



# Income Tax Assessment Act 1997

No. 38, 1997 as amended

**Compilation start date:** 18 March 2014

**Includes amendments up to:** Act No. 13, 2014

This compilation has been split into 11 volumes

Volume 1: sections 1-1 to 36-55  
Volume 2: sections 40-1 to 55-10  
Volume 3: sections 58-1 to 122-205  
**Volume 4: sections 124-1 to 152-430**  
Volume 5: sections 160-1 to 220-800  
Volume 6: sections 230-1 to 312-15  
Volume 7: sections 315-1 to 420-70  
Volume 8: sections 620-5 to 727-910  
Volume 9: sections 768-100 to 995-1  
Volume 10: Endnotes 1 to 3  
Volume 11: Endnotes 4 to 8

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### **This compilation**

This is a compilation of the *Income Tax Assessment Act 1997* as in force on 18 March 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 7 April 2014.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

### **Uncommenced amendments**

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

### **Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### **Modifications**

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

### **Provisions ceasing to have effect**

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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## **Chapter 3—Specialist liability rules**

### **Part 3-3—Capital gains and losses: special topics**

#### **Division 124—Replacement-asset roll-overs**

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124-R	Water entitlements

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Guide to Division 124**

### **124-1 What this Division is about**

A replacement-asset roll-over allows you, in special cases, to defer the making of a capital gain or loss from one CGT event until a later CGT event happens. It involves your ownership of one CGT asset ending and you acquiring another one.

### **124-5 How to find your way around this Division**

- (1) First, find out if you can obtain a roll-over when your ownership of one or more CGT assets ends and you acquire one or more CGT assets: see Subdivisions 124-B to 124-R.

Note 1: If you carry on a small business, you may also be able to obtain a roll-over under Subdivision 152-E.

Note 2: Subdivision 124-O (about FSR transitions) also provides for roll-overs in situations where a replacement CGT asset is acquired by a new owner.

- (2) Second, find out what the consequences are for being able to obtain a roll-over: see Subdivision 124-A.

Note: The consequences of a scrip for scrip roll-over are set out in Subdivision 124-M. The consequences of replacing a statutory licence by a new statutory licence are set out in Subdivision 124-C. The consequences of the new owner roll-overs in Subdivision 124-O (about FSR transitions) are set out in that Subdivision. The consequences of an exchange of a membership interest in an MDO are set out in Subdivision 124-P. The consequences of an exchange of stapled ownership interests are set out in Subdivision 124-Q. The consequences of a roll-over for water entitlements are set out in Subdivision 124-R.

- (3) Third, find out if there are any special rules relevant to your situation: see the Subdivision under which you can get the roll-over.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 124-A—General rules

### Table of sections

124-10	Your ownership of one CGT asset ends
124-15	Your ownership of more than one CGT asset ends
124-20	Share and interest sale facilities

### 124-10 Your ownership of one CGT asset ends

- (1) There are these consequences (in most cases) if you can obtain a roll-over when your ownership of a \*CGT asset (the *original asset*) ends and you \*acquire one or more CGT assets (the *new assets*) in a situation covered by this Division.
  - (1A) A \*car, motor cycle or similar vehicle must not be one of the new assets.
  - (2) A \*capital gain or a \*capital loss you make from the original asset is disregarded.
  - (3) If you \*acquired the original asset on or after 20 September 1985, the first element of each new asset's \*cost base is:

$$\frac{\text{The original asset's cost base} \\ \text{(worked out when your ownership of it ended)}}{\text{Number of new assets}}$$

The first element of each new asset's \*reduced cost base is worked out similarly.

- Note 1: In some cases the amount you paid to acquire the new asset also forms part of the first element: see Subdivision 124-D (about strata title conversion) and Subdivision 124-O (about FSR transitions).
- Note 2: There are modifications to the consequences in Subdivision 124-B (about compulsory acquisition, loss or destruction), Subdivision 124-C (about statutory licences), Subdivision 124-J (about Crown leases), Subdivision 124-L (about prospecting and mining) and Subdivision 124-O (about FSR transitions).
- Note 3: No other elements of the cost base of the new asset are affected by the roll-over.
- Note 4: There are special indexation rules for roll-overs: see Division 114.
- Note 5: The reduced cost base may be modified for a roll-over happening after a demerger: see section 125-170.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-15

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- (4) If you \*acquired the original asset before 20 September 1985, you are taken to have acquired each new asset before that day.

Note: A capital gain or loss you make from a CGT asset you acquired before 20 September 1985 is generally disregarded: see Division 104. This exemption is removed in some situations: see Division 149.

- (5) However, subsection (4) is taken never to have applied to a \*share to which subsection 104-195(6) applies (CGT event J4).

**124-15 Your ownership of more than one CGT asset ends**

- (1) There are these consequences (in most cases) if you can obtain a roll-over when your ownership of more than one \*CGT asset (the *original assets*) ends and you acquire one or more CGT assets (the *new assets*) in a situation covered by this Division.

Example: You own 100 shares in a company. The company cancels these shares and issues you with 10 shares in return.

- (1A) A \*car, motor cycle or similar vehicle must not be one of the new assets.
- (2) A \*capital gain or a \*capital loss you make from each original asset is disregarded.
- (3) If you \*acquired all the original assets on or after 20 September 1985, the first element of each new asset's cost base is:

$$\frac{\text{The total of the cost bases of all the original assets (worked out when your ownership of them ended)}}{\text{Number of new assets}}$$

The first element of each new asset's \*reduced cost base is worked out similarly.

Note 1: No other elements of the cost base of the new asset are affected by the roll-over.

Note 2: There are special indexation rules for roll-overs: see Division 114.

- (4) If you \*acquired all the original assets before 20 September 1985, you are taken to have acquired each new asset before that day.

Note: A capital gain or loss you make from a CGT asset you acquired before 20 September 1985 is generally disregarded: see Division 104. This exemption is removed in some situations: see Division 149.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (5) If you \*acquired some of the original assets before 20 September 1985, you are taken to have acquired a number of new assets before that day. It is the maximum possible that does not exceed:

$$\text{The number of new assets} \times \frac{\text{The number of original assets you *acquired before 20 September 1985}}{\text{The total number of original assets}}$$

If the result is less than one, none of the new assets are taken to have been \*acquired before 20 September 1985.

Example: To continue the example, suppose you acquired 67 of the 100 original shares before 20 September 1985. The number of new shares that you are taken to have acquired before that day cannot exceed:

$$10 \times \frac{67}{100} = 6.7$$

So, you are taken to have acquired 6 of the 10 shares before that day.

Note: Subdivision 124-O provides a different rule for FSR transitions.

- (6) These rules are relevant to each remaining new asset. The first element of each one's \*cost base is:

The total of the cost bases of all the original assets  
that you \*acquired on or after 20 September 1985  
(worked out when your ownership of them ended)

Number of remaining new assets

The first element of each one's \*reduced cost base is worked out similarly.

Note: There are special indexation rules for roll-overs: see Division 114.

Example: To continue the example, suppose the total of the cost bases of the 33 shares you acquired on or after 20 September 1985 is \$400.

The first element of the cost base of each of the remaining 4 shares is:

$$\frac{\$400}{4} = \$100$$

The first element of the reduced cost base of those 4 shares is worked out similarly.

- (7) However, subsections (4) and (5) are taken never to have applied to a \*share to which subsection 104-195(6) applies (CGT event J4).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-20

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**124-20 Share and interest sale facilities**

*Share and interest sale facilities*

- (1) An entity (the **investor**) is treated as owning an \*ownership interest (the **roll-over interest**) in a company or trust (the **issuer**) at a time (the **deeming time**), if:
  - (a) the investor owned an ownership interest (the **original interest**) in a company or trust; and
  - (b) a transaction happened in relation to the original interest; and
  - (c) because:
    - (i) a \*foreign law impedes the ability of the issuer to issue or transfer the roll-over interest to the investor; or
    - (ii) it would be impractical or unreasonably onerous to determine whether a foreign law impedes the ability of the issuer to issue or transfer the roll-over interest to the investor;it is \*arranged that the issuer will issue or transfer the roll-over interest to another entity (the **facility**) under the transaction instead of to the investor; and
  - (d) in accordance with that arrangement and as a result of the transaction, the facility:
    - (i) becomes the owner of the roll-over interest; and
    - (ii) owns the roll-over interest at the deeming time; and
  - (e) under the arrangement, the investor is entitled to receive from the facility:
    - (i) an amount equivalent to the \*capital proceeds of any \*CGT event that happens in relation to the roll-over interest (less expenses); or
    - (ii) if a CGT event happens in relation to the roll-over interest together with CGT events happening in relation to other ownership interests—an amount equivalent to the investor's proportion of the total capital proceeds of the CGT events (less expenses).
- (2) The facility is treated as not owning the roll-over interest at the deeming time.
- (3) This section applies for the purposes of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) applying one of the following provisions (the ***roll-over provision***) in relation to the transaction:
  - (i) Subdivision 124-G (Exchange of shares in one company for shares in another company);
  - (ii) Subdivision 124-H (Exchange of units in a unit trust for shares in a company);
  - (iii) Subdivision 124-I (Change of incorporation);
  - (iv) Subdivision 124-N (Disposal of assets by a trust to a company);
  - (v) Subdivision 124-Q (Exchange of stapled ownership interests for ownership interests in a unit trust); and
- (b) the following provisions, to the extent that they relate to a roll-over under the roll-over provision that involves the transaction:
  - (i) item 2 of the table in subsection 115-30(1);
  - (ii) sections 124-10 and 124-15.

*Incorporated bodies*

- (4) Without limiting this section, it also has effect, in a case covered by subparagraph (3)(a)(iii) (about Subdivision 124-I), as if each reference in this section to an \*ownership interest in a company or trust were a reference to:
  - (a) an interest in an incorporated body; and
  - (b) any rights relating to the body owned by the entity that owns that interest.
- (5) This section applies, in a case covered by subparagraph (3)(a)(iii) (about Subdivision 124-I), in relation to rights as a \*member of a company incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* in the same way as it applies in relation to \*shares in a company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 124-B—Asset compulsorily acquired, lost or destroyed

### Table of sections

#### When a roll-over is available

124-70	Events giving rise to a roll-over
124-75	Other requirements if you receive money
124-80	Other requirements if you receive an asset

#### The consequences of a roll-over being available

124-85	Consequences for receiving money
124-90	Consequences for receiving an asset
124-95	You receive both money and an asset

### When a roll-over is available

#### 124-70 Events giving rise to a roll-over

- (1) You may be able to choose a roll-over if one of these events happens to a \*CGT asset (the *original asset*) you own:
  - (a) it is compulsorily \*acquired by an \*Australian government agency;
  - (aa) it is compulsorily acquired by an entity (other than an Australian government agency or a \*foreign government agency) under a power of compulsory acquisition conferred by a law covered under subsection (1A);
  - (b) it, or part of it, is lost or destroyed;
  - (c) you \*dispose of it to an entity (other than a foreign government agency) in circumstances meeting all of these conditions:
    - (i) the disposal takes place after a notice was served on you by or on behalf of the entity;
    - (ii) the notice invited you to negotiate with the entity with a view to the entity acquiring the asset by agreement;
    - (iii) the notice informed you that if the negotiations were unsuccessful, the asset would be compulsorily acquired by the entity;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (iv) the compulsory acquisition would have been under a power of compulsory acquisition conferred by a law covered under subsection (1A);
- (ca) you dispose of it to an entity (other than a foreign government agency) in circumstances meeting all of these conditions:
  - (i) the asset is land over which a mining lease was compulsorily granted;
  - (ii) the lease significantly affected your use of the land;
  - (iii) the lease was in force just before the disposal;
  - (iv) the entity to which you dispose of the land was the lessee under the lease;
- (cb) you dispose of it to an entity (other than a foreign government agency) in circumstances meeting all of these conditions:
  - (i) the asset is land over which a mining lease would have been compulsorily granted if you had not disposed of it;
  - (ii) that lease would have significantly affected your use of the land;
  - (iii) the entity to which you dispose of the land would have been the lessee under the lease.
- (d) if it is a lease granted to you by an \*Australian government agency under an \*Australian law—the lease expires and is not renewed.

Note 1: There are no roll-over consequences if you make a capital loss from the event.

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

- (1A) A law is covered under this subsection if it is:
  - (a) an \*Australian law (other than Chapter 6A of the *Corporations Act 2001*); or
  - (b) a \*foreign law (other than a foreign law corresponding to Chapter 6A of the *Corporations Act 2001*).
- (2) You must receive money or another \*CGT asset (except a \*car, motor cycle or similar vehicle), or both:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Section 124-75**

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- (a) as compensation for the event happening; or
- (b) under an insurance policy against the risk of loss or destruction of the original asset.

Note: There are other requirements that must be satisfied if:

- you receive money: see section 124-75; or
- you receive another CGT asset: see section 124-80.

- (3) The requirement in subsection (4) must be satisfied if:
  - (a) you are a foreign resident just before the event happens; or
  - (b) you are the trustee of a trust that is a \*foreign trust for CGT purposes for the income year in which the event happens.
- (4) The original asset must be \*taxable Australian property just before the event happens. The other asset must be taxable Australian property just after you \*acquire it.

**124-75 Other requirements if you receive money**

- (1) If you receive money for the event happening, you can choose to obtain a roll-over only if these other requirements are satisfied.

Note: The roll-over consequences are set out in section 124-85.

- (2) You must:
  - (a) incur expenditure in \*acquiring another \*CGT asset (except a \*depreciating asset whose decline in value is worked out under Division 40 or deductions for which are calculated under Division 328); or
  - (b) if part of the original asset is lost or destroyed—incur expenditure of a capital nature in repairing or restoring it.
- (3) At least some of the expenditure must be incurred:
  - (a) no earlier than one year, or within such further time as the Commissioner allows in special circumstances, before the event happens; or
  - (b) no later than one year, or within such further time as the Commissioner allows in special circumstances, after the end of the income year in which the event happens.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Special rules if you acquire another asset*

- (4) If just before the event happened the original asset:
- (a) was used in your \*business; or
  - (b) was \*installed ready for use in your business; or
  - (c) was in the process of being \*installed ready for use in your business;
- the other asset must be used in the business, or be installed ready for use in the business, for a reasonable time after you \*acquired it.
- Otherwise, you must use the other asset (for a reasonable time after you \*acquired it) for the same purpose as, or for a similar purpose to, the purpose for which you used the original asset just before the event happened.
- (5) The other asset cannot become an item of your \*trading stock just after you \*acquire it, nor can it be a \*depreciating asset whose decline in value is worked out under Division 40 or deductions for which are calculated under Division 328.
- (6) The other asset cannot become a \*registered emissions unit \*held by you just after you \*acquire it.

**124-80 Other requirements if you receive an asset**

- (1) If you receive another \*CGT asset for the event happening, you can choose to obtain a roll-over only if these other requirements are satisfied.
- Note: The roll-over consequences are set out in section 124-90.
- (2) The other asset cannot become an item of your \*trading stock just after you \*acquire it, nor can it be a \*depreciating asset whose decline in value is worked out under Division 40 or deductions for which are calculated under Division 328 nor can it be a \*registered emissions unit.
- (3) The \*market value of the other asset (when you \*acquire it) must be more than the \*cost base of the original asset just before the event happens.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-85

**The consequences of a roll-over being available**

**124-85 Consequences for receiving money**

- (1) If you receive money for the event happening, there are these consequences if you choose to obtain a roll-over.

*Original asset acquired on or after 20 September 1985*

- (2) If you make a \*capital gain from the event, this table sets out in what situations the gain is reduced, not reduced or disregarded.

It also sets out in what situations the expenditure you incurred to \*acquire another \*CGT asset or to repair or restore the original asset is reduced.

**You make a capital gain from the event**

Item	In this situation:	There are these consequences
1	The money exceeds the expenditure you incurred to *acquire another CGT asset or to repair or restore the original asset	If the gain is more than the excess: (a) the gain is reduced to the amount by which the money exceeds that expenditure; and (b) that expenditure is reduced by the amount by which the gain (before it is reduced) is more than the excess
2	The money exceeds that expenditure	If the gain is less than or equal to the excess, the gain is not reduced
3	The money does not exceed that expenditure	The gain is disregarded in working out your *net capital gain or *net capital loss for the income year. That expenditure is reduced by the amount of the gain

Example: In 1999 Simon bought a small factory. In 2000 a fire destroys part of it. He receives \$100,000 under an insurance policy.

The capital gain is worked out under section 112-30.

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Suppose the factory's cost base at the time of the fire is \$75,000 and the market value of the part that is not destroyed is \$150,000. The cost base of the part that is destroyed is:

$$\$75,000 \times \frac{\$100,000}{\$100,000 + \$150,000} = \$30,000$$

The capital gain is:

$$\$100,000 - \$30,000 = \$70,000$$

Case 1

Suppose Simon spent \$80,000 on repairing the factory. The money he received under the insurance policy exceeds the repair cost by \$20,000. The gain exceeds that by \$50,000.

The result is that the gain is reduced to \$20,000 and the \$80,000 he spent on repairs is reduced to \$30,000.

Case 2

Suppose Simon spent \$15,000 on repairs instead. The money he received under the policy exceeds that amount by \$85,000. This is more than the gain he made.

The gain is relevant to working out Simon's net capital gain or loss for the income year and the \$15,000 he spent on repairs forms part of the factory's cost base.

Case 3

Suppose Simon spent \$120,000 on repairs instead. The gain is disregarded and the \$120,000 is reduced to \$50,000.

