the subsection, substitute:

(3) Parts 3-1 and 3-3 (about CGT) of the *Income Tax Assessment Act 1997* apply as if the taxpayer:

(a) had disposed of the CGT assets constituted by the shares, and had done so immediately before the company ceased to be a PDF; and

(b) had re-acquired those assets immediately afterwards;

for an amount equal to the shares' market value immediately after the company so ceased.

343 Section 124ZS (definition of *non-CGT assessable income*)

Omit "Part IIIA", substitute "Part 3-1 or 3-3 (about CGT) of the *Income Tax Assessment Act 1997*".

344 Section 124ZW

Insert:

> ***accumulated net capital loss*** for a year of income (the ***loss year***) means the amount (if any) by which the total of:
>
> (a) the total of the overall capital losses for all classes of assessable income for the loss year; and
>
> (b) any accumulated net capital loss for the last year of income *before* the loss year;
>
> exceeds:
>
> (c) the total of the overall capital gains for all classes of assessable income for the loss year (before section 116GB is applied).

345 Section 124ZW (definition of *non-CGT assessable income*)

Omit "Part IIIA", substitute "Part 3-1 or 3-3 (about CGT) of the *Income Tax Assessment Act 1997*".

346 Section 124ZW (definition of *ordinary 160Z gain amount*)

Repeal the definition, substitute:

> ***ordinary capital gain*** for a CGT event means any capital gain that would (apart from this Subdivision) arise from the event.

347 Section 124ZW (definition of *ordinary 160Z loss amount*)

Repeal the definition, substitute:

> ***ordinary capital loss*** for a CGT event means any capital loss that would (apart from this Subdivision) arise from the event.

348 Section 124ZW (definition of *overall 160Z gain*)

Repeal the definition, substitute:

overall capital gain for a class of assessable income means:

(a) the amount by which the total ordinary capital gain for that class exceeds the total ordinary capital loss for that class; or

(b) if an amount has been applied under subsection 124ZZB(2) to reduce an overall capital gain previously worked out under this definition—that gain as so reduced.

349 Section 124ZW (definition of *overall 160Z loss*)

Repeal the definition, substitute:

overall capital loss for a class of assessable income means the amount by which the total ordinary capital gain for that class is less than the total ordinary capital loss for that class.

350 Section 124ZW (definition of *prior year Part IIIA loss*)

Repeal the definition.

351 Section 124ZW (definition of *residual overall 160Z gain*)

Repeal the definition, substitute:

residual overall capital gain means so much of an overall capital gain as remains after applying subsection 124ZZB(2).

352 Section 124ZW (definition of *total ordinary 160Z gain amount*)

Repeal the definition, substitute:

total ordinary capital gain for a class means the total of so much of any ordinary capital gains as has been allocated to that class under section 124ZZA.

353 Section 124ZW (definition of *total ordinary 160Z loss amount*)

Repeal the definition, substitute:

> ***total ordinary capital loss*** for a class means the total of so much of any ordinary capital losses as has been allocated to that class under section 124ZZA.

354 Section 124ZZ

Omit "160ZO", substitute "102-5 of the *Income Tax Assessment Act 1997* (about net capital gains)".

Note: The heading to section 124ZZ is replaced by the heading "**Treatment of capital gains**".

355 Section 124ZZA

Omit "160Z" (wherever occurring), substitute "capital".

356 Subsection 124ZZB(1)

Omit "160Z", substitute "capital".

Note 1: The heading to section 124ZZB is replaced by the heading "**Assessable income etc. in relation to capital gains**".

Note 2: The heading to subsection 124ZZB(1) is omitted.

357 Subsection 124ZZB(2)

Omit "160Z" (wherever occurring), substitute "capital".

Note: The heading to subsection 124ZZB(2) is omitted.

358 Subsection 124ZZB(3)

Omit "prior year Part IIIA loss", substitute "accumulated net capital loss".

Note: The heading to subsection 124ZZB(3) is omitted.

359 Subsection 124ZZB(3)

Omit "160Z", substitute "capital".

360 Section 124ZZC

Repeal the section.

361 Section 124ZZD

Repeal the section, substitute:

124ZZD No net capital loss

The company does not make a net capital loss for the year of income, despite section 102-10 of the *Income Tax Assessment Act 1997*.

362 Subsection 128TG(2)

Omit "Part IIIA (Capital gains and capital losses)", substitute "Parts 3-1 and 3-3 (about CGT) of the *Income Tax Assessment Act 1997*".

363 Section 128TI (note)

Omit "Part IIIA of this Act", substitute "Parts 3-1 and 3-3 (about CGT) of the *Income Tax Assessment Act 1997*".

364 Paragraph 149A(1)(a)

Omit "within the meaning of Part IIIA".

365 Subparagraph 149A(1)(b)(i)

Omit "within the meaning of Part IIIA".

366 Paragraph 158H(3)(c)

Omit "within the meaning of Part IIIA".

367 Subsection 159GA(1) (paragraph (a) of the definition of *taxable non-primary-production income*)

Omit "Part IIIA", substitute "Parts 3-1 and 3-3 (about CGT) of the *Income Tax Assessment Act 1997* or Part IIIA of this Act".

368 Paragraph 159GZZZBB(a)

Omit "owns an asset", substitute "owned a CGT asset".

369 Paragraph 159GZZZBB(c)

Repeal the paragraph, substitute:

(c) after the changeover time, a CGT event (which event is in this Subdivision called the ***post-changeover disposal***) happens in relation to the asset; and

370 Paragraph 159GZZZBB(e)

Repeal the paragraph, substitute:

(e) the taxpayer makes a capital gain or capital loss from the post-changeover disposal;

371 Section 159GZZZBC

Repeal the section, substitute:

159GZZZBC Capital gains adjustment

For the purposes of working out the amount of a capital gain that the taxpayer makes from the post-changeover disposal, if the market value of the asset at the changeover time was more than its cost base at that time, the first element of its cost base at the changeover time is that market value.

372 Section 159GZZZBD

Repeal the section, substitute:

159GZZZBD Capital loss adjustment

For the purposes of working out the amount of a capital loss that the taxpayer makes from the post-changeover disposal, if the market value of the asset at the changeover time was less than its reduced cost base at that time, the first element of its reduced cost base at the changeover time is that market value.

373 Subsection 159GZZZBE(1)

Omit "subsection 160ZK(1) in relation to a disposal of the asset by the taxpayer after 31 December 1990", substitute "section 110-55 of the *Income Tax Assessment Act 1997* (about reduced cost base) in relation to the post-changeover disposal".

374 Subsection 159GZZZBE(2)

Omit "subsection 160ZK(1) in relation to a disposal of the asset by the taxpayer after 31 December 1990", substitute "section 110-55 of the *Income Tax Assessment Act 1997* (about reduced cost base) in relation to the post-changeover disposal".

375 Subsection 159GZZZF(1)

Omit "consideration" (wherever occurring), substitute "capital proceeds".

376 Subsection 159GZZZG(1)

Omit "consideration" (wherever occurring), substitute "capital proceeds".

377 Subsection 159GZZZH(2)

Omit "Part IIIA", substitute "Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*".

378 Subsections 159GZZZH(3) and (4)

Repeal the subsections, substitute:

(3) For the purposes of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*, if a CGT event happens in relation to the eligible interest, the cost base and reduced cost base of the eligible interest is reduced by the eligible interest's eligible proportion of the cancellation adjustment amount.

379 Subsection 159GZZZH(5)

Repeal the subsection, substitute:

(5) This section applies in relation to the acquisition of the eligible interest held by the eligible entity, and to a CGT event happening in relation to the eligible interest, even if the entity was not an eligible entity, and the interest was not an eligible interest, at the time of the acquisition or CGT event.

380 Section 159GZZZN

Repeal the section, substitute:

159GZZZN Buy-back and cancellation disregarded for certain purposes

If a company buys-back a share then the buy-back, and any subsequent cancellation of the share, are disregarded for the purposes of:

(a) determining for the purposes of this Act:

(i) whether an amount is included in the assessable income of the company under a provision of this Act (other than a provision of Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997* (about CGT)); or

(ii) whether an amount is allowable as a deduction to the company; or

(b) determining whether the company makes a capital gain or capital loss.

381 Subsection 159GZZZP(1A)

Omit "paragraph 160ZA(4)(b)", substitute "section 118-20 of the *Income Tax Assessment Act 1997*".

382 Subparagraph 159GZZZQ(1)(a)(i)

Omit "Part IIIA", substitute "Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* (about CGT)".

383 Paragraph 159GZZZQ(1)(b)

Repeal the paragraph, substitute:

(b) whether the seller makes a capital gain or capital loss;

384 Subparagraph 159GZZZQ(8)(c)(i)

Omit "Part IIIA", substitute "Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* (about CGT)".

385 Subparagraph 159GZZZQ(8)(c)(ii)

Omit "Part IIIA", substitute "Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997*.

386 Subparagraph 159GZZZS(a)(i)

Omit "Part IIIA", substitute "Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* (about CGT)".

387 Paragraph 159GZZZS(b)

Repeal the paragraph, substitute:

(b) whether the seller makes a capital gain or capital loss;

388 Subdivision E of Division 16K of Part III

Repeal the Subdivision.

389 Subsection 159J(6) (paragraph (aa) of the definition of *separate net income*)

After "Part IIIA", insert "of this Act or Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997* (about CGT)".

390 Subsection 159ZR(1) (paragraph (c) of the definition of *normal taxable income*)

After "160ZO", insert "of this Act or section 102-5 of the *Income Tax Assessment Act 1997* (about including net capital gains in assessable income)".

391 Subparagraph 160AFD(9)(b)(ii)

After "Part IIIA", insert "of this Act or Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997* (about CGT)".

392 Before subsection 160ZC(1A)

Insert:

(1AA) Subsections (1) and (2) do not apply for the purposes of assessments for the 1998-99 year of income or any later year of income.

See instead Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*.

393 Before section 160ZNB

Insert:

160ZNBA Application of this Division

This Division does not apply for the purposes of assessments for the 1998-99 year of income or any later year of income.

See instead Subdivision 165-CB of the *Income Tax Assessment Act 1997*.

394 Before section 160ZNT

Insert:

160ZNTA Application of this Division

This Division does not apply for the purposes of assessments for the 1998-99 year of income or any later year of income.

See instead Division 175 of the *Income Tax Assessment Act 1997*.

395 Before subsection 160ZO(1)

Insert:

(1A) This section does not apply for the purposes of assessments for the 1998-99 year of income or any later year of income.

See instead Division 102 of the *Income Tax Assessment Act 1997*.

396 Before subsection 160ZP(1)

Insert:

(1A) An amount of a net capital loss cannot be transferred under this section in the 1998-99 year of income or a later year of income.

Note: To work out whether a company can transfer a net capital loss to another company in the 1998-99 year of income or a later year of income: see Subdivision 170-B of the *Income Tax Assessment Act 1997*.

397 Before section 160ZZPK

Insert:

160ZZPJA Continued operation of Division

This Division continues to have effect (with such modifications as are necessary) for the purposes of working out capital gains and capital losses under Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*.

398 Before section 160ZZPZA

Insert:

160ZZPZAA Continued operation of Division

This Division continues to have effect (with such modifications as are necessary) for the purposes of working out capital gains and capital losses under Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*.

399 Before section 160ZZRAAA

Insert:

160ZZRAAAA Continued operation of Division

This Division continues to have effect (with such modifications as are necessary) for the purposes of working out capital gains and capital losses under Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*.

400 Section 160ZZZH

Repeal the section, substitute:

160ZZZH Net capital losses

Subdivision 170-B of the *Income Tax Assessment Act 1997* (about transfer of net capital losses within wholly-owned groups of companies) has effect as if an Australian branch of a foreign bank were a 100% subsidiary (within the meaning of that Act) of the bank and an Australian resident (within the meaning of that Act).

401 Subsection 170(9D)

After "Part IIIA", insert "of this Act or Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997* (about CGT)".

402 Subsection 170(10AA)

Repeal the subsection, substitute:

(10AA) Nothing in this section prevents the amendment, at any time, of an assessment for the purpose of giving effect to any of the provisions of the *Income Tax Assessment Act 1997* set out in this table.

Amendment of assessments

Item	Provision	Brief description
1	Subdivision 20-B	Disposal of a car for which lease payments have been deducted
10	Division 28	Car expenses
20	Section 42-290	Balancing adjustment relief for plant
30	Subsection 104-10(3) or (6) Subsection 104-25(2) Subsection 104-45(2) Subsection 104-90(2) Subsection 104-110(2) Subsection 104-205(2) Subsection 104-225(5) Subsection 104-230(5)	The time of a CGT event is decided by there being a contract entered into
40	Paragraph 104-15(4)(a)	CGT event B1: agreement ends without title passing
50	Subsection 104-40(5)	Exception to CGT event D2 where option is exercised
60	Section 108-15	Disposal of collectable that is part of a set
70	Section 108-25	Disposal of personal use asset that is part of a set

Amendment of assessments		
Item	**Provision**	**Brief description**
80	Section 116-45	Modification to capital proceeds for non-receipt
90	Section 116-50	Modification to capital proceeds for amounts you repay
100	Subsection 122-25(4)	Right or option etc. exercised after roll-over to acquire trading stock
110	Subsection 122-135(4)	Right or option etc. exercised after roll-over to acquire trading stock
120	Subdivision 124-B	Roll-over for assets compulsorily acquired, lost or destroyed
130	Subsection 126-5(3)	CGT event B1: agreement ends without title passing
140	Subsection 126-45(3)	CGT event B1: agreement ends without title passing
150	Subsection 126-50(3)	Right or option etc. exercised after roll-over to acquire trading stock
160	Section 126-70	Capital loss disregarded despite choice for no roll-over
180	Section 330-175 Section 330-245	An amount in an agreement to transfer deduction entitlements exceeds the maximum amount capable of being transferred
190	Subdivision 385-E	Primary producer elects to spread or defer tax on profit from forced disposal or death of live stock
200	Section 385-160	Disentitling event happens in relation to your primary production business
210	Division 900	Substantiation

403 Subsection 177A(1) (definition of *capital loss*)

Repeal the definition, substitute:

capital loss means a capital loss within the meaning of Part 3-1 of the *Income Tax Assessment Act 1997*.

404 Subparagraph 177C(2)(a)(i)

Repeal the subparagraph, substitute:

(i) the non-inclusion of the amount in the assessable income of the taxpayer is attributable to the making of an agreement, choice, declaration, election or selection, the giving of a notice or the exercise of an option (expressly provided for by this Act or the *Income Tax Assessment Act 1997*) by any person, except one under Subdivision 126-B or 170-B of the *Income Tax Assessment Act 1997*; and

405 Subparagraph 177C(2)(c)(i)

Repeal the subparagraph, substitute:

(i) the incurring of the capital loss by the taxpayer is attributable to the making of an agreement, choice, declaration, election or selection, the giving of a notice or the exercise of an option (expressly provided for by this Act or the *Income Tax Assessment Act 1997*) by any person, except one under Subdivision 126-B or 170-B of the *Income Tax Assessment Act 1997*

406 Subparagraph 177C(2)(c)(ii)

Before "declaration", insert "agreement, choice".

407 Subparagraph 177C(2A)(a)(i)

Omit "an agreement under section 160ZP or an election under section 160ZZO", substitute "a choice under Subdivision 126-B of the *Income Tax Assessment Act 1997* or an agreement under Subdivision 170-B of that Act".

408 Subparagraph 177C(2A)(b)(i)

Omit "an agreement under section 160ZP or an election under section 160ZZO", substitute "a choice under Subdivision 126-B of the *Income Tax Assessment Act 1997* or an agreement under Subdivision 170-B of that Act".

409 Subsection 221AZI(5) (definition of *net capital gain*)

Repeal the definition.

410 Subsection 221YA(1B)

Repeal the subsection, substitute:

(1B) For the purposes of this Division, disregard a taxpayer's net capital gain for a year in working out the taxpayer's taxable income for that year.

411 Subparagraph 221YBA(7)(a)(iii)

Repeal the subparagraph, substitute:

(iii) a net capital gain; and

412 Subsection 221YCAA(2) (paragraph (k) of the definition of *Adjusted preceding year's tax*)

Omit "within the meaning of Part IIIA".

413 Paragraph 221YDA(1AA)(a)

Omit "within the meaning of Part IIIA".

414 Subsections 221YHAAA(5) and (6)

Repeal the subsections, substitute:

(5) A reference in this Subdivision to the net income of a trust estate of a year of income is, if the net income of the trust estate of that year of income included a net capital gain under Part 3-1 of the *Income Tax Assessment Act 1997*, taken to be the amount that would have been that net income if the net capital gain had not been so included.

415 Subsection 303(1) (definition of *30 June 1988 asset*)

Omit "an asset", substitute "a CGT asset".

