Taxation Laws Amendment Act (No. 4) 1999

No. 94, 1999

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An Act to amend the law relating to taxation, and for related purposes

Contents

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[*Assented to 16 July 1999*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Taxation Laws Amendment Act (No. 4) 1999*.

2 Commencement

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

(2) Schedule 2 commences just after Schedule 1.

(3) Part 2 of Schedule 3 commences just after Part 1 of Schedule 3.

3 Schedules

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment made before the commencement of this section for the purposes of giving effect to this Act.

Schedule 1—Income tax deductions for gifts

Income Tax Assessment Act 1997

1 Subsection 30-20(2) (table item 1.2.1)

Omit “Australian”, substitute “Royal Australian and New Zealand”.

2 Subsection 30-25(2) (at the end of the table)

Add:

2.2.17	The Australian Council of Christians and Jews	the gift must be made after 6 December 1998
2.2.18	the Sir William Tyree Foundation of The Australian Industry Group	the gift must be made after 28 February 1999

3 Subsection 30-45(2) (at the end of the table)

Add:

4.2.15	The Business Against Domestic Violence Reserve	the gift must be made after 22 April 1998

4 Subsection 30-50(2) (table item dealing with Australian National Korean War Memorial Trust Fund)

Omit “2 September 1998”, substitute “2 September 1999”.

5 Subsection 30-50(2) (table item dealing with The National Nurses’ Memorial Trust)

Renumber the item as 5.2.7

6 Subsection 30-50(2) (at the end of the table)

Add:

5.2.8	Mount Macedon Memorial Cross Restoration, Development and Maintenance Trust Fund	the gift must be made after 8 February 1998 and before 9 February 1999

7 Subsection 30-55(2) (table item 6.2.6)

Omit "the Victoria Conservation Trust", substitute "Trust for Nature (Victoria)".

8 Subsection 30-70(1)

Omit "marriage guidance", substitute "or providing marriage education under the *Marriage Act 1961*, or family and child mediation or family and child counselling under the *Family Law Act 1975*".

9 Subsection 30-70(2) (at the end of the table)

Add:

8.2.2	the Stolen Children's Support Fund	the gift must be made after 28 February 1999

10 Subsection 30-75(1)

Omit "declared by the Attorney-General to be a marriage guidance organisation", substitute "approved by the Attorney-General under section 9C of the *Marriage Act 1961* or section 13A or 13B of the *Family Law Act 1975*".

Note: The heading to section 30-75 is altered by omitting "**guidance**" and substituting "**education and family and child mediation and counselling**".

11 Subsections 30-75(2) and (3)

Repeal the subsections.

12 Subsection 30-80(2) (at the end of the table)

Add:

9.2.4	Australian American Education Leadership Foundation Limited	the gift must be made after 26 January 1998

9.2.5	Sydney Talmudical College Association Refugees Overseas Aid Fund	the gift must be made after 29 January 1998
9.2.6	United Israel Appeal Refugee Relief Fund Limited	the gift must be made after 29 January 1998
9.2.7	the Asia Society AustralAsia Centre	the gift must be made after 6 December 1998

13 Subsection 30-100(2) (at the end of the table)

Add:

12.2.3	The Centenary of Federation Trust Fund	the gift must be made after 26 November 1998 and before 1 July 2001

14 After section 30-100

Insert:

Other recipients

30-105 Other recipients

This table sets out specific other recipients.

Other recipients—specific		
Item	**Fund, authority or institution**	**Special conditions**
13.2.1	St Patrick's Cathedral Parramatta Rebuilding Fund	the gift must be made after 24 February 1998 and before 25 February 2000

15 Subsection 30-315(2) (after table item 9)

Insert:

9AA	Asia Society AustralAsia Centre	item 9.2.7

16 Subsection 30-315(2) (after table item 13)

Insert:

13A	Australian American Education Leadership Foundation Limited	item 9.2.4

17 Subsection 30-315(2) (table item 18)

Repeal the item.

18 Subsection 30-315(2) (after table item 20)

Insert:

20A	Australian Council of Christians and Jews	item 2.2.17

19 Subsection 30-315(2) (after table item 28)

Insert:

28A	Business Against Domestic Violence Reserve	item 4.2.15
28B	Centenary of Federation Trust Fund	item 12.2.3

20 Subsection 30-315(2) (after table item 48)

Insert:

48A	Family and child mediation and counselling	item 8.1.1

21 Subsection 30-315(2) (table item 70)

Omit "guidance", substitute "education".

22 Subsection 30-315(2) (before table item 73)

Insert:

72B	Mount Macedon Memorial Cross Restoration, Development and Maintenance Trust Fund	item 5.2.8

23 Subsection 30-315(2) (after table item 74)

Insert:

74A	National Nurses' Memorial Trust	item 5.2.7

24 Subsection 30-315(2) (after table item 97)

Insert:

97A	Royal Australian and New Zealand College of Obstetricians and Gynaecologists	item 1.2.1

25 Subsection 30-315(2) (after table item 111)

Insert:

111A	Sir William Tyree Foundation of The Australian Industry Group	item 2.2.18

26 Subsection 30-315(2) (after table item 112)

Insert:

112A	Stolen Children's Support Fund	item 8.2.2
112B	St Patrick's Cathedral Parramatta Rebuilding Fund	item 13.2.1
112C	Sydney Talmudical College Association Refugees Overseas Aid Fund	item 9.2.5

27 Subsection 30-315(2) (after table item 116)

Insert:

116A	Trust for Nature (Victoria)	item 6.2.6

28 Subsection 30-315(2) (after table item 118)

Insert:

118A	United Israel Appeal Refugee Relief Fund Limited	item 9.2.6

29 Subsection 30-315(2) (table item 122)

Repeal the item.

30 Application of amendments

The amendments made by items 8, 10 and 11 apply to gifts made on or after the day on which this Act receives the Royal Assent.

Schedule 2—Katherine District Business Re-establishment Fund

Part 1—Deductibility of gifts

Income Tax Assessment Act 1997

1 Subsection 30-45(2) (at the end of the table)

Add:

4.2.16	Katherine District Business Re-establishment Fund	none

2 Subsection 30-315(2) (after table item 64)

Insert:

64A	Katherine District Business Re-establishment Fund	item 4.2.16

Part 2—Exemption of income etc. from fund

3 Exemption of grants paid from fund

Any amount of ordinary income or statutory income that is paid directly to an entity by way of grant to the entity from the Katherine District Business Re-establishment Fund is exempt from tax under the *Income Tax Assessment Act 1997*.

Note: This exemption does not apply to amounts paid to a third party.

4 Amounts are excluded exempt income

Income that is exempt under item 3 is excluded exempt income for the purposes of the *Income Tax Assessment Act 1997*.

Note: Subsection 36-20(3) of the *Income Tax Assessment Act 1997* contains the general definition of excluded exempt income.

5 No capital gain to arise as a result of grant

Nothing in Part IIIA of the *Income Tax Assessment Act 1936* operates to deem a capital gain to have accrued to a taxpayer where the relevant disposal related to a right to receive a grant from the Katherine District Business Re-establishment Fund.

6 Application

This Part applies only in relation to assessments for the 1997-98 income year.

Schedule 3—Majority underlying interests in pre-CGT assets held by public entities

Part 1—Commissioner's power to disregard tracing rules

Income Tax Assessment Act 1936

1 Section 160ZZSJ (note)

Repeal the note.

2 Section 160ZZSQ

Repeal the section.

3 Application

The repeals made by items 1 and 2 apply to a public entity if the test time (within the meaning of Division 20 of Part IIIA of the *Income Tax Assessment Act 1936*) was on or after 20 January 1997.

Income Tax Assessment Act 1997

4 Subsection 149-105(3) (note)

Repeal the note.

5 Section 149-140

Repeal the section.

6 Application

The repeals made by items 4 and 5 apply to assessments for the 1998-99 income year and later income years.

Part 2—How changes in majority underlying interests are determined

Income Tax Assessment Act 1997

7 Subsection 149-55(1)

Omit "examine its records to make a determination", substitute "give the Commissioner written evidence".

Note: The heading to section 149-55 is altered by omitting "**determine periodically**" and substituting "**give the Commissioner evidence periodically as to**".

8 Subsection 149-55(1)

Omit "making the determination", substitute "doing so".

9 After subsection 149-55(1)

Insert:

(1A) The evidence must be given in a form that makes the information about those interests readily apparent.

(1B) The only consequences of failing to give the evidence are those set out in section 149-70. It is not an offence to fail to give the evidence.

10 Before paragraph 149-55(2)(a)

Insert:

(aa) 30 June 1999;

11 Paragraph 149-55(2)(a)

Omit "20 January 1997", substitute "30 June 1999".

12 Before subsection 149-60(1)

Insert:

(1A) To avoid the consequences in section 149-70, the following condition must be complied with.

13 Subsection 149-60(1)

Omit "The determination must show whether,", substitute "On the basis solely of the evidence given to the Commissioner under subsection 149-55(1), the Commissioner must be satisfied that, or think it reasonable to assume that,".

Note: The heading to section 149-60 is altered by omitting "**determination**" and substituting "**evidence**".

14 Paragraph 149-60(2)(b)

Omit "result in a determination that gives", substitute "allow evidence to be given that enables".

15 Subsection 149-60(3)

Omit "entity cannot identify from examining its records", substitute "evidence does not show".

16 Subsection 149-60(3)

Omit "it must make the determination on the basis", substitute "the evidence must be treated on the assumption".

17 Subsection 149-60(4)

Omit "entity must make the determination", substitute "evidence must be treated".

18 Subsection 149-60(5)

Omit "entity must make the determination on the basis", substitute "evidence must be treated on the assumption".

19 Section 149-65

Repeal the section.

20 Subsection 149-70(1)

Repeal the subsection, substitute:

(1) The asset stops being a *pre-CGT asset if the condition in subsection 149-60(1) is not satisfied.

21 Subsection 149-70(3)

Repeal the subsection.

22 Subsection 149-75(2)

Omit "subsection 149-65(2) or (3) or 149-70(2), as appropriate", substitute "subsection 149-70(2)".

23 Section 149-80

Omit "make a further determination", substitute "give the Commissioner any more evidence".

Note: The heading to section 149-80 is altered by omitting "**further determination**" and substituting "**more evidence**".

24 Subdivisions 149-D and 149-E

Repeal the Subdivisions.

25 Before section 149-165

Insert:

149-162 Subdivision applies only if entity gives sufficient evidence

(1) This Subdivision applies only if, on the basis solely of evidence the entity gives the Commissioner, the Commissioner is satisfied, or thinks it reasonable to assume, that this Subdivision applies to the entity.

(2) The evidence must be given in a form that makes it readily apparent whether this Subdivision applies.

26 Subsection 149-165(1)

Omit "how the entity may determine under section 149-60", substitute "the treatment of evidence that an entity gives the Commissioner under section 149-55 as to".

27 Subsection 149-165(2)

Omit "make the determination on the basis", substitute "require the Commissioner to treat the evidence on the assumption".

28 Subsection 149-170(1)

Omit "how the entity (the ***head entity***) may determine under section 149-60", substitute "the treatment of evidence that an entity (the ***head entity***) gives the Commissioner under section 149-55 as to".

29 Subsection 149-170(2)

Omit “make the determination on the basis”, substitute “require the Commissioner to treat the evidence on the assumption”.

30 Subsection 995-1(1) (definition of *capital unitholding of less than 1%*)

Repeal the definition.

31 Subsection 995-1(1) (definition of *income unitholding of less than 1%*)

Repeal the definition.

32 Application

The amendments made by this Part apply to a public entity if the test time (within the meaning of Division 149 of the *Income Tax Assessment Act 1997*) is on or after 30 June 1999.

Part 3—Which companies are covered

Income Tax Assessment Act 1997

33 Paragraph 149-50(1)(e)

After “beneficially owned”, insert “, whether directly, or indirectly through one or more interposed entities,”.

34 Paragraph 149-50(1)(f)

Repeal the paragraph.

35 Paragraph 149-55(2)(b)

Omit “paragraph 149-50(1)(a), (e) or (f)”, substitute “paragraph 149-50(1)(a) or (e)”.

36 Paragraph 149-55(2)(d)

After “beneficially owned”, insert “, whether directly, or indirectly through one or more interposed entities, by one or more of the following”.

37 Subparagraph 149-55(2)(d)(i)

Omit “by”.

38 Subparagraph 149-55(2)(d)(i)

Omit “or”.

39 Subparagraph 149-55(2)(d)(ii)

Omit “by”.

40 Paragraph 149-55(2)(e)

Repeal the paragraph.

41 Paragraphs 149-165(1)(b) and 149-170(1)(b)

Omit “paragraph 149-50(1)(a), (e) or (f)”, substitute “paragraph 149-50(1)(a) or (e)”.

42 Application

The amendments made by this Part apply to CGT assets so far as they are held on or after 11 March 1999.

Schedule 4—Beneficiary rebate for CDEP wages

Income Tax Assessment Act 1936

1 Subsection 160AAA(1) (after paragraph (b) of the definition of *rebatable benefit*)

Insert:

(c) paid as a wage to a participant in a project under the Community Development Employment Projects program from the wages component of a grant made under the program; or

2 Application

The amendment made by item 1 applies to payments made on or after 1 July 1998.

Schedule 5—Small business provisions and value shifting between companies

Part 1—Income Tax Assessment Act 1997: new Divisions

1 At the end of Division 118

Add:

Subdivision 118-F—Small business retirement exemption

Guide to Subdivision 118-F

118-400 What this Subdivision is about

> You can choose to disregard a capital gain from a CGT event happening to a CGT asset of your small business if the capital proceeds from the event are used in connection with your retirement.
>
> There is a lifetime limit of $500,000 for all choices that can be made in respect of an individual under this Subdivision.
>
> You must offset net capital losses first.