*Original asset acquired before 20 September 1985*

- (3) If you \*acquired the original asset before 20 September 1985 and you incurred expenditure in acquiring another \*CGT asset, you are taken to have acquired the other asset before that day if:
- (a) the expenditure is not more than 120% of the \*market value of the original asset when the event happened; or
  - (b) a natural disaster happened so that the original asset, or part of it, is lost or destroyed and it is reasonable to treat the other asset as substantially the same as the original asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-90

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- (4) If you \*acquired the original asset before 20 September 1985 and you incurred expenditure of a capital nature in repairing or restoring it, you are taken to have acquired the original asset (as repaired or restored) before that day.

**124-90 Consequences for receiving an asset**

- (1) If you receive another \*CGT asset for the event happening, there are these consequences if you choose to obtain a roll-over.
- (2) A \*capital gain you make from the original asset is disregarded.
- (3) If you \*acquired the original asset on or after 20 September 1985:
- (a) the first element of the other asset's \*cost base is the original asset's cost base at the time of the event; and
  - (b) the first element of the other asset's \*reduced cost base is the original asset's reduced cost base at the time of the event.

Note: There are special indexation rules for roll-overs: see Division 114.

Example: Steven bought land in 1999 for \$100,000. In 2001 the government compulsorily acquires the land and gives him new land in return.

A capital gain he makes from the original land is disregarded. Suppose the original land's cost base when it is acquired is \$120,000. The first element of the new land's cost base becomes \$120,000.

- (4) If you acquired the original asset before 20 September 1985, you are taken to have \*acquired the other asset before that day.

**124-95 You receive both money and an asset**

- (1) If you receive both money and another \*CGT asset for the event happening and choose to obtain a roll-over, the requirements and consequences are different for each part of the compensation attributable to the original asset (having regard to the amount of money and the \*market value of the other asset).

*The other asset as a part of compensation*

- (2) The \*market value of the other asset (when you \*acquire it) must be more than that part of the \*cost base of the original asset that is attributable to the new asset.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-95

Note: This requirement is different to that in subsection 124-80(3). It requires a proportional attribution of the cost base of the original asset.

- (3) If you \*acquired the original asset on or after 20 September 1985:
- (a) the first element of the other asset's \*cost base is that part of the original asset's cost base at the time of the event that is attributable to the new asset; and
  - (b) the first element of the other asset's \*reduced cost base is worked out similarly.

Note: These consequences are different to those in subsection 124-90(3). They require a proportional attribution of the cost base of the original asset.

- (4) If you \*acquired the original asset before 20 September 1985, you are taken to have acquired the new asset before that day.

*Money as a part of compensation*

- (5) If you make a \*capital gain from the event, this table sets out in what situations that part of the gain on the original asset that is attributable to the amount of money you received is reduced, not reduced or disregarded.

It also sets out in what situations the expenditure you incurred to \*acquire another \*CGT asset or to repair or restore the original asset is reduced.

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**You make a capital gain from the event**

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Item	In this situation:	There are these consequences
1	The money exceeds the expenditure you incurred to *acquire another CGT asset or to repair or restore the original asset	If that part of the gain that is attributable to the amount of money is more than the excess: <ul style="list-style-type: none"> <li>(a) that part of the gain is reduced to the amount by which the money exceeds that expenditure; and</li> <li>(b) that expenditure is reduced by the amount by which that part of the gain (before it is reduced) is more than the excess</li> </ul>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-95

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**You make a capital gain from the event**

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<b>Item</b>	<b>In this situation:</b>	<b>There are these consequences</b>
2	The money exceeds that expenditure	If that part of the gain that is attributable to the amount of money is less than or equal to the excess, the gain is not reduced
3	The money does not exceed that expenditure	That part of the gain that is attributable to the amount of money is disregarded in working out your *net capital gain or *net capital loss for the income year. That expenditure is reduced by the amount of that part of the gain

Note: These consequences are different to those in subsection 124-85(2). They require a proportional attribution of capital gain on the original asset.

- (6) If you \*acquired the original asset before 20 September 1985 and you incurred expenditure in acquiring another \*CGT asset, you are taken to have acquired the other asset before that day if:
- (a) the expenditure you incurred in acquiring the other asset is not more than 120% of the \*market value of that part of the original asset that is attributable to the other asset when the event happened; or
  - (b) a natural disaster happened so that the original asset, or part of it, is lost or destroyed and it is reasonable to treat the other asset as substantially the same as that part of the original asset that is attributable to the new asset.

Note 1: The consequences in paragraph (6)(a) are different to those in paragraph 124-85(3)(a). They require a proportional attribution of the market value of the original asset.

Note 2: The consequences in paragraph (6)(b) are different to those in paragraph 124-85(3)(b). They require a proportional attribution of the original asset.

Example: Kris owns land, which he acquired in 1998. It is compulsorily acquired, and Kris receives \$80,000 in cash and replacement land with a market value of \$80,000.

The cost base of the original land is \$150,000.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Kris buys additional land for \$80,000.

Subsection (2) is satisfied because the market value of the replacement land (\$80,000) is more than the part of the cost base of the original land that is attributable to the replacement land:

$$50\% \times \$150,000 = \$75,000$$

Applying subsection (5), the other part of the gain is disregarded, and the first element of the cost base of the replacement land is the part of the cost base of the original land that is attributable to the replacement land:

$$50\% \times \$150,000 = \$75,000$$

Applying subsection (3), the money he received (\$80,000) is the same as the expenditure he incurred to buy the additional land. Item 3 in the table applies. The part of the gain that is attributable to that money is disregarded:

$$50\% \times \$10,000 = \$5,000$$

The expenditure is reduced by \$5,000.

## Subdivision 124-C—Statutory licences

### 124-140 New statutory licences

- (1) There is a roll-over if:
- (a) your ownership of one or more \*statutory licences (each of which is an **original licence**) ends, resulting in \*CGT event C2 happening to the licence (or to each of the licences as part of an \*arrangement); and
  - (b) as a result of the CGT event or events, you are issued one or more new licences (each of which is a **new licence**) for the original licence (or original licences); and
  - (c) the new licence authorises (or the new licences taken together authorise) substantially similar activity as that authorised by the original licence (or by the original licences taken together).

Note 1: If there has been a capital improvement to the original licence: see section 108-75.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-140

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Note 2: Subdivision 124-C of the *Income Tax (Transitional Provisions) Act 1997* modifies this roll-over for certain water-related licences. A separate roll-over for other water entitlements is provided in Subdivision 124-R of this Act.

(1A) If:

- (a) you are a foreign resident just before the \*CGT event happens (or just before one or more of the CGT events happens); or
- (b) you are the trustee of a trust that is a \*foreign trust for CGT purposes for the income year in which the event happens (or for an income year in which one or more of those events happens);

there is no roll-over under this section unless the conditions in subsection (1B) are satisfied.

(1B) The conditions are that:

- (a) if there was only one original licence—the licence must be \*taxable Australian property just before the \*CGT event happens; and
  - (b) if there was more than one original licence—each original licence must be taxable Australian property just before the CGT event in relation to it happens; and
  - (c) if there is only one new licence—the licence must be taxable Australian property just after you \*acquire it; and
  - (d) if there is more than one new licence—each new licence must be taxable Australian property just after you acquire it.
- (2) The first element of the \*cost base and \*reduced cost base of the new licence includes any amount you paid to get it (which can include giving property: see section 103-5).
- (3) A **statutory licence** is an authority, licence, permit or quota (except a lease or a \*mining entitlement or \*prospecting entitlement) granted by:
- (a) an \*Australian government agency under an \*Australian law; or
  - (b) a \*foreign government agency under a \*foreign law.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **124-145 Rollover consequences—capital gain or loss disregarded**

A \*capital gain or \*capital loss you make from the original licence (or from each of the original licences) is disregarded.

### **124-150 Rollover consequences—partial roll-over**

- (1) You can obtain only a partial roll-over in relation to an original licence if the \*capital proceeds for that licence includes something (the *ineligible proceeds*) other than a new licence or new licences. There is no roll-over for that part (the *ineligible part*) of the licence for which you received the ineligible proceeds.

Note: If there is more than one original licence, some or all of those original licences may each have an ineligible part.

- (2) The \*cost base of the ineligible part is that part of the cost base of the original licence as is reasonably attributable to the ineligible part.
- (3) The \*reduced cost base of the ineligible part is that part of the reduced cost base of the original licence as is reasonably attributable to the ineligible part.
- (4) For the purposes of sections 124-155 and 124-165, for each original licence that has an ineligible part:
  - (a) reduce the \*cost base of that licence (just before the \*CGT event that happened in relation to it) by so much of that cost base as is attributable to that ineligible part; and
  - (b) reduce the \*reduced cost base of that licence (just before the CGT event that happened in relation to it) by so much of that reduced cost base as is attributable to that ineligible part.

### **124-155 Roll-over consequences—all original licences were post-CGT**

- (1) This section applies if you \*acquired the original licence (or all of the original licences) on or after 20 September 1985.
- (2) The first element of the \*cost base of the new licence (or of each of the new licences) is such amount as is reasonable having regard to:
  - (a) the total of the cost bases of all the original licences; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) the number, \*market value and character of the original licences; and
  - (c) the number, market value and character of the new licences.
- (3) The first element of the \*reduced cost base of the new licence (or of each of the new licences) is such amount as is reasonable having regard to:
- (a) the total of the reduced cost bases of all the original licences; and
  - (b) the number, \*market value and character of the original licences; and
  - (c) the number, market value and character of the new licences.

**124-160 Roll-over consequences—all original licences were pre-CGT**

If you \*acquired the original licence (or all of the original licences) before 20 September 1985, you are taken to have acquired the new licence (or all of the new licences) before that day.

**124-165 Roll-over consequences—some original licences were pre-CGT, others were post-CGT**

- (1) This section applies if:
- (a) there was more than one original licence; and
  - (b) you \*acquired one or more of the original licences before 20 September 1985; and
  - (c) you acquired one or more of the original licences on or after that day.
- (2) Each new licence is taken to be 2 separate \*CGT assets that are both \*statutory licences:
- (a) one (which you are taken to have \*acquired on or after 20 September 1985) representing the extent to which you acquired the original licences on or after that day; and
  - (b) another (which you are taken to have acquired before that day) representing the extent to which you acquired the original licences before that day.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) The first element of the \*cost base and \*reduced cost base of the \*CGT asset mentioned in paragraph (2)(a) in relation to a new licence is worked out under the formula:

$$\text{Total post-CGT cost base} \times \frac{\text{Market value of new licence}}{\text{Market value of all new licences}}$$

where:

*market value of all new licences* is the total of the \*market values of all of the new licences.

*market value of new licence* is the \*market value of the new licence to which the \*CGT asset mentioned in paragraph (2)(a) relates.

*total post-CGT cost base* is the total of the \*cost bases of all the original licences that you \*acquired on or after 20 September 1985.

### **Subdivision 124-D—Strata title conversion**

#### **124-190 Strata title conversion**

- (1) You can choose to obtain a roll-over if:
- (a) you own property that gives you a right to occupy a unit in a building; and
  - (b) the building's owner subdivides it into \*stratum units; and
  - (c) the owner transfers to you the stratum unit that corresponds to the unit you had the right to occupy just before the subdivision.

Note 1: The roll-over consequences are set out in section 124-10. The original asset is the property that gave you the right to occupy a unit in the building. The new asset is the stratum unit.

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

- (2) The first element of the \*cost base and \*reduced cost base of the \*stratum unit includes any amount you paid to get it (which can include giving property: see section 103-5).

Note: The rest of the first element is worked out under Subdivision 124-A.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-240

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- (3) A *stratum unit* is a lot or unit (however described in an \*Australian law or a \*foreign law relating to strata title or similar title) and any accompanying common property.

**Subdivision 124-E—Exchange of shares or units**

**Table of sections**

124-240	Exchange of shares in the same company
124-245	Exchange of units in the same unit trust

**124-240 Exchange of shares in the same company**

You can choose to obtain a roll-over if:

- (a) you own \*shares (the *original shares*) of a certain class in a company; and
- (b) the company redeems or cancels all shares of that class; and
- (c) the company issues you with new shares (and you receive nothing else) in substitution for the original shares; and
- (d) the \*market value of the new shares just after they were issued is at least equal to the market value of the original shares just before they were redeemed or cancelled; and
- (e) the \*paid-up share capital of the company just after the new shares were issued is the same as just before the original shares were redeemed or cancelled; and
- (f) one of these requirements is satisfied:
  - (i) you are an Australian resident at the time of the redemption or cancellation; or
  - (ii) if you are a foreign resident at that time—the original shares were \*taxable Australian property just before that time and the new shares are taxable Australian property when they are issued.

Note 1: The roll-over consequences are set out in Subdivision 124-A. The original assets are the original shares. The new assets are the new shares.

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

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **124-245 Exchange of units in the same unit trust**

You can choose to obtain a roll-over if:

- (a) you own units (the *original units*) of a certain class in a unit trust; and
- (b) the trustee redeems or cancels all units of that class; and
- (c) the trustee issues you with new units (and you receive nothing else) in substitution for the original units; and
- (d) the \*market value of the new units just after they were issued is at least equal to the market value of the original units just before they were redeemed or cancelled; and
- (e) one of these requirements is satisfied:
  - (i) you are an Australian resident at the time of the redemption or cancellation; or
  - (ii) if you are a foreign resident at that time—the original units were \*taxable Australian property just before that time and the new units are taxable Australian property when they are issued.

Note: The roll-over consequences are set out in Subdivision 124-A. The original assets are the original units. The new assets are the new units.

### **Subdivision 124-F—Exchange of rights or options**

#### **Table of sections**

124-295	Exchange of rights or option to acquire shares in a company
124-300	Exchange of rights or option to acquire units in a unit trust

### **124-295 Exchange of rights or option to acquire shares in a company**

- (1) You can choose to obtain a roll-over if:
- (a) you own rights (the *original rights*) to \*acquire \*shares in a company or to acquire an option to acquire \*shares in a company; or
  - (b) you own an option (the *original option*) to acquire \*shares in a company;
- and these other requirements are satisfied.

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

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-300

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- (2) The \*shares must:
  - (a) be consolidated and divided into new shares of a larger amount; or
  - (b) be subdivided into new shares of a smaller amount.
- (3) The company must cancel the original rights or original option because of the consolidation or subdivision.
- (4) The company must:
  - (a) issue you with new rights (relating to the new \*shares) in substitution for the original rights; or
  - (b) issue you with a new option (relating to the new shares) in substitution for the original option.
- (5) You must receive nothing else in substitution for the original rights or original option.
- (6) The \*market value of the new rights or new option just after it was issued must be at least equal to the market value of the original rights or original option just before it was cancelled.
- (7) One of these requirements must be satisfied:
  - (a) you must be an Australian resident at the time of the cancellation; or
  - (b) if you are a foreign resident at that time:
    - (i) the original rights or original option were \*taxable Australian property just before that time; and
    - (ii) the new rights or new option are taxable Australian property when they are issued.

Note: The roll-over consequences are set out in Subdivision 124-A. The original asset is the original rights or original option. The new asset is the new rights or new option.

**124-300 Exchange of rights or option to acquire units in a unit trust**

- (1) You can choose to obtain a roll-over if:
  - (a) you own rights (the *original rights*) to \*acquire units in a unit trust or to acquire an option to acquire units in a unit trust; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(b) you own an option (the *original option*) to acquire units in a unit trust;

and these other requirements are satisfied.

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

- (2) The units must:
  - (a) be consolidated and divided into new units of a larger amount; or
  - (b) be subdivided into new units of a smaller amount.
- (3) The trustee must cancel the original rights or original option because of the consolidation or subdivision.
- (4) The trustee must:
  - (a) issue you with new rights (relating to the new units) in substitution for the original rights; or
  - (b) issue you with a new option (relating to the new units) in substitution for the original option.
- (5) You must receive nothing else in substitution for the original rights or original option.
- (6) The \*market value of the new rights or new option just after it was issued must be at least equal to the market value of the original rights or original option just before it was cancelled.
- (7) One of these requirements must be satisfied:
  - (a) you must be an Australian resident at the time of the cancellation; or
  - (b) if you are a foreign resident at that time:
    - (i) the original rights or original option were \*taxable Australian property just before that time; and
    - (ii) the new rights or new option are taxable Australian property when they are issued.

Note: The roll-over consequences are set out in Subdivision 124-A. The original asset is the original rights or original option. The new asset is the new rights or new option.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-350

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**Subdivision 124-G—Exchange of shares in one company for shares in another company**

**Guide to Subdivision 124-G**

**124-350 What this Subdivision is about**

This Subdivision sets out when you can obtain a roll-over if:

- you own shares in a company; and
- there is a reorganisation of its affairs so that you become the owner of new shares in another company.

**Table of sections**

124-355 Summary of rules

**Disposal case**

124-360 Disposal of shares in one company for shares in another one

124-365 Other requirements to be satisfied

**Redemption or cancellation case**

124-370 Redemption or cancellation of shares in one company for shares in another one

124-375 Other requirements to be satisfied

**Rules applying to both cases**

124-380 Requirements to be satisfied in both cases

124-382 Special rules for ADI restructures

**Consequences for the interposed company unless consolidated group continues**

124-385 Consequences for the interposed company

**Additional consequences for member if shares are trading stock or revenue assets**

124-390 Deferral of profit or loss on shares

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

### 124-355 Summary of rules

- (1) This Subdivision deals with 2 cases in which you can choose to obtain a roll-over because of the reorganisation of a company's affairs.  
Note: Section 103-25 tells you when you have to make the choice.
- (2) The first case is if you dispose of shares in one company to another company and the other company issues you with new shares. You can find the specific rules relevant to this case in sections 124-360 and 124-365.
- (3) The second case is if your shares in one company are redeemed or cancelled and another company issues you with new shares in return. You can find the specific rules relevant to this case in sections 124-370 and 124-375.
- (4) There are some rules that apply in both cases: see section 124-380.
- (5) There are also consequences for the other company if you can choose to obtain the roll-over: see section 124-385.