416 Subsection 303(3)

Repeal the subsection, substitute:

(3) Some provisions of this Division say that a payment can include giving property. To the extent that one does, use the market value of the property in working out the amount of the payment.

417 Section 304

Repeal the section, substitute:

304 CGT rules are primary code for treatment of gains and losses

(1) This section applies if:

(a) a CGT event happens that involves a CGT asset (unless a capital gain or capital loss arising from the event is to be disregarded); or

(b) a CGT event happens:

(i) that involves a CGT asset; and

(ii) for which there is a roll-over under Part 3-3 of the *Income Tax Assessment Act 1997*;

(unless a capital gain or capital loss arising from the event would have to be disregarded even without the roll-over);

and the asset was owned by a taxpayer immediately before the event.

(2) An amount is not included in the taxpayer's assessable income under section 6-5 of the *Income Tax Assessment Act 1997* in respect of the event unless:

(a) the asset is a security; or

(b) the amount is a gain attributable to currency exchange rate fluctuations.

(3) None of these apply in respect of the event:

(a) sections 15-15 and 25-40 of the *Income Tax Assessment Act 1997*; or

(b) sections 25A and 52 of this Act.

(4) The taxpayer cannot deduct an amount under section 8-1 of the *Income Tax Assessment Act 1997* in respect of the event unless:

(a) the asset is a security; or

(b) the amount is a loss attributable to currency exchange rate fluctuations.

418 Section 306

Repeal the section, substitute:

306 Treatment of CGT asset owned at the end of 30 June 1988

(1) Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* apply to a 30 June 1988 asset of a taxpayer as if the taxpayer had acquired it on 30 June 1988.

(2) However, this does not affect how to work out the asset's cost base to the taxpayer.

419 Section 307

Repeal the section.

420 Subsections 308(1) and (2)

Repeal the subsections, substitute:

(1) The first element of the cost base of each 30 June 1988 asset of the taxpayer is the greater of the asset's market value (at the end of 30 June 1988) and the asset's cost base (on that day).

(2) The first element of the reduced cost base of each 30 June 1988 asset of the taxpayer is the lesser of the asset's market value (at the end of 30 June 1988) and the asset's cost base (on that day).

421 Sections 311, 312, 313 and 314

Repeal the sections, substitute:

311 Exercise of rights

(1) Despite section 130-40 of the *Income Tax Assessment Act 1997*, the modifications in subsections (3) and (4) of this section apply if a taxpayer exercises rights or options as mentioned in that section to acquire:

(a) shares in a company, or options to acquire shares in a company; or

(b) units in a unit trust, or options to acquire units in a unit trust;

and those rights or options are 30 June 1988 assets of the taxpayer.

(2) The first element of the cost base of the shares, units or options is the sum of:

(a) the amount paid to exercise the rights or options; and

(b) the greater of the market value of the rights or options (at the end of 30 June 1988) and the cost base of the rights or options (on that day).

(3) The first element of the reduced cost base of the shares, units or options is the sum of:

(a) the amount paid to exercise the rights or options; and

(b) the lesser of the market value of the rights or options (at the end of 30 June 1988) and the cost base of the rights or options (on that day).

(4) The payment referred to in subsection (3) or (4) can include giving property: see subsection 303(3).

(5) For indexation purposes, the amount referred to in paragraph (3)(b) is taken to have been incurred on 30 June 1988.

422 Section 315

Repeal the section, substitute:

315 Options

Subsection 104-30(5) applies to an option granted by a taxpayer as if the reference in that subsection to 20 September 1985 were a reference to 1 July 1988.

423 Paragraph 315F(d)

Omit "Part IIIA", substitute "Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997*".

424 Paragraph 315F(f)

Repeal the paragraph, substitute:

(f) whether a CGT event has happened, or whether a capital gain or capital loss from a CGT event is to be disregarded.

425 Section 317 (definition of *CGT roll-over provisions*)

After "Part IIIA", insert "of this Act or Divisions 122, 124 and 126, and section 118-350, of the *Income Tax Assessment Act 1997*".

426 Paragraph 377(1)(c)

Repeal the paragraph, substitute:

(c) a profit of a capital nature derived by the company in the qualifying period:

(i) in respect of the disposal of a taxable Australian asset to which Part IIIA of this Act applies, to the extent that an amount is included in the assessable income of the company under that Part in respect of the disposal; or

(ii) in respect of a CGT event happening in relation to an asset having the necessary connection with Australia, to the extent that an amount is included in the assessable income of the company under

Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997*; or

(iii) in respect of CGT event D1 or E9 happening in circumstances where one of the items in a table in section 136-15 of the *Income Tax Assessment Act 1997* is satisfied, to the extent that an amount is included in the assessable income of the company under Part 3-1 or 3-3 of that Act;

427 Subsection 396(2)

Repeal the subsection, substitute:

(2) A reference in subsection (1) to a non-taxable Australian asset is a reference to:

(a) an asset other than a taxable Australian asset (within the meaning of Part IIIA of this Act); or

(b) a CGT asset other than one that has the necessary connection with Australia (within the meaning of the *Income Tax Assessment Act 1997*).

428 At the end of subsection 396(3)

Add "and in deciding whether a CGT asset has the necessary connection with Australia, disregard the residency assumption in applying category 8 of the table in section 136-25 of the *Income Tax Assessment Act 1997*".

429 Paragraph 399(1)(c)

Repeal the paragraph, substitute:

(c) this Act is further modified by disregarding subsections 160M(13) and (14), and the *Income Tax Assessment Act 1997* is further modified by disregarding section 136-45; and

430 Paragraph 399(1)(d)

Omit "the Act", substitute "this Act".

431 At the end of paragraph 399(1)(d)

Add "and, for the purposes of applying Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* in accordance with the preceding paragraphs, the trust is a resident trust for CGT purposes.

432 Subsection 399A(2) (paragraph (d) of the definition of *Eligible debt term*)

Omit ", within the meaning of Part IIIA".

433 Paragraph 401(1)(a)

After "disposal of an asset,", insert "or to take into account the capital proceeds from a CGT event happening in relation to a CGT asset,".

Note: The heading to section 401 is replaced by the heading "**Reduction of disposal consideration or capital proceeds where attributed income not distributed**".

434 Paragraph 401(1)(b)

After "disposal", insert "or CGT event".

435 Paragraph 401(1)(c)

After "consideration", insert "or capital proceeds".

436 Paragraph 401(1)(c)

After "disposal", insert "or CGT event".

437 Paragraph 401(3)(b)

After "disposal of the asset", insert ", or the CGT event,".

438 Paragraph 401(3)(c)

After "disposal", insert "or the capital proceeds from the CGT event".

439 Paragraph 401(3)(c)

After "the consideration" (last occurring), insert "or those capital proceeds".

440 Paragraph 401(3)(d)

After "disposal", insert "or the capital proceeds from the CGT event".

441 Subparagraph 401(3)(d)(i)

After "the consideration", insert "or those capital proceeds".

442 Subparagraph 401(3)(d)(ii) (at the end of the definition of *Consideration*)

Add "or the capital proceeds".

443 Paragraph 401(5)(d)

After "disposal", insert "or of the CGT event".

444 Subsection 405(1) (definition of *commencing day non-taxable Australian asset*)

Repeal the definition, substitute:

commencing day asset has the meaning given by section 406.

445 Subsection 405(3)

Repeal the subsection, substitute:

(3) Some provisions of this Subdivision say that a payment can include giving property. To the extent that one does, use the market value of the property in working out the amount of the payment.

446 Subsection 406(2)

Repeal the subsection, substitute:

(2) For the purposes of applying this Act in calculating the attributable income of the eligible CFC, a ***commencing day asset*** of the eligible CFC is a CGT asset (other than one having the necessary connection with Australia) owned by the eligible CFC at the end of its commencing day.

(3) In deciding whether a CGT asset has the necessary connection with Australia, disregard the residency

assumption in applying category 8 of the table in section 136-25 of the *Income Tax Assessment Act 1997*.

Note: The heading to section 406 is replaced by the heading "**Meaning of *commencing day* and *commencing day asset***".

447 Section 408

Repeal the section, substitute:

408 Certain capital gains and losses disregarded

If a CFC makes a capital gain or capital loss from a CGT event because of Subdivision 136-A of the *Income Tax Assessment Act 1997*, or would have made a capital gain from the event apart from indexation, disregard the CGT event in calculating the attributable income of the eligible CFC.

448 Section 408A

Repeal the section, substitute:

408A Certain events before commencing day ignored

For the purposes of applying this Act in calculating the attributable income of an eligible CFC, if the eligible CFC's commencing day is after 30 June 1995:

(a) Part IIIA of this Act does not apply to disposals of assets of the eligible CFC; and

(b) Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* do not apply to CGT events involving the eligible CFC;

before the end of the commencing day.

449 Section 409

Repeal the section, substitute:

409 Losses before 30 June 1990 to be disregarded

For the purposes of applying this Act in calculating the attributable income of the eligible CFC, capital losses incurred before the end of 30 June 1990 are disregarded.

450 Section 410

Repeal the section, substitute:

410 General modifications—CGT

For the purposes of applying this Act in calculating the attributable income of the eligible CFC, Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* apply as if these provisions were disregarded:

(a) section 116-85 (about section 47A of this Act applying to a rolled-over asset);

(b) section 116-95 (about a company changing residence from an unlisted country);

(c) section 118-12 (about assets used to produce exempt income);

(d) section 136-40 (about an individual or company becoming an Australian resident);

(e) section 136-50 (about a CFC becoming an Australian resident);

(f) Subdivision 170-B (about transfer of net capital losses within company groups).

451 Subsections 411(1) and (2)

Repeal the subsections, substitute:

(1) Subject to this section, for the purposes of applying this Act in calculating the attributable income of the eligible CFC, a commencing day asset of the eligible CFC is taken to have been acquired, for the purposes of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* (about CGT), by it on its commencing day.

Note: The heading to section 411 is replaced by the heading "**Commencing day assets taken to have been acquired on commencing day**".

452 Subsections 412(2) and (3)

Repeal the subsections, substitute:

(2) The first element of the cost base of each commencing day asset of the eligible CFC is the greater of the asset's market value (at the end of the eligible CFC's commencing day) and the asset's cost base (on that day).

(3) The first element of the reduced cost base of each commencing day asset of the eligible CFC is the lesser of the asset's market value (at the end of the eligible CFC's commencing day) and the asset's cost base (on that day).

Note: The heading to section 412 is replaced by the heading "**Cost base of commencing day asset**".

453 Paragraph 413(2)(a)

Omit "non-taxable Australian".

454 Paragraph 413(3)(a)

Omit "non-taxable Australian".

455 At the end of section 413

Add:

(4) The payment referred to in subsection (2) or (3) can include giving property: see subsection 405(3).

456 Sections 414, 415, 416 and 417

Repeal the sections, substitute:

414 Exercise of rights

(1) For the purposes of applying this Act in calculating the attributable income of the eligible CFC, the following provisions have effect.

(2) Despite section 130-40 of the *Income Tax Assessment Act 1997*, the modifications in subsections (3) and (4) of this section apply if the eligible CFC exercises rights or options as mentioned in that section to acquire:

(a) shares in a company, or options to acquire shares in a company; or

(b) units in a unit trust, or options to acquire units in a unit trust;

and those rights or options are commencing day assets of the eligible CFC.

(3) The first element of the cost base of the shares, units or options is the sum of:

(a) the amount paid to exercise the rights or options; and

(b) the greater of the market value of the rights or options (at the end of the eligible CFC's commencing day) and the cost base of the rights or options (on that day).

(4) The first element of the reduced cost base of the shares, units or options is the sum of:

(a) the amount paid to exercise the rights or options; and

(b) the lesser of the market value of the rights or options (at the end of the eligible CFC's commencing day) and the cost base of the rights or options (on that day).

(5) The payment referred to in subsection (3) or (4) can include giving property: see subsection 405(3).

(6) For indexation purposes, the amount referred to in paragraph (3)(b) is taken to have been incurred on the eligible CFC's commencing day.

457 Subsections 418(2)

Repeal the subsection, substitute:

(2) Subsection 104-30(5) of the *Income Tax Assessment Act 1997* applies to an option granted by the eligible CFC as if the reference in that subsection to 20 September 1985 were a

reference to the day after the eligible CFC's commencing day.

458 Subsection 418(3)

Omit "Subsection 160ZZC(9)", substitute "Section 134-1 of the *Income Tax (Transitional Provisions) Act 1997*".

459 Paragraphs 418A(1)(b) and (c)

Repeal the paragraphs, substitute:

(b) the eligible CFC owned a CGT asset at the residence-change time; and

(c) a CGT event happens in relation to the asset during the eligible period;

460 Subsection 418A(1)

Omit "to 417", substitute "to 414".

461 Paragraph 418A(1)(d)

Omit "non-taxable Australian".

462 Paragraph 418A(1)(f)

Repeal the paragraph, substitute:

(f) if subsection 160M(8) of this Act, or section 104-160 of the *Income Tax Assessment Act 1997* (CGT event I1), applied to the change of residence for the purposes of the application of this Act apart from this Part:

(i) section 412 applies as if subsections 412(2) and (3) referred only to the market value of the asset concerned; and

(ii) section 414 applies as if paragraphs 414(3)(b) and (4)(b) referred only to the market value of the asset concerned.

463 Subsection 418A(2)

Omit "non-taxable Australian".

464 Subsection 418A(2)

Omit "to 417", substitute "to 414".

465 Section 419

Repeal the section, substitute:

419 Modified application of Subdivision 126-B of the *Income Tax Assessment Act 1997*

(1) For the purposes of applying this Act in calculating the attributable income of the eligible CFC, Subdivision 126-B of the *Income Tax Assessment Act 1997* has effect as if the table in subsection 126-50(5) of that Act were omitted and the following table were substituted:

Additional requirements			
Item	**The originating CFC's residency status**	**The recipient company's residency status**	**This requirement must be satisfied**
1	A resident of a broad-exemption listed country at the time of the trigger event	Either: (a) a resident of that broad-exemption listed country at that time; or (b) an Australian resident at that time	It does not matter what the roll-over asset is

Additional requirements			
Item	**The originating CFC's residency status**	**The recipient company's residency status**	**This requirement must be satisfied**
2	A resident of a broad-exemption listed country at the time of the trigger event	A resident of a particular non-broad-exemption listed country at that time	The asset must have been used (just before that time) in connection with a permanent establishment of the originating CFC in any non-broad-exemption listed country at or through which the originating CFC carried on business just before that time
3	A resident of a non-broad-exemption listed country at the time of the trigger event	Either: (a) a resident of a non-broad-exemption listed country at that time; or (b) an Australian resident at that time	It does not matter what the roll-over asset is

(2) The residency assumption is ignored for the purpose of applying the table in subsection (1).

467 Subsection 421(1)

After "election", insert "or choice".

468 Subsection 421(1A)

After "election" (wherever occurring), insert "or choice".

469 Subsection 421(2)

After "election" (wherever occurring), insert "or choice".

470 Subsection 421(3)

After "election" (wherever occurring), insert "or choice".

471 Subsections 422(2), (3) and (4)

Repeal the subsections, substitute:

(2) This section sets out what happens if:

(a) the eligible CFC ceases at a time (the ***residency change time***), during the eligible period or an earlier statutory accounting period, to be a resident of an unlisted country and becomes a resident of a listed country; and

(b) subsection 457(3) does not apply to the change of residence; and

(c) because of the change in its residency status, an amount is included in the eligible taxpayer's assessable income under section 457 (including because of paragraph 58(1)(d) of the *Taxation Laws Amendment (Foreign Income) Act 1990*); and

(d) a CGT event happens during the eligible period in relation to a CGT asset (the ***CFC asset***) that the eligible CFC owned since the residency change time.

(3) If the conditions in subsection (4) are satisfied, the capital proceeds from the CGT event are reduced by the amount worked out under subsection (5). If the conditions in subsection (6) are satisfied, those capital proceeds are increased by the amount worked out under subsection (7).

Reduction of capital proceeds

(4) If all the eligible CFC's assets were disposed of at the residency change time for their market values in the circumstances mentioned in subparagraph 457(2)(a)(i):

(a) distributable profits of the eligible CFC of a particular amount (the ***distributable profit amount***) would be

created, or its distributable profits would be increased by an amount (also the ***distributable profit amount***); and

(b) the eligible CFC would have made a profit (the ***CFC asset profit***) on the disposal of the CFC asset.

(5) The capital proceeds are reduced by:

$$\text{Distributable profit amount} \times \frac{\text{CFC asset profit}}{\text{Total asset profits}}$$

where:

total asset profits is the sum of the profits that the eligible CFC would have made if all its assets were disposed of at the residency change time for their market values (ignoring disposals that would not result in a profit).