Table of sections

[This is the end of the Guide.]

Choosing the exemption

118-405 Choosing the exemption

Individual

(1) If you are an individual, you can choose to disregard all or part of a *capital gain from a *CGT event that happens in relation to a *CGT asset in an income year (the ***retirement year***) if:

(a) the CGT event would have resulted (apart from this Subdivision) in a *capital gain; and

(b) the asset or assets are not *shares in a company or units in a unit trust; and

(c) all of the*capital proceeds from the CGT event are received within the period starting one year before, and ending 2 years after, the time of the event; and

(d) the maximum net asset value requirements in section 118-440 are satisfied; and

(e) the requirement that the asset be an *active asset in section 118-445 is satisfied; and

(f) you did not choose to obtain a roll-over under Division 123 (the small business roll-over) for the CGT event; and

(g) if you were under 55 just before the time of the CGT event—an amount equal to the *eligible termination payment referred to in subsection 118-415(2) is rolled over (within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*) except by being paid as mentioned in paragraph 27A(12)(c) of that Act.

Note 1: Section 103-25 tells you when the choice must be made.

Note 2: Paragraph 27A(12)(c) of the *Income Tax Assessment Act 1936* deals with payments to life companies or registered organisations to purchase certain annuities.

(2) If all or part of the *capital proceeds from the *CGT event is an obligation to pay money or to do some other thing, paragraph (1)(c) applies as if those capital proceeds (or that part of them) were received when the money was paid or the thing was done.

Company or trust

(3) A company or a trust (except one precluded by subsection (4)) can also choose to disregard such an amount if:

(a) the requirements in paragraphs (1)(a) to (f) are satisfied; and

(b) there was a *controlling individual of the company or trust just before the time of the *CGT event; and

(c) the company or trust requirements in section 118-450 are satisfied.

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

(4) These entities cannot make the choice:

(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 these entities:

(i) a company covered by paragraph (a);

(ii) a *mutual insurance company;

(iii) a *mutual affiliate company;

(iv) a *publicly traded unit trust.

118-410 Meaning of *controlling individual*

Companies

(1) An individual is a ***controlling individual*** of a company at a time if, at that time:

(a) the individual is an employee of the company within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (disregarding subsection 12(11) of that Act); and

(b) the individual holds all the legal and equitable interests in *shares, other than *redeemable shares, that carry (between them) the right to exercise at least 50% of the voting power in the company and receive at least 50% of any *dividend the company may pay and of any distribution of capital the company may make.

Note: That Act includes as employees individuals:

- who are entitled to payment as members of the executive body of the company (whether described as the board of directors or otherwise); or
- who work for the company under a contract that is wholly or mainly for labour; or
- who are paid by the company to perform or present, or to participate in the performance or presentation of, any music, play, dance, entertainment, sport, display or promotional activity or a similar activity.

Trusts

(2) An individual is a ***controlling individual*** of a trust (where entities have entitlements to all the income and capital of the trust) at a time if, at that time:

(a) the individual is an employee of the trust within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (disregarding subsection 12(11) of that Act); and

(b) the individual is entitled (for the individual's own benefit) to at least 50% of the income and capital of the trust.

(3) An individual is a ***controlling individual*** of a trust (where entities do not have entitlements to all the income and capital of the trust) at a time (the ***control test time***) if:

(a) at the control test time, the individual is an employee of the trust within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (disregarding subsection 12(11) of that Act); and

(b) during the income year applicable under subsection (4):

(i) the trust made a distribution of income or capital, or both; and

(ii) the individual was entitled (for the individual's own benefit) to at least 50% of each distribution of income made by the trust; and

(iii) the individual was entitled (for the individual's own benefit) to at least 50% of each distribution of capital made by the trust.

(4) The income year referred to in paragraph (3)(b) is:

(a) if the control test time is in the retirement year—the income year just before the retirement year; or

(b) if the control test time is in another income year—that other income year.

Consequences of the exemption

118-415 Consequences of choice

Consequences in all cases

(1) If the individual, company or trust makes the choice referred to in section 118-405 for any part of the *capital gain from the *CGT asset:

(a) that part of the capital gain equal to its *CGT exempt amount is disregarded; and

(b) there can be no roll-over for the *CGT event; and

(c) the exemptions in Subdivision 118-B (main residence) and Subdivision 118-C (goodwill) do not apply to the *CGT event.

Additional consequence for an individual

(2) This Act applies to you as if the *capital proceeds from the *CGT event (to the extent of the asset's *CGT exempt amount) were an *eligible termination payment made to you at the later of:

(a) when you made the choice; or

(b) when you received the amount.

Note: For the rules about eligible termination payments, see Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*.

(3) In working out those *capital proceeds, disregard the market value substitution rule (see section 116-30).

(4) The amount of that *eligible termination payment is, for the purposes of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*, a CGT exempt component.

Additional consequences for a company or trust

(5) Any *eligible termination payment or part of one the company or trust makes to comply with section 118-450:
   (a) is, for the purposes of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*, a CGT exempt component; and
   (b) cannot be deducted from the company's or trust's assessable income.

Working out the CGT exempt amount

118-420 First step—apply net capital losses to reduce capital gains

(1) This section applies if you have *net capital losses of earlier income years (for the 1995-96 income year or later years) that would, apart from this Subdivision and if you had sufficient *capital gains, be applied in working out whether you have a *net capital gain for the retirement year.

(2) Apply those *net capital losses (in the order in which they were made) in reducing the *capital gains you made from the *CGT events to which you chose to apply this Subdivision.

(3) Reduce the *capital gains in the order in which you made the choices.

Example: Glenn has net capital losses from previous income years of $200 and $300 (made in that order). Glenn chooses to apply this Subdivision for the sale of assets A, B and C (for which he made capital gains of $200, $400 and $700).

The capital gain from asset A is reduced to nil by the $200 loss. The $300 loss is then applied to the gain from asset B, reducing it to $100. Glenn then has a maximum of $100 for asset B and $700 for asset C to choose as CGT exempt amounts.

(4) A *net capital loss of a company is not applied under subsection (2) if the company would be prevented from applying it in working out its net capital gain for the year by Subdivision 165-CA or because the Commissioner disallowed it under Subdivision 175-CA.

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.

(5) This section is to be applied in reduction of *net capital losses before Division 102 or 123.

118-425 Second step—choose the amount to disregard

(1) For each of the *CGT assets that has an amount of remaining *capital gain after applying section 118-420, you can choose to disregard all or part of that remaining capital gain.

Note 1: You make capital gains equal to any remaining parts that you do not choose to disregard.

Note 2: Section 103-25 tells you when the choice must be made.

(2) However, the choice must be made in a way that ensures that:

(a) for an individual—your *CGT retirement exemption limit is not exceeded; or

(b) for a company or trust—the CGT retirement exemption limit of the *controlling individual for whom the choice is made is not exceeded.

(3) The amount chosen for the asset is its ***CGT exempt amount***.

(4) The *CGT exempt amount must be specified in writing.

(5) If a company or trust is making the choice and it has 2 *controlling individuals, it must specify in writing the percentage of each *CGT asset's *CGT exempt amount that is attributable to each individual. One of the percentages may be nil, but they must add up to 100%.

Example: Daryl is a controlling individual of a company. The company specifies 90% for Daryl under subsection (5) (which means that the percentage specified for the other controlling individual must be 10%). Daryl's retirement exemption limit is $500,000.

To determine whether subsection (2) is complied with, Daryl would take 90% of the asset's CGT exempt amount, add that to amounts previously specified in choices made by or for him under this Subdivision and see whether the total exceeds $500,000.

Note: Subsections (4) and (5) are exceptions to the general rule about choices in section 103-25.

118-430 Third step—reduction if individual not controlling individual throughout ownership of asset

(1) The *CGT exempt amount of a *CGT asset of a company or trust is reduced if:

(a) there was only one *controlling individual of the company or trust just before the time of the *CGT event; and

(b) the individual was not a controlling individual of the company or trust at some time in:

(i) the period starting at the start of the 1992-93 income year; or

(ii) the period starting at the time when the company or trust *acquired the asset;

and ending just before the time of the CGT event.

(2) The amount of the reduction is:

$$\text{Asset's } {}^{*}\text{CGT exempt amount} \times \frac{\begin{array}{c}\text{Days in period when individual}\\ \text{was not a } {}^{*}\text{controlling individual}\\ \text{of the company or trust}\end{array}}{\text{Days in period}}$$

using whichever of the periods specified in paragraph (1)(b) gives you the lesser reduction.

Example: A company acquires a CGT asset on 1 July 1986 and sells it on 30 June 1998 (12 years later). The asset's CGT exempt amount is $300.

Debbie was a controlling individual of the company:

- at the time of the disposal; and
- from 1 July 1987 to 30 June 1992; and
- from 1 July 1997 to 30 June 1998.

Because Debbie was not a controlling individual for the full period of ownership, the asset's CGT exempt amount must be reduced. The amount of the reduction is the lesser of:

- taking into account the period starting at the start of the 1992-93 income year (see subparagraph (1)(b)(i)), the reduction is:

$$\$300 \times \frac{1{,}826}{2{,}192} = \$250$$

- taking into account the full period of ownership (see subparagraph (1)(b)(ii)), the reduction is:

$$\$300 \times \frac{2,192}{4,383} = \$150$$

The amount of the reduction is $150, leaving a CGT exempt amount of $150.

(3) The *CGT exempt amount of a *CGT asset of a company or trust is reduced if:

(a) there were 2 *controlling individuals of the company or trust just before the time of the *CGT event; and

(b) at least one of them was not a controlling individual of the company or trust at some time in:

(i) the period starting at the start of the 1992-93 income year; or

(ii) the period starting on the day when the company or trust *acquired the asset;

and ending just before the time of the CGT event.

(4) The amount of the reduction (for that individual) is the amount worked out using the formula in subsection (2) multiplied by the individual's percentage (see subsection 118-425(5)) of the asset's *CGT exempt amount.

118-435 Meaning of *CGT retirement exemption limit*

(1) An individual's ***CGT retirement exemption limit*** at a time is $500,000 reduced by the *CGT exempt amounts of *CGT assets specified in choices previously made by or for the individual under this Subdivision.

(2) If the individual was one of 2 *controlling individuals of a company or trust that made a choice for the individual, only the individual's percentage (see subsection 118-425(5)) of the assets' *CGT exempt amounts is taken into account under subsection (1) for that choice.

Requirements

118-440 Common requirement—maximum net asset value

Just before the time of the *CGT event:

(a) the sum of these amounts must not exceed $5,000,000:
  (i) the *net value of the CGT assets of the relevant entity;
  (ii) the net value of the CGT assets of any entities *connected with the relevant entity;
  (iii) if a *small business CGT affiliate of the relevant entity is a partner in a partnership (except one that is an entity connected with the relevant entity), the affiliate's share of the net value of the CGT assets of the partnership;
  (iv) if the relevant entity chooses to obtain the retirement exemption for land or a building that is an *active asset because of subsection 123-80(2) and the asset qualified for the exemption because it was being used, or held ready for use, in the course of carrying on a business by a small business CGT affiliate of the relevant entity—the net value of the CGT assets of the affiliate; and

(b) if the relevant entity is a partner in a partnership and the CGT event happens in relation to a *CGT asset of the partnership, the net value of the CGT assets of the partnership must not exceed $5,000,000.

118-445 Common requirement—active assets

The *CGT asset (or each CGT asset) must have been an *active asset during at least half of the period it was owned by the entity and either:

(a) an active asset just before the time of the *CGT event; or

(b) if it was not an active asset just before that time:
  (i) the relevant *business must have ceased to be carried on not earlier than 12 months before that time; and
  (ii) it was an active asset just before the business ceased to be carried on.

118-450 Company or trust requirements

(1) The company or trust must make an *eligible termination payment in relation to its *controlling individual or each of its controlling individuals for each *CGT event happening in relation to a *CGT asset for which it makes a choice under this Subdivision.

(2) The payment must be made by the later of:

(a) 7 days after it makes the choice; or

(b) 7 days after it receives an amount of *capital proceeds from the *CGT event.

(3) If all or part of the *capital proceeds from the *CGT event is an obligation to pay money or to do some other thing, paragraph (2)(b) applies as if those capital proceeds (or that part of them) were received when the money was paid or the thing was done.

(4) In working out those *capital proceeds, disregard the market value substitution rule (see section 116-30).

(5) The amount of the *eligible termination payment, or the sum of the amounts of the eligible termination payments, required to be made under subsection (1) must be equal to the lesser of:

(a) the amount of *capital proceeds received; or

(b) the *CGT asset's *CGT exempt amount.

(6) If there are 2 *controlling individuals, the amount of each *eligible termination payment under this section is to be worked out by reference to each individual's percentage (see subsection 118-425(5)) of the *CGT asset's *CGT exempt amount.

(7) If this section requires the company or trust to make 2 or more *eligible termination payments to an individual (whether or not by the same time), the company or trust may meet that requirement by making one payment or by making separate payments.

(8) For a *controlling individual who was under 55 just before the time of the *CGT event—an amount equal to the *eligible termination payment must be rolled over (within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*) except by being paid as mentioned in paragraph 27A(12)(c) of that Act.

Note: Paragraph 27A(12)(c) of the *Income Tax Assessment Act 1936* deals with payments to life companies or registered organisations to purchase certain annuities.

2 Section 122-205 (link note)

Repeal the link note, substitute:

Division 123—Small business roll-over

Guide to Division 123

123-1 What this Division is about

> A small-business roll-over allows you to defer the making of a capital gain from a CGT event happening in relation to one or more small business assets if you acquire replacement assets.