### Disposal case

#### 124-360 Disposal of shares in one company for shares in another one

- (1) You can choose to obtain a roll-over if:
  - (a) you are a \*member of a company (the *original company*);  
and
  - (b) you and at least one other entity (the *exchanging members*) own all the \*shares in it; and
  - (c) under a \*scheme for reorganising its affairs, the exchanging members \*dispose of all their shares in it to another company (the *interposed company*) in exchange for shares in the interposed company (and nothing else);

Note: See section 124-20 if an exchanging member uses a share sale facility.

and the requirements in sections 124-365 and 124-380 are satisfied.

Note: The roll-over consequences are set out in Subdivision 124-A. The original assets are your shares in the original company. The new assets are your new shares in the interposed company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-365

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- (2) You are taken to have chosen to obtain the roll-over if:
- (a) immediately before the time referred to in section 124-365 as the completion time, the original company is the \*head company of a \*consolidated group; and
  - (b) immediately after the completion time, the interposed company is the head company of the group.

Note: The consolidated group continues in existence because of section 703-70.

**124-365 Other requirements to be satisfied**

- (1) The interposed company must own all the \*shares in the original company just after *all* the exchanging members have \*disposed of their shares in the original company (the *completion time*).
- (2) Just after the completion time, *each* exchanging member must own:
  - (a) a whole number of \*shares in the interposed company; and
  - (b) a percentage of the \*shares in the interposed company that were issued to *all* the exchanging members that is equal to the percentage of the shares in the original company (that were \*disposed of to the interposed company) that the member owned.
- (3) The ratio of:
  - the \*market value of *each* exchanging member's \*shares in the interposed company *to* the market value of the shares in the interposed company issued to *all* the exchanging members (worked out just after the completion time);must equal the ratio of:
  - the market value of that member's shares in the original company that were \*disposed of to the interposed company *to* the market value of *all* the shares in the original company that were disposed of to the interposed company (worked out just before the first disposal).

Example: There are 100 shares in A Pty Ltd (the original company), all having the same rights. B Pty Ltd (the interposed company) acquires all the shares in A by issuing each shareholder in A 10 shares in itself for

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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each share they have in A. All shares in B have the same rights. Bill owned 15 shares in A and received 150 shares in B in exchange.

- (4) Either:
- (a) you are an Australian resident at the time you \*disposed of your \*shares in the original company; or
  - (b) if you are a foreign resident at that time:
    - (i) your shares in the original company were \*taxable Australian property just before that time; and
    - (ii) your shares in the interposed company are taxable Australian property just after the completion time.

## Redemption or cancellation case

### 124-370 Redemption or cancellation of shares in one company for shares in another one

- (1) You can choose to obtain a roll-over if you are a \*member of a company (the *original company*) and under a \*scheme for reorganising its affairs:
- (a) another company (the *interposed company*) \*acquires no more than 5 \*shares in the original company; and
  - (b) these are the first shares that the interposed company acquires in the original company; and
  - (c) you and at least one other entity (the *exchanging members*) own all the remaining shares in the original company; and
  - (d) the original company redeems or cancels those remaining shares; and
  - (e) each exchanging member receives shares (and nothing else) in the interposed company in return for their shares in the original company being redeemed or cancelled;

Note: See section 124-20 if an exchanging member uses a share sale facility.

and the requirements in sections 124-375 and 124-380 are satisfied.

Note: The roll-over consequences are set out in Subdivision 124-A. The original assets are your shares in the original company. The new assets are your new shares in the interposed company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-375

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- (1A) You are taken to have chosen to obtain the roll-over if:
- (a) immediately before the time referred to in section 124-375 as the completion time, the original company is the \*head company of a \*consolidated group; and
  - (b) immediately after the completion time, the interposed company is the head company of the group.

Note: The consolidated group continues in existence because of section 703-70.

- (2) The original company can issue other \*shares in itself to the interposed company as part of the scheme.

Note: Some of the interposed company's shares in the original company may be taken to be acquired before 20 September 1985: see section 124-385.

**124-375 Other requirements to be satisfied**

- (1) The interposed company must own all the \*shares in the original company just after *all* the exchanging members have had their shares in the original company redeemed or cancelled (the *completion time*).
- (2) Just after the completion time, *each* exchanging member must own:
  - (a) a whole number of \*shares in the interposed company; and
  - (b) a percentage of the \*shares in the interposed company that were issued to *all* the exchanging members that is equal to the percentage of the shares in the original company (that were redeemed or cancelled) that the member owned.
- (3) The ratio of:
  - the \*market value of each exchanging member's \*shares in the interposed company *to* the market value of the shares in the interposed company issued to *all* the exchanging members (worked out just after the completion time);must equal the ratio of:
  - the market value of that member's shares in the original company that were redeemed or cancelled *to* the market value of *all* the shares in the original company that were

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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redeemed or cancelled (worked out just before the first redemption or cancellation).

Example: There are 100 shares in X Pty Ltd (the original company), all having the same rights. X issues 2 shares to Y Pty Ltd (the interposed company) and cancels all other shares in itself. Y issues each shareholder in X 10 shares in itself for each share they had in X. All shares in Y have the same rights. Wil owned 10 shares in X and received 100 shares in Y in exchange.

- (4) Either:
- (a) you are an Australian resident at the time your \*shares in the original company are redeemed or cancelled; or
  - (b) if you are a foreign resident at that time:
    - (i) your shares in the original company were \*taxable Australian property just before that time; and
    - (ii) your shares in the interposed company are taxable Australian property just after the completion time.

## **Rules applying to both cases**

### **124-380 Requirements to be satisfied in both cases**

- (1) The \*shares issued in the interposed company must not be \*redeemable shares.
- (2) Each exchanging member who is issued \*shares in the interposed company must own the shares from the time they are issued to the completion time.
- (3) Just after the completion time:
  - (a) the exchanging members must own *all* the \*shares in the interposed company; or
  - (b) entities other than those members must own no more than 5 \*shares in the interposed company and the \*market value of those shares expressed as a percentage of the market value of all the shares in the interposed company is such that it is reasonable to treat the exchanging members as owning all the shares.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-382

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*Choice to be made by interposed company*

- (5) If:
- (a) immediately before the completion time, the original company is the \*head company of a \*consolidated group; and
  - (b) immediately after the completion time, the interposed company is the head company of a \*consolidatable group consisting only of itself and the \*members of the group immediately before the completion time;

the interposed company must choose that the consolidated group is to continue in existence at and after the completion time.

Note: Sections 703-65 to 703-80 deal with the effects of the choice for the consolidated group.

- (6) If subsection (5) of this section does not apply, the interposed company must choose that section 124-385 apply.
- (7) In either case, the interposed company must make the choice within 28 days after the completion time, or within such further time as the Commissioner allows. The choice cannot be revoked.

Note: This is an exception to the general rule about choices in section 103-25.

**124-382 Special rules for ADI restructures**

- (1) This section applies if:
- (a) the interposed company is a non-operating holding company within the meaning of the *Financial Sector (Business Transfer and Group Restructure) Act 1999*; and
  - (b) a restructure instrument under Part 4A of that Act is in force in relation to the interposed company; and
  - (c) because of the restructure to which the instrument relates, an \*ADI becomes a subsidiary (within the meaning of that Act) of the interposed company; and
  - (d) the original company is:
    - (i) the ADI; or
    - (ii) part of an extended licensed entity (within the meaning of the \*prudential standards) that includes the ADI.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Certain preference shares disregarded*

- (2) For the purposes of this Subdivision, disregard any \*shares in the original company that can be disregarded under subsection 703-37(4).

**Consequences for the interposed company unless consolidated group continues**

**124-385 Consequences for the interposed company**

- (1A) This section applies if the interposed company so chooses under subsection 124-380(6).
- (1) A whole number of the \*shares that the interposed company owns in the original company (just after the completion time) are taken to have been \*acquired before 20 September 1985 if any of the original company's assets as at the completion time were acquired by it before that day.
- Note: Generally, a capital gain or capital loss you make from a CGT asset that you acquired before 20 September 1985 can be disregarded: see Division 104.
- (2) The number (worked out as at the completion time) is the greatest possible that (when expressed as a percentage of all the \*shares) does not exceed:
- the \*market value of the original company's assets that it \*acquired before 20 September 1985 less its liabilities (if any) in respect of those assets;
- expressed as a percentage of:
- the market value of *all* the original company's assets less *all* of its liabilities.
- (3) The first element of the \*cost base of the interposed company's \*shares in the original company that are *not* taken to have been \*acquired before 20 September 1985 is:
- the total of the cost bases (as at the completion time) of the original company's assets that it acquired on or after that day;
- less:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-390

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- its liabilities (if any) in respect of those assets.
- (4) The first element of the \*reduced cost base of the interposed company's \*shares is worked out similarly.
- (5) A liability of the original company that is not a liability in respect of a specific asset or assets of the company is taken to be a liability in respect of all the assets of the company.

Note: An example is a bank overdraft.

- (6) If a liability is in respect of 2 or more assets, the proportion of the liability that is in respect of any one of those assets is equal to:

$$\frac{\text{The *market value of the asset}}{\text{The total of the market values of all the assets that the liability is in respect of}}$$

**Additional consequences for member if shares are trading stock or revenue assets**

**124-390 Deferral of profit or loss on shares**

- (1) There are additional consequences if:
- (a) under subsection 124-360(2), you are taken to obtain the roll-over and, at the time immediately before you \*dispose of your \*shares in the original company, some or all of them are your \*trading stock or \*revenue assets; or
  - (b) under subsection 124-370(1A), you are taken to obtain the roll-over and, at the time immediately before the original company redeems or cancels your shares in it, some or all of them are your trading stock or revenue assets.

*Trading stock*

- (2) The amount included in your assessable income because of the \*disposal, redemption or cancellation of each of your \*shares in the original company that is your \*trading stock at that time is equal to:
- (a) if the share has been your trading stock ever since the start of the income year in which that time occurs—the total of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (i) its \*value as trading stock at the start of the income year;  
and
  - (ii) the amount (if any) by which its cost has increased since  
the start of the income year; or
- (b) otherwise—its cost at that time.
- (3) For each of the \*shares in the interposed company that you  
acquired in return for those of your shares in the original company  
that were your \*trading stock at that time, you are taken to have  
paid:

$$\frac{\text{Total of the amounts included in your assessable income  
under subsection (2) for those shares in the original company}}{\text{Number of those shares in the interposed company}}$$

Note: The amount worked out under the formula becomes the cost of each of  
those shares in the interposed company.

*Revenue assets*

- (4) For each of your \*shares in the original company that is a \*revenue  
asset at that time, your assessable income includes the total of the  
amounts that (apart from this subsection) would be subtracted from  
the gross disposal proceeds in calculating any profit or loss on your  
disposing of, or ceasing to own, that share at that time.
- (5) For each of the \*shares in the interposed company that you  
acquired in return for those of your shares in the original company  
that were \*revenue assets at that time, you are taken to have paid:

$$\frac{\text{Total of the amounts included in your assessable income  
under subsection (4) for those shares in the original company}}{\text{Number of those shares in the interposed company}}$$

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 124-H—Exchange of units in a unit trust for shares in a company**

### **Guide to Subdivision 124-H**

#### **124-435 What this Subdivision is about**

This Subdivision sets out when you can obtain a roll-over if:

- you own units in a unit trust; and
- there is a reorganisation of its affairs so that you become the owner of new shares in a company.

#### **Table of sections**

124-440 Summary of rules

##### **Disposal case**

124-445 Disposal of units in a unit trust for shares in a company

124-450 Other requirements to be satisfied

##### **Redemption or cancellation case**

124-455 Redemption or cancellation of units in a unit trust for shares in a company

124-460 Other requirements to be satisfied

##### **Rules applying to both cases**

124-465 Requirements to be satisfied in both cases

##### **Consequences for the company**

124-470 Consequences for the company

#### **124-440 Summary of rules**

- (1) This Subdivision deals with 2 cases in which you can choose to obtain a roll-over because of the reorganisation of a unit trust's affairs.

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

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) The first case is if you dispose of units in a unit trust to a company and the company issues you with shares. You can find the specific rules about this case in sections 124-445 and 124-450.
- (3) The second case is if your units in a unit trust are redeemed or cancelled and a company issues you with shares. You can find the specific rules about this case in sections 124-455 and 124-460.
- (4) There are some rules that apply in both cases: see section 124-465.
- (5) There are also consequences for the company if you can choose to obtain a roll-over: see section 124-470.

## Disposal case

### 124-445 Disposal of units in a unit trust for shares in a company

You can choose to obtain a roll-over if:

- (a) you are a \*member of a unit trust; and
- (b) you and at least one other entity (the *exchanging members*) own all the units in it; and
- (c) under a \*scheme for reorganising its affairs, the exchanging members \*dispose of their units in it to a company in exchange for \*shares in the company (and nothing else);

Note: See section 124-20 if an exchanging member uses a share sale facility.

and the requirements in sections 124-450 and 124-465 are satisfied.

Note: The roll-over consequences are out in Subdivision 124-A. The original assets are your units in the unit trust. The new assets are your new shares in the company.

### 124-450 Other requirements to be satisfied

- (1) The company must own all the units in the unit trust just after *all* the exchanging members have \*disposed of their units in the unit trust (the *completion time*).
- (2) Just after the completion time, *each* exchanging member must own:
  - (a) a whole number of \*shares in the company; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-455

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(b) a percentage of the \*shares in the company that were issued to all the exchanging members that is equal to the percentage of the units in the unit trust (that were \*disposed of to the company) that the member owned.

(3) The ratio of:

- the \*market value of *each* exchanging member's \*shares in the company *to* the market value of the shares in the company issued to *all* the exchanging members (worked out just after the completion time);

must equal the ratio of:

- the market value of that member's units in the unit trust that were disposed of to the company *to* the market value of *all* the units that were disposed of to the company (worked out just before the first disposal).

Example: There are 1,000 units in the A unit trust, all having the same rights. B Pty Ltd acquires all the units in A by issuing each unitholder in A 10 shares in itself for each 100 units they have in A. All shares in B have the same rights. Brian owned 300 units in A and received 30 shares in B in exchange.

(4) Either:

- (a) you are an Australian resident at the time you \*disposed of your units in the unit trust; or
- (b) if you are a foreign resident at that time:
  - (i) your units were \*taxable Australian property just before that time; and
  - (ii) your \*shares in the company are taxable Australian property just after the completion time.

## Redemption or cancellation case

### 124-455 Redemption or cancellation of units in a unit trust for shares in a company

- (1) You can choose to obtain a roll-over if you are a member of a unit trust and under a \*scheme for reorganising its affairs:
  - (a) a company \*acquires no more than 5 units in the trust; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) these are the first units that the company acquires in the trust; and
- (c) you and at least one other entity (the *exchanging members*) own all the remaining units in the trust; and
- (d) the trustee redeems or cancels those remaining units; and
- (e) each exchanging member receives \*shares (and nothing else) in the company in return for their units being redeemed or cancelled;

Note: See section 124-20 if an exchanging member uses a share sale facility.

and the requirements in sections 124-460 and 124-465 are satisfied.

Note: The roll-over consequences are set out in Subdivision 124-A. The original assets are your units in the unit trust. The new assets are your new shares in the company.

- (2) The trustee of the unit trust can issue other units to the company as part of the scheme.

Note: Some of the company's units in the unit trust may be taken to be acquired before 20 September 1985: see section 124-470.

### **124-460 Other requirements to be satisfied**

- (1) The company must own all the units in the unit trust just after *all* the exchanging members have had their units in the unit trust redeemed or cancelled (the *completion time*).
- (2) Just after the completion time, *each* exchanging member must own:
  - (a) a whole number of \*shares in the company; and
  - (b) a percentage of the \*shares in the company that were issued to *all* the exchanging members that is equal to the percentage of the units in the unit trust (that were redeemed or cancelled) that the member owned.
- (3) The ratio of:
  - the \*market value of each exchanging member's \*shares in the company to the market value of the shares in the company issued to *all* the exchanging members (worked out just after the completion time);

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-465

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must equal the ratio of:

- the market value of that member's units in the unit trust that were redeemed or cancelled *to* the market value of *all* the units that were redeemed or cancelled (worked out just before the first redemption or cancellation).

Example: There are 1,000 units in the A unit trust, all having the same rights. 2 new units in A are issued to B Pty Ltd, and all other units in A are cancelled. Each unitholder in A is issued 10 shares in B for each 100 units they have in A. All shares in B have the same rights. Alison owned 200 units in A and received 20 shares in B in exchange.

(4) Either:

- (a) you are an Australian resident at the time your units in the unit trust are redeemed or cancelled; or
- (b) if you are a foreign resident at that time:
  - (i) your units were \*taxable Australian property just before that time; and
  - (ii) your \*shares in the company are taxable Australian property just after the completion time.