Increase in capital proceeds

(6) If all the eligible CFC's assets were disposed of at the residency change time for their market values in the circumstances mentioned in subparagraph 457(2)(a)(i):

(a) the distributable profits of the eligible CFC would be reduced by an amount (the ***distributable profit reduction amount***); and

(b) the eligible CFC would have made a loss (the ***CFC asset loss***) on the disposal of the CFC asset.

(7) The capital proceeds are increased by:

$$\text{Distributable profit reduction amount} \times \frac{\text{CFC asset loss}}{\text{Total asset losses}}$$

where:

total asset losses is the sum of the losses that the eligible CFC would have made if all its assets were disposed of at the residency change time for their market values (ignoring disposals that would not result in a loss).

Note: The heading to section 422 is replaced by the heading "**Adjustment of capital proceeds where change of residence by eligible CFC from unlisted to listed country**".

472 Subsection 423(2)

Repeal the subsection, substitute:

(2) The capital proceeds from a CGT event that happens in relation to a CGT asset of the eligible CFC during the eligible period are reduced if:

(a) either:

(i) because of Division 17 of Part IIIA of this Act, that Part did not apply to the disposal of the asset to the eligible CFC by another CFC during the eligible period or an earlier statutory accounting period; or

(ii) there was a roll-over under Division 122, 124 or 126 of the *Income Tax Assessment Act 1997* (except under Subdivision 124-J, 124-K or 124-L of that Act) for a CGT event (the ***earlier CGT event***) that happened during that period in relation to the asset and involving the eligible CFC and another CFC; and

(b) the eligible taxpayer was an attributable taxpayer in relation to both CFC's at the time of the disposal or the earlier CGT event; and

(c) the other CFC is taken, under section 47A of this Act, to have paid the eligible CFC a dividend in relation to the disposal or the earlier CGT event; and

(d) an amount is included in the attributable taxpayer's assessable income in respect of the dividend under section 458 or 459 of this Act.

(3) The reduction is the lesser of:

(a) the amount of the dividend; and

(b) the amount of any capital gain that:

(i) apart from Division 17 of Part IIIA of this Act, would have accrued to the other CFC in respect of the disposal if the consideration in respect of the

disposal had been the market value of the asset at the time of the disposal; or

(ii) the other CFC would have made from the earlier CGT event apart from the roll-over if the capital proceeds from that event had been the market value of the asset at the time of that event.

Note: The heading to section 423 is replaced by the heading "**Adjustment of capital proceeds where section 47A applies to rolled-over assets**".

473 Subsection 424(2)

After "this Act", insert "or Part 3-1 or 3-3 of the *Income Tax Assessment Act 1997*".

474 Subsection 438(3)

Omit "has the effect that it would have if", substitute "of this Act and Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* have the effect they would have if".

475 Paragraph 438(3)(b)

Omit "Part IIIA", substitute "those Parts".

476 Subsection 438(3A)

After "Part IIIA", insert "of this Act or Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*".

477 Subsection 438(3A)

After "election", insert "or choice".

478 Subsection 438(3B)

After "election being given", insert "or the choice being made".

479 Subsection 438(3B)

After "election may be given", insert "or the choice may be made".

480 Subsection 438(4)

After "Part IIIA", insert "of this Act, or a CGT asset that does not have the necessary connection with Australia within the meaning of the *Income Tax Assessment Act 1997*".

481 Paragraph 461(1)(a)

After "disposal of an asset,", insert "or to take into account the capital proceeds from a CGT event happening in relation to a CGT asset,".

482 Paragraph 461(1)(b)

After "disposal", insert "or CGT event".

483 Paragraph 461(1)(c)

After "consideration", insert "or capital proceeds".

484 Paragraph 461(1)(c)

After "disposal", insert "or CGT event".

485 Paragraph 461(1)(d)

After "disposal", insert "or CGT event".

486 Paragraph 461(1)(g)

After "disposal", insert "or CGT event".

487 Paragraph 461(3)(a)

After "disposal of the asset", insert ", or the CGT event,".

488 Paragraph 461(3)(b)

After "disposal", insert "or the capital proceeds from the CGT event".

489 Paragraph 461(3)(b)

After "the consideration" (last occurring), insert "or those capital proceeds".

490 Paragraph 461(3)(c)

After "disposal", insert "or the capital proceeds from the CGT event".

491 Subparagraph 461(3)(c)(i)

After "the consideration", insert "or those capital proceeds".

492 Subparagraph 461(3)(c)(ii) (at the end of the definition of *Consideration*)

Add "or the capital proceeds".

493 Paragraph 613(1)(a)

After "disposal of an asset,", insert "or to take into account the capital proceeds from a CGT event happening in relation to a CGT asset,".

494 Paragraph 613(1)(c)

After "consideration" (wherever occurring), insert "or capital proceeds".

495 Paragraph 613(1)(c)

After "disposal", insert "or CGT event".

496 Paragraph 613(1)(d)

After "disposal", insert "or the CGT event".

497 Subsection 613(3)

After "asset", insert "or the CGT event".

498 Subparagraph 245-55(4)(a)(ii) of Schedule 2C

Repeal the subparagraph, substitute:

(ii) the forgiveness of the debt was a CGT event involving a CGT asset having the necessary connection with Australia; and

499 Paragraph 245-65(2A)(b) of Schedule 2C

Repeal the paragraph, substitute:

(b) the forgiveness of the debt was a CGT event involving a CGT asset having the necessary connection with Australia.

500 Paragraph 245-85(1)(c) of Schedule 2C

Omit "for the purposes of Part IIIA", substitute "for CGT purposes".

501 Subsection 245-90(2) of Schedule 2C

Omit "under paragraph 160Z(1)(b)".

502 Section 245-125 of Schedule 2C (definition of *deductible net capital loss*)

Repeal the definition, substitute:

deductible net capital loss means a net capital loss that:

(a) the debtor has for an income year earlier than the forgiveness year of income; and

(b) apart from this Subdivision, could be applied in working out the debtor's net capital gain for the forgiveness year of income (assuming the debtor had enough capital gains).

503 Subsection 245-165(1) of Schedule 2C (definition of *reducible asset*)

Omit "an asset", substitute "a CGT asset".

504 Subsection 245-165(1) of Schedule 2C (definition of *relevant cost base*)

Omit "an asset", substitute "a CGT asset".

505 Subsection 245-165(1) of Schedule 2C (definition of *relevant cost base*)

Omit ", the indexed cost base,".

506 Subsection 245-165(2) of Schedule 2C

Repeal the subsection.

507 Section 245-170 of Schedule 2C

Omit "assets", substitute "CGT assets".

508 Paragraph 245-170(a) of Schedule 2C

Omit "an asset", substitute "a CGT asset".

509 Paragraphs 245-170(b), (c) and (d) of Schedule 2C

Repeal the paragraphs, substitute:

(b) a CGT asset that the debtor no longer owned at the end of the commencement day;

(c) a personal use asset (within the meaning of the *Income Tax Assessment Act 1997*);

(d) a dwelling (within the meaning of the *Income Tax Assessment Act 1997*) that was the debtor's main residence at any time before the forgiveness year of income;

510 Paragraph 245-170(f) of Schedule 2C

Repeal the paragraph, substitute:

(f) a right covered by section 118-305 of the *Income Tax Assessment Act 1997* (which exempts from CGT certain rights relating to a superannuation fund or approved deposit fund);

511 Paragraph 245-170(g) of Schedule 2C

Omit "an asset", substitute "a CGT asset".

512 Paragraph 245-170(g) of Schedule 2C

Omit "for the purposes of this Act".

513 Paragraph 245-170(h) of Schedule 2C

Omit "an asset", substitute "a CGT asset".

514 Subparagraph 245-170(h)(ii) of Schedule 2C

Repeal the subparagraph, substitute:

(i) a CGT event in relation to which would result in an amount being included in the debtor's assessable income, or in the debtor being able to deduct an amount; and

515 Subsection 245-190(1) of Schedule 2C

Omit "particular asset", substitute "particular CGT asset".

516 Subsection 245-190(2) of Schedule 2C

Omit "particular asset", substitute "particular CGT asset".

517 Subsection 245-190(3) of Schedule 2C

Omit "an asset", substitute "a CGT asset".

518 Subsection 245-190(3) of Schedule 2C

Omit "the asset had been disposed of", substitute "a CGT event had happened to the asset".

519 Section 245-255 of Schedule 2C

Omit "that question would be determined under section 160ZZRN", substitute "the question whether an entity is a controller (for CGT purposes) of a company is determined under section 140-20 of the *Income Tax Assessment Act 1997*".

520 Subsection 57-25(1) of Schedule 2D

Repeal the subsection, substitute:

(1) This section applies to:

(a) the disposal of an asset by the transition taxpayer after the transition time; and

(b) a CGT event that happens after the transition time in relation to an asset owned by the transition taxpayer;

where the transition taxpayer owned the asset at all times from the transition time until the disposal or the CGT event.

521 After subsection 57-25(2) of Schedule 2D

Insert:

(2A) For the purposes of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* (about CGT), in determining whether the transition taxpayer makes a capital gain or capital loss from a CGT event that happens after the transition time in relation to an asset referred to in subsection (1), the cost base and reduced cost base of the asset (at the transition time) is its adjusted market value at that time.

522 Section 57-35 of Schedule 2D (after paragraph (d) of the definition of *asset*)

Insert:

and (e) a CGT asset;

Part 4—Consequential amendment of other Acts

Australian Industry Development Corporation Act 1970

523 Section 29A (at the end of paragraphs (a) and (b) of the definition of *asset*)

Add "and".

524 Section 29A (at the end of the definition of *asset*)

Add:

; and (e) a CGT asset within the meaning of the *Income Tax Assessment Act 1997*.

525 Subsection 29ZD(1)

Omit "Part IIIA of the *Income Tax Assessment Act 1936*", substitute "Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*".

526 Paragraphs 29ZD(4)(a) and (b)

Repeal the paragraphs, substitute:

(a) working out whether the Corporation made a capital gain; or

(b) working out whether the Corporation made a capital loss; or

Bank Integration Act 1991

527 Subsection 5(1) (at the end of the definition of *asset*)

Add:

; and (e) a CGT asset within the meaning of the *Income Tax Assessment Act 1997*.

Civil Aviation Legislation Amendment Act 1995

528 Subsection 9(4)

Repeal the subsection, substitute:

(4) A transfer that this section makes is not a CGT event for the purposes of the *Income Tax Assessment Act 1997*.

529 Subsections 19(2) and (3)

Repeal the subsections, substitute:

(2) The surrender by AA of an equitable interest in respect of an eligible building is not a CGT event for the purposes of applying the *Income Tax Assessment Act 1997* to AA.

(3) The granting of a lease by the Federal Airports Corporation to AA or CASA in respect of an eligible building is not a CGT event for the purposes of applying the *Income Tax Assessment Act 1997* to the Federal Airports Corporation.

Commonwealth Serum Laboratories Act 1961

530 Section 35

After "*Income Tax Assessment Act 1936*", insert "and the *Income Tax Assessment Act 1997*".

531 Paragraph 35(d)

Omit "paragraph 160ZH(1)(b), (c), (d) or (e) of the *Income Tax Assessment Act 1936*", substitute "subsection 110-25(3), (5) or (6) of the *Income Tax Assessment Act 1997*".

Defence Act 1903

532 Subsection 122AA(1)

Omit "the Commonwealth disposes, or disposed, of an asset to a company", substitute "a CGT event (within the meaning of the *Income Tax Assessment Act 1997*) happens in relation to a CGT asset (within the meaning of that Act) of the Commonwealth".

533 Before paragraph 122AA(1)(a)

Insert:

(aa) the event involves a company acquiring the asset;

534 Paragraph 122AA(1)(b)

Omit "the disposal is", substitute "the event happens".

535 Paragraph 122AA(1)(c)

Before "the asset", insert "for the purposes of the *Income Tax Assessment Act 1997*,".

536 Paragraph 122AA(1)(e)

Repeal the paragraph.

537 Subsection 122AA(2)

Omit "Part IIIA of the *Income Tax Assessment Act 1936*", substitute "Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*".

538 Subsection 122AA(4)

Repeal the subsection.

Federal Airports Corporation Act 1986

539 Section 57D

Repeal the section, substitute:

57D Capital gains tax

(1) If:

(a) the Corporation owned a CGT asset at the end of 30 June 1991 (the ***changeover time***); and

(b) the asset's market value at that time was greater than what would have been, for the purposes of Part IIIA of the *Income Tax Assessment Act 1936*, the asset's

indexed cost base for the Corporation if the Corporation had disposed of it at that time;

then, for the purposes of working out whether the Corporation makes a capital *gain* from a later CGT event that happens in relation to the asset, Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* apply as if the Corporation:

(c) had disposed of the asset at the changeover time for an amount equal to that indexed cost base; and

(d) had immediately re-acquired it for an amount equal to its market value at the changeover time.

(2) If:

(a) the Corporation owned a CGT asset at the end of 30 June 1991 (the ***changeover time***); and

(b) the asset's market value at that time was less than what would have been, for the purposes of Part IIIA of the *Income Tax Assessment Act 1936*, the asset's reduced cost base for the Corporation if the Corporation had disposed of it at that time;

then, for the purposes of working out whether the Corporation makes a capital *loss* from a later CGT event that happens in relation to the asset, Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* apply as if the Corporation:

(c) had disposed of the asset at the changeover time for an amount equal to that reduced cost base; and

(d) had immediately re-acquired it for an amount equal to its market value at the changeover time.

(3) A capital gain or capital loss is disregarded if it arises from a CGT event that happens in relation to a CGT asset of the Corporation and:

(a) the Commonwealth acquired the asset before 20 September 1985; or

(b) the Commonwealth and not the Corporation is entitled to the capital proceeds from the event.

(4) An expression has the same meaning in this section as in the *Income Tax Assessment Act 1997*, except so far as the contrary intention appears in this Act.

Financial Corporations (Transfer of Assets and Liabilities) Act 1993

540 Section 3 (at the end of the definition of *asset*)

Add:

; and (e) a CGT asset within the meaning of the *Income Tax Assessment Act 1997*.

541 Subsection 15(3)

Omit all the words after "acquired the asset for", substitute "an amount equal to what would have been the asset's cost base to the transferring corporation for the purposes of working out under the *Income Tax Assessment Act 1997* whether the transferring corporation made a capital gain from the transfer".

542 Sections 18 and 19

Repeal the sections, substitute:

18 Additional roll-over relief

There is a roll-over under Subdivision 126-B of the *Income Tax Assessment Act 1997* (which normally applies only to transfers between companies in the same wholly-owned group) if:

(a) the trigger event is a transfer to which this Act applies; and

(b) the requirements of that Subdivision are met, disregarding:

(i) subsection 126-50(1) of that Act (about the originating and recipient companies being members of the same wholly-owned group); and

(ii) subsection 126-50(5) of that Act (about the residency status of the originating and recipient

companies and the asset's connection to Australia); and

(iii) section 126-55 (about the originating and recipient companies choosing to obtain the roll-over).

This is in addition to that Subdivision's effect apart from this section.

19 For the receiving corporation, asset has necessary connection with Australia

Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997* apply to an asset acquired by the receiving corporation as a result of a transfer as if the asset had, while it is an asset of the receiving corporation, the necessary connection with Australia.

543 Before subsection 20(1)

Insert:

(1A) In addition to its effect apart from this section, the *Income Tax Assessment Act 1997* also has the effect it would have if sections 170-110 to 170-145 (which are about transferring net capital losses within wholly-owned company groups) of that Act were replaced by the provisions in Schedule 2 to this Act (which are a modified version of the rules in those sections).

(1B) Subsection (1) does not enable a net capital loss to be transferred in the 1998-99 year of income or a later year of income.

Note: The heading to section 20 is replaced by the heading "**Transfer of net capital loss**".

544 At the end of the Act

Add:

Schedule 2—Net capital losses and the Income Tax Assessment Act 1997

Effect of transferring a net capital loss

170-110 When a corporation can transfer a net capital loss

(1) A transferring corporation within the meaning of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* (the ***loss company***) can transfer an amount of its *net capital loss for an income year of the loss company (the ***capital loss year***) to a receiving corporation within the meaning of that Act (the ***gain company***) if the conditions in this Subdivision are met.

(2) The amount transferred can be the whole or part of the *net capital loss.

Note: A PDF cannot transfer a net capital loss, except one for a period before it became a PDF: see section 195-30 of the *Income Tax Assessment Act 1997*.

(3) However, the *loss company cannot transfer so much of the *net capital loss as the loss company has applied, or can apply, in working out its *net capital gain or *net capital loss for an income year before the one in which the amount is transferred.

170-115 Who can apply transferred loss

(1) If an amount of a *net capital loss is transferred, the gain company can apply the amount in working out its *net capital gain for the income year of the gain company for which the amount is transferred or for a later income year. The income year for which the gain company applies the amount is called the ***application year***.

Note: A company's net capital gain or net capital loss for an income year is usually worked out under section 102-5.