Table of sections

123-5 Basic principles for the small business roll-over

(1) You can choose to obtain a roll-over if:

(a) a CGT event happens in relation to a CGT asset; and

(b) the event would have resulted in you making a capital gain; and

(c) but for the roll-over, you would have had a net capital gain for the income year.

(2) The asset must be:

(a) an active asset; or

(b) a share in a company or a unit in a unit trust, where you are a controlling individual of the company or unit trust.

(3) You must acquire a replacement asset within the period from one year before to 2 years after the happening of the last CGT event in the income year for which you obtain the small business roll-over.

(4) The form of the roll-over is that any capital gain that you would have made from the CGT event and which remains after being offset against capital losses is disregarded to the extent that it does not exceed the cost base of the replacement asset.

(5) You cannot disregard a capital gain that you would have made from the CGT event happening to assets that are not goodwill if the replacement asset is goodwill.

(6) There is a limit of $5,000,000 on the maximum net value of the assets that you and entities connected with you can own.

(7) You will make a capital gain if a CGT event subsequently happens to the replacement asset or if its status changes in particular ways.

[This is the end of the Guide.]

When you can obtain the roll-over

123-10 When you can obtain the roll-over

You can choose to obtain a roll-over if:

(a) a *CGT event (the ***trigger event***) happens in an income year (the ***roll-over year***) in relation to one or more *CGT assets (the ***original asset***) that you own; and

(b) the original asset satisfies the requirements set out in section 123-65; and

(c) the trigger event would have resulted (apart from the roll-over) in you making a *capital gain (the ***notional capital gain***); and

(d) you would have a *net capital gain for the roll-over year (apart from the roll-over); and

(e) the maximum net asset value requirements set out in section 123-50 are satisfied; and

(f) not later than 2 years after the last trigger event during the roll-over year for which you choose a small business roll-over, you choose one or more CGT assets as replacements (the ***replacement asset***); and

(g) the replacement asset satisfies the requirements set out in section 123-75; and

(h) you did not choose to disregard all or part of the capital gain from the trigger event under Subdivision 118-F.

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

Note 2: Paragraph (f) is an exception to the general rule about choices in section 103-25.

What the roll-over consists of

123-15 What the roll-over consists of

If you choose the roll-over for the trigger event happening in relation to the original asset, so much of the notional capital gain (reduced under sections 123-20 and 123-25) as does not exceed the total of the first and second elements of the *cost base of the replacement asset (worked out under section 123-30, 123-35 or 123-40) is disregarded.

Note: If there is an amount of the notional capital gain that cannot be so disregarded, you make a capital gain equal to that amount.

123-20 Limit on notional capital gain for shares or units

(1) If the notional capital gain from a trigger event happening in relation to a *share in a company or a unit in a unit trust is *more* than the amount worked out using this formula, it is reduced by the excess:

$$\text{Unrealised net capital gain from *active assets} \times \frac{\text{Market value of *share or unit}}{\text{Total of market values of all *shares in the company or units in the unit trust}}$$

where:

unrealised net capital gain from active assets is the total of the *capital gains, less any *capital losses, that would be made by the company or trust at the time of the trigger event if all of the *CGT assets of the company or trust that:

(a) were *active assets at that time, or had ceased to be active assets because of the cessation of a *business of the company or trust not earlier than 12 months before that time; and

(b) had been active assets during more than half of the period in which they were owned by the company or were assets of the trust;

were *disposed of for their market values at that time.

(2) In calculating the unrealised net capital gain from *active assets, disregard any *CGT asset that had been chosen by the company or trust as a replacement asset for the purposes of this Division and that was *acquired by the company or trustee less than 5 years before the trigger event happened in relation to the *share or unit.

123-25 Reducing notional capital gain for capital losses

(1) If you have any *capital losses of the roll-over year or *net capital losses of earlier income years, you apply them:

(a) first, by deducting any capital losses of the roll-over year from your notional capital gain (or notional capital gains) remaining after applying section 123-20; and

(b) then, by deducting net capital losses of the 1995-96 income year or later years, in the order in which they were incurred, from your remaining notional capital gain (or notional capital gains).

(2) A *capital loss of a company is not applied under subsection (1) if:

(a) it was required to calculate its *net capital loss of the roll-over year under Subdivision 165-CB; or

(b) the Commissioner has disallowed the capital loss under Subdivision 175-CB.

Note: Subdivision 165-CB deals with the consequences of a company changing ownership or control and not satisfying the same business test. Subdivision 175-CB deals with using a company's capital losses to avoid income tax.

(3) A *net capital loss of a company is not applied under subsection (1) if the company would be prevented from applying it in working out its net capital gain for the year by Subdivision 165-CA or because the Commissioner disallowed it under Subdivision 175-CA.

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.

(4) If you have notional capital gains from a trigger event happening in relation to both goodwill, and *CGT assets other than goodwill, the *capital losses and *net capital losses are applied under subsection (1):

(a) first to the notional capital gains from assets other than goodwill; and

(b) then to the notional capital gains from goodwill.

123-30 If all replacement assets are goodwill

If your replacement asset or assets consist of goodwill only, any remaining notional capital gain that is from goodwill is disregarded to the extent of the first and second elements of the *cost bases of the replacement assets (at the time when you *acquired them).

123-35 If no replacement asset is goodwill

If none of your replacement assets is goodwill, any remaining notional capital gain is disregarded to the extent of the first and second elements of the *cost bases of the replacement assets (at the time when you *acquired them).

Note: In this case, it is irrelevant whether the notional capital gains are from goodwill or from other assets.

123-40 If replacement assets consist of goodwill and other assets

Replacement assets that are goodwill

(1) Any remaining notional capital gain that is from goodwill is disregarded to the extent of the first and second elements of the

*cost bases of the replacement assets that are goodwill (at the time you *acquired them).

Note: You cannot disregard any notional capital gain that is from assets other than goodwill against the cost bases of replacement assets that are goodwill.

Replacement assets that are not goodwill

(2) Any remaining notional capital gain, including from goodwill, is disregarded to the extent of the first and second elements of the *cost bases of those replacement assets that are not goodwill (at the time you *acquired them).

123-45 Limit where replacement asset is a share or unit

Despite section 123-35 and subsection 123-40(2), if a replacement asset is a *share in a company or a unit in a unit trust, the amount of notional capital gain that can be measured against its *cost base cannot exceed:

$$\begin{array}{c}\text{Total market value of}\\ {}^{*}\text{active assets of the}\\ \text{company or trust}\end{array} \times \frac{\text{Market value of } {}^{*}\text{share or unit}}{\begin{array}{c}\text{Total of market values of all } {}^{*}\text{shares in}\\ \text{the company of units in the unit trust}\end{array}}$$

at the time of the *acquisition of the share or unit.

Conditions for the roll-over

123-50 Maximum net asset value requirements

(1) Just before the time of the trigger event:
- (a) the sum of these amounts must not exceed $5,000,000:
  - (i) the *net value of the CGT assets of yours;
  - (ii) the net value of the CGT assets of any entities *connected with you;
  - (iii) if a *small business CGT affiliate of yours is a partner in a partnership (except one that is an entity connected with you), the affiliate’s share of the net value of the CGT assets of the partnership;
  - (iv) if you choose to obtain the roll-over for land or a building that is an *active asset because of subsection 123-80(2) and the asset qualified for the roll-over

because it was being used, or held ready for use, in the course of carrying on a *business by a small business CGT affiliate of yours—the net value of the CGT assets of the affiliate; and

(b) if you are a partner in a partnership and the trigger event happens in relation to a *CGT asset of the partnership, the net value of the CGT assets of the partnership must not exceed $5,000,000.

(2) The ***net value of the CGT assets*** of an entity is the amount (if any) by which the sum of the market values of those assets exceeds the sum of the liabilities of the entity that are related to them.

(3) In working out the ***net value of the CGT assets*** of an entity:

(a) disregard *shares, units or other interests (except debt) in another entity that is *connected with the first-mentioned entity; and

(b) if the entity is an individual, disregard:

(i) assets being used solely for the personal use and enjoyment of the entity, or the entity's *small business CGT affiliate; and

(ii) a right to, or to any part of, any allowance, annuity or capital amount payable out of a *superannuation fund or an *approved deposit fund; and

(iii) a right to, or to any part of, an asset of a superannuation fund or of an approved deposit fund; and

(iv) a *life insurance policy.

123-55 Meaning of *small business CGT affiliate*

(1) A person is your ***small business CGT affiliate*** if:

(a) you are an individual and the person is your spouse or child under 18 years; or

(b) the person acts, or could reasonably be expected to act, in accordance with your directions or wishes, or in concert with you.

(2) Another partner in a partnership in which you are a partner is not your ***small business CGT affiliate*** only because the partner acts, or could reasonably be expected to act, in concert with you.

123-60 Meaning of *connected with* you

(1) An entity is ***connected with*** you if:

(a) you control the entity in the way described in this section; or

(b) the entity controls you in that way; or

(c) you and the entity are each controlled in that way by the same entity.

Control of entity: 50% or more of rights

(2) An entity (the ***first entity***) controls another entity if the first entity, its *small business CGT affiliates or the first entity together with its small business CGT affiliates:

(a) beneficially own, or have the right to acquire the beneficial ownership of, interests in the other entity that carry between them the right to receive at least 50% of any distribution of income or capital by the other entity; or

(b) if the other entity is a company—beneficially own, or have the right to acquire beneficial ownership of, shares in the company that carry between them the right to exercise, or control the exercise of, at least 50% of the voting power in the company; or

(c) if the other entity is a discretionary trust:

(i) not being the Public Trustee of a State or Territory, are the trustee or trustees of the trust; or

(ii) have the power to determine the manner in which the trustee or trustees of the trust exercise the power to make any payment of income or capital to or for the benefit of beneficiaries of the trust.

Exception for trusts

(3) Paragraph (2)(c) does not apply if:

(a) the trust referred to in that paragraph is the entity wishing to choose the roll-over; and

(b) a beneficiary of the trust controls the trust in the way described in this section; and

(c) that beneficiary is not a *small business CGT affiliate of that trust or of a person who has the power of determination referred to in subparagraph (2)(c)(ii).

Control of entity: at least 40% but less than 50% of rights

(4) An entity (the ***first entity***) also controls another entity if the first entity, its *small business CGT affiliates or the first entity together with its small business CGT affiliates:

(a) beneficially own, or have the right to acquire the beneficial ownership of, interests in the other entity that carry between them the right to receive at least 40%, but less than 50%, of any distribution of income or capital by the other entity; or

(b) if the other entity is a company—beneficially own, or have the right to acquire beneficial ownership of, *shares in the company that carry between them the right to exercise, or control the exercise of, at least 40%, but less than 50%, of the voting power in the company;

unless the Commissioner is satisfied, or thinks it reasonable to assume, that the other entity is controlled by an entity other than, or by entities that do not include, the first entity or any of its small business CGT affiliates.

Control of discretionary trust

(5) If the trustee or trustees of a discretionary trust have the power to pay to, or apply for the benefit of, an entity any income or capital of the trust, this section applies to the entity as if the entity beneficially owned interests in any distribution of income or capital of the trust equal to the maximum percentage of the income or capital that the trustee is empowered to pay to, or apply for the benefit of, the entity.

(6) Subsection (5) does not apply to the entity if the entity is one of these (a ***public entity***):

(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;

and the trustee or trustees have the power referred to in that subsection only because another beneficiary of the trust has an interest in the entity.

Indirect control of entity

(7) This section applies to an entity that directly controls a second entity as if it also controlled any other entity that is directly, or indirectly by any other application or applications of this section, controlled by the second entity.

(8) However, if an entity (the ***first entity***) controls a public entity, this section does not, merely because of subsection (7), apply to the first entity as if it controlled any other entity that is controlled by the public entity.

123-65 Original asset requirements

(1) If the original asset is neither a *share in a company nor a unit in a unit trust, it must have been an *active asset during at least half of the period you owned it and either:

(a) an active asset just before the time of the trigger event; or

(b) if it was not an active asset just before that time:

(i) the relevant *business must have ceased to be carried on not earlier than 12 months before that time; and

(ii) it was an active asset just before the business ceased to be carried on.

(2) If the original asset is a *share in a company:

(a) you must be a *controlling individual of that company just before the time of the trigger event; and

(b) the company must be a *private company and an Australian resident at that time.

(3) If the original asset is a unit in a unit trust:

(a) you must be a *controlling individual of that trust just before the time of the trigger event; and

(b) the unit trust must not be a *publicly traded unit trust but must be a *resident trust for CGT purposes for the income year in which the trigger event happens.

(4) If the original asset was a replacement asset under a previous application to you of this Division, you must have *acquired the original asset more than 5 years before the time of the trigger event.

123-70 Meaning of *controlling individual*

Companies

(1) An individual is a ***controlling individual*** of a company at a time if, at that time, the individual:

(a) is a director of the company; and

(b) is an employee of the company within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (disregarding subsection 12(11) of that Act; and

(c) holds all the legal and equitable interests in *shares, other than *redeemable shares, that carry (between them) the right to exercise at least 50% of the voting power in the company and receive at least 50% of any *dividend the company may pay and of any distribution of capital the company may make.

Note: That Act includes as employees individuals:

- who are entitled to payment as members of the executive body of the company (whether described as the board of directors or otherwise);
- who work for the company under a contract that is wholly or mainly for labour;
- who are paid by the company to perform or present, or to participate in the performance or presentation of, any music, play, dance, entertainment, sport, display or promotional activity or a similar activity.

(2) Despite subsection (1), if an individual chooses a *share in a company as a replacement asset and the individual does not satisfy the requirements in paragraph (1)(a) at that time, that does not prevent the individual from being a ***controlling individual*** of the company from that time if the individual satisfies those requirements within 3 months of making the choice.