## Rules applying to both cases

### 124-465 Requirements to be satisfied in both cases

- (1) The \*shares issued in the company must not be \*redeemable shares.
- (2) Each exchanging member who is issued \*shares in the company must own the shares from the time they are issued to the completion time.
- (3) Just after the completion time:
  - (a) the exchanging members must own *all* the \*shares in the company; or
  - (b) entities other than those members must own no more than 5 \*shares in the company and the \*market value of those shares expressed as a percentage of the market value of all the shares in the company is such that it is reasonable to treat the exchanging members as owning all the shares.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Choice to be made by company*

- (5) The company must choose that the rules in section 124-470 apply. It must make its choice within 2 months after the completion time, or within such further time as the Commissioner allows.

Note: This is an exception to the general rule about choices in section 103-25.

## **Consequences for the company**

### **124-470 Consequences for the company**

- (1) A whole number of the units that the company owns in the unit trust (just after the completion time) are taken to have been \*acquired before 20 September 1985 if any of the unit trust's assets as at the completion time were acquired by it before that day.

Note: Generally, a capital gain or capital loss you make from a CGT asset that you acquired before 20 September 1985 can be disregarded: see Division 104.

- (2) The number (worked out as at the completion time) is the greatest possible that (when expressed as a percentage of all the units) does not exceed:

- the \*market value of the unit trust's assets that it \*acquired before 20 September 1985 less its liabilities (if any) in respect of those assets;

expressed as a percentage of:

- the market value of *all* the unit trust's assets less *all* of its liabilities.

- (3) The first element of the \*cost base of the company's units in the unit trust that are *not* taken to have been \*acquired before 20 September 1985 is:

- the total of the cost bases (as at the completion time) of the unit trust's assets that it acquired on or after that day;

less:

- its liabilities (if any) in respect of those assets.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-510

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- (4) The first element of the \*reduced cost base of the company's units is worked out similarly.
- (5) A liability of the unit trust that is not a liability in respect of a specific asset or assets of the trust is taken to be a liability in respect of all the assets of the trust.
- Note: An example is a bank overdraft.
- (6) If a liability is in respect of 2 or more assets, the proportion of the liability that is in respect of any one of those assets is equal to:

$$\frac{\text{The *market value of the asset}}{\text{The total of the market values of all the assets that the liability is in respect of}}$$

## **Subdivision 124-I—Change of incorporation**

### **Guide to Subdivision 124-I**

#### **124-510 What this Subdivision is about**

Roll-over relief is available for members of a body that is incorporated under one law and is converted to, or replaced with, a body incorporated under another law.

#### **Table of sections**

##### **Object of this Subdivision**

124-515 Object of this Subdivision

##### **Change of incorporation without change of entity**

124-520 Change of incorporation without change of entity

##### **Old corporation wound up**

124-525 Old corporation wound up

##### **Special consequences of some roll-overs**

124-530 Shares in company replacing pre-CGT and post-CGT mix of interest and rights in body

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

124-535 Rights as member of Indigenous corporation replacing pre-CGT and post-CGT mix of interest and rights in body

## **Object of this Subdivision**

### **124-515 Object of this Subdivision**

The object of this Subdivision is to ensure that CGT considerations for \*members of a body incorporated under a law do not impede a change of incorporation involving converting the body to, or replacing it with, a company incorporated under:

- (a) the *Corporations Act 2001* or a similar \*foreign law; or
- (b) the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

Note: Subdivision 620-A provides a roll-over for the assets of the body.

## **Change of incorporation without change of entity**

### **124-520 Change of incorporation without change of entity**

- (1) This section applies if:
  - (a) you are a \*member of a body incorporated under a law described in column 1 of an item of the table; and
  - (b) the body is converted into a company incorporated under a law described in column 2 of the item, without creating a new legal entity; and
  - (c) it is reasonable to conclude that there is no significant difference:
    - (i) between the ownership of the body, and of rights relating to the body held by entities that owned the body, just before the conversion and the ownership of the company just after the conversion; or
    - (ii) between the mix of ownership of the body, and of rights relating to the body held by entities that owned the body, just before the conversion and the mix of ownership of the company just after the conversion.

Note: See section 124-20 if an entity uses a share or interest sale facility.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-520

<b>Laws the body and company are incorporated under</b>	
<b>Column 1</b>	<b>Column 2</b>
<b>Body incorporated under this law</b>	<b>Company incorporated under this law</b>
1 A law other than the <i>Corporations Act 2001</i> and a similar *foreign law relating to companies	The <i>Corporations Act 2001</i> or a similar foreign law relating to companies
2 A law other than the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i>	The <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i>

- (2) You can choose to obtain a roll-over if:
- (a) as a result of the conversion you are issued with \*shares in the company and you receive nothing else; and
  - (b) either you are an Australian resident at the time of the conversion or, if you are a foreign resident at that time:
    - (i) each of your interest and your other rights (if any) relating to the body was \*taxable Australian property just before that time; and
    - (ii) the shares are taxable Australian property when they are issued.

Note 1: The roll-over consequences are set out in Subdivision 124-A and section 124-530.

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

- (3) If the company is incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, subsection (2) applies in relation to rights as a \*member of the company in the same way as that subsection applies to \*shares in a company.

Note: This may allow you to choose to obtain a roll-over. The roll-over consequences are set out in Subdivision 124-A and section 124-535.

*Exception for demutualisation of certain bodies*

- (4) This section does not apply to demutualisation of a body if Division 326 in Schedule 2H to the *Income Tax Assessment Act 1936* applies to the demutualisation.

Note: That Division deals with demutualisation of entities other than insurance companies and health insurers.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Old corporation wound up

### 124-525 Old corporation wound up

- (1) This section applies if:
- (a) a body is incorporated under a law described in column 1 of an item of the table; and
  - (b) a company is incorporated under a law described in column 2 of the item; and
  - (c) the body ceases to exist, but the company continues to exist, after the time (the *switch time*) the \*members of the body receive \*shares in the company, or rights as members of it if it is incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, on account of:
    - (i) their interests in the body; and
    - (ii) their other rights (if any) relating to the body; and
  - (d) the members of the body do not receive anything else on account of the expected ending of those interests and rights; and
  - (e) it is reasonable to conclude that there is no significant difference:
    - (i) between the ownership of the body, and of rights relating to the body held by entities that owned the body, just before the switch time and the ownership of the company just after the switch time; or
    - (ii) between the mix of ownership of the body, and of rights relating to the body held by entities that owned the body, just before the switch time and the mix of ownership of the company just after the switch time; and
- Note: See section 124-20 if an entity uses a share or interest sale facility.
- (f) the body \*disposes of all its \*CGT assets to the company, except any assets expected to be needed to meet the body's existing or expected liabilities before it ceases to exist.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-525

<b>Laws the body and company are incorporated under</b>	
<b>Column 1</b>	<b>Column 2</b>
<b>Body incorporated under this law</b>	<b>Company incorporated under this law</b>
1 A law other than the <i>Corporations Act 2001</i> and a similar *foreign law relating to companies	The <i>Corporations Act 2001</i> or a similar foreign law relating to companies
2 A law other than the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i>	The <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i>

- (2) You can choose to obtain a roll-over if:
- (a) you were a \*member of the body just before the switch time; and
  - (b) your ownership of your interest in the body ends at a time (the *end time*) after the switch time; and
  - (c) at the end time you have the \*shares in the company that you received at the switch time; and
  - (d) either you are an Australian resident at the end time or, if you are a foreign resident at the end time:
    - (i) each of your interest in the body and your other rights (if any) relating to the body was \*taxable Australian property just before the end time; and
    - (ii) the shares in the company that you received at the switch time are taxable Australian property at the end time.

Note 1: The roll-over consequences are set out in Subdivision 124-A and section 124-530.

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

- (3) If the company is incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, subsection (2) applies in relation to rights as a \*member of the company in the same way as that subsection applies to \*shares in a company.

Note: This may allow you to choose to obtain a roll-over. The roll-over consequences are set out in Subdivision 124-A and section 124-535.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Special consequences of some roll-overs

### **124-530 Shares in company replacing pre-CGT and post-CGT mix of interest and rights in body**

- (1) This section applies if:
  - (a) you choose to obtain a roll-over under section 124-520 or 124-525 relating to \*shares you have in the company on account of the following (your *original assets*):
    - (i) your interest in the body mentioned in that section;
    - (ii) your other rights relating to the body mentioned in that section; and
  - (b) you \*acquired some of your original assets before 20 September 1985 and the rest of them on or after that day.
- (2) You are taken to have \*acquired so many of the \*shares before 20 September 1985 as is reasonable, having regard to:
  - (a) the number and \*market value of your original assets; and
  - (b) the number and market value of the shares.
- (3) The first element of the \*cost base of each of the \*shares not taken by subsection (2) to have been \*acquired before 20 September 1985 (your *post-CGT shares*) is such amount as is reasonable having regard to:
  - (a) the total of the cost bases of your original assets that you acquired on or after 20 September 1985; and
  - (b) the number and \*market value of your post-CGT shares.
- (4) The reduced cost base of each of your post-CGT shares is worked out similarly.
- (5) This section has effect despite subsections 124-15(5) and (6).

### **124-535 Rights as member of Indigenous corporation replacing pre-CGT and post-CGT mix of interest and rights in body**

- (1) This section applies if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-570

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- (a) you choose to obtain a roll-over under section 124-520 or 124-525 relating to rights (the **replacement rights**) you have as a \*member of a company incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* on account of the following (your **original assets**):
    - (i) your interest in the body mentioned in that section;
    - (ii) your other rights relating to the body mentioned in that section; and
  - (b) you \*acquired any of your original assets before 20 September 1985.
- (2) You are taken to have \*acquired the replacement rights before 20 September 1985.
- (3) This section has effect despite subsection 124-15(5).

**Subdivision 124-J—Crown leases**

**Guide to Subdivision 124-J**

**124-570 What this Subdivision is about**

This Subdivision sets out the situations in which the holder of a Crown lease over land obtains a replacement asset roll-over when the lease is, among other things, renewed, extended or converted to an estate in fee simple.

**Table of sections**

**Operative provisions**

124-575	Extension or renewal of Crown lease
124-580	Meaning of <i>Crown lease</i>
124-585	Original right differs in area from new right
124-590	Part of original right excised
124-595	Treating parts of new right as separate assets
124-600	What is the roll-over?
124-605	Change of lessor

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## Operative provisions

### 124-575 Extension or renewal of Crown lease

- (1) There is a roll-over if:
- (a) you hold one or more \*CGT assets that are \*Crown leases over land (the *original right*); and
  - (b) the original right expires or you surrender it; and
  - (c) you are granted one or more new Crown leases over land or one or more estates in fee simple in land, or both (the *new right*); and
  - (d) the new right relates to the same land as the original right.

Note 1: The roll-over consequences are set out in Subdivision 124-A. They might be modified: see section 124-600.

Note 2: If there has been a capital improvement to the Crown lease: see section 108-75.

- (2) The new right must have been granted in one of these ways:
- (a) by renewing or extending the term of the original right where the renewal or extension is mainly due to your having held the original right; or
  - (b) by changing the purpose for which the land to which the original right related can be used; or
  - (c) by converting the original right to a \*Crown lease in perpetuity; or
  - (d) by converting the original right to an estate in fee simple; or
  - (e) by consolidating, or consolidating and dividing, the original right; or
  - (f) by subdividing the original right; or
  - (g) by excising or relinquishing a part of the land to which the original right related; or
  - (h) by expanding the area of that land.

### 124-580 Meaning of *Crown lease*

A *Crown lease* is:

- (a) a lease of land granted by the Crown under an \*Australian law (other than the common law); or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-585

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- (b) a similar lease granted under a \*foreign law.

**124-585 Original right differs in area from new right**

- (1) Even if the new right relates to different land to that to which the original right related, this Subdivision applies as if it relates to the same land in these cases:
- (a) the difference in area is not significant;
  - (b) the difference in \*market value is not significant;
  - (c) the new right was granted to correct errors in or omissions from the original right;
  - (d) the new right relates to a significantly different area of land but you had made reasonable efforts to ensure that the area was the same;
  - (e) it is otherwise reasonable for this Subdivision to apply in that way.
- (2) However, the rule in subsection (1) does not apply if section 124-590 applies.

**124-590 Part of original right excised**

- (1) There is a *partial* roll-over if you \*acquired the original right on or after 20 September 1985 and:
- (a) the land to which the new right relates is different in area to the land the subject of the original right because a part (the *excised part*) of the land to which the original right related was excised or you relinquished it; and
  - (b) you received a payment for the expiry or surrender of the original right.

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

Note: Section 124-600 sets out the effect on your cost base.

- (2) There is no roll-over for the excised part. The \*cost base of the excised part is so much of the \*cost base of the relevant \*Crown lease as is attributable to the excised part.

Its \*reduced cost base is worked out similarly.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: You may make a capital gain or loss on the excised part because of CGT event C2.

### **124-595 Treating parts of new right as separate assets**

- (1) Each part of a \*Crown lease or an estate in fee simple that is part of the new right is taken to be a separate \*CGT asset to the extent that it relates to:
  - (a) land to which a Crown lease (that was part of the original right) related where you \*acquired the lease before 20 September 1985; and
  - (b) land to which a Crown lease (that was part of the original right) related where you acquired the lease on or after 20 September 1985; and
  - (c) other land.
- (2) You are taken to have \*acquired each asset that is a separate \*CGT asset because of paragraph (1)(a) before 20 September 1985.

### **124-600 What is the roll-over?**

- (1) The roll-over is mainly as specified in Subdivision 124-A.
- (2) However, you work out the \*cost base and \*reduced cost base of \*CGT assets (that you are not taken to have \*acquired before 20 September 1985) and that are part of the new right a bit differently where section 124-590 or 124-595 applies.
- (3) The first element of your \*cost base for each of those assets is:

$$\text{CB of post-CGT original right} \times \frac{\text{Market value of separate asset}}{\text{Market value of all new assets}}$$

where:

***CB of post-CGT original right*** is the sum of the \*cost bases of the \*Crown leases (that were part of the original right) and that you \*acquired on or after 20 September 1985 (just before the original right expired or was surrendered) reduced, if there is an excised part, by so much of those cost bases as is attributable to the excised part.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-605

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**market value of all new assets** is the \*market value of all \*CGT assets (that you are not taken to have \*acquired before 20 September 1985) that are part of the new right just after you acquired them.

**market value of separate asset** is the \*market value of the particular asset just after you \*acquired it.

- (4) The first element of the \*reduced cost base of each of those assets is worked out similarly.

**124-605 Change of lessor**

- (1) You treat a lease of land (whether or not it is a \*Crown lease) granted to you (the **fresh lease**) as being a renewal of your original right if:
- (a) after the grant of the original right, the land (the **original land**) to which it related became vested in an \*Australian government agency (other than the one that granted the original right); and
  - (b) the second agency granted you the fresh lease over:
    - (i) the original land; or
    - (ii) the original land less an excised area; or
    - (iii) the original land and other land; and
  - (c) the fresh lease was granted under an \*Australian law (other than the common law).
- (2) You do this even if there is a period between the end of the original right and the grant of the fresh lease if you continued to occupy the original land during that period under a permission, licence or authority granted by the second agency.

**Subdivision 124-K—Depreciating assets**

**Table of sections**

124-655	Roll-over for depreciating assets
124-660	Right granted to associate

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **124-655 Roll-over for depreciating assets**

There is a roll-over for a \*depreciating asset if:

- (a) the asset is attached to land you hold under a \*quasi-ownership right granted by an \*exempt Australian government agency or an \*exempt foreign government agency; and
- (b) you \*hold the asset because of section 40-40; and
- (c) the quasi-ownership right expires or is terminated or you surrender it; and
- (d) you are granted a new quasi-ownership right over the land or an estate in fee simple in the land; and
- (e) there is no roll-over for you under Subdivision 124-J (about Crown leases) or Subdivision 124-L (about prospecting and mining entitlements).

Note 1: The roll-over consequences are set out in Subdivision 124-A.

Note 2: This section provides a roll-over for a depreciating asset in the limited circumstances where Subdivision 124-J cannot because a quasi-ownership right over land covers situations that a Crown lease does not (for example, an easement over land).

Note 3: If there has been a capital improvement to the quasi-ownership right: see section 108-75.

### **124-660 Right granted to associate**

If the \*quasi-ownership right or estate in fee simple is instead granted to an \*associate or an \*associated government entity of yours:

- (a) your \*reduced cost base of the \*depreciating asset is reduced by the \*adjustable value of the asset just before the original quasi-ownership right expired or was surrendered or terminated; and
- (b) there is no roll-over.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-700

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**Subdivision 124-L—Prospecting and mining entitlements**

**Guide to Subdivision 124-L**

**124-700 What this Subdivision is about**

This Subdivision sets out the situations in which there is a roll-over if a prospecting or mining entitlement expires or is surrendered and it is replaced by a new one.

**Table of sections**

**Operative provisions**

124-705	Extension or renewal of prospecting or mining entitlement
124-710	Meaning of prospecting entitlement and mining entitlement
124-715	Original entitlement differs in area from new entitlement
124-720	Part of original entitlement excised
124-725	Treating parts of new entitlement as separate assets
124-730	What is the roll-over?

**Operative provisions**

**124-705 Extension or renewal of prospecting or mining entitlement**

- (1) There is a roll-over if:
- (a) you hold one or more \*CGT assets that are \*prospepecting entitlements or \*mining entitlements (the *original entitlement*); and
  - (b) the original entitlement expires or you surrender it; and
  - (c) you are granted one or more new prospecting entitlements or mining entitlements (the *new entitlement*); and
  - (d) the new entitlement relates to the same land as the original entitlement.

Note 1: The roll-over consequences are set out in Subdivision 124-A. They might be modified: see section 124-730.