(2) The loss company can no longer apply the transferred amount and is taken not to have made the *net capital loss to the extent of that amount.

170-120 Gain company is taken to have made transferred loss

(1) If an amount of a *net capital loss is transferred, the amount is taken to be a *net capital loss of the gain company for the capital loss year.

(2) However, if the capital loss year is the same as the application year, the amount is taken to be a *capital loss of the gain company for the application year.

170-125 Tax treatment of consideration for transferred tax loss

(1) If the loss company receives consideration from the gain company for the transferred amount:

(a) the consideration is neither assessable income nor exempt income of the loss company; and

(b) the loss company does not make a *capital gain because of receiving the consideration.

Note: However, the consideration may affect how section 170-175 modifies the cost base of direct and indirect interests in the loss company.

(2) If the gain company gives consideration to the loss company for the transferred amount:

(a) the gain company cannot deduct the consideration; and

(b) the gain company does not make a *capital loss because of giving the consideration.

Note: However, the consideration may affect how section 170-175 modifies the cost base of direct and indirect interests in the gain company.

Conditions for transfer

170-128 *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* must apply to asset transfer from loss company to gain company

If it were assumed that:

(a) an asset (within the meaning of the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993*) had been transferred by the loss company to the gain company on the last day of a particular income year of the loss company (the ***notional transfer year***); and

(b) the requirements of paragraphs 7(6)(a) and (b) of that Act were satisfied in relation to that transfer;

then it must be the case that that Act would have applied to that transfer.

170-132 The loss year

The *loss year must be either:

(a) the income year in which the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* commenced; or

(b) an earlier income year.

170-133 The transfer year

(1) The *transfer year must either:

(a) end at the end of the *notional transfer year; or

(b) correspond to the income year of the *loss company that next follows the *notional transfer year.

(2) Also, the *transfer year must be one of the 5 income years after the income year in which the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* commenced.

170-135 The loss company

(1) It must be the case that the loss company was *not* required to calculate the *net capital loss:

(a) under section 165-114 (because of a change in ownership or control); or

(b) under section 175-75 (because of an injected capital gain or loss).

(2) Also, it must be the case that neither Subdivision 165-CA nor Subdivision 175-CA would have prevented the loss company from applying the *net capital loss in working out its *net capital gain for the application year if it had made enough capital gains in that year.

Note 1: Subdivision 165-CA deals with the consequences of changing ownership or control of a company. Subdivision 175-CA deals with using a company's net capital losses to avoid income tax.

Note 2: A company's net capital gain or net capital loss for an income year is usually worked out under section 102-5.

170-140 The gain company

(1) If the capital loss year and the application year are *not* the same, the gain company must not be prevented by Subdivision 165-CA or 175-CA from applying the transferred amount in working out its *net capital gain for the application year.

Note 1: Subdivision 165-CA deals with the consequences of changing ownership or control of a company. Subdivision 175-CA deals with using a company's net capital losses to avoid income tax.

Note 2: A company's net capital gain or net capital loss for an income year is usually worked out under section 102-5.

(2) If the capital loss year and the application year *are* the same, it must be the case that the gain company was *not* required to calculate its own *net capital gain or *net capital loss for the application year:

(a) under Subdivision 165-CB (because of a change in ownership or control); or

(b) under section 175-75 (because of an injected capital gain or loss).

Note: In deciding whether paragraph (b) applies, remember that the transferred amount is taken to be a capital loss of the gain company for the application year (because of subsection 170-120(2)).

170-145 Maximum amount that can be transferred

Loss company can only transfer what it cannot use itself

(1) The amount transferred cannot exceed the amount of the loss company's *net capital loss that, apart from the transfer, the loss company would carry forward to the next income year after the application year.

Note: If the capital loss year and the application year are the same, the loss company would carry forward the *whole* of the net capital loss, because section 102-5 does not allow a net capital loss to be applied in the income year in which it was made.

Example: In the application year the loss company has:

- a net capital loss from an earlier income year of $25,000; and
- other capital losses totalling $10,000; and
- capital gains totalling $20,000;

Of the $25,000 loss, the loss company can transfer to the gain company no more than:

$$\$25{,}000 - \left(\$20{,}000 - \$10{,}000\right) = \$15{,}000$$

Transferred loss must not exceed total cost bases of equity and debt interests in the loss company held by companies in the same wholly-owned group

(2) The amount transferred also cannot exceed the total of the respective *cost bases at the end of the application year (excluding indexation) of:

(a) each *share in the loss company that is held at the end of the application year by a company that:

(i) was a member of the same *wholly-owned group as the loss company throughout the application year

(disregarding a period when either was not *in existence); and

(ii) *acquired the share on or after 20 September 1985; and

(b) each debt that the loss company owes at the end of the application year, for money it *borrowed, to a company that:

(i) was a member of the same *wholly-owned group as the loss company throughout the application year (disregarding a period when either was not *in existence); and

(ii) *acquired the debt on or after 20 September 1985.

(3) No amount can be transferred if there is no such share or debt.

(4) Subsections (2) and (3) do not apply if the gain company is a *100% subsidiary of the loss company throughout the application year (disregarding a period when either was not *in existence).

545 Application

The amendment made by item 541 applies to a transfer in the 1998-99 income year or a later income year.

Income Tax Rates Act 1986

546 Subsection 3(1) (paragraph (a) of the definition of *capital gains amount*)

Omit "section 160ZO of the Assessment Act", substitute "section 102-5 of the *Income Tax Assessment Act 1997* or section 160ZO of the *Income Tax Assessment Act 1936*".

547 Subsection 3(1) (paragraph (b) of the definition of *capital gains amount*)

Omit "section 160ZO of the Assessment Act", substitute "section 102-5 of the *Income Tax Assessment Act 1997* or section 160ZO of the *Income Tax Assessment Act 1936*".

Industry Research and Development Act 1986

548 Subsection 39HB(4)

Repeal the subsection, substitute:

(4) The commercial government bodies guidelines must set out a criterion to the effect that an eligible government body will not be entered on the Register of Commercial Government Bodies with effect on a particular day if on that day the body is or will be an exempt entity within the meaning of the *Income Tax Assessment Act 1997*.

549 Application

Section 4 of this Act does not apply to the amendment made by item 548.

Transport Legislation Amendment (Search and Rescue Service) Act 1997

550 Subclause 2(3) of Schedule 4

Repeal the subclause, substitute:

(3) A transfer that this clause makes is not a CGT event for the purposes of the *Income Tax Assessment Act 1997*.

Schedule 3—Company bad debts

Part 1—Amendment of the Income Tax (Transitional Provisions) Act 1997

1 After Subdivision 165-CB

Insert:

Subdivision 165-C—Deducting bad debts

Table of sections

165-135 Application of Subdivision 165-C of the *Income Tax Assessment Act 1997*

165-135 Application of Subdivision 165-C of the *Income Tax Assessment Act 1997*

Subdivision 165-C of the *Income Tax Assessment Act 1997* (about companies deducting bad debts) applies to assessments for the 1998-1999 income year and later income years.

[The next Division is Division 166.]

Division 166—Income tax consequences of changing ownership or control of a listed public company

[The next Subdivision is Subdivision 166-C.]

Subdivision 166-C—Deducting bad debts

Table of sections

166-40 Application of Subdivision 166-C of the *Income Tax Assessment Act 1997*

166-40 Application of Subdivision 166-C of the *Income Tax Assessment Act 1997*

Subdivision 166-C of the *Income Tax Assessment Act 1997* (about listed public companies deducting bad debts) applies to assessments for the 1998-1999 income year and later income years.

[The next Division is Division 175.]

2 After Subdivision 175-CB

Insert:

Subdivision 175-C—Tax benefits from unused bad debt deductions

Table of sections

175-40 Application of Subdivision 175-C of the *Income Tax Assessment Act 1997*

175-40 Application of Subdivision 175-C of the *Income Tax Assessment Act 1997*

Subdivision 175-C of the *Income Tax Assessment Act 1997* (about companies obtaining tax benefits from unused bad debt deductions) applies to assessments for the 1998-1999 income year and later income years.

Part 2—Consequential amendment of the Income Tax Assessment Act 1997

4 Section 12-5 (table item headed "tax losses")

Omit "**63CA**", substitute "165-120".

5 Subsection 25-35(5) (table item 1)

Omit "**sections 63A and 63C**", substitute "Subdivisions 165-C and 166-C".

6 Subsection 25-35(5) (table item 2)

Omit "**sections 63B and 63D**", substitute "Subdivision 175-C and **section 63D**".

7 Section 165-1

Repeal the section, substitute:

165-1 What this Division is about

A change in the ownership or control of a company can affect:

- whether it can deduct its tax losses of earlier income years; and
- how it calculates its taxable income and tax loss for the income year of the change; and
- whether it can deduct debts owed to it that are written off as bad.

8 At the end of section 165-195

Add:

(3) In applying a test for the purposes of Subdivision 165-C (about deducting bad debts), this section does not cover *shares allotted before the *first continuity period.

9 At the end of section 166-150

Add:

Note: Subdivisions 166-F and 166-G modify how this test is applied in certain cases.

10 At the end of section 166-155

Add:

Note: Subdivisions 166-F and 166-G modify how this test is applied in certain cases.

11 At the end of section 166-160

Add:

Note: Subdivisions 166-F and 166-G modify how this test is applied in certain cases.

12 Section 175-1

Omit ", or current year deductions", substitute ", current year deductions, or deductions for bad debts,".

Part 3—Consequential amendment of the Income Tax Assessment Act 1936

13 Before subsection 63A(1)

Insert:

(1A) This section does not apply to the 1998-99 year of income or a later year of income.

Note: Subdivisions 165-C, 166-C and 175-C of the *Income Tax Assessment Act 1997* deal with a company deducting bad debts for those income years.

14 Before subsection 63B(1A)

Insert:

(1AA) This section does not apply to the 1998-99 year of income or a later year of income.

Note: Subdivisions 165-C, 166-C and 175-C of the *Income Tax Assessment Act 1997* deal with a company deducting bad debts for those income years.

15 Before subsection 63C(1)

Insert:

(1A) This section does not apply to the 1998-99 year of income or a later year of income.

Note: Subdivisions 165-C, 166-C and 175-C of the *Income Tax Assessment Act 1997* deal with a company deducting bad debts for those income years.

16 Before subsection 63CA(1)

Insert:

(1A) This section does not apply to the 1998-99 year of income or a later year of income.

Note: Section 165-120 of the *Income Tax Assessment Act 1997* deals with a company deducting in those income years a tax loss resulting from a bad debt.

17 After subsection 63E(5)

Insert:

(5A) Subdivisions 165-C, 166-C and 175-C of the *Income Tax Assessment Act 1997* apply to an allowable deduction under this section in respect of the whole or part of a debt that is extinguished, in the same way as they apply to a debt (or part of a debt) that is written off as bad.

19 Paragraph 427(b)

Omit "63CA,".

20 Paragraph 427(b)

Omit "and Subdivisions 165-A, ", substitute ", Subdivision 165-A, section 165-120 and Subdivisions".

Part 4—Consequential amendment of other Acts

Commonwealth Bank Sale Act 1995

21 Subsection 18(1)

Omit "section 63A of the *Income Tax Assessment Act 1936* to decide whether a deduction is allowable to a Bank body", substitute "Subdivision 165-C or 166-C of the *Income Tax Assessment Act 1997* to decide whether a Bank body can deduct an amount for a bad debt".

Note: The heading to section 18 is altered by omitting "**section 63A**" and substituting "**bad debt provisions**".

Financial Corporations (Transfer of Assets and Liabilities) Act 1993

22 Subsections 22(2) and (3)

Repeal the subsections, substitute:

Modification of tests for receiving corporation to deduct bad debt

(2) In relation to a transfer of a debt, Subdivisions 165-C, 166-C and 175-C of the *Income Tax Assessment Act 1997* have effect as if the debt had been incurred at the time of the transfer.

Note: Those Subdivisions are about companies deducting bad debts.

Easing of restrictions on transferring corporation

(3) If:

(a) this Act applies to one or more transfers of assets by the transferring corporation to the receiving corporation; and

(b) an entity incurs a debt to the transferring corporation in a year of income (the ***debt year***); and

(c) the debt year is the income year in which this section (as originally enacted) commenced or an earlier income year; and

(d) Subdivision 165-C or 175-C, or both, of the *Income Tax Assessment Act 1997* prevent the transferring corporation from deducting an amount for the debt for an income year (the ***deduction year***); and

(e) the transferring corporation did not, at any time in the deduction year, derive income from:

(i) a business of a kind that it did not carry on; or

(ii) a transaction of a kind that it had not entered into in the course of its business operations;

before the transfer, or the earliest of the transfers, occurred;

neither Subdivision 165-C nor 175-C of that Act prevents the transferring corporation from deducting that amount.

Note: Subdivision 165-C of the *Income Tax Assessment Act 1997* is about the conditions that a company needs to satisfy before it can deduct a bad debt.

Subdivision 175-C of that Act is about the Commissioner preventing a company from getting certain tax benefits through its unused bad debts.

23 Subsection 22(4)

Repeal the subsection, substitute:

Limit on deductions for partly written-off debt

(4) If this Act applies to the transfer of a debt that has been partly written off, the maximum that the receiving corporation can deduct for the debt for one or more years of income under section 8-1 or 25-35 of the *Income Tax Assessment Act 1997* is worked out using the formula:

Amount of the debt – Unrecouped deductions

where:

unrecouped deductions means the total of the amounts that the transferring corporation has deducted or can deduct for any year of income under:

(a) section 8-1 or 25-35 of the *Income Tax Assessment Act 1997*; or

(b) section 51 or 63 of the *Income Tax Assessment Act 1936*;

reduced by the total of any amounts included in its assessable income in respect of the debt under:

(c) Subdivision 20-A of the *Income Tax Assessment Act 1997*; or

(d) subsection 63(3) of the *Income Tax Assessment Act 1936*.

24 Application

The amendment made by item 23 applies to assessments for the 1997-98 year of income and later years of income.

Schedule 4—Intellectual property (new Division 373)

Part 1—Amendment of the Income Tax (Transitional Provisions) Act 1997

1 Section 330-75 (link note)

Repeal the link note, substitute:

[The next Division is Division 373.]

Division 373—Intellectual property

Table of sections

373-1	Application of Division 373 of the *Income Tax Assessment Act 1997*
373-10	Application to item of intellectual property you owned before 1998-99
373-65	Effect on balancing adjustment if there has been roll-over relief under the old law only
373-100	Item you acquired in a non-arm's length transaction

373-1 Application of Division 373 of the *Income Tax Assessment Act 1997*

Division 373 (Intellectual property) of the *Income Tax Assessment Act 1997* applies to assessments for the 1998-99 income year and later income years.

[The next section is section 373-10.]

373-10 Application to item of intellectual property you owned before 1998-99

(1) This section affects how Division 373 (Intellectual property) of the *Income Tax Assessment Act 1997* applies if you have

owned an item of intellectual property since before the 1998-99 income year.

Unrecouped expenditure

(2) Your ***unrecouped expenditure*** on the item at the *start* of the 1998-99 income year equals the item's residual value in relation to you *immediately after* the end of the 1997-98 income year, as worked out under Division 10B of Part III of the *Income Tax Assessment Act 1936*. (It can later be reduced and increased as provided in Division 373 (Intellectual property) of the *Income Tax Assessment Act 1997*.)

See section 373-25 of the *Income Tax Assessment Act 1997*.

Effective life

(3) The item's ***effective life*** in your hands is the same as its effective life worked out at the end of the 1997-98 income year under Division 10B of Part III of the *Income Tax Assessment Act 1936*. (This is despite section 373-35 of the *Income Tax Assessment Act 1997*.)

Taking account of what happened before 1998-99

(4) The provisions of the *Income Tax Assessment Act 1997* listed in column 2 of an item in the table apply as shown in the table.

Taking account of what happened before 1998-99			
Item	**The following provision(s):**	**apply to this:**	**in the same way as they apply to this:**
1	373-50(4); 373-65(2); 41-40(2) (as applying because of 373-80 and 373-85)	an amount you have deducted or can deduct for the item under Division 10B of Part III of the *Income Tax Assessment Act 1936* for an income year before the 1998-99 income year	an amount you have deducted or can deduct for the item under Subdivision 373-B or 373-D (as appropriate) of the *Income Tax Assessment Act 1997*
2	373-50(4); 373-65(2); 373-85(4); 41-40(2) (as applying because of 373-80 and 373-85)	an amount that section 124P of the *Income Tax Assessment Act 1936* included in your assessable income for the item for an income year before the 1998-99 income year	an amount included in your assessable income for the item by section 373-50 or 373-65 (as appropriate) of the *Income Tax Assessment Act 1997*
3	373-60(1)(a)	the item's cost to you for the purposes of Division 10B of Part III of the *Income Tax Assessment Act 1936*	your expenditure on the item

[The next section is section 373-65.]