Unit trusts

(3) An individual is a ***controlling individual*** of a unit trust at a time if, at that time:

(a) the individual is an employee of the trust within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (disregarding subsection 12(11) of that Act; and

(b) the individual is beneficially entitled to at least 50% of the income and capital of the trust.

(4) Despite subsection (3), if an individual chooses a unit in a unit trust as a replacement asset and the individual does not satisfy the requirements of paragraph (3)(a) at that time, that does not prevent the individual from being a ***controlling individual*** of the trust from that time if the individual satisfies those requirements within 3 months of making the choice.

123-75 Replacement asset requirements

(1) To be eligible to be a replacement asset, you must *acquire it during the period starting one year before and ending 2 years after the happening of the last CGT event in the income year for which you obtain the small business roll-over.

(2) A replacement asset must be:

(a) a *share in a company or a unit in a unit trust; or

(b) an *active asset when it is *acquired or an active asset by the end of 2 years after the last trigger event during the roll-over year for which you choose a small business roll-over.

Note: If a replacement asset is an active asset and its status subsequently changes, you may make a capital gain: see section 104-185 (CGT event J2). Special rules apply if you die: see section 123-85.

(3) If a replacement asset is a *share in a company:

(a) you, or an entity *connected with you, must be a *controlling individual of the company just after you *acquire the share; and

(b) the company must be a *private company and an Australian resident when you acquire the share; and

(c) the total of the market values of the *active assets of the company at the time you acquire the share must be 80% or more of the market value of all of the assets of the company at that time.

Example: Joseph owns 50% of the shares in Company A and Company B, and is a director and employee of both companies. He is therefore a *controlling individual* of the companies (see section 123-70). The companies are *connected with* Joseph (see section 123-60) because he controls both of them.

Company A owns land which it leases to Joseph for use in a business. It sells the land at a profit and buys shares in Company B.

The replacement asset test is satisfied because Joseph is *connected with* Company A and is a *controlling individual* of Company B.

Note: If a replacement asset is a share in a company and the status of the company changes, or you or an entity connected with you ceases to be its controlling individual, you may make a capital gain: see section 104-190 (CGT event J3). Special rules apply if you die: see section 123-85.

(4) If a replacement asset is a unit in a unit trust:

(a) you, or an entity *connected with you, must be a *controlling individual of the trust just after you *acquire the unit; and

(b) the unit trust must not be a *publicly traded unit trust but must be a *resident trust for CGT purposes for the income year in which you acquire the unit; and

(c) the total of the market values of the *active assets of the trust at the time you acquire the unit must be 80% or more of the market value of all of the assets of the trust at that time.

Note: If a replacement asset is a unit in a unit trust and the status of the unit trust changes or you cease to be its controlling individual, you may make a capital gain: see section 104-190 (CGT event J3). Special rules apply if you die: see section 123-85.

(5) You cannot choose goodwill as a replacement asset unless you have a notional capital gain that is from the trigger event happening in relation to goodwill.

123-80 Meaning of *active asset*

(1) A *CGT asset is an ***active asset*** if you own it and:

(a) you use it, or hold it ready for use, in the course of carrying on a *business; or

(b) it is an intangible asset that is inherently connected with a business you carry on (for example, goodwill or the benefit of a restrictive covenant).

(2) A *CGT asset is also an ***active asset*** for a trigger event that happens after 13 August 1998 if:

(a) it is land or a building that you own; and

(b) it is used, or held ready for use, in the course of carrying on a business by an entity that is *connected with you or is your *small business CGT affiliate.

(3) Subsection 392-20(1) is disregarded in determining, for the purposes of subsection (1) or (2), whether an entity is carrying on a *business.

Note: You would be taken to be carrying on a primary production business under subsection 392-20(1) if the business is carried on by a trust and you are presently entitled to trust income.

Exceptions

(4) However, these *CGT assets cannot be ***active assets***:

(a) interests in an entity that is *connected with you;

(b) *shares in companies;

(c) interests in trusts;

(d) financial instruments (such as loans, debentures, bonds, promissory notes, futures contracts, forward contracts, currency swap contracts and a right or option in respect of a share, security, loan or contract);

(e) an asset whose main use in the course of carrying on the *business referred to in subsection (1) or (2) is to derive interest, an annuity, rent, royalties or foreign exchange gains unless:

(i) the asset is an intangible asset and has been substantially developed, altered or improved by you so that its market value has been substantially enhanced; or

(ii) its main use for deriving rent was only temporary.

Consequences of death

123-85 Rules where an individual who has obtained a roll-over dies

(1) If a replacement asset that formed part of the estate of an individual who has died has devolved to the deceased's *legal personal representative; and:

(a) the status of the replacement asset did not change in any of the ways covered by subsection 104-185(1) while the deceased owned it; or

(b) if the replacement asset is a *share in a company or a unit in a unit trust, the circumstances of the company or unit trust did not change in any of the ways covered by section 104-190 while the share or unit was in the hands of the deceased individual;

then, for the purposes of this Division, anything done or not done by the deceased in relation to the asset is treated as though it had been done or not done by the legal personal representative.

(2) If the replacement asset has passed to a beneficiary of the deceased individual, and:

(a) the status of the replacement asset did not change in any of the ways covered by subsection 104-185(1) while the deceased owned it; or

(b) if the replacement asset is a *share in a company or a unit in a unit trust, the circumstances of the company or unit trust did not change in any of the ways covered by subsection 104-190(1) while the share or unit was in the hands of the deceased individual or the deceased's *legal personal representative;

then, for the purposes of this Division, anything done or not done by the deceased or by the deceased's legal personal representative in relation to the asset is treated as though it had been done or not done by the beneficiary.

3 After Division 136

Insert:

Division 138—Value shifts between companies under common ownership

Table of Subdivisions

Guide to Division 138

138-1 What this Division is about

> The capacity of companies under common ownership to shift assets between them for less than market value (or, in some cases, cost base) can bring forward capital losses or defer capital gains so as to create tax deferral benefits for the owners.
>
> This Division is designed to prevent such a deferral.

138-3 More about this Division

Value shifts can occur if a company transfers an asset to, or creates an asset in, another company for less than the asset's market value (or, in some cases, cost base) where the companies are ultimately owned by the same individuals in the same proportions (common ownership). This will:

- reduce the market value of shares (and other interests) in the company transferring or creating the asset by the extent of the shift in market value; and
- increase the market value of shares in the other company.

Value shifts do not alter the underlying economic position of the common owners. However, they can allow the common owners to create a capital loss (for example, by selling the shares in the company from which the value is shifted) while creating an unrealised capital gain in the company to which the value is shifted.

Further, if the common ownership of the company from which the value is shifted is held through one or more other companies, the value of the shares (and other interests) in those other companies would also be reduced. Consequently, a sale of their shares would also generate capital losses, even though the underlying economic position of the common owners remains unchanged.

This Division is designed to prevent these outcomes by:

- reducing the cost bases of shares (and other interests) in the company transferring or creating the asset and in any company or trust interposed between it and the common owners; and
- increasing the cost bases of shares in the other company and any company or trust interposed between it and the common owners.

This Division only adjusts the cost bases of CGT assets acquired *on or after* 20 September 1985.

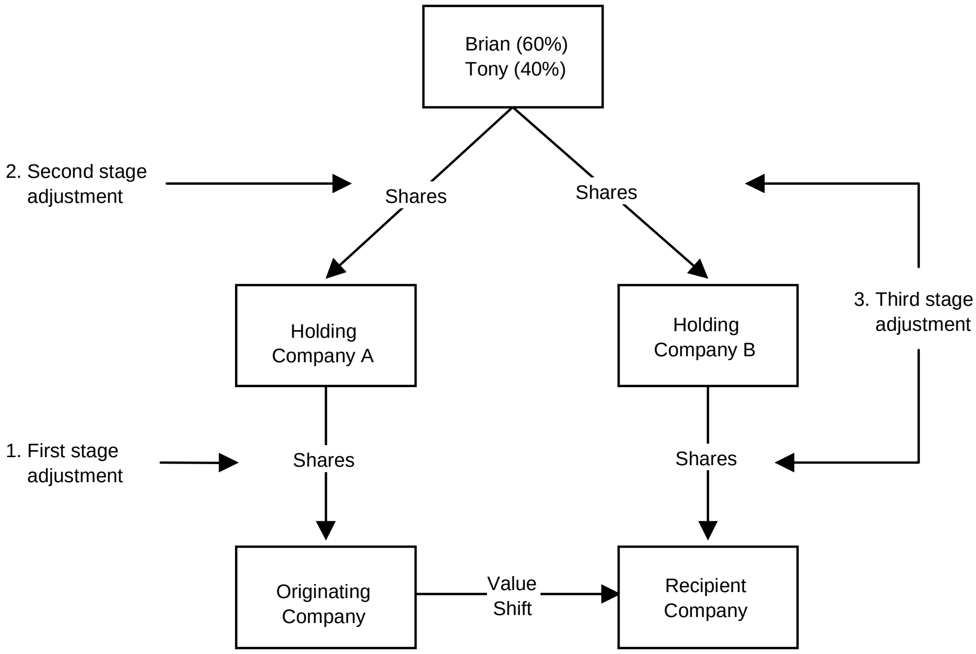
You can choose to group certain assets so that you make only one reduction for all assets in a group, rather than treating each asset separately.

138-5 Maps showing the operation of this Division

Diagram 1: a 3-stage adjustment process

There is a 3-stage adjustment process to the cost bases of shares (and in some cases loans) if:

- an originating company disposes of an asset to, or creates an asset in, a recipient company for undervalue (through one of the CGT events specified in section 138-15); and
- both companies are under common ownership: they are ultimately owned by the same individuals in the same proportions.



First stage: reduce the cost bases of the shares (and loans) in the originating company: see Diagram 2.

Second stage: reduce the cost bases of the *indirect* interests in shares (and loans) in the originating company: see Subdivision 138-G.

Third stage: increase the cost bases of the *direct and indirect* interests in shares in the recipient company: see Subdivision 138-H.

Diagram 2: reducing the cost bases of the direct interests in the originating company

For transferred assets, the outcome depends on whether you choose to group them or treat them separately. Created assets are treated separately.

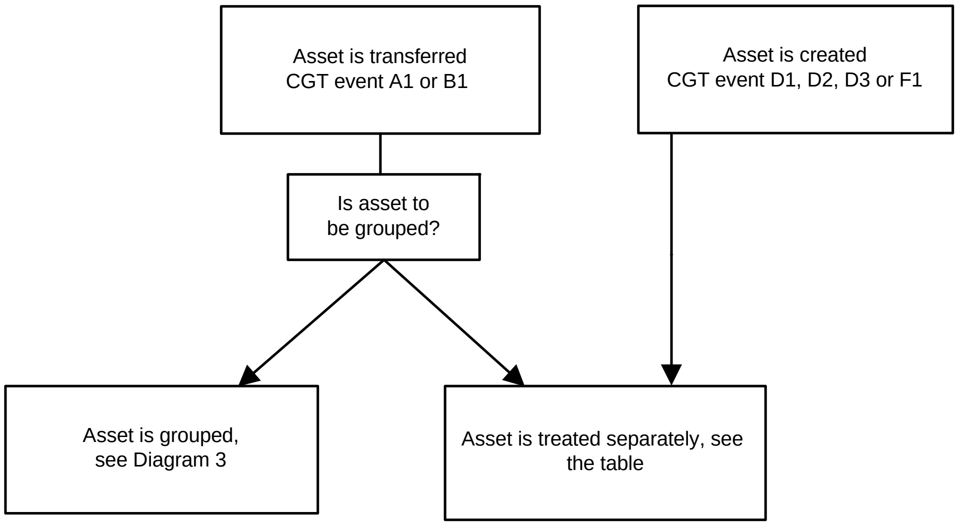


Diagram 3: asset is grouped

There are 3 groups of assets. The group to which an asset is allocated determines under which Subdivision the relevant cost bases are reduced.

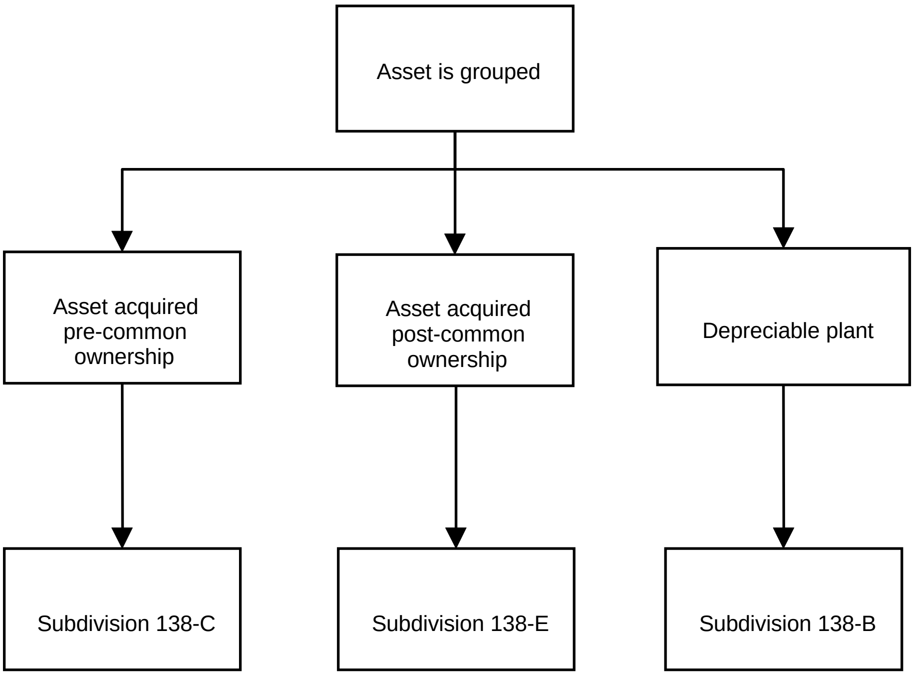


Table: asset is treated separately

The kind of asset, and the time when it was acquired in relation to the common ownership time, determines under which Subdivision the relevant cost bases are reduced.