Note 2: If there has been a capital improvement to the entitlement: see section 108-75.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) The new entitlement must have been granted in one of these ways:
- (a) by renewing or extending the term of the original entitlement where the renewal or extension is mainly due to your having held the original entitlement; or
  - (b) by consolidating, or consolidating and dividing, the original entitlement; or
  - (c) by subdividing the original entitlement; or
  - (d) by converting a \*prospecting entitlement to a \*mining entitlement, or a mining entitlement to a prospecting entitlement; or
  - (e) by excising or relinquishing a part of the land to which the original entitlement related; or
  - (f) by expanding the area of that land.

#### **124-710 Meaning of prospecting entitlement and mining entitlement**

- (1) A *prospecting entitlement* is:
- (a) an authority, licence, permit or entitlement under an \*Australian law or \*foreign law to prospect or explore for \*minerals in an area; or
  - (b) a lease of land that allows the lessee to prospect or explore for minerals on the land; or
  - (c) an interest in a thing referred to in paragraph (a) or (b).
- (2) A *mining entitlement* is:
- (a) an authority, licence, permit or entitlement under an \*Australian law or \*foreign law to mine for \*minerals in an area; or
  - (b) a lease of land that allows the lessee to mine for minerals on the land; or
  - (c) an interest in a thing referred to in paragraph (a) or (b).

#### **124-715 Original entitlement differs in area from new entitlement**

- (1) Even if the new entitlement relates to different land to that to which the original entitlement related, this Subdivision applies as if it relates to the same land in these cases:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-720

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- (a) the difference in area is not significant;
  - (b) the difference in \*market value is not significant;
  - (c) the new entitlement was granted to correct errors in or omissions from the original entitlement;
  - (d) it is otherwise reasonable for this Subdivision to apply in that way.
- (2) However, the rule in subsection (1) does not apply if section 124-720 applies.

**124-720 Part of original entitlement excised**

- (1) There is *partial* roll-over if you \*acquired the original entitlement on or after 20 September 1985 and:
- (a) the land to which the new entitlement relates is different in area to the land the subject of the original entitlement because a part (the *excised part*) of the land to which the original entitlement related was excised or you relinquished it; and
  - (b) you received a payment for the expiry or surrender of the original entitlement.

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

Note: Section 124-730 sets out the effect on your cost base.

- (2) There is no roll-over for the excised part. The \*cost base of the excised part is so much of the \*cost base of the original entitlement as is attributable to the excised part.

Its \*reduced cost base is worked out similarly.

Note: You may make a capital gain or loss on the excised part because of CGT event C2.

**124-725 Treating parts of new entitlement as separate assets**

- (1) Each part of a \*prospecting entitlement or \*mining entitlement that is part of the new entitlement is taken to be a separate \*CGT asset to the extent that it relates to:
- (a) land to which a prospecting entitlement or mining entitlement (that was part of the original entitlement) related where you \*acquired the entitlement before 20 September 1985; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) land to which a prospecting entitlement or mining entitlement (that was part of the original entitlement) related where you acquired the entitlement on or after 20 September 1985; and
  - (c) other land.
- (2) You are taken to have \*acquired each asset that is a separate \*CGT asset because of paragraph (1)(a) before 20 September 1985.

### 124-730 What is the roll-over?

- (1) The roll-over is mainly as specified in Subdivision 124-A.
- (2) However, you work out the \*cost base and \*reduced cost base of \*CGT assets (that you are not taken to have \*acquired before 20 September 1985) and that are part of the new entitlement a bit differently where section 124-720 or 124-725 applies.
- (3) The first element of your \*cost base for each of those assets is:

$$\text{CB of post-CGT original entitlement} \times \frac{\text{Market value of separate asset}}{\text{Market value of all new assets}}$$

where:

***CB of post-CGT original entitlement*** is the sum of the \*cost bases of the prospecting entitlements or mining entitlements (that were part of the original entitlement) and that you \*acquired on or after 20 September 1985 (just before the original entitlement expired or was surrendered) reduced, if there is an excised part, by so much of those cost bases as is attributable to the excised part.

***market value of all new assets*** is the \*market value of all \*CGT assets (that you are not taken to have \*acquired before 20 September 1985) that are part of the new entitlement just after you acquired them.

***market value of separate asset*** is the \*market value of the particular asset just after you \*acquired it.

- (4) The first element of the \*reduced cost base of each of those assets is worked out similarly.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-775

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**Subdivision 124-M—Scrip for scrip roll-over**

**Guide to Subdivision 124-M**

**124-775 What this Subdivision is about**

This Subdivision allows you to choose a roll-over where post-CGT shares or trust interests you own are replaced with other shares or trust interests, for example, where there is a company takeover.

You can only choose the roll-over if you would have made a capital gain from the exchange.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Operative provisions

### 124-780 Replacement of shares

- (1) There is a roll-over if:
- (a) an entity (the *original interest holder*) exchanges:
    - (i) a \*share (the entity's *original interest*) in a company (the *original entity*) for a share (the holder's *replacement interest*) in another company; or
    - (ii) an option, right or similar interest (also the holder's *original interest*) issued by the original entity that gives the holder an entitlement to acquire a share in the original entity for a similar interest (also the holder's *replacement interest*) in another company; and
  - (b) the exchange is in consequence of a single \*arrangement that satisfies subsection (2) or (2A); and
  - (c) the conditions in subsection (3) are satisfied; and
  - (d) if subsection (4) applies, the conditions in subsection (5) are satisfied.

Note 1: There are some exceptions: see section 124-795.

Note 2: The original interest holder can obtain only a partial roll-over if the capital proceeds for its original interest include something other than its replacement interest: see section 124-790.

Note 3: A trustee who gets a roll-over under this Subdivision for an original interest consisting of shares issued as part of a demutualisation may be eligible for a further roll-over under Subdivision 126-E when a beneficiary becomes absolutely entitled to the replacement shares.

Example 1: You can get a roll-over if you exchange your shares in one entity for shares in another entity or if you exchange options in one entity for options in another entity. You cannot get a roll-over if you exchange options for shares.

Example 2: Examples of arrangements that could be involved include:

- a company takeover, whether or not it is regulated by the *Corporations Act 2001*, resulting in a company owning 80% or more of another company's shares.
- a scheme of arrangement governed by the *Corporations Act 2001* that involves a cancellation of some interests in an original entity resulting in another entity owning 80% or more of the interests in the original entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-780

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*Conditions for arrangement*

- (2) The \*arrangement must:
- (a) result in:
    - (i) a company (the **acquiring entity**) that is not a member of a \*wholly-owned group becoming the owner of 80% or more of the \*voting shares in the original entity; or
    - (ii) a company (also an **acquiring entity**) that is a member of such a group increasing the percentage of voting shares that it owns in the original entity, and that company or members of the group becoming the owner of 80% or more of those shares; and
  - (b) be one in which at least all owners of \*voting shares in the original entity (except a company referred to in paragraph (a)) could participate; and
  - (c) be one in which participation was available on substantially the same terms for all of the owners of interests of a particular type in the original entity.

Note 1: The 80% or more requirement is satisfied if the acquiring entity ends up owning at least 80% of the voting shares in the original entity. This may include shares held before the arrangement started.

Note 2: Participation will be on substantially the same terms if, for example, matters such as those referred to in subsections 619(2) and (3) of the *Corporations Act 2001* affect the capital proceeds that each participant can receive.

*Conditions for arrangement—takeover bids and arrangements*

- (2A) The \*arrangement must:
- (a) satisfy paragraph (2)(a); and
  - (b) be, be part of, or include one or more of the following:
    - (i) a takeover bid (within the meaning of the *Corporations Act 2001*) for the original interests by the acquiring entity that is not carried out in contravention of the provisions mentioned in paragraphs 612(a) to (g) of that Act;

Note: For exemption and modification of provisions by ASIC (and review by the takeovers panel) see Part 6.10 of the *Corporations Act 2001*. For Court declarations excusing contraventions see section 1325D of that Act.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) a compromise or arrangement entered into by the original entity under Part 5.1 of the *Corporations Act 2001*, approved by order of a court made for the purposes of paragraph 411(4)(b) of that Act.

*Conditions for roll-over*

- (3) The conditions are:
  - (a) the original interest holder \*acquired its original interest on or after 20 September 1985; and
  - (b) apart from the roll-over, it would make a \*capital gain from a \*CGT event happening in relation to its original interest; and
  - (c) its replacement interest is in a company (the **replacement entity**) that is:
    - (i) the company referred to in subparagraph (2)(a)(i); or
    - (ii) in any other case—the \*ultimate holding company of the \*wholly-owned group; and
  - (d) the original interest holder chooses to obtain the roll-over or, if section 124-782 applies to it for the arrangement, it and the replacement entity jointly choose to obtain the roll-over; and
  - (e) if that section applies, the original interest holder informs the replacement entity in writing of the \*cost base of its original interest worked out just before a CGT event happened in relation to it.

Note: If the original interest holder also exchanges a CGT asset that it acquired before 20 September 1985, the cost base of any interest received in exchange for it is worked out under section 124-800.

*Further roll-over conditions in certain cases*

- (4) The conditions specified in subsection (5) must be satisfied if the original interest holder and an acquiring entity did not deal with each other at \*arm's length and:
  - (a) neither the original entity nor the replacement entity had at least 300 \*members just before the \*arrangement started; or
  - (b) the original interest holder, the original entity and an acquiring entity were all members of the same \*linked group just before that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-781

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Note: There are some cases where a company will not be regarded as having 300 members: see section 124-810.

- (5) The conditions are:
- (a) the \*market value of the original interest holder's \*capital proceeds for the exchange is at least substantially the same as the market value of its original interest; and
  - (b) its replacement interest carries the same kind of rights and obligations as those attached to its original interest.

*CUFS*

- (6) This section applies to the holder of a Chess Unit of Foreign Security as if the holder held the underlying interests that the unit represents.

Note: A Chess Unit of Foreign Security is an interest, traded on the stock market operated by ASX Limited, in a foreign share, unit or interest.

- (7) A company is the **ultimate holding company** of a \*wholly-owned group if it is not a \*100% subsidiary of another company in the group.

**124-781 Replacement of trust interests**

- (1) There is a roll-over if:
- (a) an entity (also the **original interest holder**) exchanges:
    - (i) a unit or other interest (also the holder's **original interest**) in a trust (also the **original entity**) for a unit or other interest (also the holder's **replacement interest**) in another trust (also the **acquiring entity**); or
    - (ii) an option, right or similar interest (also the holder's **original interest**) issued by the original entity that gives the holder an entitlement to acquire a unit or other interest in the original entity for a similar interest (also the holder's **replacement interest**) in another trust (also the **acquiring entity**); and
  - (b) entities have \*fixed entitlements to all of the income and capital of the original entity and the acquiring entity; and
  - (c) the exchange is in consequence of an \*arrangement that satisfies subsection (2) or (2A); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(d) the conditions in subsections (3) and (4) are satisfied.

Note 1: There are some exceptions: see section 124-795.

Note 2: The original interest holder can obtain only a partial roll-over if the capital proceeds for its original interest include something other than its replacement interest: see section 124-790.

*Conditions for arrangement*

- (2) The \*arrangement must:
- (a) result in the acquiring entity owning 80% or more of the \*trust voting interests in the original entity or, if there are none, 80% or more of the units or other interests in the original entity; and
  - (b) be one in which at least all owners of trust voting interests (or of units or other interests) in the original entity (except the acquiring entity) could participate; and
  - (c) be one in which participation was available on substantially the same terms for all of the owners of interests or units of a particular type in the original entity.

*Conditions for arrangement—takeover bids*

- (2A) The \*arrangement must:
- (a) satisfy paragraph (2)(a); and
  - (b) be, be part of, or include a takeover bid (within the meaning of the *Corporations Act 2001*) for the original interests by the acquiring entity that is not carried out in contravention of the provisions mentioned in paragraphs 612(a) to (g) of that Act.

Note: For exemption and modification of provisions by ASIC (and review by the takeovers panel) see Part 6.10 of the *Corporations Act 2001*. For Court declarations excusing contraventions see section 1325D of that Act.

*Conditions for roll-over*

- (3) The conditions are:
- (a) the original interest holder \*acquired its original interest on or after 20 September 1985; and
  - (b) apart from the roll-over, it would make a \*capital gain from a \*CGT event happening in relation to its original interest; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-781

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- (c) it chooses to obtain the roll-over or, if section 124-782 applies to it for the \*arrangement, it and the trustee of the acquiring entity jointly choose to obtain the roll-over; and
- (d) if that section applies to it, it informs that trustee in writing of the \*cost base of its original interest as at the time just before a CGT event happened in relation to it.

Note: If the original interest holder also exchanges a CGT asset that it acquired before 20 September 1985, the cost base of any interest received in exchange for it is worked out under section 124-800.

*Further roll-over conditions in certain cases*

- (4) These conditions must be satisfied if the original interest holder and the trustee of the acquiring entity did not deal with each other at \*arm's length and neither the original entity nor the acquiring entity had at least 300 beneficiaries just before the \*arrangement started:
  - (a) the \*market value of the original interest holder's \*capital proceeds for the exchange is at least substantially the same as the market value of its original interest; and
  - (b) its replacement interest carries the same kind of rights and obligations as those attached to its original interest.

Note: There are some cases where a trust will not be regarded as having 300 beneficiaries: see section 124-810.

*CUFS*

- (5) This section applies to the holder of a Chess Unit of Foreign Security as if the holder held the underlying interests that the unit represents.

Note: A Chess Unit of Foreign Security is an interest, traded on the stock market operated by ASX Limited, in a foreign share, unit or interest.

*Meaning of trust voting interest*

- (6) A **trust voting interest** in a trust is an interest in the trust that confers rights of the same or a similar kind as the rights conferred by a \*voting share in a company.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

**124-782 Transfer or allocation of cost base of shares acquired by acquiring entity etc.**

*Transfer of cost base*

- (1) The \*cost base of an original interest \*acquired by an acquiring entity under the \*arrangement from an original interest holder becomes the first element of the cost base and \*reduced cost base of the acquiring entity for the interest if:
- (a) the original interest holder obtains a roll-over; and
  - (b) the holder is a \*significant stakeholder or a \*common stakeholder for the arrangement.

Note 1: For other interests, for example, interests for which the roll-over is not chosen, the cost base will be worked out under the ordinary cost base rules in Divisions 110 and 112.

Note 2: There is a special rule to determine the cost base of equity or debt given to an ultimate holding company by an acquiring entity under an arrangement: see section 124-784.

*Allocation of cost base in cancellation case*

- (2) The \*cost base and \*reduced cost base of any interests (the ***new interests***) issued by the original entity to an acquiring entity under the \*arrangement is worked out under subsection (3) if:
- (a) original interests of an original interest holder are cancelled under the arrangement; and
  - (b) the holder obtains a roll-over for the cancellation; and
  - (c) the holder is a \*significant stakeholder or a \*common stakeholder for the arrangement.
- (3) The first element of the \*cost base and \*reduced cost base of the new interests of an acquiring entity is that part of the cost base of the cancelled interests as can be reasonably allocated to the new interests, having regard to:
- (a) the nature of the \*arrangement; and
  - (b) the number, type and relative \*market values of the cancelled interests and the new interests; and
  - (c) any other relevant matters.

Example: Robert Co has 3 shareholders: Antill Co with 300 shares, Rachael Co 400 shares and Margaret Co 300 shares. The cost base of each share is

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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\$1 and market value is \$2. Margaret Co is owned by two shareholders, John and Paul, who each have 50 shares. The market value of each share is \$20.

Under an arrangement, Robert Co cancels the shares of Antill Co and Rachael Co. They receive 30 and 40 shares respectively in Margaret Co, which becomes the sole shareholder in Robert Co. The market value of Antill Co's and Rachael Co's shares in Margaret Co is equivalent to the market value of their cancelled shares in Robert Co.

Robert Co also issues 700 shares to Margaret Co, reflecting the \$1,400 total market value of the shares issued by Margaret Co to Antill Co and Rachael Co. Before and after the arrangement, Margaret Co's shares in Robert Co were worth \$2 each.

It is necessary to reasonably allocate the cost bases of the cancelled shares (700 x \$1) to the 700 shares issued by Robert Co to Margaret Co. In this case, an allocation of \$1 per share would be reasonable.

Note: If no new shares are issued by Robert Co, the cost base of the original shares that Margaret Co holds would not be adjusted.

- (4) The amount allocated to a new interest under subsection (3) must not be more than its \*market value just after the \*arrangement was completed.

**124-783 Meaning of *significant stakeholder*, *common stakeholder*, *significant stake* and *common stake***

*Significant stakeholder*

- (1) An original interest holder is a ***significant stakeholder*** for an \*arrangement if it had:
- (a) a \*significant stake in the original entity just before the arrangement started; and
  - (b) a significant stake in the replacement entity just after the arrangement was completed.
- (2) Also, if an original interest holder is an acquiring entity, any other original interest holder is a ***significant stakeholder*** for an \*arrangement if it:
- (a) had a \*significant stake in the original entity just before the \*arrangement started; and
  - (b) is an \*associate of the replacement entity just after the arrangement was completed.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Common stakeholder*

- (3) An original interest holder is a **common stakeholder** for an \*arrangement if it had:
  - (a) a \*common stake in the original entity just before the arrangement started; and
  - (b) a common stake in the replacement entity just after the arrangement was completed.
- (4) If an acquiring entity for an \*arrangement is an original interest holder, each other original interest holder that has a replacement interest is a **common stakeholder** for the arrangement.
- (5) No original interest holder is a **common stakeholder** for an \*arrangement if either the original entity or the replacement entity had at least 300 \*members (for a company) or 300 beneficiaries (for a trust) just before the arrangement started.