373-65 Effect on balancing adjustment if there has been roll-over relief under the old law only

(1) If:

(a) in the 1997-98 income year or an earlier income year roll-over relief was available under section 124PA of the *Income Tax Assessment Act 1936* in relation to the disposal of an item of intellectual property by a taxpayer (the ***transferor***) to another taxpayer (the ***transferee***); and

(b) a balancing adjustment is required for the item for the 1998-99 income year or a later income year; and

(c) there has been no earlier balancing adjustment event for the item for which roll-over relief was available under Common rule 1;

the balancing adjustment is affected in 2 ways.

(2) First:

(a) the total amounts that the transferor deducted or could deduct for the item under Division 10B of Part III of the *Income Tax Assessment Act 1936*; or

(b) if there have been 2 or more prior applications of section 124PA of that Act to the item—the total amounts that the prior transferors deducted or could deduct for the item under that Division;

are taken to have been amounts that the transferee deducted or could deduct for the item under that Division.

(3) Second:

(a) the total amounts included in the transferor's assessable income under Division 10B of Part III of the *Income Tax Assessment Act 1936* because of the item; or

(b) if there have been 2 or more prior applications of section 124PA of that Act to the item—the total amounts included under that Division in the assessable income of the prior transferors because of the item;

are taken to have been amounts included in the transferee's assessable income under that Division because of the item.

[The next section is section 373-100.]

373-100 Item you acquired in a non-arm's length transaction

(1) This section affects how section 373-100 of the *Income Tax Assessment Act 1997* applies to you if the entity from which you acquired the item had owned since before the 1998-99 income year:

(a) the item itself; or

(b) if subsection 373-100(4) of that Act applies—the other item.

(2) That entity's expenditure on the item or other item (as appropriate) is taken to be the cost of the item or other item to the entity for the purposes of Division 10B of Part III of the *Income Tax Assessment Act 1936*.

[The next Division is Division 375.]

Part 2—Consequential amendment of the Income Tax Assessment Act 1997

2 Section 10-5 (table item headed "industrial property")

Repeal the item, substitute:

industrial property

consideration for disposal of unit relating to copyright in Australian film **124P**

see also *intellectual property* and *research and development*

3 Section 10-5 (before table item headed "interest")

Insert:

intellectual property

amount arising from partial realisation of item of ..... Subdivision 373-C

excess of termination value over written down value for item of 373-65

4 Section 12-5 (table item headed "industrial property")

Repeal the item, substitute:

industrial property

unit relating to copyright in Australian film ..... **124K to 124Z**

see also *intellectual property* and *research and development*

5 Section 12-5 (before table item headed "interest")

Insert:

intellectual property

capital allowance for expenditure on item of 373-10

excess of written down value over termination value for item of 373-65

patent, design or copyright, expenditure in obtaining grant, registration or extension of 373-5

6 Section 20-5 (after table item 3)

Insert:

3A	The amount arising from a partial realisation of an item of intellectual property for which you have deducted amounts may be included in your assessable income.	373-50

7 Section 40-30 (table item dealing with "industrial property")

Repeal the item, substitute:

Industrial property (relating to a copyright in an Australian film)	Capital expenditure on acquiring a unit of industrial property to produce assessable income	Any entity	Effective life (2 years to 25 years)	Bala adjus requi
Intellectual property	Capital expenditure on acquiring an item of intellectual property to produce assessable income	Any entity	Effective life (up to 25 years, depending on the kind of item)	Bala adjus requi

8 Section 41-5 (after table item dealing with grapevines)

Insert:

Intellectual property	Applies as modified by section 373-85	Applies as modified by section 373-80	Does

9 Section 41-10

Omit "in relation to the disposal of property".

10 Subsection 41-23(1) (after table item 4.1)

Insert:

5.1	Intellectual property	the transferor and transferee jointly elect for it	Subsection 373-85(2)

11 Paragraph 41-65(1)(a)

Omit “a person”, substitute “an entity”.

Part 3—Consequential amendment of the Income Tax Assessment Act 1936

12 Subsection 73G(1)

Omit "a unit of industrial property (within the meaning of Division 10B)", substitute "an item of intellectual property (as defined by section 373-15 of the *Income Tax Assessment Act 1997*)".

13 Subsection 73G(2)

Omit "unit", substitute "item".

14 Subsection 73G(3)

Omit "unit", substitute "item".

15 Paragraph 73G(4)(a)

Omit "unit" (wherever occurring), substitute "item".

16 Subsection 73G(5)

Omit "unit" (wherever occurring), substitute "item".

17 Subsection 82KH(1) (before paragraph (k) of the definition of *relevant expenditure*)

Insert:

(ka) expenditure incurred by the taxpayer in respect of an item of intellectual property (as defined by section 373-15 of the *Income Tax Assessment Act 1997*) that relates to copyright subsisting in a film, but only to the extent described at the end of this definition;

18 Subsection 82KH(1) (before paragraph (o) of the definition of *relevant expenditure*)

Insert:

(oa) expenditure incurred by the taxpayer in respect of acquiring an item of intellectual property (as defined by

section 373-15 of the *Income Tax Assessment Act 1997*) that is a licence under a copyright subsisting in computer software, but only to the extent described at the end of this definition;

19 Subsection 82KH(1) (before paragraph (w) of the definition of *relevant expenditure*)

Insert:

(wa) expenditure (unless covered by an earlier paragraph of this definition) incurred by the taxpayer in respect of an item of intellectual property (as defined by section 373-15 of the *Income Tax Assessment Act 1997*), but only to the extent described at the end of this definition;

20 Subsection 82KH(1) (at the end of the definition of *relevant expenditure*)

Add:

However, paragraph (ka), (oa) or (wa) only covers expenditure to the extent that:

(x) it is taken into account in working out under Division 373 of the *Income Tax Assessment Act 1997* the taxpayer's unrecouped expenditure on the item in determining whether, apart from section 82KL of this Act, the taxpayer could deduct an amount under that Division for the item for a year of income; or

(y) it would be so taken into account apart from the following rules (about non-arm's length transactions):

(i) Common rule 2 (in Subdivision 41-B of that Act);

(ii) section 373-100 of that Act.

21 After paragraph 82KH(1AD)(a)

Insert:

(b) if paragraph (ka), (oa) or (wa) of the definition of ***relevant expenditure*** in subsection (1) covers the expenditure—the taxpayer deducting or being able to deduct, or not deducting or not being able to deduct, as

appropriate, an amount under Division 373 of the *Income Tax Assessment Act 1997* for the item for a year of income because the taxpayer's unrecouped expenditure on the item would be calculated under that Division by reference to the relevant expenditure; and

22 Before subsection 124L(1)

Insert:

(1A) For the purposes of assessments for the 1998-99 year of income and later years of income, this Division applies to the owner of a unit of industrial property only if the unit relates to a copyright in an Australian film.

Note: For other kinds of intellectual property, see Division 373 of the *Income Tax Assessment Act 1997*.

23 Subparagraph 570(1)(a)(ii)

After "Part III", insert "of this Act or an item of intellectual property as defined by section 373-15 of the *Income Tax Assessment Act 1997*".

24 Subsection 245-140(1) of Schedule 2C (after the table item dealing with expenditure on acquiring a unit of industrial property)

Insert:

Expenditure on acquiring an item of intellectual property to produce assessable income	Subdivision 373-B of the *Income Tax Assessment Act 1997*

25 After paragraph 57-25(4)(k) of Schedule 2D

Insert:

(la) Division 373 of the *Income Tax Assessment Act 1997* (about intellectual property); and

26 Subsection 57-85(3) of Schedule 2D (table item 7)

Repeal the item, substitute:

7	Industrial property (copyright in Australian film)	**Division 10B of Part III**	
7A	Intellectual property	Subdivision 373-B	**Division 10B of Part III**

27 Subsection 57-110(2) of Schedule 2D (table item 5)

Repeal the item, substitute:

5	Industrial property (copyright in Australian film)	**Sections 124N and 124P**	**Division 10B of Part III**
5A	Intellectual property	Subdivisions 373-C and 373-D	Subdivision 373-B and **Division 10B of Part III**

Schedule 5—Horticultural plants (new Subdivision 387-C)

Part 1—Amendment of the Income Tax (Transitional Provisions) Act 1997

1 At the end of section 20-5

Add:

(2) Sections 82BE and 124ZZN of the *Income Tax Assessment Act 1936* do not apply to an assessment for the 1998-99 income year or a later income year. This has effect despite subsection (1).

2 Section 387-140 (link note)

Repeal the link note, substitute:

Subdivision 387-C—Establishing horticultural plants

Table of sections

387-160	Application of Subdivision 387-C of the *Income Tax Assessment Act 1997*
387-175	Saving of determinations specifying periods for effective life
387-190	Deduction for destruction of a horticultural plant first used in horticulture business before 1998-99 income year
387-195	Treatment of deductions under Division 10F of Part III of the *Income Tax Assessment Act 1936*
387-205	New owners' requests for tax information from last owners of horticultural plants

387-160 Application of Subdivision 387-C of the *Income Tax Assessment Act 1997*

(1) Subdivision 387-C of the *Income Tax Assessment Act 1997* applies to assessments for the 1998-99 income year and later income years, in relation to expenditure incurred on or after 10 May 1995.

(2) You can deduct an amount under that Subdivision for expenditure incurred before the 1998-99 income year only to the extent to which you could have deducted an amount for that expenditure under Division 10F of Part III of the *Income Tax Assessment Act 1936* if that Division had allowed deductions for the 1998-99 income year and later income years.

Note: This means that you cannot deduct an amount for expenditure that was recouped before the 1997-98 income year.

(3) If the effective life of a horticultural plant was set under section 124ZZK of the *Income Tax Assessment Act 1936*, its effective life is the same for the purposes of Subdivision 387-C of the *Income Tax Assessment Act 1997*.

[The next section is section 387-175.]

387-175 Saving of determinations specifying periods for effective life

(1) A determination in force under section 124ZZL of the *Income Tax Assessment Act 1936* immediately before 1 July 1998 also has effect for the purposes of Subdivision 387-C of the *Income Tax Assessment Act 1997* on and after that day as if it were a determination under section 387-175 of the *Income Tax Assessment Act 1997*.

Note: Section 124ZZL of the *Income Tax Assessment Act 1936* and section 387-175 of the *Income Tax Assessment Act 1997* allow the Commissioner to make a determination specifying a period that an entity can adopt as the effective life of a horticultural plant.

(2) Anything done in relation to the determination under that Subdivision also has effect for the purposes of Division 10F (Deduction for capital expenditure incurred in establishing horticultural plants) of Part III of the *Income Tax Assessment Act 1936*.

[The next section is section 387-190.]

387-190 Deduction for destruction of a horticultural plant first used for commercial horticulture before 1998-99 income year

(1) Section 387-190 of the *Income Tax Assessment Act 1997* applies in relation to a horticultural plant first used (or held ready for use) for commercial horticulture before the 1998-99 income year and destroyed in that income year or later, as if sections 387-165 and 387-185 of that Act had applied to assessments for income years before that income year.

Note: Section 387-190 of the *Income Tax Assessment Act 1997* allows a deduction for the destruction of a horticultural plant with an effective life of 3 years or more. This deduction is additional to the deduction for the plant under section 387-165 of that Act.

(2) This section has effect despite section 387-160.

387-195 Treatment of deductions under Division 10F of Part III of the *Income Tax Assessment Act 1936*

(1) In applying subsection 387-195(2) of the *Income Tax Assessment Act 1997* to work out whether you can deduct an amount under Subdivision 387-C of that Act for expenditure on establishing a horticultural plant, disregard any amount deducted or deductible under Division 10F of Part III of the *Income Tax Assessment Act 1936*.

Note: This ensures that you can deduct amounts for the 1998-99 income year and later income years under Subdivision 387-C of the *Income Tax Assessment Act 1997* for expenditure on establishing a horticultural plant, even if an entity did or can deduct amounts for one or more income years before the 1998-99 income year under Division 10F of Part III of the *Income Tax Assessment Act 1936* for the expenditure.

(2) Subdivision 387-C of the *Income Tax Assessment Act 1997* does not affect a deduction, or an entitlement to a deduction, under Division 10F of Part III of the *Income Tax Assessment Act 1936* for the 1997-98 income year or an earlier income year.

[The next section is section 387-205.]

387-205 New owners' requests for tax information from last owners of horticultural plants

Section 387-205 of the *Income Tax Assessment Act 1997* applies to a change of ownership of a horticultural plant that occurs on or after 1 July 1998.

Note: That section allows the new owner of a horticultural plant to require the last owner to provide tax information relating to the plant.

Part 2—Consequential amendment of the Income Tax Assessment Act 1997

3 Section 12-5 (table item headed "primary production")

Omit "**124ZZD to 124ZZR**", substitute "Subdivision 387-C".

4 Subsection 20-30(1) (after table item 1.15)

Insert:

1.15A	Subdivision 387-C	horticultural plant establishment expenditure

5 Section 40-30 (table item dealing with horticultural plants)

Omit "**Division 10F of Part III**", substitute "Subdivision 387-C".

Part 3—Consequential amendment of the Income Tax Assessment Act 1936

6 Before Subdivision A of Division 10F of Part III

Insert:

Subdivision AA—Application

124ZZEA This Division does not apply after 1997-98 year of income

An amount is not deductible under this Division for a year of income after the 1997-98 year of income.

Note: Subdivision 387-C of the *Income Tax Assessment Act 1997* allows deductions for the 1998-99 year of income and later years of income for capital expenditure relating to the establishment of a horticultural plant (including expenditure incurred before the 1998-99 year of income—see Subdivision 387-C of the *Income Tax (Transitional Provisions) Act 1997*).

7 At the end of subsection 124ZZO(6)

Add "but before 1 July 1998".

8 At the end of subsection 124ZZO(6)

Add:

Note: Section 387-205 of the *Income Tax Assessment Act 1997* allows an entity that becomes the owner of a horticultural plant on or after 1 July 1998 to require the previous owner to provide tax information relating to the plant.

9 Subsection 245-140(1) of Schedule 2C (table item dealing with expenditure incurred in establishing horticultural plants)

Omit "Sections 124ZZF and 124ZZG and subsection 124ZZM(2)", substitute "Subdivision 387-C".

10 Application

Section 4 of this Act does not apply to the amendments made by items 6 and 7.

Schedule 6—Averaging primary producers' tax liability (new Division 392)

Part 1—Amendment of the Income Tax (Transitional Provisions) Act 1997

1 At the end of the Act

Add:

[The next Division is Division 392.]

Division 392—Long-term averaging of primary producers' tax liability

Table of sections

392-1 Application of Division 392 of the *Income Tax Assessment Act 1997*
392-25 Transitional provision—election under section 158A of the *Income Tax Assessment Act 1936*

392-1 Application of Division 392 of the *Income Tax Assessment Act 1997*

(1) Division 392 of the *Income Tax Assessment Act 1997* applies to assessments for the 1998-99 income year and later income years.

(2) It applies to your assessment as if:

(a) it had applied to your assessment for each income year before the 1998-99 income year for which Division 16 of Part III of the *Income Tax Assessment Act 1936* applied in relation to your income; and

(b) you had carried on a primary production business during each income year before the 1998-99 income

year when you carried on a business of primary production; and

(c) for each income year before the 1998-99 income year you had a basic taxable income equal to your taxable income for the income year for the purposes of Division 16 of Part III of the *Income Tax Assessment Act 1936*.

Note: Section 149A of the *Income Tax Assessment Act 1936* identifies what your taxable income for an income year is for the purposes of Division 16 of Part III of that Act.

[The next section is section 392-25.]

392-25 Transitional provision—election under section 158A of the *Income Tax Assessment Act 1936*

Division 392 of the *Income Tax Assessment Act 1997* does not apply to your assessment for the 1998-99 income year or a later income year if you made an election under section 158A (Election that Division not apply) of the *Income Tax Assessment Act 1936* relating to an income year before the 1998-99 income year.

Part 2—Consequential amendment of the Income Tax Assessment Act 1997

2 Subsection 4-10(3) (at the end of the note at the end of step 2 of the method statement)

Add "and section 4-25".

3 At the end of Division 4

Add:

[The next section is section 4-25.]

4-25 Special provisions for working out your basic income tax liability

Subsection 392-35(3) may increase your basic income tax liability beyond the liability worked out simply by applying the income tax rates to your taxable income.

Note: Subsection 392-35(3) increases some primary producers' tax liability by requiring them to pay extra income tax on their averaging components worked out under Subdivision 392-C.

4 Section 12-5 (table item headed "averaging of incomes")

Repeal the item.