Applicable provision where asset is treated separately		
Item	**For this kind of asset:**	**The relevant Subdivision is:**
1	Depreciable plant	Subdivision 138-B
2.1	Pre-common ownership asset, acquired pre-CGT	Subdivision 138-C

Applicable provision where asset is treated separately		
Item	**For this kind of asset:**	**The relevant Subdivision is:**
2.2	Pre-common ownership asset, acquired post-CGT	Subdivision 138-C
3.1	Post-common ownership asset, acquired pre-CGT	Subdivision 138-D
3.2	Post-common ownership asset, acquired post-CGT	Subdivision 138-E
4	Created asset	Subdivision 138-E

Note 1: If depreciable plant is outside the scope of Subdivision 138-B (for example, because it is a building: see subsection 138-85(1)), Subdivision 138-C, 138-D or 138-E may apply.

Note 2: If there is no reduction under Subdivision 138-C, a reduction may be required under Subdivision 138-E (for post-CGT assets).

[This is the end of the Guide.]

Subdivision 138-A—Application of Division

Table of sections

138-15 When this Division may affect you

(1) You only have to make an adjustment if:

(a) a company (the ***originating company***) does an act constituting one of the *CGT events specified in the table in subsection (4) (the ***trigger event***) and involving another company (the ***recipient company***); and

(b) the companies are *under common ownership at the time of the event; and

(c) you have a *share in, a loan to or an indirect interest in the originating company or a share or an indirect interest in a share in the recipient company (that you *acquired *on or after* 20 September 1985); and

(d) there is a shift in value from the originating company to the recipient company as a result of the trigger event.

(2) 2 companies are ***under common ownership*** if:

(a) they are members of the same *wholly-owned group; or

(b) after tracing the direct and indirect ownership of the *shares in each of the companies (through any interposed companies and trusts) to the individuals who ultimately hold it, that ownership is held by the same individuals in the same proportions.

(3) In doing the tracing, ignore *shares whose *dividends can reasonably be regarded as being equivalent to the payment of interest on a loan having regard to:

(a) the way in which the dividends are calculated; and

(b) the conditions applying to the payment of the dividends; and

(c) any other relevant matters.

(4) The *CGT events are:

Relevant *CGT events

Event No.	Description	See section:
A1	The originating company *disposes of a *CGT asset to the recipient company	104-10
B1	The originating company enters an agreement with the recipient company for the right to the use and enjoyment of a *CGT asset	104-15
D1	The originating company creates contractual or other rights in the recipient company	104-35
D2	The originating company grants an option to the recipient company	104-40
D3	The originating company grants a right to income from mining to the recipient company	104-45
F1	The originating company grants a lease to the recipient company	104-110

(5) *CGT event B1 is not a trigger event if title in the *CGT asset does not pass to the recipient company when the agreement ends.

(6) All reductions to *cost bases and *reduced cost bases of direct interests in the originating company are to be made at the time of the trigger event.

Note: Cost base adjustments of indirect interests in the originating company, and of direct and indirect interests in the recipient company, are only made when a CGT event subsequent to the trigger event happens in relation to those interests.

138-20 Exceptions

(1) You do not have to make an adjustment in any of these cases:

(a) the recipient company is a *100% subsidiary of the originating company;

(b) the trigger event involves a distribution to shareholders of the originating company in the course of winding it up, and the company is dissolved within 3 years after the winding up started, or the Commissioner allows a further time for the company to be dissolved;

(c) the trigger event happens in relation to a *car, or a motor cycle or similar vehicle.

(2) You do not have to make an adjustment if the originating company receives *capital proceeds equal to:

(a) the market value (at the time of the *CGT event) of the *CGT asset it transfers or creates; or

(b) the sum of the market values of the CGT assets in the group.

Note: There are other circumstances in which you do not have to make an adjustment because of the amount received by the originating company. For example:

- no adjustment is required under Subdivision 138-B if the asset is transferred for its residual value or in the range between market value and residual value if market value is greater.
- no adjustment is required under Subdivision 138-C if an asset is transferred for its indexed common ownership market value.
- no adjustment is required under Subdivision 138-E if an asset is transferred for the lesser of its market value and its cost base.

138-30 Market value substitution rule not to apply

In working out the *capital proceeds from a *CGT event (for this Division), disregard section 116-30 (the market value substitution rule).

Subdivision 138-B—Value shifts involving plant: reductions of direct interests

Guide to Subdivision 138-B

138-80 What this Subdivision does

> The cost bases of shares in and loans to the originating company are reduced where CGT event A1 or B1 happens in relation to certain plant and the capital proceeds are less than the plant's residual value.
>
> It does not matter whether the plant was acquired *before* or *after* the companies last came under common ownership, or *before* or *after* 20 September 1985.
>
> If the plant is outside the scope of this Subdivision, Subdivision 138-C, 138-D or 138-E may apply.

Table of sections

Operative provisions

[This is the end of the Guide.]

Operative provisions

138-85 Conditions for this Subdivision to affect you

(1) This Subdivision affects you only if:

(a) the trigger event is *CGT event A1 or B1; and

(b) it involved *plant (that is not a building or structure) for which the originating company has deducted or can deduct an amount for depreciation; and

(c) the market value of the plant (at the time of the trigger event) is equal to or less than 110% of its *residual value (at that time); and

(d) the expenditure incurred by the originating company on its last *acquisition of the plant is less than $1,000,000. (The expenditure can include giving property: see section 103-5.)

(2) You do not make a reduction under this Subdivision if the *capital proceeds from the trigger event are:

(a) equal to the *residual value of the plant at the time of the event; or

(b) if the market value of the plant is more than its residual value at that time—in the range between market value and residual value.

(3) The ***residual value*** of *plant is the lesser of:

(a) its market value; and

(b) the greater of:

(i) its *written down value; and

(ii) the value assigned to it in the books of the originating company.

138-90 Pre-conditions for adjustments to your shares

You make a calculation for a *share in the originating company if you *acquired the share *on or after* 20 September 1985 and owned it at the time of the trigger event.

138-95 Pre-conditions for adjustments to your loans

You make a calculation for a loan to the originating company if:

(a) you *acquired the loan *on or after* 20 September 1985 and owned it at the time of the trigger event; and

(b) either:

(i) you did not deal at arm's length with the originating company in connection with the loan; or

(ii) the value of the loan was reduced as a result of the trigger event; and

(c) either:

(i) the *cost base or *reduced cost base of one or more shares in the originating company is reduced to nil under section 138-100; or

(ii) no shares in the originating company were *acquired *on or after* 20 September 1985 and *before* the time of the trigger event.

138-100 Reduction of cost base—shares

General rule

(1) You work out the reduction in the *cost base and *reduced cost base of each *share described in section 138-90 as at the time just before the trigger event. The reduction is worked out in this way:

$$\frac{\text{Market value of } {}^{*}\text{share}}{\text{Market values of all } {}^{*}\text{shares in originating company}} \times \left[\begin{array}{c}\text{Residual value}\\ \text{of } {}^{*}\text{plant}\end{array} - \begin{array}{c}{}^{*}\text{Capital proceeds}\\ \text{from trigger event}\end{array}\right]$$

Example 1: Company A, which owns all 10 shares in company B, acquires all 10 shares in company C for $20,000 (their market value) on 1 July 1998.

Company C has a post-CGT depreciable asset with a market value and written down value of $20,000.

C transfers the asset to B for nothing on 10 September 1998.

C is the *originating company* and B the *recipient company*. The cost base of each share in C (which is $2,000) is reduced as follows:

$$\$2{,}000 - \left[10\% \times \left(\$20{,}000 - 0\right)\right] = \$0$$

Example 2: The same fact situation except that the written down value and book value (the residual value) of the asset is $18,500.

The cost base of each share in C is reduced as follows:

$$\$2{,}000 - \left[10\% \times \left(\$18{,}500 - 0\right)\right] = \$150$$

Exception

(2) However, you do not reduce the *cost base and *reduced cost base of a *share under subsection (1) if:

(a) at the time of the trigger event, there were 2 or more classes of *shares owned in the originating company; and

(b) it would be unreasonable to reduce the cost base and reduced cost base of a share by as much as would be the case under that subsection.

(3) Instead, you reduce the *cost base and *reduced cost base of the *share by a reasonable amount having regard to:

(a) the circumstances in which you *acquired the share; and

(b) the extent to which its market value was reduced as a result of the trigger event.

138-105 Reduction of cost base—loans

General rule

(1) You work out the reduction in the *cost base and *reduced cost base of each loan described in section 138-95 as at the time just before the trigger event. The reduction is worked out in this way.

Method statement

Step 1. Express the market value of the loan as a fraction of the total market values of all loans to the originating company.

Step 2. If section 138-100 has operated to reduce the *cost base of *shares in the originating company to nil, and the reduction amount exceeds the cost base, multiply the excess by the fraction from Step 1.

Step 3. If section 138-100 has operated to reduce the *reduced cost base of *shares in the originating company to nil, and the reduction amount exceeds the reduced cost base, multiply the excess by the fraction from Step 1.

Step 4. However, if there were no *shares on which section 138-100 could operate, multiply the difference between the *residual value of the *plant and the *capital proceeds from the trigger event by the fraction from Step 1.

Step 5. The result at Step 2 or Step 4 is the amount by which you reduce the *cost base of the loan. The result at Step 3 or Step 4 is the amount by which you reduce the *reduced cost base of the loan.

Exception

(2) However, you do not reduce the *cost base and *reduced cost base of a loan under subsection (1) if:

(a) at the time of the trigger event, you or another entity owned:

(i) a *share in the originating company that you or the other entity *acquired *before* 20 September 1985; or

(ii) another loan to the originating company; and

(b) it would be unreasonable to reduce the cost base and reduced cost base of the loan by as much as would be the case under that subsection.

(3) Instead, you reduce the *cost base and *reduced cost base of the loan by a reasonable amount having regard to:

(a) the circumstances in which you *acquired the loan; and

(b) the extent to which its market value was reduced as a result of the trigger event.

138-110 Grouping option for depreciable plant

You apply this Subdivision (except subsection 138-85(1)) for all of the items of *plant you have allocated to a depreciable plant group as if:

(a) they were a single *CGT asset; and

(b) *CGT event A1 happened in relation to the single asset at the time of the first trigger event for an asset in the group in the income year; and

(c) the *capital proceeds from the trigger event were the sum of the capital proceeds for the *CGT events that happened in relation to all of the items; and

(d) the *residual value of the single asset were the sum of the residual values of all the items.

For allocating assets to a group: see Subdivision 138-F.

Subdivision 138-C—Value shifts involving pre and post-CGT assets acquired before common ownership: reductions of direct interests

Guide to Subdivision 138-C

138-155 What this Subdivision does

> The cost bases of shares in or loans to the originating company are reduced by a reasonable amount where CGT event A1 or B1 happens in relation to CGT assets that were acquired *before* the companies came under common ownership.
>
> This Subdivision does not apply to plant covered by subsection 138-85(1).
>
> If no reduction is made under this Subdivision, a reduction may be required under Subdivision 138-E (for post-CGT assets).

Table of sections

[This is the end of the Guide.]

138-160 Assets acquired *before* common ownership

(1) You reduce the *cost base and *reduced cost base of a *share you have in, or a loan you have to, the originating company under section 138-170 if:

(a) the trigger event is *CGT event A1 or B1; and

(b) you *acquired the share or loan *on or after* 20 September 1985 and owned it at the time of the trigger event; and

(c) the originating company acquired the asset to which the event happened *before* it and the recipient company last came *under common ownership; and

(d) the conditions in subsection (2) are satisfied, or the condition in subsection (3) is satisfied.

Post-CGT assets

(2) The conditions are that:

(a) the originating company *acquired the *CGT asset *on or after* 20 September 1985 (ignoring Division 149 (about when an asset stops being a pre-CGT asset)); and

(b) at the time when the companies last came under common ownership, the sum of the market values of all of the assets of the originating company substantially exceeded the sum of the *cost bases of those assets.

Pre-CGT assets

(3) The condition is that the originating company *acquired the *CGT asset *before* 20 September 1985 (ignoring Division 149).

Note: If no reduction is made under this Subdivision, an adjustment may be required under Subdivision 138-E in relation to an asset acquired *on or after* 20 September 1985 (ignoring Division 149).

Exception

(4) You do not make a reduction under this Subdivision or Subdivision 138-E if the *capital proceeds from the trigger event are:

(a) equal to the *indexed common ownership market value of the *CGT asset at the time of the event; or

(b) if the market value of the asset is more than its indexed common ownership market value at that time—in the range between market value and indexed common ownership market value.

(5) The ***indexed common ownership market value*** of the *CGT asset is the market value of the asset at the last time the originating company and the recipient company came *under common ownership, indexed by reference to the index number for the quarter in which the trigger event happened and the index number

for the quarter in which the originating and recipient companies last came under common ownership.

Note: Subdivision 960-M shows you how to index amounts.

138-165 Subdivision not to apply to certain plant

This Subdivision does not apply to *plant covered by section 138-85(1).

138-170 Adjustment to cost base

If the requirements of section 138-160 are satisfied, you reduce the *cost base and *reduced cost base of the *share or loan by a reasonable amount.