*Significant stake*

- (6) An entity has a **significant stake** in a company at a time if the entity, or the entity and the entity's \*associates between them:
  - (a) have at that time \*shares carrying 30% or more of the voting rights in the company; or
  - (b) have at that time the right to receive 30% or more of any \*dividends that the company may pay; or
  - (c) have at that time the right to receive 30% or more of any distribution of capital of the company.

Example: There are 4 shareholders in YZT Company: Sonja has 60%, Mario has 20%, Peter has 10% and Dave has 10%.

Sonja, Mario and Peter are associates. They each have a significant stake in YZT because, on an associate inclusive basis, they each have a 90% stake in YZT. Dave does not have a significant stake because his total stake, on an associate inclusive basis, is 10%.

- (7) An entity has a **significant stake** in a trust at a time if the entity, or the entity and the entity's \*associates between them, had at that time the right to receive 30% or more of any distribution to beneficiaries of the trust of income or capital of the trust.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (8) No original interest holder has a **significant stake** in a company that has at least 300 \*members or a trust that has at least 300 beneficiaries if it is reasonable for the company or the trustee of the trust to conclude that this is the case on the information available to it.

Note: There are some cases where a company or trust will not be regarded as having 300 members or beneficiaries: see section 124-810.

*Common stake*

- (9) If the original entity and the acquiring entity are companies, an entity, or 2 or more entities, have a **common stake** in the original entity just before the \*arrangement started and in the acquiring entity just after the arrangement was completed if the entity or entities, and their \*associates, between them:
- (a) had 80% or more of:
    - (i) the voting rights in the original entity just before the arrangement started; and
    - (ii) the voting rights in the replacement entity just after the arrangement was completed; or
  - (b) had the right to receive 80% or more of:
    - (i) any \*dividends that the original entity may pay just before the arrangement started; and
    - (ii) any dividends that the replacement entity may pay just after the arrangement was completed; or
  - (c) had the right to receive 80% or more of:
    - (i) any distribution of capital of the original entity just before the arrangement started; and
    - (ii) any distribution of capital of the replacement entity just after the arrangement was completed.
- (10) If the original entity and the acquiring entity are trusts, an entity, or 2 or more entities, have a **common stake** in the original entity just before the \*arrangement started and in the acquiring entity just after the arrangement was completed if the entity or entities, and their \*associates, between them:
- (a) had, just before the arrangement started, the right to receive 80% or more of any distribution to beneficiaries of the original entity of income or capital of the original entity; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) had, just after the arrangement was completed, the right to receive 80% or more of any distribution to beneficiaries of the replacement entity of income or capital of that entity.

### **124-784 Cost base of equity or debt given by acquiring entity to ultimate holding company**

#### *Purpose*

- (1) This section allocates an appropriate \*cost base to equity issued, or new debt owed, by an acquiring entity under the \*arrangement to the \*ultimate holding company where the cost base of an original interest was transferred or allocated under section 124-782 because the original interest holder is a \*significant stakeholder or a \*common stakeholder for the arrangement.

#### *Allocation of cost base*

- (2) The first element of the \*cost base of the equity or debt for the \*ultimate holding company is that part of the cost base of the original interest transferred or allocated under section 124-782 as:
  - (a) may be reasonably allocated to the equity or debt; and
  - (b) is not more than the \*market value of the equity or debt just after the arrangement was completed.

#### *No capital gain on debt repayment*

- (3) Any \*capital gain of the \*ultimate holding company from the repayment of new debt owed by an acquiring entity under the \*arrangement is disregarded to the extent that it relates to the difference between the part of the \*cost base transferred or allocated under section 124-782 and the \*market value of the debt just after the arrangement was completed.

Note: If the debt is assigned or exchanged, there may be a capital gain.

### **124-784A When arrangement is a restructure**

- (1) This section applies in relation to a single \*arrangement if:
  - (a) the replacement entity for the arrangement knows, or could reasonably be expected to know:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-784A

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- (i) that a roll-over under section 124-780 has been, or will be, obtained in relation to the arrangement; and
  - (ii) that there is a \*common stakeholder for the arrangement (disregarding subsections 124-783(4) and (5)); and
- (b) subsection (2) is satisfied for the arrangement.

Note: If this section applies, the first element of the cost base and reduced cost base of interests in the original entity acquired under the arrangement is worked out under section 124-784B.

- (2) This subsection is satisfied for the \*arrangement if the result of step 2 is more than 80% of the result of step 3.

*Method statement*

Step 1. Add up the \*market value just after the \*arrangement was completed (the **completion time**) of all of the replacement interests issued by the replacement entity under the arrangement in exchange for the following interests (the **qualifying interests**):

- (a) original interests in the original entity;
- (b) any interests issued by the original entity to an acquiring entity under the arrangement in respect of other original interests in the original entity cancelled under the arrangement.

Step 2. Add to the result of step 1 the \*market value at the completion time of all of the replacement interests issued by the replacement entity under any earlier arrangement for which this section applied in exchange for qualifying interests in the original entity.

Step 3. Add up the \*market value at the completion time of all of the:

- (a) \*shares \*on issue by the replacement entity; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) options, rights and similar interests issued by the replacement entity that give the holder an entitlement to acquire a share in the replacement entity at or after the completion time.

*Application if an entity is listed*

- (3) For the purposes of:
- (a) subsection (2); and
  - (b) step 5 of the method statement in subsection 124-784B(2);
- if interests in an entity are listed for quotation in the official list of an \*approved stock exchange at the completion time, then the replacement entity may choose that the \*market value at that time of an interest in the first-mentioned entity is taken to be the \*officially quoted price of the interest at that time.

*Application if more than one original entity*

- (4) If qualifying interests in more than one original entity are \*acquired under the \*arrangement, then, for the purposes of subsections (1) and (2):
- (a) those interests of each of those original entities are taken to have been acquired under separate arrangements; and
  - (b) those separate arrangements are taken to have happened in the same order as the acquisitions.
- (5) If qualifying interests in more than one original entity:
- (a) would be taken by subsection (4) to have been \*acquired under separate \*arrangements happening at the same time; or
  - (b) are acquired under separate arrangements that commence at the same time;
- then, for the purposes of subsections (1) and (2), the replacement entity must choose the order in which those separate arrangements are to have happened.

*Meaning of officially quoted price*

- (6) An interest in an entity has an **officially quoted price** at a particular time if, during the one week period starting on the day in which

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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that time occurred, there was at least one transaction on the relevant stock exchange in interests of that class. That price is the weighted average of the prices at which those interests were traded on that stock exchange during that period.

- (7) For the purposes of subsection (6), if an interest is quoted on 2 or more \*approved stock exchanges on that day, the ***officially quoted price*** of the interest is determined under subsection (6) in respect of whichever of those the entity chooses.

**124-784B What is the cost base and reduced cost base when arrangement is a restructure?**

- (1) This section applies in relation to each qualifying interest in the original entity:
- (a) \*acquired by an acquiring entity under an \*arrangement to which section 124-784A applies; and
  - (b) for which the first element of the \*cost base of the acquiring entity is not worked out under section 124-782.

Note: Section 124-782 applies when an original interest holder is a significant stakeholder or a common stakeholder.

*First element of cost base—qualifying interests acquired in exchange for replacement interests only*

- (2) The first element of the \*cost base of the acquiring entity for the qualifying interest in the original entity is worked out as follows:

*Method statement*

Step 1. Add up:

- (a) the \*market value, at the completion time, of the original entity's \*pre-CGT assets (except \*trading stock); and
- (b) the \*cost bases, at the completion time, of the original entity's \*post-CGT assets (except trading stock); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) for the original entity's \*CGT assets (except trading stock) that had no cost base—the maximum amount of consideration the original entity would need to receive if it were to dispose, at the completion time, of those assets without an amount being assessable income of, or deductible to, the original entity; and
- (d) the amount worked out under steps 2 and 3.

Step 2. For the original entity's \*trading stock, add up:

- (a) the \* value of the trading stock at the start of the income year containing the completion time; and
- (b) for \*livestock acquired by natural increase during that income year but before the completion time—the \*cost of that livestock; and
- (c) the amount of any outgoing incurred in connection with acquiring an item of trading stock during that income year but before the completion time (except livestock acquired by natural increase); and
- (d) the amount of any outgoings forming part of the cost of the trading stock incurred by the entity during its current holding of the trading stock but before the completion time.

Step 3. For any asset of the original entity not covered by steps 1 and 2, work out the amount that would be the asset's \*cost base at the completion time if it were a \*CGT asset.

Step 4. Subtract from the result of step 1 the original entity's liabilities (if any) at the completion time in respect of those assets.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-784B

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Step 5. If there is one class of \*membership interests in the original entity, divide the result of step 4 by the total number of those membership interests at the completion time.

If there are 2 or more classes of membership interests in the original entity, allocate a portion of the result of step 4 to each class in proportion to the \*market value of all the membership interests in that class and divide that result by the total number of membership interests in that class at the completion time.

Note 1: For the purposes of this subsection, Division 701 (Core rules for consolidated groups) is disregarded for an original entity that becomes a subsidiary member of a consolidated group or MEC group under the arrangement (see paragraph 715-910(1)(a)).

Note 2: If the original entity is the head company of a consolidated group or MEC group, then subsection 701-1(1) (the single entity rule) and section 701-5 (the entry history rule) apply in relation to that group when working out steps 1 and 2 (see subsection 715-910(2)).

Note 3: For step 5, the replacement entity may choose to use the officially quoted price of the qualifying interests as their market value (see subsection 124-784A(3)).

*First element of cost base—interests acquired in exchange for replacement interests and cash etc.*

(3) However, if the qualifying interest was acquired under the \*arrangement partly in exchange for one or more replacement interests and partly for something else, subsection (2) applies only for working out the first element of that part of the \*cost base of the qualifying interest that is attributable to the replacement interests.

Note 1: This means that the acquiring entity will have to apportion the cost base amount worked out under subsection (2) according to the relative values of the replacement interests and the other component.

Note 2: The first element of that part of the cost base, and reduced cost base, of the qualifying interest that is attributable to cash etc. is worked out using the general rules about cost base.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Liabilities*

- (4) For the purposes of step 4 of subsection (2), a liability of the original entity that is not a liability in respect of a specific asset or assets of the entity is taken to be a liability in respect of all the assets of the entity.
- (5) If a liability is in respect of 2 or more assets, the proportion of the liability that is in respect of any one of those assets is equal to:

$$\frac{\text{The *market value of the asset}}{\text{The total of the *market values of all the assets that the liability is in respect of}}$$

*First element of reduced cost base*

- (6) The first element of the \*reduced cost base of the acquiring entity for the qualifying interest in the original entity is worked out similarly.

*Rights and options to acquire membership interests*

- (7) For the purposes of step 5 of subsection (2), if at the completion time a person holds an option, right or similar interest (including a contingent option, right or interest), created or issued by the original entity, to acquire a \*membership interest in the original entity, that option, right or interest is treated as if it were a membership interest in the original entity.

**124-784C Cost base of equity or debt given by acquiring entity to ultimate holding company**

*Purpose*

- (1) This section allocates an appropriate \*cost base to equity issued, or new debt owed, by an acquiring entity under the \*arrangement to the \*ultimate holding company of a \*wholly-owned group where the cost base of the acquiring entity for a qualifying interest was worked out under section 124-784B.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-785

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*Allocation of cost base*

- (2) The first element of the \*cost base of the equity or debt for the \*ultimate holding company is that part of the cost base of the qualifying interest worked out under section 124-784B as:
- (a) may be reasonably allocated to the equity or debt; and
  - (b) is not more than the \*market value of the equity or debt at the completion time.

*No capital gain on debt repayment*

- (3) Any \*capital gain of the \*ultimate holding company from the repayment of new debt owed by an acquiring entity under the \*arrangement is disregarded to the extent that it relates to the difference between the part of the \*cost base worked out under section 124-784B and the \*market value of the debt at the completion time.

Note: If the debt is assigned or exchanged, there may be a capital gain.

**124-785 What is the roll-over?**

- (1) A \*capital gain you make from your original interest is disregarded.
- (2) You work out the first element of the \*cost base of each \*CGT asset you received as a result of the exchange by reasonably attributing to it the cost base (or the part of it) of your original interest for which it was exchanged and for which you obtained the roll-over.
- (3) In applying subsection (2), you reduce the \*cost base of your original interest (just before you stop owning it) by so much of that cost base as is attributable to an ineligible part (see section 124-790).

- (4) The first element of the \*reduced cost base is worked out similarly.

Example 1: Lyn exchanges 1 share with a cost base of \$10 for another share. The cost base of the new share is \$10.

Example 2: Glenn exchanges 2 shares with cost bases of \$10 and \$11 respectively for one new share. The cost base of the new share is \$21.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Example 3: Wayne exchanges 1 share with a cost base of \$9 for share A with a market value of \$5 and share B with a market value of \$10. The cost base of share A is \$3 and the cost base of share B is \$6.

### 124-790 Partial roll-over

- (1) The original interest holder can obtain only a partial roll-over if its \*capital proceeds for its original interest include something (the *ineligible proceeds*) other than its replacement interest. There is no roll-over for that part (the *ineligible part*) of its original interest for which it received ineligible proceeds.
- (2) The \*cost base of the ineligible part is that part of the cost base of your original interest as is reasonably attributable to it.

Example: Ken owns 100 shares in Aim Ltd. Those shares have a cost base of \$2.

Ken accepts an offer from LBZ Ltd to acquire those shares. The offer is 1 share in LBZ (market value \$4) plus \$1 for each Aim share.

Ken chooses the roll-over to the extent that he can.

The cost base of the ineligible part is  $[\$100 \times \$200] \div \$500 = \$40$ .

Ken makes a capital gain of  $\$100 - \$40 = \$60$ .

### 124-795 Exceptions

- (1) You cannot obtain the roll-over if, just before you stop owning your original interest, you are a foreign resident unless, just after you \*acquire your replacement interest, the replacement interest is \*taxable Australian property.
- (2) You cannot obtain the roll-over if:
  - (a) any \*capital gain you might make from your replacement interest would be disregarded (except because of a roll-over);  
or
  - (b) you and the acquiring entity are members of the same \*wholly-owned group just before you stop owning your original interest and the acquiring entity is a foreign resident.

Example: An example of a capital gain or loss being disregarded as mentioned in paragraph (2)(a) is because the asset is trading stock.

Note: A roll-over may be available under Subdivision 126-B in the circumstances mentioned in paragraph (2)(b).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-800

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- (3) You cannot obtain the roll-over for the \*CGT event happening in relation to the exchange of your original interest if you can choose a roll-over under Division 122 or Subdivision 124-G for that event.

Note: Division 122 deals with the disposal of assets to a wholly-owned company, and Subdivision 124-G deals with company reorganisation.

- (4) You cannot obtain the roll-over for the \*CGT event happening in relation to the exchange of your qualifying interest if:
- (a) the replacement entity makes a choice to that effect under this subsection; and
  - (b) that entity or the original entity notifies you in writing of the choice before the exchange.

**124-800 Interest received for pre-CGT interest**

- (1) If, in consequence of the \*arrangement, you exchange an interest that you \*acquired before 20 September 1985 for an interest in the replacement entity, the first element of the \*cost base and \*reduced cost base of the interest in the replacement entity is its \*market value just after you acquired it.
- (2) The \*cost base and \*reduced cost base of the interest in the replacement entity is reduced if all or part of a \*capital gain from \*CGT event K6 happening is disregarded because of subsection 104-230(10). The amount of the reduction is the amount of the \*capital gain you disregard under that subsection.

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

Note 2: Subsection 104-230(10) provides that a capital gain from CGT event K6 is disregarded to the extent that you could have chosen a roll-over under this Subdivision if your original interest had been post-CGT.

**124-810 Certain companies and trusts not regarded as having 300 members or beneficiaries**

- (1) For the purposes of this Subdivision, a company is treated as if it did not have at least 300 \*members if subsection (3) or (5) applies to it.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) For the purposes of this Subdivision, a trust is treated as if it did not have at least 300 beneficiaries if subsection (4) or (5) applies to it.

*Concentrated ownership*

- (3) This subsection applies to a company if an individual owns, or up to 20 individuals own between them, directly or indirectly (through one or more interposed entities) and for their own benefit, \*shares in the company:
- (a) carrying \*fixed entitlements to:
    - (i) at least 75% of the company's income; or
    - (ii) at least 75% of the company's capital; or
  - (b) carrying at least 75% of the voting rights in the company.
- (4) This subsection applies to a trust if an individual owns, or up to 20 individuals own between them, directly or indirectly (through one or more interposed entities) and for their own benefit, units or other fixed interests in the trust:
- (a) carrying \*fixed entitlements to:
    - (i) at least 75% of the trust's income; or
    - (ii) at least 75% of the trust's capital; or
  - (b) if beneficiaries of the trust have a right to vote in respect of activities of the trust—carrying at least 75% of those voting rights.

*Possible variation of rights etc.*

- (5) This subsection applies to a company or trust if, because of:
- (a) any provision in the entity's constituent document, or in any contract, agreement or instrument:
    - (i) authorising the variation or abrogation of rights attaching to any of the \*shares, units or other fixed interests in the entity; or
    - (ii) relating to the conversion, cancellation, extinguishment or redemption of any of those interests; or
  - (b) any contract, \*arrangement, option or instrument under which a person has power to acquire any of those interests; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(c) any power, authority or discretion in a person in relation to the rights attaching to any of those shares, units or interests; it is reasonable to conclude that the rights attaching to any of those interests are capable of being varied or abrogated in such a way (even if they are not in fact varied or abrogated in that way) that, directly or indirectly, subsection (3) or (4) would apply to the entity.