5 Section 13-1 (table item headed "primary production")

Omit:

averaging of income	**156**

substitute:

averaging of income, trustees	**156**
averaging of tax liability, individuals	392-35(2)

6 Before paragraph 42-295(3)(d)

Insert:

(da) Division 392 of this Act (which provides for long-term averaging of primary producers' tax liability) applies to your assessment; or

7 Section 385-5 (at the end of the table)

Add:

4	Long-term averaging of some primary producers' tax liability (by tax offsets and extra income tax)	Division 392

Part 3—Consequential amendment of the Income Tax Assessment Act 1936

8 Paragraph 86(2)(b)

After "Division 16", insert "of this Part or Division 392 (Long-term averaging of primary producers tax liability) of the *Income Tax Assessment Act 1997*".

9 Subsection 94(10A)

Omit "Division 16", substitute "Division 392 (Long-term averaging of primary producers' tax liability) of the *Income Tax Assessment Act 1997*".

10 Subsection 94(10B)

Omit "Division 16", substitute "Division 392 (Long-term averaging of primary producers' tax liability) of the *Income Tax Assessment Act 1997*".

12 Sub-subparagraph 94(10C)(a)(i)(A)

Omit "relevant primary production deductions", substitute "primary production deductions".

13 Sub-subparagraph 94(10C)(a)(i)(B) (definition of *A*)

Repeal the definition, substitute:

A is the amount shown in the following table:

Value of A for formula		
Item	**Taxpayer's taxable non-primary production income**	**Value of A**
1	Nil	Nil
2	Not more than $5,000 (but more than nil)	Difference between basic taxable income and taxable primary production income
3	Between $5,000 and $10,000	$10,000 – taxable non-primary production income
4	At least $10,000	Nil

14 Sub-subparagraph 94(10*C*)(a)(i)(B) (definition of *C*)

Omit "actual taxable income from primary production", substitute "taxable primary production income".

15 Subparagraph 94(10C)(a)(ii)

Omit "aggregate of the relevant primary production deductions of the taxpayer of the year of income exceeds the assessable primary production income of the taxpayer of the year of income", substitute "taxpayer's primary production deductions for the year of income exceed the taxpayer's assessable primary production income for that year".

16 Subparagraph 94(10C)(a)(ii) (definition of *A*)

Repeal the definition, substitute:

A is the amount shown in the following table:

Value of A for formula		
Item	**Taxpayer's taxable non-primary production income**	**Value of A**
1	Nil	Nil
2	Not more than $5,000 (but more than nil)	Basic taxable income
3	Between $5,000 and $10,000	Non-primary production shade-out amount worked out under subsection 392-90(3) of the *Income Tax Assessment Act 1997*
4	At least $10,000	Nil

17 Subparagraph 94(10C)(a)(ii) (*d*efinition of *D*)

Repeal the definition, substitute:

D is the number of whole dollars in the difference between the taxpayer's primary production deductions for the year of income and the taxpayer's assessable primary production income for that year; and

18 Subsection 94(14)

Omit "***actual taxable income from primary production***,".

19 Subsection 94(14)

Omit ", ***notional taxable income from primary production***".

20 At the end of section 94

Add:

(15) In this section, the following terms have the same meanings that they have in Division 392 (Long-term averaging of primary producers' tax liability) of the *Income Tax Assessment Act 1997*:

(a) assessable primary production income;

(b) basic taxable income;

(c) non-primary production shade-out amount;

(d) primary production deductions;

(e) taxable non-primary production income;

(f) taxable primary production income.

21 Before subsection 156(1)

Insert:

(1A) Subsections (4) and (4A) do not apply to an assessment for the 1998-99 income year or a later income year.

Note: This means that an individual taxpayer is not entitled to a rebate or required to pay complementary tax under this section for those income years (and that subsections (1), (2) and (3) are not relevant to those income years). Division 392 of the *Income Tax Assessment Act 1997* provides for averaging of individual primary producers' tax liability for years of income after 1997-98, taking into account the tax on their average incomes.

22 Section 159S (paragraph (a) of the definition of *taxable part of the taxable income*)

Omit "Division 16 does not apply to the income of the taxpayer of", substitute "neither Division 16 of this Part (Averaging of incomes) nor Division 392 (Long-term averaging of primary producers' tax liability) of the *Income Tax Assessment Act 1997* applies to the taxpayer's assessment for".

23 Subsection 159ZR(1) (definition of *rebated tax*)

After "156 or 160AA", insert "of this Act, and of any tax offset under subsection 392-35(2) of the *Income Tax Assessment Act 1997* (which allows some primary producers tax offsets),".

24 Paragraph 221YBA(2)(a)

Repeal the paragraph, substitute:

(a) the taxpayer's taxable primary production income worked out under section 392-80 of the *Income Tax Assessment Act 1997* (Working out your taxable primary production income); or

25 Subsection 221YCAA(2) (before paragraph (g) of the definition of *adjusted preceding year's tax*)

Insert:

(ga) any averaging component of the taxpayer worked out under section 392-90 of the *Income Tax Assessment Act 1997* for the preceding year of income had been increased by the provisional tax uplift factor for the current year of income; and

26 Subsection 221YCAA(2) (paragraph (h) of the definition of *adjusted preceding year's tax*)

Omit "Division 16 of Part III", substitute "Division 392 (Long-term averaging of primary producers' tax liability) of the *Income Tax Assessment Act 1997* or Division 16 of Part III of this Act".

27 Subsection 221YCAA(2) (paragraph (j) of the definition of *adjusted preceding year's tax*)

Omit "other than a rebate under section 156", substitute "except a tax offset under subsection 392-35(2) of the *Income Tax Assessment Act 1997* (which provides tax offsets for some primary producers), or a rebate under section 156 of this Act,".

28 Subsection 221YCAA(2) (paragraph (m) of the definition of *qualifying reductions*)

After "160AQZ", insert "or a tax offset under subsection 392-35(2) of the *Income Tax Assessment Act 1997*".

29 Subparagraph 221YCAA(3)(b)(ii)

Omit "Division 16 of Part III, the deemed taxable income from primary production of the taxpayer", substitute "Division 392 of the *Income Tax Assessment Act 1997* (Long-term averaging of primary producers' tax liability), the taxpayer's averaging component".

30 Application of amendments made by items 25 to 29

The amendments made by items 25 to 29 (inclusive) of this Schedule apply for the purposes of working out amounts of provisional tax payable for the 1999-2000 year of income and later years of income.

Part 4—Consequential amendment of the Income Tax Rates Act 1986

31 Subsection 12(3)

Repeal the subsection.

32 After section 12

Insert:

12A Rate of extra income tax for primary producers

(1) This section sets the rate of extra income tax payable under subsection 392-35(3) of the *Income Tax Assessment Act 1997* on every dollar of a taxpayer's averaging component for a year of income.

(2) The rate is worked out using the formula:

$$\frac{\text{Averaging adjustment}}{\text{Averaging component}}$$

Rate if taxable income is less than tax-free threshold adjusted by family tax assistance

(3) If:

(a) section 20C or 20D applies to the taxpayer for the year of income, or would apply apart from section 20E; and

(b) the taxpayer's taxable income is more than $5,400 but less than the taxpayer's adjusted tax-free threshold;

the rate is worked out using the formula:

$$\frac{\text{Averaging adjustment} - \left[\left(\text{Adjusted tax-free threshold} - \text{Taxable income}\right) \times \text{Lowest marginal rate of tax}\right]}{\text{Averaging component}}$$

(4) If:

(a) section 20C or 20D applies to the taxpayer for the year of income, or would apply apart from section 20E; and

(b) the taxpayer's taxable income is $5,400 or less and is less than the taxpayer's adjusted tax-free threshold;

the rate is worked out using the formula:

$$\frac{\text{Averaging adjustment} - \left[\text{Tax-free threshold increase} \times \text{Lowest marginal rate of tax}\right]}{\text{Averaging component}}$$

(5) Subsections (3) and (4) have effect despite subsection (2).

(6) In this section:

adjusted tax-free threshold means the sum of $5,400 and the tax-free threshold increase, in whole dollars.

averaging adjustment means the taxpayer's smoothing adjustment, worked out for the year of income under section 392-75 of the *Income Tax Assessment Act 1997*.

averaging component means the taxpayer's averaging component in whole dollars, worked out for the year of income under Subdivision 392-C of the *Income Tax Assessment Act 1997*.

lowest marginal rate of tax has the meaning given by section 20B.

taxable income means the taxpayer's taxable income (as defined in section 20B) for the year of income, in whole dollars.

tax-free threshold increase means the sum of the amounts by which sections 20C and 20D increase the amount of $5,400 set out in column 1 of the table in clause 1 of Part I of Schedule 7 in relation to the taxpayer (or would increase that amount of $5,400 if they applied to the taxpayer), in whole dollars.

33 Paragraph 12(7)(a) (definition of *B*)

Omit "subsection (3)", substitute "section 12A".

34 Paragraph 12(7)(*b*) (definition of *B*)

Repeal the definition, substitute:

B is the amount of tax (if any) that would be payable by the person on the person's taxable income if:

(i) the comparison rate described in section 392-55 of the *Income Tax Assessment Act 1997* were the rate of tax payable by the person on that income; and

(ii) this subsection and section 12A did not apply; and

(iii) the person were not entitled to any rebate or credit; and

35 Subsections 20G(1) and (2)

Repeal the subsections.

36 Subsection 20G(5) (definition of *taxable income*)

Repeal the definition.

37 Subsection 20G(5) (definition of *deemed taxable income from primary production*)

Repeal the definition.

38 At the end of subsection 20G(5)

Add:

Note: Subsections 12A(3) and (4) indicate how family tax assistance reduces extra income tax payable by a primary producer under Division 392 of the *Income Tax Assessment Act 1997* if the primary producer's taxable income is less than the primary producer's tax-free threshold as affected by family tax assistance.

39 After paragraph 2(b) of Part I of Schedule 7

Insert:

; and (c) Division 392 (Long-term averaging of primary producers' tax liability) of the *Income Tax Assessment Act 1997* does not apply to the taxpayer's assessment;

40 At the end of paragraph 3(b) of Part I of Schedule 7

Add "or Division 392 (Long-term averaging of primary producers' tax liability) of the *Income Tax Assessment Act 1997* applies to the taxpayer's assessment".

41 After paragraph 2(b) of Part II of Schedule 7

Insert:

; and (c) Division 392 (Long-term averaging of primary producers' tax liability) of the *Income Tax Assessment Act 1997* does not apply to the taxpayer's assessment;

42 At the end of paragraph 3(b) of Part II of Schedule 7

Add "or Division 392 (Long-term averaging of primary producers' tax liability) of the *Income Tax Assessment Act 1997* applies to the taxpayer's assessment".

43 Clause 3 of Part I of Schedule 11 (sub-subparagraph (c)(i)(A) of the definition of *B*)

Repeal the sub-subparagraph, substitute:

(A) if Division 392 (Long-term averaging of primary producers' tax liability) of the *Income Tax Assessment Act 1997* applies—the average income worked out under section 392-45 of that Act;

44 Clause 3 of Part I of Schedule 11 (paragraph (d) of the definition of *B*)

After "average income", insert "worked out under section 392-45 of the *Income Tax Assessment Act 1997*".

45 Clause 3 of Part II of Schedule 11 (sub-subparagraph (c)(i)(A) of the definition of *B*)

Repeal the sub-subparagraph, substitute:

(A) if Division 392 (Long-term averaging of primary producers' tax liability) of the *Income Tax Assessment Act 1997* applies—the average income worked out under section 392-45 of that Act;

46 Clause 3 of Part II of Schedule 11 (paragraph (d) of the definition of *B*)

After "average income", insert "worked out under section 392-45 of the *Income Tax Assessment Act 1997*".

Schedule 7—Environment (new Division 400)

Part 1—Amendment of the Income Tax (Transitional Provisions) Act 1997

1 At the end of the Act

Add:

[The next Division is Division 400.]

Division 400—Environmental impact assessment and environmental protection

Table of sections

400-10	Application of Subdivision 400-A of the *Income Tax Assessment Act 1997*
400-20	Deductions under section 82BB of the *Income Tax Assessment Act 1936*
400-50	Application of Subdivision 400-B of the *Income Tax Assessment Act 1997*
400-100	Application of Subdivision 400-C of the *Income Tax Assessment Act 1997*

400-10 Application of Subdivision 400-A of the *Income Tax Assessment Act 1997*

(1) Subdivision 400-A of the *Income Tax Assessment Act 1997* applies to assessments for the 1998-99 income year and later income years, in relation to expenditure incurred on or after 12 March 1991.

(2) To work out the amount (if any) you can deduct under that Subdivision for expenditure you incurred before the 1998-99 income year, use the amount of that expenditure that you were allowed to use to work out your deductions under section 82BB of the *Income Tax Assessment Act 1936* for income years before the 1998-99 income year.

Note: This means that you cannot get a deduction under that Subdivision for expenditure that you recouped before the 1997-98 income year.

400-20 Deductions under section 82BB of the *Income Tax Assessment Act 1936*

Deductions under section 82BB do not prevent deductions under Subdivision 400-A of the Income Tax Assessment Act 1997

(1) In applying section 400-20 of the *Income Tax Assessment Act 1997* to work out whether you can deduct an amount under Subdivision 400-A of that Act for expenditure, disregard any possibility of deducting an amount for the expenditure under section 82BB of the *Income Tax Assessment Act 1936*.

Note: This ensures that you can deduct amounts under Subdivision 400-A of the *Income Tax Assessment Act 1997* for the 1998-99 income year and later income years, even if you can deduct amounts under section 82BB of the *Income Tax Assessment Act 1936* for one or more income years before the 1998-99 income year.

Saving of deductions under section 82BB of the Income Tax Assessment Act 1936

(2) Subdivision 400-A of the *Income Tax Assessment Act 1997* does not affect a deduction under section 82BB of the *Income Tax Assessment Act 1936* for the 1997-98 income year or an earlier income year.

[The next section is section 400-50.]

400-50 Application of Subdivision 400-B of the *Income Tax Assessment Act 1997*

Subdivision 400-B of the *Income Tax Assessment Act 1997* applies to assessments for the 1998-99 income year and later income years.

[The next section is section 400-100.]

400-100 Application of Subdivision 400-C of the *Income Tax Assessment Act 1997*

Subdivision 400-C of the *Income Tax Assessment Act 1997* applies to the use of property in the 1998-99 income year and later income years.

Part 2—Consequential amendment of the Income Tax Assessment Act 1997

2 Section 12-5 (table item headed "environment")

Repeal the item, substitute:

environment

environmental impact assessment	Subdivision 400-A
environmental protection activities	Subdivision 400-B

3 Subsection 20-30(1) (at the end of the table)

Add:

1.17	Subdivision 400-A	expenditure on environmental impact assessment
1.18	Subdivision 400-B	expenditure on environmental protection activities

4 Section 40-30 (table items dealing with environmental impact studies and environment protection)

Repeal the items, substitute:

Environmental impact assessment	Expenditure on assessing the environmental impact of an income-producing project	Any entity with an income-producing project	Generally 10 years, but may be less, depending on the estimated life of the project	This appli
Environmental protection activities	Expenditure incurred in dealing with pollution or waste	Any entity incurring expenditure to deal with pollution or waste from its income-producing activity or from or on the site of that activity	Immediate 100% write off	This appli

5 Section 41-5 (after table item dealing with electricity connections)

Insert:

Environmental impact assessment	Does not apply	Applies as modified by subsection 400-20(3)	Does
Environmental protection activities	Does not apply	Applies as modified by subsection 400-65(4)	Does

6 Subsection 42-55(1)

Repeal the subsection.

7 Subsection 42-55(2)

Repeal the subsection.

8 Paragraph 43-20(5)(a)

Repeal the paragraph, substitute:

(a) they are constructed as a result of carrying out an activity described in paragraph 400-60(1)(a) or (b) (in the definition of ***environmental protection activities***); and

9 Subsection 43-20(5) (note)

Omit "eligible environment", substitute "environmental".

10 Subsection 43-50(4)

Repeal the subsection.

11 Subsection 43-50(5)

Repeal the subsection.

Part 3—Consequential amendment of the Income Tax Assessment Act 1936

12 Before subsection 82BB(1)

Insert:

(1A) This section does not allow a deduction for the 1998-99 year of income or a later year of income.

Note: Subdivision 400-A of the *Income Tax Assessment Act 1997* allows deductions for the 1998-99 year of income and later years of income for allowable environmental impact expenditure.

13 Subsection 82BG(1)

After "1991", insert "and before the taxpayer's 1998-99 year of income".

14 At the end of subsection 82BG(1)

Add:

Note: Subdivision 400-C of the *Income Tax Assessment Act 1997* treats property used for eligible environmental impact activities in the 1998-99 year of income or a later year of income as if it were used for the purpose of producing assessable income.

15 Before subsection 82BK(1)

Insert:

(1A) This section does not allow a deduction for the 1998-99 year of income or a later year of income.