138-175 Deciding what is a reasonable adjustment

(1) In deciding whether a reduction is necessary to the *cost base and reduced cost base of a *share or loan and, if so, what reduction is reasonable, have regard to the matters set out in subsection (2) or the matter set out in subsection (3) (whichever gives you the result you prefer).

(2) The matters are:

(a) the circumstances in which you *acquired the *share or loan; and

(b) the extent to which the market value of the share or loan was reduced as a result of the trigger event; and

(c) the extent (if any) to which what you paid or gave to acquire the share or loan is attributable to the *CGT asset to which the trigger event happened.

(3) The matter is the amount by which the *indexed common ownership market value of the *CGT asset exceeds the amount of the *capital proceeds from the trigger event.

138-180 Grouping option for assets acquired before common ownership

(1) You apply this Subdivision for all the *CGT assets you allocated to a pre-common ownership group as if:

(a) they were a single *CGT asset that was *acquired by the originating company *on or after* 20 September 1985; and

(b) *CGT event A1 had happened in relation to the single asset at the time of the first trigger event for an asset in the group in the income year; and

(c) the *capital proceeds for the trigger event were the sum of the capital proceeds for the CGT events that happened in relation to all of the assets in the group; and

(d) the market value of the single asset were the sum of the market value of each of the assets (as at the time when the originating company and recipient company last came under common ownership).

For allocating assets to a group: see Subdivision 138-F.

(2) In working out what reduction is reasonable for the single asset, you have regard only to the matter set out in subsection 138-175(3).

Subdivision 138-D—Value shifts involving pre-CGT assets acquired after common ownership: reductions of direct interests

Guide to Subdivision 138-D

138-182 What this Subdivision does

> The cost bases of shares in or loans to the originating company are reduced by a reasonable amount where CGT event A1 or B1 happens in relation to pre-CGT assets that were acquired *after* the companies came under common ownership.
>
> This Subdivision does not apply to plant covered by subsection 138-85(1).

Table of sections

[This is the end of the Guide.]

138-185 Pre-CGT asset acquired *after* common ownership

(1) You reduce the *cost base and *reduced cost base of *shares you have in, or loans you have to, the originating company under this section if:

(a) *CGT event A1 or B1 happens in relation to a *CGT asset of the originating company; and

(b) the originating company *acquired the asset *before* 20 September 1985 and *after* the last time it and the recipient company came under common ownership; and

(c) you acquired each share or loan *on or after* 20 September 1985 and owned it at the time of the trigger event.

(2) You reduce the *cost base and *reduced cost base of each *share or loan by the amount (if any) that is reasonable having regard to:

(a) the circumstances in which you *acquired it; and

(b) the extent to which its market value was reduced as a result of the trigger event.

138-190 Subdivision not to apply to certain plant

This Subdivision does not apply to *plant covered by subsection 138-85(1).

Subdivision 138-E—Value shifts involving post-CGT assets: reduction of direct interests

Guide to Subdivision 138-E

138-240 What this Subdivision does

> The cost bases of shares in or loans to the originating company are reduced if the capital proceeds from the trigger event are less than both the cost base of the relevant asset and its market value.
>
> This Subdivision applies to created assets (CGT events D1, D2, D3 and F1) as well as transfers of post-CGT assets.
>
> It does not apply to pre-CGT assets, or to plant covered by subsection 138-85(1).

Table of sections

Operative provisions

[This is the end of the Guide.]

Operative provisions

138-245 Application of Subdivision

(1) There are 3 situations in which you reduce the *cost base and *reduced cost base of *shares you have in, or loans you have to, the originating company under this Subdivision. This table sets them out and the conditions that apply to each situation.

When this Subdivision applies		
Item	**This Subdivision can apply in this situation**	**Conditions**
1	The trigger event is *CGT event A1 or B1 (that happens in relation to the originating company and the recipient company)	(a) the originating company *acquired the asset *on or after* 20 September 1985; and (b) the *capital proceeds from the event are less than both the *cost base of the asset and its market value

When this Subdivision applies		
Item	**This Subdivision can apply in this situation**	**Conditions**
2	The trigger event is *CGT event D1 that happens when the originating company creates a *CGT asset in the recipient company	The *capital proceeds from the event are less than the market value of the asset
3	The trigger event is *CGT event D2, D3 or F1 that happens when the originating company creates a *CGT asset in the recipient company	The *capital proceeds from the event are less than the lesser of the market value of the asset at the time of the event and the expenditure the originating company incurred to create it

Exceptions

(2) You do not reduce the *cost base and *reduced cost base of a *share or loan if:

(a) the *CGT asset to which *CGT event A1 or B1 happens is *plant covered by subsection 138-85(1); or

(b) that cost base and reduced cost base are reduced under Subdivision 138-C.

(3) You do not make a reduction under this Subdivision if the *capital proceeds from *CGT event A1 or B1 are:

(a) equal to the lesser of the *cost base or market value of the *CGT asset at the time of the event; or

(b) if the market value of the asset is more than its cost base at that time—in the range between market value and cost base.

138-250 Pre-conditions for adjustments to your shares

You make a calculation for a *share in the originating company if you *acquired it *on or after* 20 September 1985 and owned it at the time of the trigger event.

138-255 Pre-conditions for adjustments to your loans

You make a calculation for a loan to the originating company if:

(a) you *acquired it *on or after* 20 September 1985 and owned it at the time of the trigger event; and

(b) either:

(i) you did not deal at arm's length with the originating company in connection with the loan; or

(ii) the value of the loan was reduced as a result of the trigger event; and

(c) either:

(i) the *cost base or *reduced cost base of one or more *shares in the originating company is reduced to nil under section 138-265 or 138-270; or

(ii) no shares in the originating company were *acquired *on or after* 20 September 1985 and *before* the time of the trigger event.

138-260 Reduction rules for shares

(1) You work out the reduction in the *cost base and *reduced cost base of each *share as at the time just before the time of the trigger event.

(2) You work out a factor (the ***share reduction factor***) by dividing the market value of the *share by the sum of the market values of all of the shares in the originating company that were *acquired *on or after* 20 September 1985.

138-265 Reduction of cost base of shares

(1) If this Subdivision applies as mentioned in item 1 in the table in subsection 138-245(1), you reduce the *cost base of the *share by the amount worked out in this way:

$$\left[\begin{array}{c}\text{Lesser of } {}^{*}\text{cost base of}\\ {}^{*}\text{CGT asset (just before}\\ \text{time of trigger event) and}\\ \text{its market value (at that time)}\end{array} - \begin{array}{c}{}^{*}\text{Capital proceeds}\\ \text{from trigger event}\end{array}\right] \times \begin{array}{c}\text{Share reduction}\\ \text{factor}\end{array}$$

Note: Item 1 deals with the case where CGT event A1 or B1 happens.

(2) If this Subdivision applies as mentioned in item 2 in the table in subsection 138-245(1), you reduce the *cost base of the *share by the amount worked out in this way:

$$\left[\begin{array}{c}\text{Market value of}\\ \text{*CGT asset created in the recipient}\\ \text{company (at time of trigger event)}\end{array} - \begin{array}{c}\text{*Capital proceeds}\\ \text{from trigger event}\end{array}\right] \times \begin{array}{c}\text{Share reduction}\\ \text{factor}\end{array}$$

Note: Item 2 deals with the case where CGT event D1 happens.

(3) If this Subdivision applies as mentioned in item 3 in the table in subsection 138-245(1), you reduce the *cost base of the *share by the amount worked out in this way:

$$\left[\begin{array}{c}\text{Lesser of market value of}\\ \text{*CGT asset (at time of trigger}\\ \text{event) and expenditure}\\ \text{incurred to create it}\end{array} - \begin{array}{c}\text{*Capital proceeds}\\ \text{from trigger event}\end{array}\right] \times \begin{array}{c}\text{Share reduction}\\ \text{factor}\end{array}$$

Note: Item 3 deals with the case where CGT event D2, D3 or F1 happens.

138-270 Reduction of reduced cost base of shares

For the circumstances set out in subsection 138-265(1), (2) or (3), you work out the reduction in the *reduced cost base in the same way as under that subsection except that you use the *reduced cost base rather than the *cost base.

138-275 Different calculation if more than one class of shares

(1) However, you do not reduce the *cost base or *reduced cost base of a *share under section 138-265 or 138-270 if:

(a) at the time of the trigger event:

(i) there were 2 or more classes of *shares owned in the originating company; or

(ii) you or another entity owned a share in the originating company that you or the other entity *acquired *before* 20 September 1985; and

(b) it would be unreasonable to reduce the *cost base or *reduced cost base of the share by as much as would be the case under that section.

(2) Instead, you reduce the *cost base and *reduced cost base of the *share by a reasonable amount having regard to:

(a) the circumstances in which you *acquired the share; and

(b) the extent to which its market value was reduced as a result of the trigger event.

138-280 Reduction rules for loans

(1) You work out the reduction in the *cost base and *reduced cost base of each loan described in section 138-255 as at the time just before the time of the trigger event.

(2) You work out a factor (the ***loan reduction factor***) by dividing the market value of the loan by the sum of the market values of all of the loans to the originating company that were *acquired *on or after* 20 September 1985.

138-285 Reduction of cost base and reduced cost base of loans

(1) If section 138-265 or 138-270 has operated to reduce the *cost base of one or more *shares in the originating company to nil, and the reduction amount exceeds the cost base, multiply the excess by the loan reduction factor. The result is the reduction in the cost base of the loan.

(2) If section 138-265 or 138-270 has operated to reduce the *reduced cost base of one or more *shares in the originating company to nil, and the reduction amount exceeds the reduced cost base, multiply the excess by the loan reduction factor. The result is the reduction in the reduced cost base of the loan.

(3) However, if there were no shares on which section 138-265 or 138-270 could operate, you reduce the *cost base and *reduced cost base of the loan by the amount worked out in the same way as for sections 138-265 and 138-270, except that you use the loan reduction factor rather than the share reduction factor.

138-295 Different calculation if more than one loan or pre-CGT shares

(1) However, you do not reduce the *cost base or *reduced cost base of a loan under section 138-285 if:

(a) at the time of the trigger event:

(i) you or another entity owned a *share in the originating company that you or the other entity *acquired *before* 20 September 1985; or

(ii) you owned another loan to the originating company; or

(iii) another loan to the originating company was owned by a company that was a member of the same *wholly-owned group at that time or by an individual referred to in paragraph 138-15(2)(b) (about the ultimate owners); and

(b) it would be unreasonable to reduce the cost base or reduced cost base of the loan by as much as would be the case under that section.

(2) Instead, you reduce the *cost base and *reduced cost base of the loan by a reasonable amount having regard to:

(a) the circumstances in which you *acquired the loan; and

(b) the extent to which its market value was reduced as a result of the trigger event.

138-300 Grouping option for post-common ownership assets

(1) You apply this Subdivision for all of the *CGT assets you allocated to a post-common ownership group as if:

(a) they were a single *CGT asset that was *acquired by the originating company *on or after* 20 September 1985; and

(b) *CGT event A1 happened in relation to the single asset at the time of the first trigger event for an asset in the group in the income year; and

(c) the *capital proceeds for the trigger event were the sum of the capital proceeds for the CGT events that happened in relation to all of the assets in the group.

For allocating assets to a group: see Subdivision 138-F.

(2) In applying a provision of this Subdivision to the single asset that requires using the lesser of the *cost base or *reduced cost base of the asset and its market value, you make the calculation by adding together the lesser amount for each asset in the group.

(3) You work out the market value, *cost base and *reduced cost base of each asset in the group at the time of the first trigger event.

Subdivision 138-F—Grouping of assets

Guide to Subdivision 138-F

138-350 What this Subdivision does

> Grouping CGT assets provides a simplified method of applying this Division to 2 or more assets in relation to which CGT event A1 or B1 happens in the same income year.
>
> Grouping may result in no reduction being required and in some cases it will result in a lesser reduction. You may also choose to group certain assets for convenience.
>
> This Subdivision shows you how to group assets and sets out the rules for allocating assets to particular groups.

Table of sections

Operative provisions

[This is the end of the Guide.]

Operative provisions

138-355 Choosing to allocate assets to a group

You can choose to allocate *CGT assets to a group so that this Division applies once to all the CGT assets in the group.

Note 1: Sections 138-110, 138-180 and 138-300 show you how to make adjustments for CGT events happening to grouped assets.

Note 2: Section 103-25 tells you when you have to make the choice.

138-360 3 different groups

There are 3 different groups to which *CGT assets may be allocated:

- a depreciable *plant group;
- a pre-common ownership group;
- a post-common ownership group.

138-365 Conditions for allocating assets to a group

(1) There are some common conditions that apply to any allocation of a *CGT asset to a group.

(2) These are:

(a) *CGT event A1 or B1 happened to the asset (involving the originating and recipient companies) in the same income year of the originating company that CGT event A1 or B1 (involving those companies) happened to each other asset in the group; and

(b) the expenditure incurred by the originating company on its last *acquisition of the asset was less than $1,000,000; and

(c) the asset is not land, a building or a structure.

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

(3) An additional condition for allocating a *CGT asset to a depreciable *plant group is that the asset is *plant for which the originating company has deducted or can deduct an amount for depreciation.

(4) An additional condition for allocating a *CGT asset to a pre-common ownership group is that the *CGT asset was *acquired by the originating company *before* the time when it and the recipient company last came under common ownership.

(5) Additional conditions for allocating a *CGT asset to a post-common ownership group are:

(a) the *CGT asset was *acquired by the originating company *on or after* the time when it and the recipient company last came under common ownership; and

(b) the *CGT asset was last acquired by the originating company *on or after* 20 September 1985.