*Single individual*

- (6) For the purposes of subsections (3) and (4), all of the following are taken to be a single individual:
- (a) an individual, whether or not the individual holds \*shares, units or other interests in the entity concerned;
  - (b) the individual's \*associates;
  - (c) for any shares, units or interests in respect of which other individuals are nominees of the individual or of the individual's associates—those other individuals.

**Subdivision 124-N—Disposal of assets by a trust to a company**

**Guide to Subdivision 124-N**

**124-850 What this Subdivision is about**

Entities can choose to obtain a roll-over if:

- (a) a trust disposes of all of its assets to a company; and
- (b) units and interests in the trust are replaced by shares in the company.

The roll-over may also be available for 2 or more trusts disposing of all their assets to a single company.

Note: The effect of the roll-over may be reversed if the trust does not cease to exist within 6 months: see section 104-195.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Table of sections

### Operative provisions

124-855	What this Subdivision deals with
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124-865	Entities both choose the roll-over
124-870	Roll-over for owner of units or interests in a trust
124-875	Effect on the transferor and transferee

## Operative provisions

### 124-855 What this Subdivision deals with

- (1) A roll-over may be available for a restructuring (a *trust restructure*) if:
- (a) a trust, or 2 or more trusts, (the *transferor*) \*dispose of all of their \*CGT assets to a company limited by \*shares (the *transferee*); and
  - (b) \*CGT event E4 is capable of applying to all of the units and interests in the transferor; and
  - (c) the requirements in section 124-860 are met.

Note: A roll-over is not available for a restructure undertaken by a discretionary trust.

- (2) For 2 or more transferors, units and interests in each transferor must be owned in the same proportions by the same beneficiaries.

Example: Matthew and Jaclyn each own 50% of the units in the Spring Unit Trust and the Dale Unit trust. All of the assets of both trusts are disposed of to Jonathon Pty Ltd. A roll-over for a trust restructure is available if the other requirements of this Subdivision are met.

### 124-860 Requirements for roll-over

- (1) All of the \*CGT assets owned by the transferor must be disposed of to the transferee during the \*trust restructuring period. However, ignore any CGT assets retained by the transferor to pay existing or expected debts of the transferor.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) The *trust restructuring period* for a trust restructure:
- (a) starts just before the first \*CGT asset is \*disposed of to the transferee under the trust restructure, which must happen on or after 11 November 1999; and
  - (b) ends when the last CGT asset of the transferor is disposed of to the transferee.
- (3) The transferee must not be an \*exempt entity.
- (4) The transferee must be a company that:
- (a) has never carried on commercial activities; and
  - (b) has no \*CGT assets other than small amounts of cash or debt; and
  - (c) has no losses of any kind.
- Example: It could be a shelf company.
- (5) Subsection (4) does not apply to a transferee that is the trustee of the transferor.
- (6) Just after the end of the \*trust restructuring period:
- (a) each entity that owned interests in a transferor just before the start of the trust restructuring period must own replacement interests in the transferee in the same proportion as it owned those interests in that transferor; and
  - (b) the \*market value of the replacement interests each of those entities owns in the transferee must be at least substantially the same as the market value of the interests it owned in the transferor or transferors just before the start of the trust restructuring period.
- Note 1: Any assets in the company just before the start of the trust restructuring period may affect the ability of owners of units or interests to comply with paragraph (6)(b).
- Note 2: See section 124-20 if an entity uses an interest sale facility.
- (7) For the purposes of subsection (6), ignore any \*shares in the transferee that:
- (a) just before the start of the \*trust restructuring period, were owned by entities who together owned no more than 5 shares; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) just after the end of that period, represented such a low percentage of the total \*market value of all the shares that it is reasonable to treat other entities as if they owned all the shares in the transferee.

Example: To continue the example in subsection 124-855(2), assume that Jonathon Pty Ltd was a shelf company organised for Matthew and Jaclyn by their solicitor, Indira.

Indira owned the 2 shares in Jonathon Pty Ltd before the trust restructuring period. The company issues Matthew and Jaclyn 5,000 shares each.

In these circumstances, it is reasonable to treat Matthew and Jaclyn as if they owned all the shares in Jonathon Pty Ltd.

### **124-865 Entities both choose the roll-over**

A roll-over is only available for the transferor and transferee if both the transferor and transferee choose to obtain it.

Note 1: If they do so, the consequences for the transferor and transferee are set out in section 124-875.

Note 2: An entity that owns a unit or interest in the transferor can also choose to obtain a roll-over: see section 124-870.

### **124-870 Roll-over for owner of units or interests in a trust**

- (1) You can choose to obtain a roll-over (whether or not the transferor and transferee choose to obtain a roll-over, and even if \*CGT event J4 applies) if:

- (a) you own units or interests in the transferor (your *original interests*); and  
(b) the ownership of all your units or interests ends under a trust restructure in exchange for \*shares in the transferee (your *replacement interests*).

Note 1: The roll-over consequences are set out in Subdivision 124-A. The original assets are your units and interests in the transferor. The new assets are your shares in the transferee.

Note 2: The effect of the roll-over may be reversed if the transferor does not cease to exist within 6 months: see section 104-195.

- (2) You must make the choice for each of your original interests.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-875

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- (3) An entity that is a foreign resident cannot choose a roll-over under this section unless the replacement interests the entity \*acquires in the transferee are \*taxable Australian property just after their acquisition.
- (4) If you choose a roll-over, you cannot make a \*capital loss from a \*CGT event that happens to your original interests during the \*trust restructuring period.

Note: The rule in subsection (4) prevents a capital loss arising on your units or interests after the trust assets have been disposed of to the company but before your shares are issued to you.

*Exception: trading stock*

- (5) This section does not apply to your ownership of an original interest ending if:
- (a) the interest was an item of your \*trading stock and the corresponding replacement interest becomes an item of your trading stock when you \*acquire it; or
  - (b) the interest was not an item of your trading stock but the corresponding replacement interest becomes an item of your trading stock when you acquire it.

**124-875 Effect on the transferor and transferee**

*Capital gains and losses disregarded*

- (1) Any \*capital gain or \*capital loss from \*CGT event A1 happening to the transferor under the trust restructure is disregarded (even if \*CGT event J4 applies).

Note: The effect of the roll-over may be reversed if the transferor does not cease to exist within 6 months: see section 104-195.

*Cost base is transferred*

- (2) The first element of the \*cost base and \*reduced cost base (for the transferee) of each \*CGT asset that the transferee \*acquires under the trust restructure is the same as the cost base and reduced cost base of that asset (for the transferor) just before that acquisition.

Note: For the cost base and reduced cost base of interests in the transferee: see Subdivision 124-A.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Pre-CGT assets retain their status*

- (3) If the transferor \*acquired any of the \*CGT assets \*disposed of to the transferee under the trust restructure before 20 September 1985, the transferee is taken to have acquired it before that day.
- (4) However, subsection (3) is taken never to have applied to such an asset of the transferee if subsection 104-195(4) (CGT event J4) applies to the transferee in relation to the asset.

*Exception: trading stock*

- (5) This section does not apply to a \*CGT asset if:
  - (a) the asset was an item of \*trading stock of the transferor and becomes an item of trading stock of the transferee; or
  - (b) the asset was not an item of trading stock of the transferor but becomes an item of trading stock of the transferee when the transferee \*acquires it.

*Exception: asset must be taxable Australian property for foreign resident transferee*

- (6) For a transferee that is a foreign resident, this section only applies to a \*CGT asset that is \*taxable Australian property just after the transferee \*acquires it under the trust restructure.

## **Subdivision 124-O—FSR (financial services reform) transitions**

### **Table of sections**

#### **Same owner roll-overs**

124-880	Old licence roll-over (same owner)
124-885	Qualified licence roll-over (same owner)
124-890	Rights roll-over (same owner)
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#### **New owner roll-overs**

124-900	Old licence roll-over (new owner)
124-905	Qualified licence roll-over (new owner)
124-910	Rights roll-over (new owner)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-3** Capital gains and losses: special topics

**Division 124** Replacement-asset roll-overs

**Section 124-880**

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- 124-915 Consequences of a new owner roll-over (where one CGT asset comes to an end)
- 124-920 Consequences of a new owner roll-over (where more than one CGT asset comes to an end)

**Extension of FSR transition period**

- 124-925 Special extension of the 10 March 2004 cut-off date (same owner roll-overs)
- 124-930 Special extension of the 10 March 2004 cut-off date (new owner roll-overs)

**Same owner roll-overs**

**124-880 Old licence roll-over (same owner)**

There is a roll-over if:

- (a) you apply for an \*Australian financial services licence during the period beginning on 11 March 2002 and ending on 10 March 2004; and
- (b) at the time you make the application, you hold one or more licences, registrations, approvals, authorities or other similar things (the *old licence or licences*) that give you the status of a regulated principal within the meaning of section 1430 of the *Corporations Act 2001*; and
- (c) you are granted an Australian financial services licence as a result of the application; and
- (d) that licence covers some or all of the activities that the old licence or licences authorised you to carry on; and
- (e) the old licence or licences cease to have effect (whether wholly or partly):
  - (i) when the Australian financial services licence is granted to you; or
  - (ii) if the Australian financial services licence is granted to you after 10 March 2004—on 10 March 2004.

Note: The period in paragraph (a) may be extended in special circumstances: see section 124-925. If it is extended, the day in subparagraph (e)(ii) changes too.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **124-885 Qualified licence roll-over (same owner)**

There is a roll-over if:

- (a) you apply for an \*Australian financial services licence during the period beginning on 11 March 2002 and ending on 10 March 2004; and
- (b) at the time you make the application, you hold an Australian financial services licence to which section 1434 of the *Corporations Act 2001* applies (the **qualified licence**); and
- (c) you are granted an Australian financial services licence as a result of the application (the **new licence**); and
- (d) if the new licence is granted on or before 10 March 2004—the qualified licence is revoked as a result of the new licence being granted to you; and
- (e) if the new licence is granted after 10 March 2004:
  - (i) the qualified licence ceases to have effect on 10 March 2004; and
  - (ii) if the new licence had been granted on or before 10 March 2004, the qualified licence would have been revoked as a result of the new licence being granted.

Note: The period in paragraph (a) may be extended in special circumstances: see section 124-925. If it is extended, the day in paragraphs (d) and (e) changes too.

### **124-890 Rights roll-over (same owner)**

There is a roll-over if:

- (a) one or more intangible \*CGT assets owned by you cease to exist during the period beginning on 11 March 2002 and ending on 10 March 2004; and
- (b) the asset or assets cease to exist because of the termination of one or more contracts; and
- (c) the termination is directly connected with Chapter 7 of the *Corporations Act 2001* (as amended by the *Financial Services Reform Act 2001*) beginning to apply to you; and
- (d) you acquire one or more intangible CGT assets by entering into one or more contracts in substitution (whether wholly or partly) for the contract or contracts that were terminated.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-895

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Note: The period in paragraph (a) may be extended in special circumstances: see section 124-925.

**124-895 Consequences of a same owner roll-over**

(1) In each situation covered by section 124-880, 124-885 or 124-890, where:

- (a) your ownership of one or more \*CGT assets (the *original asset or assets*) comes to an end; and
- (b) you acquire one or more CGT assets (the *replacement asset or assets*);

the consequences of that section applying are the consequences specified in Subdivision 124-A, with the modifications set out below.

(2) The first element of the \*cost base and \*reduced cost base of each replacement asset includes any amount you paid to get the replacement asset (which can include giving property: see section 103-5). This subsection does not apply if subsection (3) applies.

Note: If subsection (3) applies, any amount you paid to get the replacement asset is included in the cost base and reduced cost base by subsection (5).

(3) In a situation where subsection 124-15(5) would otherwise apply (where you \*acquired some original assets before 20 September 1985 and some on or after that date), use subsections (4) to (7) of this section instead of subsections 124-15(5) and (6).

(4) Each replacement asset, or part of a replacement asset, to the extent that it relates to one or more original assets that were \*acquired before 20 September 1985, is taken to be:

- (a) a separate asset; and
- (b) acquired before 20 September 1985.

(5) The first element of the \*cost base of each replacement asset that you are not taken to have \*acquired before 20 September 1985 is the sum of:

- (a) the amount worked out under the formula in subsection (6); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) either:
- (i) any amount you paid to get the replacement asset (which can include giving property: see section 103-5); or
  - (ii) for a replacement asset, part of which is treated as a separate asset under subsection (4)—such part of any amount you paid to get the asset (which can include giving property: see section 103-5) as is reasonably attributable to the part of the asset that you are not taken to have acquired before 20 September 1985.
- (6) The formula is:
- $$\frac{\text{The total of the *cost bases of the original assets that you *acquired on or after 20 September 1985}}{\text{The number of replacement assets that you are not taken to have *acquired before 20 September 1985}}$$
- Note: If an original asset is an old licence that ceases to have effect only partly, subsection (8) modifies this formula.
- (7) The first element of each replacement asset's \*reduced cost base is worked out similarly.
- (8) If, in a situation covered by section 124-880, an old licence mentioned in that section ceases to have effect only partly, then:
- (a) a reference in Subdivision 124-A to the original asset's \*cost base; and
  - (b) the reference in subsection (6) of this section to the total of the \*cost bases of the original assets;
- is taken to be a reference to such part of the cost base of the old licence as is reasonably attributable to the part of the old licence that ceases to have effect.

## **New owner roll-overs**

### **124-900 Old licence roll-over (new owner)**

- (1) There is a roll-over if:
- (a) a person (the *new owner*) applies for an \*Australian financial services licence during the period beginning on 11 March 2002 and ending on 10 March 2004; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 124-900

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- (b) at the time the application is made, another person (the **original owner**) holds one or more licences, registrations, approvals, authorities or other similar things (the **old licence or licences**) that give the original owner the status of a regulated principal within the meaning of section 1430 of the *Corporations Act 2001*; and
- (c) the new owner is granted an Australian financial services licence as a result of the application; and
- (d) if the Australian financial services licence is granted on or before 10 March 2004—the old licence or licences cease to have effect (whether wholly or partly) because, as a result of the Australian financial services licence being granted to the new owner, the original owner starts to be covered by an exemption under subsection 911A(2) of the *Corporations Act 2001* (or would be so covered by an exemption if that subsection applied) in respect of the original owner's regulated activities (within the meaning of section 1430 of the *Corporations Act 2001*); and
- (e) if the Australian financial services licence is granted after 10 March 2004:
  - (i) the old licence or licences cease to have effect (whether wholly or partly) on 10 March 2004; and
  - (ii) if the Australian financial services licence had been granted before 10 March 2004, the old licence or licences would have ceased to have effect (whether wholly or partly) for the reason mentioned in paragraph (d); and
- (f) subsection (2) or (3) applies.

Note: The period in paragraph (1)(a) may be extended in special circumstances: see section 124-930. If it is extended, the day in paragraphs (d) and (e) changes too.

- (2) This subsection applies if the new owner and the original owner are members of the same \*consolidatable group at the time that the new owner \*acquires the \*Australian financial services licence.
- (3) This subsection applies if:
  - (a) at the time that the new owner \*acquires the \*Australian financial services licence, all of the following apply:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (i) the new owner is a company or a trust;
  - (ii) if the new owner is a trust—\*CGT event E4 is capable of applying to all of the units and interests in the trust;
  - (iii) all of the \*membership interests in the new owner are owned by the original owner; and
- (b) the original owner is an individual who, at the same time as, or just after, the new owner acquires the Australian financial services licence:
- (i) becomes an authorised representative (within the meaning of section 761A of the *Corporations Act 2001*) of the new owner; or
  - (ii) becomes an employee of the new owner; or
  - (iii) becomes a director (within the meaning of the *Corporations Act 2001*) of the new owner.

### **124-905 Qualified licence roll-over (new owner)**

- (1) There is a roll-over if:
- (a) a person (the **new owner**) applies for an \*Australian financial services licence during the period beginning on 11 March 2002 and ending on 10 March 2004; and
  - (b) at the time the application is made, another person (the **original owner**) holds an Australian financial services licence to which section 1434 of the *Corporations Act 2001* applies (the **qualified licence**); and
  - (c) the new owner is granted an Australian financial services licence as a result of the application (the **new licence**); and
  - (d) if the new licence is granted on or before 10 March 2004—the qualified licence is revoked as a result of the new licence being granted to the new owner; and
  - (e) if the new licence is granted after 10 March 2004:
    - (i) the qualified licence ceases to have effect on 10 March 2004; and
    - (ii) if the new licence had been granted on or before 10 March 2004, the qualified licence would have been revoked as a result of the new licence being granted; and
  - (f) subsection (2) or (3) applies.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: The period in paragraph (1)(a) may be extended in special circumstances: see section 124-930. If it is extended, the day in paragraphs (d) and (e) changes too.

- (2) This subsection applies if the new owner and the original owner are members of the same \*consolidatable group at the time that the new owner \*acquires the new licence.
- (3) This subsection applies if:
  - (a) at the time that the new owner \*acquires the new licence, all of the following apply:
    - (i) the new owner is a company or a trust;
    - (ii) if the new owner is a trust—\*CGT event E4 is capable of applying to all of the units and interests in the trust;
    - (iii) all of the \*membership interests in the new owner are owned by the original owner; and
  - (b) the original owner is an individual who, at the same time as, or just after, the new owner acquires the new licence:
    - (i) becomes an authorised representative (within the meaning of section 761A of the *Corporations Act 2001*) of the new owner; or
    - (ii) becomes an employee of the new owner; or
    - (iii) becomes a director (within the meaning of the *Corporations Act 2001*) of the new owner.