Note: Subdivision 400-B of the *Income Tax Assessment Act 1997* allows deductions for the 1998-99 year of income and later years of income for allowable environment protection expenditure.

16 Subsection 82BR(1)

After "1992", insert "and before the taxpayer's 1998-99 year of income".

17 At the end of subsection 82BR(1)

Add:

Note: Subdivision 400-C of the *Income Tax Assessment Act 1997* treats property used for eligible environment protection activities in the 1998-99 year of income or a later year of income as if it were used for the purpose of producing assessable income.

18 Subsection 245-140(1) of Schedule 2C (table item dealing with expenditure on study to evaluate the environmental impact of an income producing project)

Repeal the item, substitute:

Expenditure on environmental impact assessment	item 1, 2 or 3 of the table in subsection 400-15(3) of the *Income Tax Assessment Act 1997*

19 Subsection 57-85(3) of Schedule 2D (table items 3 and 4)

Repeal the items, substitute:

3	Environmental impact assessment	Subdivision 400-A	Subdivision C of Division 3 of Part III
4	Environmental protection	Subdivision 400-B	Subdivision CA of Division 3 of Part III

Schedule 8—Above-average special professional income (new Division 405)

Part 1—Amendment of the Income Tax (Transitional Provisions) Act 1997

1 At the end of the Act

Add:

[The next Division is Division 405.]

Division 405—Above-average special professional income of authors, inventors, performing artists, production associates and sportspersons

Table of sections

405-1 Application of Division 405 of the *Income Tax Assessment Act 1997*

405-1 Application of Division 405 of the *Income Tax Assessment Act 1997*

(1) Division 405 of the *Income Tax Assessment Act 1997* applies for the purposes of assessments for the 1998-99 income year and later income years.

(2) It applies for the purposes of your assessment as if:

(a) for each income year earlier than the 1998-99 income year you had a taxable professional income equal to your eligible taxable income (if any) under Division 16A of Part III of the *Income Tax Assessment Act 1936* for that earlier income year; and

(b) you had been an Australian resident for each income year before the 1998-99 income year for which you

were a qualifying resident taxpayer under Division 16A of Part III of the *Income Tax Assessment Act 1936*.

Part 2—Consequential amendment of the Income Tax Assessment Act 1936

2 Before section 158B

Insert:

158BA Division 16A does not apply to 1998-99 or later year of income

This Division does not apply for the purposes of an assessment for the 1998-99 year of income or a later year of income.

3 Subsection 159ZR(1) (paragraph (b) of the definition of *normal taxable income*)

Repeal the paragraph, substitute:

(b) the taxable income were reduced by:

(i) any abnormal income amount taken to be included in the taxable income under section 158L; or

(ii) any above-average special professional income included in the taxable income under section 405-15 of the *Income Tax Assessment Act 1997*; and

4 Paragraph 221YBA(2)(b)

Repeal the paragraph, substitute:

(b) the above-average special professional income included in the taxpayer's taxable income under section 405-15 of the *Income Tax Assessment Act 1997*.

5 Subsection 221YCAA(2) (paragraph (f) of the definition of *adjusted preceding year's tax*)

Repeal the paragraph, substitute:

(f) the taxpayer's taxable professional income for the preceding year of income had been increased by the

provisional tax uplift factor for the current year of income, for the purposes of Division 405 of the *Income Tax Assessment Act 1997* (which deals with above-average special professional income) except working out the taxpayer's average taxable professional income for the current year of income; and

6 Subparagraph 221YCAA(3)(b)(iv)

Repeal the subparagraph, substitute:

(iv) for the purposes of Division 405 of the *Income Tax Assessment Act 1997* (which deals with above-average special professional income), the taxpayer's taxable professional income for the preceding year of income were any amount determined by the Commissioner.

7 Paragraph 221YDA(1)(dab)

Repeal the paragraph, substitute:

(dab) the taxpayer's taxable professional income and average taxable professional income for the year of income for the purposes of Division 405 of the *Income Tax Assessment Act 1997* (which deals with above-average special professional income); and

8 Subparagraph 221YDA(2)(a)(iii)

Repeal the subparagraph, substitute:

(iii) the taxpayer's taxable professional income and average taxable professional income for the year of income for the purposes of Division 405 of the *Income Tax Assessment Act 1997* (which deals with above-average special professional income) were those amounts as shown in the statement; and

9 Application of amendments made by items 4 to 8

The amendments made by items 4 to 8 apply for the purposes of working out amounts of provisional tax payable for the 1999-2000 year of income and later years of income.

Part 3—Consequential amendment of the Income Tax Rates Act 1986

10 Subsection 3(1) (definition of *abnormal income amount*)

Omit "the abnormal income amount (if any) included in the taxable income of the taxpayer of the year of income as specified in section 158L of the Assessment Act", substitute "any above-average special professional income included in the taxpayer's taxable income for the year of income under section 405-15 of the *Income Tax Assessment Act 1997*".

Schedule 9—Consequential amendments relating to indexation

Part 1—Amendment of the Income Tax (Transitional Provisions) Act 1997

1 Section 42-70

Repeat the section, substitute:

42-70 Adjustment: acquiring a car at a discount

Paragraph 42-70(1)(c) of the *Income Tax Assessment Act 1997* has effect as if, in addition to referring to the car depreciation limit, it also referred to the motor vehicle depreciation limit under section 57AF of the *Income Tax Assessment Act 1936*.

Part 2—Consequential amendment of the Income Tax Assessment Act 1997

2 Subsection 28-45(2) (note)

Omit "Subdivision 42-K", substitute "Section 42-80".

3 Paragraph 42-70(1)(c)

Omit "calculated under section 42-345".

4 At the end of section 42-80

Add:

(3) The ***car depreciation limit*** for the 1997-98 financial year is $55,134.

(4) The ***car depreciation limit*** is indexed annually.

Note: Subdivision 960-M shows you how to index amounts.

(5) The Commissioner must publish before the beginning of each *financial year the *car depreciation limit for that year.

5 Subdivision 42-K

Repeal the Subdivision.

6 Subsection 995-1(1) (definition of *car depreciation limit*)

Omit "section 42-345", substitute "section 42-80".

Part 3—Consequential amendment of the Income Tax Assessment Act 1936

7 After subsection 57AF(5)

Insert:

(5A) Despite subsection (5), the indexation factor for the 1997-98 financial year is 1.

Part 4—Application

8 Application

The amendments made by this Schedule apply to assessments for the 1997-98 income year and later income years.

Schedule 10—Amendment of Chapter 6 (the Dictionary) of the Income Tax Assessment Act 1997

1 Subsection 960-220(1)

Omit "*listed public".

2 At the end of subsection 960-220(1)

Add:

Note: A special rule applies in working out whether an asset has stopped being a pre-CGT asset: see section 149-10.

3 At the end of subsection 960-220(2)

Add:

Note: A special rule applies in working out whether an asset has stopped being a pre-CGT asset: see section 149-10.

4 Subsection 960-225(1)

Omit "*listed public".

5 Section 960-230

Omit "*listed public".

6 Subsection 960-235(1)

Omit "*listed public".

7 Section 960-240

Omit "*listed public".

8 Subsection 960-245(1)

Omit "*listed public".

9 Subsection 960-245(2) (link note)

Repeal the link note.

10 At the end of Division 960

Add:

Subdivision 960-M—Indexation

Guide to Subdivision 960-M

960-260 What this Subdivision is about

There are a number of provisions in this Act that require amounts to be indexed. This Subdivision shows you:

- how to index those amounts; and
- how to calculate the indexation factor.

Table of sections

Operative provisions

960-270 Indexing amounts
960-275 *Indexation factor*
960-280 *Index number*

[This is the end of the Guide.]

960-265 The provisions for which indexation is relevant

This table sets out the provisions for which indexation is relevant.

Provisions for which indexation is relevant

Item	Topic of provision:	See:
1	Car depreciation limit	Subdivision 42-K
2	Capital gains—cost base	Parts 3-1 and

Provisions for which indexation is relevant		
Item	**Topic of provision:**	**See:**
		3-3
3	Capital gains—Improvements as separate assets	Subdivision 108-D
4	Capital gains—Goodwill	Subdivision 118-C

Note: There are provisions of the *Income Tax Assessment Act 1936* dealing with indexation that have not yet been rewritten.

Operative provisions

960-270 Indexing amounts

(1) Some provisions of this Act require amounts to be indexed. You index an amount by multiplying it by its *indexation factor.

(2) You do not index the amount if its *indexation factor is 1 or less.

960-275 *Indexation factor*

(1) For indexation of amounts on an annual basis, the ***indexation factor*** is:

$$\frac{\text{Sum of the index numbers for the quarters in the year ending on 31 March just before the start of the relevant financial year}}{\text{Sum of the index numbers for the quarters in the year ending on the previous 31 March}}$$

Example: The business exemption threshold is an amount that is indexed on an annual basis: see section 118-260.

(2) For indexation of the *cost base of a *CGT asset (except the first element of the cost base of an asset covered by subsection (3)), the ***indexation factor*** for expenditure in an element of the cost base is:

$$\frac{\text{The index number for the quarter of the year in which the CGT event happened to the asset}}{\text{The index number for the quarter in which the expenditure was incurred}}$$

Note 1: This rule applies even if you do not actually pay some of the expenditure until a later time (for example, under a contract to purchase an asset by instalments).

Note 2: There are rules affecting when the expenditure was incurred: see sections 114-15 and 114-20.

(3) For indexation of the first element of the *cost base of a *CGT asset that is:

(a) a *share in a company that was issued or allotted by the company; or

(b) a unit in a unit trust that was issued by the trustee of the unit trust;

the ***indexation factor*** for an amount in the first element of the *cost base of the asset that was paid at a time after it was issued or allotted is:

$$\frac{\text{The index number for the quarter of the year in which the CGT event happened to the asset}}{\text{The index number for the quarter in which the amount was paid}}$$

The payment can include giving property: see section 103-5.

Example: A company issues shares to you. You acquire the shares in circumstances that did not involve a CGT event. If the shares are partly-paid and the company later makes a call on the shares, you use the index number for the quarter in which you paid that later payment.

Note: This subsection does not apply to shares or units you acquired before 16 August 1989: see section 960-275 of the *Income Tax (Transitional Provisions) Act 1997*.

(4) However, you cannot index expenditure in the third element of the *cost base of a CGT asset (non-capital costs of ownership).

(5) You work out the *indexation factor to 3 decimal places (rounding up if the fourth decimal place is 5 or more).

Example: If the factor is 1.102795, it would be rounded up to 1.103.

960-280 ***Index number***

(1) In most cases, the ***index number*** for a quarter is the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) first published by the Australian Statistician for the quarter.

(2) For calculating the *car depreciation limit under Subdivision 42-K, the ***index number*** for a quarter is the index number for the motor vehicle purchase sub-group of the Consumer Price Index, being the weighted average of the 8 capital cities, first published by the Australian Statistician for the quarter.

(3) If the Australian Statistician changes the reference base for an *index number, only index numbers published in terms of the new base are to be used after the change.

[The next Division is Division 975.]

A

11 Subsection 995-1(1)

Insert:

above-average special professional income has the meaning given by section 405-15.

12 Subsection 995-1(1)

Insert:

acquire:

(a) a *CGT asset: you ***acquire*** a CGT asset at the time worked out under Division 109; and

Note: A CGT asset acquired before 20 September 1985 may be treated as having been acquired on or after that day: see Division 149.

(b) an item of *intellectual property: an entity does not ***acquire*** an item of intellectual property merely because

a licence relating to a patent, design or copyright is surrendered to the entity.

13 Subsection 995-1(1)

Insert:

amount arising from a *partial realisation of an item of *intellectual property has the meaning given by section 373-45.

14 Subsection 995-1(1)

Insert:

annuity instrument means an instrument that secures the grant of an annuity (whether dependent on the life of an individual or not).

15 Subsection 995-1(1)

Insert:

apportionable deductions are:

(a) amounts deducted or deductible under section 25-75 (which provides a deduction for rates and land tax); or

(b) amounts deducted or deductible under section 30-15 because of item 1 or 2 in the table in that section, except amounts deducted or deductible for gifts of trading stock in cases where:

(i) the gifts are covered by section 70-90 (which has the effect that the giver's assessable income includes the market value of the gift); and

(ii) no election has been made, or is made, under Subdivision 385-E (which allows the giver to choose to spread the market value of a gift of *live stock over the giver's assessable income for 5 income years or to reduce the amount included in the giver's assessable income by the cost of replacement live stock).

16 Subsection 995-1(1)

Insert:

arm's length: in determining whether parties deal at ***arm's length***, consider any connection between them and any other relevant circumstance.

17 Subsection 995-1(1)

Insert:

artistic support has the meaning given by subsection 405-25(5).

18 Subsection 995-1(1)

Insert:

assessable non-primary production income has the meaning given by subsection 392-85(2).

19 Subsection 995-1(1)

Insert:

assessable primary production income has the meaning given by subsection 392-80(2).

20 Subsection 995-1(1)

Insert:

assessable professional income has the meaning given by subsection 405-20(1).

21 Subsection 995-1(1)

Insert:

associate-inclusive control interest in a company has the meaning given by section 140-22.

22 Subsection 995-1(1)

Insert:

attributable income has the meaning given by Division 7 of Part X of the *Income Tax Assessment Act 1936*.

23 Subsection 995-1(1)

Insert:

average income has the meaning given in subsection 392-45(1).

24 Subsection 995-1(1)

Insert:

average taxable professional income has the meaning given by subsections 405-50(1) and (2).

25 Subsection 995-1(1)

Insert:

averaging adjustment has the meaning given in section 392-75.

26 Subsection 995-1(1)

Insert:

averaging component has the meaning given in subsection 392-90(1).

B

27 Subsection 995-1(1) (definition of *balancing adjustment event*)

Repeal the definition, substitute:

balancing adjustment event: for the purposes of a particular *capital allowance, ***balancing adjustment event*** has the meaning given by the provision shown in this table:

Meaning of *balancing adjustment event*

Item	For this capital allowance:	See:
1	Depreciation	subsection 42-30(3)
2	Intellectual property	subsection 373-60(2)

28 Subsection 995-1(1)

Insert:

basic assessable income has the meaning given by subsection 392-45(2).

29 Subsection 995-1(1)

Insert:

basic rates has the meaning given by subsection 392-35(4).

30 Subsection 995-1(1)

Insert:

basic taxable income has the meaning given by section 392-15.

31 Subsection 995-1(1)

Insert:

business exemption threshold has the meaning given by section 118-260.

C

32 Subsection 995-1(1)

Insert:

capital gain: for each *CGT event a ***capital gain*** is worked out in the way described in that event.

Note 1: There are some CGT events for which there is no capital gain.

Note 2: For income years before 1998-99, ***capital gain*** has the meaning given by section 102-20 of the *Income Tax (Transitional Provisions) Act 1997*.

33 Subsection 995-1(1)

Insert:

capital loss: for each *CGT event a ***capital loss*** is worked out in the way described in that event.

Note 1: There are some CGT events for which there is no capital loss.

Note 2: For income years before 1998-99, ***capital loss*** has the meaning given by section 102-20 of the *Income Tax (Transitional Provisions) Act 1997*.

34 Subsection 995-1(1)

Insert:

capital proceeds has the meaning given by Division 116.

35 Subsection 995-1(1)

Insert:

capital unitholding of less than 1% in a unit trust has the meaning given by section 149-135.

36 Subsection 995-1(1)

Insert:

cessation time has the meaning given by sections 139CA and 139CB of the *Income Tax Assessment Act 1936*.

37 Subsection 995-1(1)

Insert:

CFC has the meaning given by Part X of the *Income Tax Assessment Act 1936*.

38 Subsection 995-1(1)

Insert:

CFT has the meaning given by section 342 of the *Income Tax Assessment Act 1936*.

39 Subsection 995-1(1)

Insert:

CGT asset has the meaning given by section 108-5.

40 Subsection 995-1(1)

Insert:

CGT event means any of the CGT events described in Division 104. A CGT event described by number (for example: ***CGT event A1***) refers to the relevant event in that Division.

41 Subsection 995-1(1)

Insert:

collectable has the meaning given by section 108-10.

42 Subsection 995-1(1)

Insert:

commencing day of a *CFC has the meaning given by section 406 of the *Income Tax Assessment Act 1936*.

43 Subsection 995-1(1)

Insert:

commencing day asset of a *CFC has the meaning given by section 406 of the *Income Tax Assessment Act 1936*.

44 Subsection 995-1(1)

Insert:

company law has the meaning given by section 124-520.

45 Subsection 995-1(1)

Insert:

commercial horticulture has the meaning given by subsection 387-170(4).

46 Subsection 995-1(1)

Insert:

comparison rate has the meaning given by section 392-55.