138-370 Condition for applying this Division to depreciable plant group

There is an additional condition that must be satisfied before you can apply this Division to a depreciable *plant group. The sum of the market values of the assets in the group must not be more than 110% of the sum of those residual values.

138-375 Shares or loans created after CGT event

(1) The modifications in subsection (2) have effect if:

(a) *CGT event A1 or B1 happened (involving the originating and recipient companies) to a *CGT asset of the originating company in the same income year of the originating company that CGT event A1 or B1 (involving those companies) happened to one or more other CGT assets of the originating company; and

(b) you allocate those assets to the same group; and

(c) a *share in (except a share issued to replace a share that is cancelled), or loan to, the originating company came into existence *after* the time of the first of those CGT events and *before* the time of the last of them.

(2) Sections 138-110, 138-180 and 138-300 have effect as if:

(a) the *share or loan had been in existence just *before* the time of the first *CGT event; and

(b) it had all the same attributes then as it had when it came into existence.

Note: Those sections show you how to make adjustments for CGT events happening to grouped assets.

Subdivision 138-G—Reductions of indirect interests in the originating company

Guide to Subdivision 138-G

138-420 What this Subdivision does

This is the second stage in the adjustment process. It reduces the cost bases of indirect interests in shares in or loans to the originating company by a reasonable amount having regard to the decrease in their value resulting from the trigger event.

Table of sections

[This is the end of the Guide.]

138-425 Reduction of cost base of indirect interests in originating company

(1) You reduce the *cost base and *reduced cost base of a *CGT asset you own if:

(a) because of owning the asset, you have an indirect interest (through one or more interposed companies or trusts) in a *share in or a loan to the originating company; and

(b) you owned the asset at the time of the trigger event; and

(c) a *CGT event happens in relation to the asset; and

(d) you *acquired the CGT asset *on or after* 20 September 1985.

(2) The amount of the reduction is such amount as is reasonable having regard to the reduction in the value of the *CGT asset as a result of the trigger event.

138-430 When adjustment under this Subdivision not required

You do not make an adjustment under this Subdivision unless Subdivision 138-B, 138-C, 138-D or 138-E applies to the trigger event.

Subdivision 138-H—Increases in direct and indirect interests in recipient company

Guide to Subdivision 138-H

138-433 What this Subdivision does

> This is the third stage in the adjustment process. It increases the cost bases of indirect interests in shares in the recipient company by a reasonable amount having regard to the increase in their value resulting from the trigger event.

Table of sections

[This is the end of the Guide.]

138-435 Compensatory increases in interests in recipient company

(1) You increase the *cost base and *reduced cost base of a *CGT asset under this section if:

(a) the asset is a *share in the recipient company or an asset that gives you an indirect interest in a share in that company (through one or more interposed companies or trusts); and

(b) the *cost base or *reduced cost base of a *CGT asset has been reduced under Subdivision 138-B, 138-C, 138-D, 138-E or 138-G as a result of the trigger event; and

(c) a *CGT event happens in relation to the asset; and

(d) you *acquired the CGT asset *on or after* 20 September 1985.

(2) The amount of the increase is such amount as is reasonable having regard to:

(a) the increase in the value of the *CGT asset as a result of the trigger event; and

(b) the amount of any relevant reductions made under Subdivision 138-B, 138-C, 138-D, 138-E or 138-G; and

(c) for the *cost base—inflation measured by reference to the All Groups Consumer Price Index Number.

138-440 When adjustment under this Subdivision not required

You do not make an adjustment under this Subdivision if a reduction is not made under Subdivision 138-B, 138-C, 138-D, 138-E or 138-G as a result of the trigger event.

Part 2—Income Tax (Transitional Provisions) Act 1997

4 After Division 136

Insert:

Division 138—Value shifts between companies under common ownership

Subdivision 138-A—Application

138-7 Apply the 1936 Act in certain cases

(1) This section applies if:

(a) the CGT event that is a trigger event under Division 138 of the *Income Tax Assessment Act 1997* happened before the start of your 1998-99 income year; and

(b) apart from this section, the trigger event would require you to modify the cost base of a CGT asset under that Division in relation to another CGT event that happens in your 1998-99 income year or a later one.

(2) You work out the cost base modification under Division 19A of Part IIIA of the *Income Tax Assessment Act 1936* as in force at the time of the trigger event, taking into account provisions of other Acts that amended that Part of that Act and that affected the operation of that Division at that time.

Part 3—Income Tax Assessment Act 1997: consequential amendments

5 Subsection 102-25(2)

Repeal the subsection, substitute:

(2) However, there are 2 exceptions: one for *CGT events J2 and J3, and one for CGT event K5.

(2A) If the circumstances that gave rise to *CGT event J2 or J3 constitute another CGT event, CGT event J2 or J3 applies in addition to the other event.

Example: CGT event J2 happens because an asset you chose as a replacement asset for a small business roll-over under Division 123 becomes your trading stock (in circumstances where CGT event K4 happens). Both CGT events apply.

(2B) *CGT event K5 happens if CGT event A1, C2 or E8 happens. CGT event K5 applies in addition to the other event.

6 Section 102-30 (after table item 2)

Insert:

2A	All entities	If you choose the small business retirement exemption under Subdivision 118-F, any net capital losses of earlier years will be offset against capital gains you made from the relevant CGT assets	section 118-420
2B	All entities	If you choose the small business roll-over under Division 123, any capital losses of the roll-over year and net capital losses of earlier years will be offset against your notional capital gains.	section 123-25

7 Subsection 103-25(3)

Repeal the subsection, substitute:

(3) However, there are some exceptions:

(a) subsections 118-425(4) and (5) (relating to the small business retirement exemption) require a choice to be made in writing; and

(b) paragraph 123-10(1)(f) (relating to the small business roll-over) requires a choice of replacement assets within the longer period specified in that paragraph; and

(c) subsections 124-380(5) and 124-465(5) (relating to replacement asset roll-overs) require a company to make the choice at an earlier time specified in those subsections.

8 Section 104-5 (after the table item dealing with CGT event J1)

Insert:

J2 Change in status of a CGT asset that was a replacement asset in a roll-over under Division 123 *[See section 104-185]*	when the change in status happens	the amount of the notional capital gain that you applied to the asset under Division 123	*no capital loss*
J3 A change happens in circumstances where a share in a company or a unit in a unit trust was a replacement asset in a roll-over under Division 123 *[See section 104-190]*	when the change in circumstances happens	the amount of the notional capital gain that you applied to the share or unit under Division 123	*no capital loss*

9 At the end of Subdivision 104-J

Add:

104-185 Change of status of replacement asset for a roll-over under Division 123: CGT event J2

(1) ***CGT event J2*** happens if you choose a *CGT asset as a replacement asset for a small business roll-over under Division 123 and:

(a) the asset is not a *share in a company or a unit in a unit trust and it stops being an *active asset; or

(b) the asset is a *share in a company or a unit in a unit trust and *CGT event A1, C2, E1, E2, G3 or I1 happens in relation to it; or

(c) the asset becomes your *trading stock; or

(d) you make a testamentary gift of the asset under the Cultural Bequests Program; or

(e) you start to use the asset solely to produce your *exempt income.

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

(2) The time of the event is when the change in the status of the asset happens.

(3) You make a ***capital gain*** equal to the amount of the notional capital gain that you disregarded for the asset under Division 123.

Example: Peter disposes of an asset for $10,000, making a notional capital gain of $2,000. He buys 2 replacement assets for $5,000 each and obtains a roll-over under Division 123.

$1,000 of the notional capital gain is disregarded for each replacement asset.

One of the replacement assets becomes Peter’s trading stock. Peter will make a capital gain of $1,000 as a result of CGT event J2 happening.

104-190 Change of circumstances where a share or unit is a replacement asset for a roll-over under Division 123: CGT event J3

(1) ***CGT event J3*** happens if you choose a *share in a company or a unit in a unit trust as a replacement asset for a roll-over under Division 123 and:

(a) if the replacement asset requirements in section 123-75 were satisfied because you were a *controlling individual of the company or trust—you stop being a controlling individual of the company or trust; or

(b) if those requirements were satisfied because an entity *connected with you was a *controlling individual of the company or trust:

(i) that entity stops being a controlling individual of the company or trust; or

(ii) that entity stops being connected with you; or

(c) the total of the market values of the *active assets of the company or trust falls below 80% of the total of the market value of all the assets owned by the company or the assets of the trust; or

(d) the company stops being a *private company that is an Australian resident, or the trust stops being a *resident trust for CGT purposes or becomes a publicly traded unit trust;

and you own the share or unit just after the change in circumstances.

(2) The time of the event is when the change in circumstances happens.

(3) You make a ***capital gain*** equal to the amount of the notional capital gain that you disregarded for the share or unit under Division 123.

Exceptions

(4) ***CGT event J3*** does not happen because of paragraph (1)(b) if the replacement asset requirements in section 123-75 were also satisfied because you were a *controlling individual of the company or trust and you remain such a controlling individual.

(5) ***CGT event J3*** does not happen because of paragraph (1)(c) if the total market values of the *active assets fell below the specified level only because of changes in the market values of assets that were owned by the company or trust when you chose the *share or unit as a replacement asset.

10 Section 112-115 (table item 3)

Omit "**Division 17A of Part IIIA**", substitute "Division 123".

11 At the end of subsection 116-30(1)

Add:

Note: The market value substitution rule is disregarded in working out capital proceeds in some cases: see subsections 118-415(3) and 118-450(4) and section 138-30.

12 Section 136-10 (after the table item dealing with CGT event J1)

Insert:

J2	Change in status of an asset that was a replacement asset in a roll-over under Division 123	the CGT asset	1, 2, 3, 6
J3	A change happens in circumstances where a share in a company or a unit in a unit trust was a replacement asset in a roll-over under Division 123	the share or unit	3, 6

13 Subsection 995-1(1)

Insert:

active asset has the meaning given by section 123-80.

14 Subsection 995-1(1)

Insert:

CGT exempt amount has the meaning given by section 118-425.

15 Subsection 995-1(1)

Insert:

CGT retirement exemption limit has the meaning given by section 118-435.

16 Subsection 995-1(1)

Insert:

connected with: an entity is ***connected with*** you in the circumstances described in section 123-60.

17 Subsection 995-1(1)

Insert:

controlling individual of a company or trust is defined as set out in this table:

Meaning of *controlling individual*

Item	For this provision:	See:
1	Subdivision 118-F (small business retirement exemption)	section 118-410
2	Division 123 (small business roll-over)	section 123-70

18 Subsection 995-1(1)

Insert:

indexed common ownership market value has the meaning given by section 138-160.

19 Subsection 995-1(1)

Insert:

net value of the CGT assets of an entity has the meaning given by section 123-50.

20 Subsection 995-1(1)

Insert:

residual value of *plant has the meaning given by section 138-85.

21 Subsection 995-1(1)

Insert:

small business CGT affiliate has the meaning given by section 123-55.

22 Subsection 995-1(1)

Insert:

under common ownership: 2 companies are ***under common ownership*** in the circumstances set out in section 138-15.

Part 4—Income Tax Assessment Act 1936: consequential amendments

23 Subsection 27A(1) (at the end of the definition of *CGT exempt component)*

Add:

; or (c) the amount that is its CGT exempt component under subsection 118-415(4) or (5) of the *Income Tax Assessment Act 1997*.

24 Subsection 27A(1) (paragraph (jaa) of the definition of *eligible termination payment*)

After "160ZZPZE(4)", insert "of this Act or an amount referred to in subsection 118-415(2) of the *Income Tax Assessment Act 1997*".

25 Section 140C (definition of *payer*)

Repeal the definition, substitute:

payer means a person or other entity (other than a continuously non-complying ADF) that makes, or is liable to make, a payment of a benefit, and includes:

(a) if the benefit is an ETP covered by subsection 160ZZPZE(4) of this Act—the taxpayer mentioned in that subsection; and

(b) if the benefit is an ETP covered by subsection 118-415(2) of the *Income Tax Assessment Act 1997*—the individual mentioned in that subsection.

26 Subsection 140M(6)

After "subsection 160ZZPZE(4)", insert "of this Act or subsection 118-415(2) of the *Income Tax Assessment Act 1997*".

Note: The heading to subsection 140M(6) is altered by omitting "*subsection 160ZZPZE(4)*" and substituting "*CGT retirement exemption*".

27 Subsection 140N(4)

After "subsection 160ZZPZE(4)", insert "of this Act or subsection 118-415(2) of the *Income Tax Assessment Act 1997*".

28 Subsection 140P(3)

After “subsection 160ZZPZE(4)”, insert “of this Act or subsection 118-415(2) of the *Income Tax Assessment Act 1997*”.

29 Section 140ZJA

After “subsection 160ZZPZE(4)”, insert “of this Act or subsection 118-415(2) of the *Income Tax Assessment Act 1997*”.

30 Section 160ZZPJA

Repeal the section.

31 Section 160ZZPZAA

Repeal the section.

32 Section 160ZZRAAAA

Repeal the section.

33 Subsection 170(10AA) (after table item 160)

Insert:

165	Subsection 138-15(5)	CGT event B1: agreement ends without title passing

34 Section 245-250 of Schedule 2C

Omit “for the purposes of Division 19A of Part IIIA (see section 160ZZRB)”, substitute “under section 138-25 of the *Income Tax Assessment Act 1997*”.

Part 5—Application and transitional

35 Application of amendments

Subject to item 37, the amendments made by this Schedule apply to assessments for the 1998-99 income year and all later income years.

36 Transitional—effect of Subdivision 118-F and Division 123 of the *Income Tax Assessment Act 1997*

Subdivision 118-F, and Division 123, of the *Income Tax Assessment Act 1997* apply to a person (with such modifications as are necessary) for the purpose of working out whether the person has a net capital gain for the 1997-98 income year and, if so, the amount of that net capital gain if:

(a) a CGT event happened in relation to land or a building owned by the person; and

(b) the CGT event happened after 13 August 1998 and before the start of the person's 1998-99 income year; and

(c) if the CGT event had happened in the person's 1998-99 income year, the land or building would have been an active asset because of subsection 123-80(2) of the *Income Tax Assessment Act 1997*.

Note: This provision is for taxpayers who have a substituted accounting period and are late balancers and who would not otherwise be able to take advantage of the extension to the definition of ***active asset*** in section 123-80 of the *Income Tax Assessment Act 1997* made by this Act.

37 Application of item 36

Item 36 applies to assessments for the 1997-98 income year.

Schedule 6—Corrections and minor amendments

Part 1—Income Tax Assessment Act 1997

1 Subsection 6-20(1)

After "this Act", insert "or another Commonwealth law".

2 Subsection 6-20(3)

After "this Division", insert "or another Commonwealth law".

3 Before the group heading before section 102-5

Insert:

[This is the end of the Guide.]

4 Section 102-20 (note 2)

Repeal the note, substitute:

Note 2: The gain or loss may be affected by an exemption, or may be able to be rolled-over. For exemptions generally, see Division 118. For roll-overs, see Divisions 122, 123, 124 and 126.

5 Before the group heading before section 103-5

Insert:

[This is the end of the Guide.]

6 Section 103-20

Repeal the section, substitute:

103-20 Amounts to be expressed in Australian currency

If a transaction or event involving an amount of money or the market value of other property:

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

(b) the money or market value is in a foreign currency;

the amount or value is to be converted into the equivalent amount of Australian currency at the time of the transaction or event.

7 Subsection 104-10(7)

Repeal the subsection, substitute:

(7) ***CGT event A1*** does not happen if the *disposal of the asset was done:

(a) to provide or redeem a security; or

(b) because of the vesting of the asset in a trustee under the *Bankruptcy Act 1966* or under a similar *foreign law; or

(c) because of the vesting of the asset in a liquidator of a company, or the holder of a similar office under a foreign law.

8 At the end of section 104-15

Add:

Note: A capital gain or capital loss is disregarded if it is made in the 1997-98 income year or an earlier one and the relevant agreement ends in the 1998-99 income year or a later one and title in the asset does not pass: see section 104-15 of the *Income Tax (Transitional Provisions) Act 1997*.

9 At the end of subsection 104-25(1)

Add:

; or (e) if the asset is an option—being exercised; or

(f) if the asset is a *convertible note—being converted.

10 Paragraph 104-30(1)(e)

Repeal the paragraph, substitute:

(e) it is released or abandoned.

11 Paragraphs 104-35(5)(c) and (d)

Omit "to you".

12 Subsection 104-35(5) (example)

Omit "This means that a gain or loss from CGT event D1 is disregarded", substitute "This means that CGT event D1 does not happen".

13 Subsection 104-40(5)

Omit "if the other entity exercises the option", substitute "if the option is exercised".

14 Subsection 104-65(3)

Omit "trustee of the original trust", substitute "beneficiary".

15 Subsection 104-65(3)

Omit "trustee makes", substitute "beneficiary makes".

16 Subsection 104-65(4)

Omit "trustee", substitute "beneficiary".

17 Paragraph 104-70(1)(a)

Omit "a unit or an interest", substitute "your unit or your interest".

18 Subparagraph 104-115(1)(b)(ii)

After "owned the land", insert "or held a lease of the land".

19 Paragraphs 104-155(5)(c) and (d)

Omit "to you".

20 Before the group heading before section 108-55

Insert:

[This is the end of the Guide.]

21 Section 109-55 (table item 4)

Omit "section 118-92", substitute "section 118-192".

22 Section 109-55 (table item 7)

Omit "relates a part", substitute "relates to a part".

23 Paragraph 110-25(3)(a)

Omit "and", substitute "or".

24 Paragraph 110-25(3)(b)

Omit "the *CGT event", substitute "a *CGT event that happens in relation to the asset".

25 Subsection 110-35(2) (note)

Repeal the note, substitute:

Note: Expenditure for professional advice about taxation incurred before 1 July 1989 does *not* form part of the cost base of a CGT asset: see section 110-35 of the *Income Tax (Transitional Provisions) Act 1997*.

26 Paragraph 112-20(1)(a)

After "acquire it", insert "(except where your acquisition of the asset resulted from *CGT event D1 happening)".

27 Paragraph 112-20(2)(a)

Repeal the paragraph.

28 Section 112-30 (heading)

Repeal the heading, substitute:

112-30 Apportionment rules

29 Section 112-35 (at the end of the example)

Add "The first element of your cost base and reduced cost base is $150,000.".

30 Section 112-35 (note)

Omit "110-30(2)", substitute "110-25(2)".

31 Subparagraph 116-30(2)(b)(ii)

Repeal the subparagraph, substitute:

(ii) the CGT event is CGT event C2 (about cancellation, surrender and similar endings).

32 Subsection 116-30(2) (note)

Repeal the note.

33 Section 118-15

Repeal the section, substitute:

118-15 Exempt capital receipts

In working out your *net capital gain or *net capital loss for the income year, disregard compensation you receive under the *firearms surrender arrangements.

34 Before section 118-40

Insert:

118-37 Compensation, damages etc.

(1) A *capital gain or *capital loss you make from a *CGT event relating directly to any of these is disregarded:

(a) compensation or damages you receive for any wrong or injury you suffer in your occupation;

(b) compensation or damages you receive for any wrong, injury or illness you or your *relative suffers personally;

(c) gambling, a game or a competition with prizes;

(d) a re-establishment grant under section 52A of the *Farm Household Support Act 1992.*

(2) A *capital gain you make as a result of receiving an amount as reimbursement or payment of your expenses under one of these schemes is disregarded:

(a) the General Practice Rural Incentives Program;

(b) the Sydney Aircraft Noise Insulation Project;

(c) the M4/M5 Cashback Scheme.

35 Subsection 118-150(5)

Omit “so that it could be repaired or renovated”.

36 Subsection 118-192(3)

Omit “deceased’”, substitute “deceased’s”.

37 At the end of section 118-192

Add:

Note: There are special rules for dwellings acquired before 7.30 pm on 20 August 1996: see section 118-195 of the *Income Tax (Transitional Provisions) Act 1997*.

38 Subsection 118-195(1) (note 2)

Omit “118-45”, substitute “118-145”.

39 At the end of Division 121

Add:

121-35 Asset register entries

(1) You satisfy a requirement under this Division to retain records for a period if you:

(a) retain for that period an entry in a register for the records that satisfies the requirements in subsection (2), or a combination of the records and such an entry for them, containing all the information required to be contained in the records; and

(b) retain those of the records that contain the information entered in the register for at least 5 years after the requirement in paragraph (2)(b) is satisfied.

(2) The requirements are:

(a) you must make an entry in a register, in English, setting out some or all of the information contained in the records; and

(b) another entity who is a *registered tax agent or some other person approved by the Commissioner must certify in the register that the information entered is information from those records.

40 Paragraph 126-50(3)(a)

Repeal the paragraph, substitute:

(a) the roll-over asset is a right or *convertible note referred to in Division 130, or an option referred to in Division 134; and

41 Subsection 126-50(5) (column 2 of table item 1)

After "resident", insert "(and not a *prescribed dual resident)".

42 Subsection 126-50(5) (column 3 of table item 1)

After "resident", insert "(and not a *prescribed dual resident)".

43 Subsection 126-50(5) (column 3 of table item 2)

After "resident", insert "(and not a *prescribed dual resident)".

44 Paragraph 126-85(2)(a)

After "*CGT asset", insert "that the subsidiary *acquired on or after 20 September 1985".

45 Paragraph 126-85(2)(b)

Repeal the paragraph.

46 Section 130-15

Omit "Were the bonus equities partly paid?", substitute "Were the bonus equities partly paid and a call paid on them?".

47 Subsection 130-20(3) (table item 2)

Omit "and you paid or were required to pay an amount for the bonus equities", substitute "and an amount has been paid for the bonus equities that you were required to pay".

48 Subsection 130-20(3) (at the end of the table)

Add:

4	You *acquire the original equities before 20 September 1985 and the bonus equities are partly paid but no amount has been paid since the issue of the bonus equities	You *acquired the original equities	Any *capital gain or *capital loss you make from the bonus equities is disregarded

49 Subsection 130-40(6) (table item 2)

Omit "you paid for them", substitute "you paid for the rights".

50 Subsection 134-1(1) (table item 1)

Before "(call option)", insert "or to issue *shares in a company".

51 At the end of section 140-10

Add ", and the operative provisions in Subdivision 140-B only apply when that CGT event happens".

52 Subsection 149-75(3)

Repeal the subsection.

53 Subsection 373-30(2) (case 8 in the table)

Omit "373-60(3)", substitute "373-60(2)".

54 Section 392-5

Omit each asterisk.

55 Before the group heading before section 392-35

Insert:

[This is the end of the Guide.]

56 Section 392-65

Omit each asterisk.

57 Before the group heading before section 392-70

Insert:

[This is the end of the Guide.]

58 Section 405-5

Omit each asterisk.

59 Section 405-10

Omit each asterisk.

60 At the end of subsection 960-275(2) (before note 1)

Add:

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

61 Paragraph 960-275(3)(a)

Omit “that was issued or allotted by the company”.

62 Paragraph 960-275(3)(b)

Omit “that was issued by the trustee of the unit trust”.

63 Subsection 960-275(3) (example)

Repeal the example, substitute:

Example: A company issues shares to Peter. The shares are partly-paid. Peter sells the shares to Narina, and the company later makes a call on the shares. Narina uses the index number for the quarter in which she paid that later payment.

64 Subsection 995-1(1)

Omit:

general company tax rate has the meaning given by section 160APA of the *Income Tax Assessment Act 1936*.

65 Subsection 995-1(1) (definition of *precluded asset*)

Omit "122-25(2)", substitute "122-25(3)".

66 Subsection 995-1(1)

Omit:

RSA has the same meaning as in the *Retirement Savings Accounts Act 1997*.

Part 2—Income Tax Assessment Act 1936

67 Paragraph 24AW(g)

Omit "Part IIIA of this Act", substitute "Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*.

68 Subsection 159GZZZH(1)

Omit "consideration" (wherever occurring), substitute "capital proceeds".

69 Subsection 159GZZZH(2)

Omit "consideration" (wherever occurring), substitute "capital proceeds".

70 Subsection 159ZR(1) (definition of *rebated tax*)

Omit "156 or 159SA", substitute "159SA 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)".

71 Before section 160ZPA

Insert:

160ZPAA Continued operation of section 160ZPA

Section 160ZPA 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*.

72 Section 304

Repeal the section, substitute:

304 CGT to be primary code for calculating gains or losses

(1) The modifications in subsection (2) apply if a CGT event happens involving a CGT asset that was owned by one of these entities just before the time of the event:

(a) a complying superannuation fund;

(b) a complying approved deposit fund;
(c) a pooled superannuation trust.

(2) These provisions do not apply to the CGT event:
(a) sections 6-5 (about *ordinary income), 8-1 (about amounts you can deduct) and 15-15 and 25-40 (about profit-making undertakings or plans) of the *Income Tax Assessment Act 1997*;
(b) sections 25A and 52 of this Act (about profit-making undertakings or schemes).

Exceptions

(3) The provisions referred to in subsection (2) can apply to the CGT event if:
(a) any capital gain or capital loss from the event is attributable to currency exchange rate fluctuations; or
(b) the CGT asset is one of these:
(i) debenture stock, a bond, debenture, certificate of entitlement, bill of exchange, promissory note or other security;
(ii) a deposit with a bank, building society or other financial institution;
(iii) a loan (secured or not);
(iv) some other contract under which an entity is liable to pay an amount (whether the liability is secured or not).

(4) The provisions referred to in subsection (2) can also apply to the CGT event if a capital gain or capital loss from the event is disregarded because of one of the provisions of the *Income Tax Assessment Act 1997* in this table:

Where gain or loss disregarded because of CGT provision

Item	Provision	Brief description
1	Paragraph 104-15(4)(a)	Title in a CGT asset does not pass when a hire purchase or similar agreement ends
2	Section 118-5	Cars, motor cycles and valour decorations
3	Section 118-10	Collectables and personal use assets
4	Section 118-13	Shares in a PDF

Where gain or loss disregarded because of CGT provision		
Item	**Provision**	**Brief description**
5	Section 118-25	Trading stock
6	Section 118-30	Film copyright
7	Section 118-35	Research and development
8	Section 118-55	Foreign currency hedging gains and losses
9	Section 118-60	Gifts under the Cultural Bequests Program
10	Section 118-300	Insurance policies
11	Section 118-305	Superannuation
12	Section 118-310	CGT event happens to right to, or part of, RSA

Part 3—Application

73 Application

The amendments made by this Schedule apply to assessments for the 1998-99 income year and all later income years.

Schedule 7—Providing taxation information to State law enforcement agencies

Taxation Administration Act 1953

1 Section 2 (after paragraph (dad) of the definition of *head*)

Insert:

(dae) in the case of the New South Wales Police Integrity Commission—the Commissioner for the New South Wales Police Integrity Commission;

(daf) in the case of the Queensland Crime Commission—the crime commissioner appointed under the *Crime Commission Act 1997* of Queensland;

2 Section 2 (after paragraph (dad) of the definition of *law enforcement agency*)

Insert:

(dae) the New South Wales Police Integrity Commission;

(daf) the Queensland Crime Commission;

[*Minister's second reading speech made in—*
House of Representatives on 11 March 1999
Senate on 21 June 1999]

(26/99)