47 Subsection 995-1(1) (definition of *continuing shareholders*)

Repeal the definition, substitute:

continuing shareholders has the meaning given by sections 175-10, 175-20, 175-25, 175-45, 175-60, 175-65 and 175-85.

48 Subsection 995-1(1)

Insert:

controller (for CGT purposes): an entity is a ***controller (for CGT purposes)*** of a company in the circumstances mentioned in section 140-20.

49 Subsection 995-1(1)

Insert:

convertible note:

(a) a ***convertible note*** of a company has the meaning given by section 82L of the *Income Tax Assessment Act 1936*; and

(b) a ***convertible note*** of a trust or unit trust means a note that has the same or a similar effect in relation to the trust or unit trust.

50 Subsection 995-1(1)

Insert:

cost base of a *CGT asset has the meaning given by Subdivision 110-A.

51 Subsection 995-1(1)

Insert:

Crown lease has the meaning given by section 124-580.

D

52 Subsection 995-1(1)

Insert:

debenture of a company or unit trust includes debenture stock, bonds, notes and any other securities of the company or trust, whether or not constituting a charge on its assets.

53 Subsection 995-1(1)

Insert:

decreased value shares has the meaning given by section 140-15.

54 Subsection 995-1(1)

Insert:

disallow:

(a) a *net capital loss—has the meaning given by section 175-40; or

(b) a *capital loss—has the meaning given by section 175-55.

55 Subsection 995-1(1)

Insert:

discount: *shares in a company or units in a unit trust are issued at a ***discount*** if the amount of the payment the company or trustee receives for the issue is less than the market value of the shares or units at the time of issue. (The payment can include a transfer of property: see section 103-5).

56 Subsection 995-1(1)

Insert:

dispose of a *CGT asset has the meaning given by section 104-10.

57 Subsection 995-1(1)

Insert:

distributable profits of a company has the meaning given by section 317 of the *Income Tax Assessment Act 1936*.

58 Subsection 995-1(1)

Insert:

dwelling has the meaning given by section 118-115.

E

59 Subsection 995-1(1) (definition of *effective life*)

Repeal the definition, substitute:

effective life:

(a) of *plant—has the meaning given by Subdivision 42-C; and

(b) of an item of *intellectual property—has the meaning given by section 373-35; and

(c) of a *horticultural plant—has the meaning given by section 387-175.

60 Subsection 995-1(1)

Insert:

eligible termination payment has the meaning given by Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*.

61 Subsection 995-1(1)

Insert:

employee share scheme: a *share or right is acquired under an ***employee share scheme*** if it is acquired (within the meaning of section 139G of the *Income Tax Assessment Act 1936*) in the way described in section 139C of that Act.

62 Subsection 995-1(1)

Insert:

environmental protection activities has the meaning given by subsection 400-60(1).

63 Subsection 995-1(1) (definition of *excluded loss*)

Repeal the definition, substitute:

excluded loss has the meaning given by sections 175-5 and 175-40.

64 Subsection 995-1(1)

Insert:

exempt entity means:

(a) an entity whose *ordinary income and *statutory income is exempt from income tax because of Division 50; or

(b) an entity whose *ordinary income and *statutory income is exempt from income tax because of any *Commonwealth law other than this Act.

65 Subsection 995-1(1)

Insert:

expenditure on an item of *intellectual property has the meaning given by section 373-30.

F

66 Subsection 995-1(1)

Insert:

firearms surrender arrangements means:

(a) a *Commonwealth law, a *State law or a *Territory law; or

(b) administrative arrangements of a State or Territory;

implementing the agreement arising from the meeting of the Police Ministers held on 10 May 1996 concerning the surrender of prohibited firearms.

67 Subsection 995-1(1)

Insert:

first continuity period has the meaning given by section 165-120.

68 Subsection 995-1(1)

Insert:

foreign government agency means:

(a) the government of a foreign country or of part of a foreign country; or

(b) an authority of the government of a foreign country; or

(c) an authority of the government of part of a foreign country.

G

69 Subsection 995-1(1)

Insert:

general company tax rate has the meaning given by section 160APA of the *Income Tax Assessment Act 1936*.

70 Subsection 995-1(1)

Insert:

general insurance policy means a policy of insurance that is not a *life insurance policy or an *annuity instrument.

71 Subsection 995-1(1)

Insert:

gross averaging amount has the meaning given by section 392-70.

H

72 Subsection 995-1(1)

Insert:

horticultural plant has the meaning given by subsection 387-170(1).

73 Subsection 995-1(1)

Insert:

horticulture has the meaning given by subsection 387-170(3).

74 Subsection 995-1(1)

Insert:

horticulture business has the meaning given by subsection 387-170(2).

I

75 Subsection 995-1(1)

Insert:

improvement threshold has the meaning given by section 108-85.

76 Subsection 995-1(1)

Insert:

incidental costs to acquire a *CGT asset, or that relate to a *CGT event, has the meaning given by section 110-35.

77 Subsection 995-1(1)

Insert:

income unitholding of less than 1% in a unit trust has the meaning given by section 149-135.

78 Subsection 995-1(1)

Insert:

increased value shares has the meaning given by section 140-15.

79 Subsection 995-1(1)

Insert:

indexation factor has the meaning given by section 960-275.

80 Subsection 995-1(1)

Insert:

index number has the meaning given by section 960-280.

81 Subsection 995-1(1) (at the end of the definition of *indirectly*)

Add:

An *ultimate owner ***indirectly*** has a beneficial interest in a *CGT asset of an entity, or in *ordinary income that may be *derived from a *CGT asset of an entity, as described in section 149-15.

82 Subsection 995-1(1) (definition of *injected amount*)

Repeal the definition, substitute:

injected amount has the meaning given by sections 175-10, 175-20 and 175-85.

83 Subsection 995-1(1)

Insert:

intellectual property has the meaning given by section 373-15.

L

84 Subsection 995-1(1)

Insert:

life insurance company means a company registered under the *Life Insurance Act 1995*.

85 Subsection 995-1(1)

Insert:

life insurance entity means:

(a) a *life insurance company; or

(b) an *SGIO.

86 Subsection 995-1(1)

Insert:

life insurance policy means a policy of insurance on the life of an individual.

87 Subsection 995-1(1)

Insert:

listed country has the meaning given by section 320 of the *Income Tax Assessment Act 1936*.

M

88 Subsection 995-1(1)

Insert:

majority underlying interests in a *CGT asset has the meaning given by section 149-15.

89 Subsection 995-1(1)

Insert:

material decrease: there is a ***material decrease*** in the market value of a *decreased value share in the way described in section 140-25.

90 Subsection 995-1(1)

Insert:

material increase: there is a ***material increase*** in the value of an *increased value share in the way described in section 140-65.

91 Subsection 995-1(1)

Insert:

minimum continuity period has the meaning given by section 165-126.

92 Subsection 995-1(1)

Insert:

mining entitlement has the meaning given by subsection 124-710(2).

N

93 Subsection 995-1(1)

Insert:

necessary connection with Australia: a *CGT asset has the ***necessary connection with Australia*** in the way described in section 136-25.

94 Subsection 995-1(1)

Insert:

net asset amount has the meaning given by section 104-95.

95 Subsection 995-1(1)

Insert:

net capital gain has the meaning given by sections 102-5 and 165-111.

Note: For income years before 1998-99, ***net capital gain*** has the meaning given by section 102-20 of the *Income Tax (Transitional Provisions) Act 1997*.

96 Subsection 995-1(1)

Insert:

net capital loss has the meaning given by sections 102-10 and 165-114.

97 Subsection 995-1(1)

Insert:

net value means:

(a) for an entity—the amount by which the sum of the market values of the assets of the entity exceeds the sum of its liabilities; or

(b) for a *business—the amount by which the sum of the market values of the assets of the business (including goodwill) exceeds the sum of its liabilities.

98 Subsection 995-1(1)

Insert:

non-primary production deductions has the meaning given by subsection 392-85(3).

99 Subsection 995-1(1)

Insert:

non-primary production shade-out amount has the meaning given by subsections 392-90(2) and (3).

100 Subsection 995-1(1)

Insert:

notional net capital gain has the meaning given by section 165-108.

101 Subsection 995-1(1)

Insert:

notional net capital loss has the meaning given by section 165-108.

O

102 Subsection 995-1(1)

Insert:

ownership interest in land or a *dwelling has the meaning given by section 118-130.

103 Subsection 995-1(1)

Insert:

ownership period of a *dwelling has the meaning given by section 118-125.

104 Subsection 995-1(1) (definition of *ownership test period*)

Repeal the definition, substitute:

ownership test period has the meaning given by sections 165-12, 165-37 and 165-123.

P

105 Subsection 995-1(1)

Insert:

partial realisation of an item of *intellectual property has the meaning given by section 373-45.

106 Subsection 995-1(1)

Insert:

passes: a *CGT asset ***passes*** to a beneficiary in an individual's estate in the way described in section 128-20.

107 Subsection 995-1(1)

Insert:

performing artist has the meaning given by subsections 405-25(2) and (3).

108 Subsection 995-1(1)

Insert:

permanent establishment has the meaning given by subsection 6(1) of the *Income Tax Assessment Act 1936*.

109 Subsection 995-1(1)

Insert:

personal use asset has the meaning given by section 108-20.

110 Subsection 995-1(1)

Insert:

pooled superannuation trust means a pooled superannuation trust within the meaning of section 48 of the *Superannuation Industry (Supervision) Act 1993*.

111 Subsection 995-1(1)

Insert:

primary production deductions has the meaning given by subsection 392-80(3).

112 Subsection 995-1(1)

Insert:

precluded asset has the meaning given by subsection 122-25(2).

113 Subsection 995-1(1)

Insert:

pre-CGT asset has the meaning given by section 149-10.

114 Subsection 995-1(1)

Insert:

production associate has the meaning given by subsection 405-25(4).

115 Subsection 995-1(1)

Insert:

professional year 1 has the meaning given by subsection 405-50(3).

116 Subsection 995-1(1)

Insert:

professional year 2 has the meaning given by subsection 405-50(4).

117 Subsection 995-1(1)

Insert:

professional year 3 has the meaning given by subsection 405-50(4).

118 Subsection 995-1(1)

Insert:

professional year 4 has the meaning given by subsection 405-50(4).

119 Subsection 995-1(1)

Insert:

prospecting entitlement has the meaning given by subsection 124-710(1).

120 Subsection 995-1(1)

Insert:

publicly traded unit trust has the meaning given by section 149-50.

121 Subsection 995-1(1) (at the end of note 1 to the definition of *purpose of producing assessable income*)

Add:

- section 400-100 (about using property for environmental impact assessment of your project or for environmental protection activities).

Q

122 Subsection 995-1(1)

Insert:

qualifying right has the meaning given by section 139CD of the *Income Tax Assessment Act 1936*.

123 Subsection 995-1(1)

Insert:

qualifying share has the meaning given by section 139CD of the *Income Tax Assessment Act 1936*.

R

124 Subsection 995-1(1)

Insert:

reduced cost base of a *CGT asset has the meaning given by Subdivision 110-B.

125 Subsection 995-1(1)

Insert:

reduced net asset amount has the meaning given by section 104-100.

126 Subsection 995-1(1)

Insert:

registered organisation has the meaning given by subsection 116E(1) of the *Income Tax Assessment Act 1936*.

127 Subsection 995-1(1)

Insert:

related business has the meaning given by subsections 118-250(3) and (4).

128 Subsection 995-1(1)

Insert:

replacement-asset roll-over: a ***replacement-asset roll-over*** allows you to defer the making of a *capital gain or a *capital loss from one *CGT event until a later CGT event happens where your ownership of one CGT asset ends and you *acquire another one. The ***replacement-asset roll-overs*** are listed in section 112-115.

129 Subsection 995-1(1)

Insert:

resident trust for CGT purposes: a trust is a ***resident trust for CGT purposes*** for an income year if, at any time during the income year:

(a) for a trust that is not a unit trust, the trustee is an Australian resident or the central management and control of the trust is in Australia; or

(b) for a unit trust, one of the requirements in column 2 and one of the requirements in column 3 of this table are satisfied.

Requirements for unit trust		
Item	**One of these requirements is satisfied**	**And also one of these**
1	Any property of the trust is situated in Australia	The central management and control of the trust is in Australia
2	The trust carries on a *business in Australia	Australian residents held more than 50% of the beneficial interests in the income or property of the trust

130 Subsection 995-1(1)

Insert:

RSA has the meaning given by the *Retirement Savings Accounts Act 1997*.

S

131 Subsection 995-1(1) (definition of *same business test period*)

Repeal the definition, substitute:

same business test period has the meaning given by sections 165-13, 165-15, 165-35, 165-40, 165-45, 165-126, 165-129, 165-132, 166-5, 166-20 and 166-40.

132 Subsection 995-1(1)

Insert:

second continuity period has the meaning given by section 165-110.

133 Subsection 995-1(1)

Insert:

same-asset roll-over: a ***same asset roll-over*** allows you to disregard a *capital gain or *capital loss you make from:

(a) *disposing of a *CGT asset to another entity; or

(b) entering into an agreement with another entity that constitutes CGT event B1; or

(c) creating a CGT asset in another entity.

The ***same-asset roll-overs*** are listed in section 112-150.

134 Subsection 995-1(1)

Insert:

SGIO has the meaning given by subsection 6(1) of the *Income Tax Assessment Act 1936* .

135 Subsection 995-1(1)

Insert:

share value shift has the meaning given by section 140-15.

136 Subsection 995-1(1)

Insert:

shift proceeds has the meaning given by sections 140-55 and 140-90.

137 Subsection 995-1(1)

Insert:

special professional has the meaning given by subsection 405-25(1).

138 Subsection 995-1(1)

Insert:

sporting competition has the meaning given by subsection 405-25(7).

139 Subsection 995-1(1)

Insert:

sportsperson has the meaning given by subsection 405-25(6).

140 Subsection 995-1(1)

Insert:

starting day has the meaning given by section 149-60.

141 Subsection 995-1(1)

Insert:

statutory licence has the meaning given by section 124-140.

142 Subsection 995-1(1)

Insert:

stratum unit has the meaning given by section 124-190.

143 Subsection 995-1(1)

Insert:

subsidiary: the expression ***100% subsidiary*** has the meaning given by section 975-505.

T

144 Subsection 995-1(1)

Insert:

taxable non-primary production income has the meaning given by subsection 392-85(1).

145 Subsection 995-1(1)

Insert:

taxable primary production income has the meaning given by subsection 392-80(1).

146 Subsection 995-1(1)

Insert:

taxable professional income has the meaning given by subsection 405-45(1).

147 Subsection 995-1(1)

Insert:

tax advantaged business of a *registered organisation has the meaning given by subsection 116GC(2) of the *Income Tax Assessment Act 1936*.

148 Subsection 995-1(1)

Insert:

tax advantaged insurance fund of a *life insurance entity has the meaning given by subsection 111B(2) of the *Income Tax Assessment Act 1936*.

149 Subsection 995-1(1) (after table item 1A in the definition of *termination value*)

Insert:

1B	Intellectual property	section 373-70

150 Subsection 995-1(1)

Insert:

test day has the meaning given by section 149-55.

151 Subsection 995-1(1) (definition of *test period*)

Repeal the definition, substitute:

test period has the meaning given by sections 166-5, 166-20 and 166-40.

152 Subsection 995-1(1) (definition of *test time*)

Repeal the definition, substitute:

test time has the meaning given by sections 165-13, 165-15, 165-35, 165-40, 165-45, 165-126, 165-129, 165-132, 166-5, 166-20 and 166-40.

153 Subsection 995-1(1)

Insert:

total share value increase of a *share value shift has the meaning given by section 140-25.

154 Subsection 995-1(1)

Insert:

traditional security has the meaning given by section 26BB of the *Income Tax Assessment Act 1936*.

U

155 Subsection 995-1(1)

Insert:

ultimate owner has the meaning given by section 149-15.

156 Subsection 995-1(1)

Insert:

unlisted country has the meaning given by section 320 of the *Income Tax Assessment Act 1936*.

157 Subsection 995-1(1) (definition of *unrecouped expenditure*)

Repeal the definition, substitute:

unrecouped expenditure: for the purposes of a particular *capital allowance, ***unrecouped expenditure*** has the meaning given by the provision shown in this table:

Meaning of *unrecouped expenditure*

Item	For this capital allowance:	See:
1	Intellectual property	section 373-25
2	Mining and quarrying: development and operation of a mine or quarry	section 330-105

W

158 Subsection 995-1(1) (after table item 1A in the definition of *written down value*)

Insert:

1B	Intellectual property	section 373-75

Y

159 Subsection 995-1(1)

Insert:

your earning activity has the meaning given by subsection 400-60(3).

[*Minister's second reading speech made in –*
House of Representatives on 27 November 1997
Senate on 13 May 1998]

(225/97)