**124-910 Rights roll-over (new owner)**

- (1) There is a roll-over if:
  - (a) one or more intangible \*CGT assets owned by a person (the **original owner**) cease to exist during the period beginning on 11 March 2002 and ending on 10 March 2004; and
  - (b) the asset or assets cease to exist because of the termination of one or more contracts; and
  - (c) the termination is directly connected with the original owner choosing that another person (the **new owner**) will conduct, in place of the original owner, the business of the original owner in relation to which Chapter 7 of the *Corporations Act 2001* (as amended by the *Financial Services Reform Act 2001*) is to apply; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (d) the new owner acquires one or more intangible CGT assets by entering into one or more contracts in substitution (whether wholly or partly) for the contract or contracts that were terminated; and
- (e) subsection (2) or (3) applies.

Note: The period in paragraph (1)(a) may be extended in special circumstances: see section 124-930.

- (2) This subsection applies if the new owner and the original owner are members of the same \*consolidatable group at the time that the new owner \*acquires the \*CGT asset or assets mentioned in paragraph (1)(d).
- (3) This subsection applies if:
  - (a) at the time that the new owner \*acquires the \*CGT asset or assets mentioned in paragraph (1)(d), all of the following apply:
    - (i) the new owner is a company or a trust;
    - (ii) if the new owner is a trust—\*CGT event E4 is capable of applying to all of the units and interests in the trust;
    - (iii) all of the \*membership interests in the new owner are owned by the original owner; and
  - (b) the original owner is an individual who, at the same time as, or just after, the new owner acquires the Australian financial services licence:
    - (i) becomes an authorised representative (within the meaning of section 761A of the *Corporations Act 2001*) of the new owner; or
    - (ii) becomes an employee of the new owner; or
    - (iii) becomes a director (within the meaning of the *Corporations Act 2001*) of the new owner.

### **124-915 Consequences of a new owner roll-over (where one CGT asset comes to an end)**

- (1) In each situation covered by section 124-900, 124-905 or 124-910, where:
  - (a) a person's (the *original owner's*) ownership of one \*CGT asset (the *original asset*) comes to an end; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) another person (the *new owner*) acquires one or more \*CGT assets (the *replacement asset or assets*);  
the consequences of that section applying are the consequences specified in this section.
- (2) A \*capital gain or a \*capital loss that the original owner makes from a \*CGT event happening to the original asset is disregarded.
- (3) If the original owner \*acquired the original asset on or after 20 September 1985, the first element of each replacement asset's \*cost base is the sum of:
- (a) the amount worked out under the formula in subsection (4);  
and
  - (b) any amount the new owner paid to get the replacement asset (which can include giving property: see section 103-5).
- (4) The formula is:
- $$\frac{\text{The original asset's *cost base (worked out when the original owner's ownership of it ended)}}{\text{The number of replacement asstes}}$$
- Note: If the original asset is an old licence that ceases to have effect only partly, subsection (7) modifies this formula.
- (5) The first element of each replacement asset's \*reduced cost base is worked out similarly.
- (6) If the original owner \*acquired the original asset before 20 September 1985, the new owner is taken to have acquired each replacement asset before that day.
- (7) If, in a situation covered by section 124-900, an old licence mentioned in that section ceases to have effect only partly, then the reference in subsection (4) of this section to the original asset's \*cost base is taken to be a reference to such part of the cost base of the old licence as is reasonably attributable to the part of the old licence that ceases to have effect.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**124-920 Consequences of a new owner roll-over (where more than one CGT asset comes to an end)**

- (1) In each situation covered by section 124-900, 124-905 or 124-910, where:
- (a) a person's (the *original owner's*) ownership of more than one \*CGT asset (the *original asset or assets*) comes to an end; and
  - (b) another person (the *new owner*) acquires one or more \*CGT assets (the *replacement asset or assets*);
- the consequences of that section applying are the consequences set out in this section.
- (2) A \*capital gain or a \*capital loss that the original owner makes from a \*CGT event happening to any of the original assets is disregarded.
- (3) If the original owner \*acquired all the original assets on or after 20 September 1985, the first element of each replacement asset's \*cost base is the sum of:
- (a) the amount worked out under the formula in subsection (4); and
  - (b) any amount the new owner paid to get the replacement asset (which can include giving property: see section 103-5).
- (4) The formula is:
- $$\frac{\text{The total of the *cost bases of all the original assets (worked out when the original owner's ownership of them ended)}}{\text{The number of replacement assets}}$$
- Note: If an original asset is an old licence that ceases to have effect only partly, subsection (11) modifies this formula.
- (5) The first element of each replacement asset's \*reduced cost base is worked out similarly.
- (6) If the original owner \*acquired all the original assets before 20 September 1985, the new owner is taken to have acquired each replacement asset before that day.
- (7) If the original owner \*acquired some of the original assets before 20 September 1985, each replacement asset, or part of a

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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replacement asset, to the extent that it relates to one or more original assets that were \*acquired before 20 September 1985, is taken to be:

- (a) a separate asset; and
  - (b) acquired before 20 September 1985.
- (8) If subsection (7) applies, the first element of the \*cost base of each replacement asset that is not taken to have been \*acquired before 20 September 1985 is the sum of:
- (a) the amount worked out under the formula in subsection (9); and
  - (b) either:
    - (i) any amount the new owner paid to get the replacement asset (which can include giving property: see section 103-5); or
    - (ii) for a replacement asset, part of which is treated as a separate asset under subsection (7)—such part of any amount the new owner paid to get the asset (which can include giving property: see section 103-5) as is reasonably attributable to the part of the asset that is not taken to have been acquired before 20 September 1985.
- (9) The formula is:
- $$\frac{\text{The total of the *cost bases of the original assets that the original owner *acquired on or after 20 September 1985}}{\text{The number of replacement assets that are not taken to have been *acquired before 20 September 1985}}$$
- Note: If an original asset is an old licence that ceases to have effect only partly, subsection (11) modifies this formula.
- (10) The first element of each replacement asset's \*reduced cost base is worked out similarly.
- (11) If, in a situation covered by section 124-900, an old licence mentioned in that section ceases to have effect only partly, then a reference in subsection (4) or (9) of this section to the original asset's \*cost base is taken to be a reference to such part of the cost base of the old licence as is reasonably attributable to the part of the old licence that ceases to have effect.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Extension of FSR transition period**

### **124-925 Special extension of the 10 March 2004 cut-off date (same owner roll-overs)**

If the Australian Securities and Investments Commission makes a declaration that provides for the relevant old legislation (within the meaning of section 1430 of the *Corporations Act 2001*) to continue to apply to you until the end of the period declared by the Commission, then:

- (a) the period mentioned in paragraphs 124-880(a), 124-885(a) and 124-890(a) is modified in its application to you so that it ends on the last day of the period declared by the Commission; and
- (b) subparagraph 124-880(e)(ii) and paragraphs 124-885(d) and (e) are modified in their application to you so that the day mentioned in those subparagraphs is the last day of the period declared by the Commission.

### **124-930 Special extension of the 10 March 2004 cut-off date (new owner roll-overs)**

If the Australian Securities and Investments Commission makes a declaration that provides for the relevant old legislation (within the meaning of section 1430 of the *Corporations Act 2001*) to continue to apply to a person who is an original owner mentioned in section 124-900, 124-905 or 124-910 until the end of the period declared by the Commission, then:

- (a) the period mentioned in paragraphs 124-900(1)(a), 124-905(1)(a) and 124-910(1)(a) is modified in its application to that person so that it ends on the last day of the period declared by the Commission; and
- (b) paragraphs 124-900(1)(d) and (e) and 124-905(1)(d) and (e) are modified in their application to that person so that the day mentioned in those subparagraphs is the last day of the period declared by the Commission.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-975

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**Subdivision 124-P—Exchange of a membership interest in an MDO for a membership interest in another MDO**

**Guide to Subdivision 124-P**

**124-975 What this Subdivision is about**

You can choose a roll-over if you exchange your interest as a member of an MDO for an interest as a member of another MDO.

You can only choose the roll-over if you would have made a capital gain from the exchange.

**Table of sections**

**Operative provisions**

124-980	Exchange of membership interests in an MDO
124-985	What the roll-over is for post-CGT interests
124-990	Partial roll-over
124-995	Pre-CGT interests

**Operative provisions**

**124-980 Exchange of membership interests in an MDO**

- (1) There is a roll-over if:
  - (a) an entity exchanges:
    - (i) an interest (the *original interest*) in an \*MDO (the *original MDO*) as a member of the original MDO; for
    - (ii) a similar interest (the *replacement interest*) in another MDO (the *new MDO*) as a member of the new MDO; and
  - (b) both the original MDO and the new MDO are companies limited by guarantee; and
  - (c) the exchange is in consequence of a single \*arrangement that satisfies subsection (3); and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (d) apart from the roll-over, the entity would make a \*capital gain from a \*CGT event happening in relation to its original interest; and
- (e) the entity chooses to obtain the roll-over; and
- (f) the entity acquired the original interest on or after 20 September 1985.

Note: The entity can obtain only a partial roll-over if the capital proceeds for its original interest include something other than its replacement interest: see section 124-990.

- (2) In working out whether an original interest is exchanged for a similar interest, disregard a difference that consists only of a right to receive distributions of income or capital.

*Conditions for arrangement*

- (3) The \*arrangement must:
  - (a) result in the new \*MDO becoming the sole \*member of the original MDO; and
  - (b) be one in which participation was available on substantially the same terms for all of the holders of interests as members of the original MDO of a particular type.

**124-985 What the roll-over is for post-CGT interests**

- (1) A \*capital gain the entity makes from an original interest \*acquired on or after 20 September 1985 is disregarded.
- (2) The entity works out the first element of the \*cost base of each replacement interest the entity received as a result of the exchange by reasonably attributing to it the cost base (or the part of it) of the entity's original interest for which it was exchanged and for which the entity obtained the roll-over.
- (3) In applying subsection (2), the entity reduces (but not below zero) the \*cost base of the original interest (just before stopping owning it) by so much of that cost base as is attributable to an ineligible part (see section 124-990).
- (4) The first element of the \*reduced cost base of a replacement interest is worked out similarly.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-990

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**124-990 Partial roll-over**

- (1) The entity can obtain only a partial roll-over if its \*capital proceeds for its original interest include something (the *ineligible proceeds*) other than its replacement interest. There is no roll-over for that part (the *ineligible part*) of its original interest for which it received ineligible proceeds.
- (2) The \*cost base of the ineligible part is that part of the cost base of the original interest as is reasonably attributable to it.

**124-995 Pre-CGT interests**

If the entity exchanges an original interest that the entity \*acquired before 20 September 1985 for its replacement interest, the first element of the \*cost base and \*reduced cost base of the replacement interest is zero.

**Subdivision 124-Q—Exchange of stapled ownership interests for ownership interests in a unit trust**

**Guide to Subdivision 124-Q**

**124-1040 What this Subdivision is about**

There is a roll-over if you own ownership interests that are stapled and, as a result of a reorganisation, you stop owning those interests and you acquire or own ownership interests in an interposed unit trust.

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**Operative provisions**

- 124-1045 Exchange of stapled securities
- 124-1050 Conditions
- 124-1055 Consequences of the roll-over for exchanging members
- 124-1060 Consequences of the roll-over for interposed trust

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Operative provisions

### 124-1045 Exchange of stapled securities

- (1) There is a roll-over if:
- (a) you own \*ownership interests in 2 or more trusts, or in one or more companies and one or more trusts, and those interests are stapled together to form stapled securities; and
  - (b) at least one of the trusts is a trust whose trustee is not assessed and liable to pay tax under Division 6B or 6C of Part III of the *Income Tax Assessment Act 1936*; and
  - (c) if no company is involved—at least one of the trusts is a trust whose trustee is assessed and liable to pay tax under Division 6B or 6C of Part III of that Act; and
  - (d) under a \*scheme for reorganising the affairs of the relevant \*stapled entities, you and the other entities that own the ownership interests in the stapled entities (together the *exchanging members*):
    - (i) stop being the owner of those ownership interests and acquire ownership interests in a new unit trust (the *interposed trust*) and nothing else (a *new trust case*); or
    - (ii) retain their ownership interests in one of those trusts (also the *interposed trust*), stop being the owner of the remaining ownership interests that form the stapled securities and receive nothing other than ownership interests in the interposed trust, or an increase in value of their existing ownership interests in the interposed trust, or both (an *existing trust case*); and
- Note: See section 124-20 if an exchanging member uses an interest sale facility.
- (e) under the scheme, the interposed trust becomes the owner of:
    - (i) for a new trust case—all of the ownership interests in the stapled entities; or
    - (ii) for an existing trust case—all of the ownership interests in the other stapled entities; and
  - (f) the conditions in section 124-1050 are satisfied.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-1050

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Note: Division 6B of Part III of the *Income Tax Assessment Act 1936* deals with taxing corporate unit trusts in the same way as companies. Division 6C has the same effect in relation to public trading trusts.

- (2) An entity is a **stapled entity** in relation to stapled securities if \*ownership interests in the entity form part of the stapled securities.
- (3) Ignore for the purposes of subsection (1) \*ownership interests held by one \*stapled entity in another stapled entity as at the start of the day on which the Bill for this Act was introduced into the Parliament.

**124-1050 Conditions**

- (1) Just after the \*scheme is completed (the **completion time**), each exchanging member must own a percentage of the \*ownership interests in the interposed trust that reasonably equates to the percentage of the ownership interests that the member owned in the \*stapled entities.

Example: Public Company A, Unit Trust No. 1 and Unit Trust No. 2 are stapled entities. Each stapled entity has 4,000 ownership interests on issue. There are no ownership interests in any of the stapled entities other than shares in the company and units in the trusts.

Under a scheme for reorganising the stapled entities, Unit Trust No. 3 is interposed between the stapled entities and the owners of the interests in those entities. Unit Trust No. 3 (the interposed trust) becomes the owner of all of the interests in each of the three stapled entities. Exchanging members receive one unit in the interposed trust for each stapled security they owned. All units in the interposed trust are of the same class.

Naomi owned 200 shares in Public Company A, 200 units in Unit Trust No. 1 and 200 units in Unit Trust No. 2. Naomi therefore owned 5% of the ownership interests in each of the stapled entities. Under the scheme, Naomi receives 100 units in Unit Trust No. 3 (out of a total of 2,000 units) in exchange for her ownership interests in the stapled entities. Naomi now owns 5% of the ownership interests in the interposed trust and meets the condition in subsection (1).

- (2) Just after the completion time, each exchanging member must have the same, or as nearly as practicable the same, proportionate \*market value of \*ownership interests in the interposed trust as the member had in the \*stapled entities just before that time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) In working out whether an exchanging member complies with subsection (2), an anticipated reasonable approximation of the \*market value of \*ownership interests just after the completion time is sufficient.

Note: An anticipated reasonable approximation of market values of ownership interests may include valuations provided to exchanging members in scheme documents.

- (4) You must be an Australian resident at the completion time or, if you are a foreign resident at that time:
- (a) some or all of your \*ownership interests in the \*stapled entities must have been \*taxable Australian property just before that time; and
  - (b) your ownership interests in the interposed trust must be taxable Australian property just after that time.

#### **124-1055 Consequences of the roll-over for exchanging members**

- (1) A \*capital gain or \*capital loss you make as a result of the \*scheme from each of your \*ownership interests is disregarded.
- (2) If you \*acquired all of your \*ownership interests in the \*stapled entities on or after 20 September 1985, the first element of the \*cost base and \*reduced cost base of each of your ownership interests in the interposed trust is such amount as is reasonable having regard to:
- (a) the total of the \*cost bases of all of your ownership interests in the \*stapled entities; and
  - (b) the number, \*market value and character of your ownership interests in the interposed trust.

Example: Naomi had a cost base of \$2.00 for each of her 200 Public Company A shares, \$1.50 for each of her 200 Unit Trust No. 1 units and \$0.50 for each of her 200 Unit Trust No. 2 units. The total of the cost bases of all of her membership interests is \$800.00.

It is reasonable to allocate \$8.00 to each of the 100 units in the interposed trust that she receives under the reorganisation.

- (3) If you \*acquired all of your \*ownership interests in the \*stapled entities before 20 September 1985, you are taken to have acquired all of your ownership interests in the interposed trust before that day.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-1060

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- (4) If you \*acquired some of your \*ownership interests in the \*stapled entities before 20 September 1985, you are taken to have acquired so many of your ownership interests in the interposed trust as is reasonable before that day having regard to:
- (a) the number, \*market value and character of your ownership interests in the stapled entities; and
  - (b) the number, market value and character of your ownership interests in the interposed trust.

Note: Generally, a capital gain or capital loss from a CGT asset acquired before 20 September 1985 can be disregarded: see Division 104.

- (5) The first element of the \*cost base and \*reduced cost base of each of your \*ownership interests in the interposed trust that is not taken by subsection (4) to have been \*acquired before 20 September 1985 (your *post-CGT interests*) is such amount as is reasonable having regard to:
- (a) the total of the cost bases of your ownership interests in the \*stapled entities that you acquired on or after 20 September 1985; and
  - (b) the number, \*market value and character of your post-CGT interests.

**124-1060 Consequences of the roll-over for interposed trust**

- (1) Apply this section separately for the interposed trust in relation to the \*ownership interests in each \*stapled entity that the trustee of the interposed trust \*acquires under the \*scheme.
- (2) A whole number of \*ownership interests in a \*stapled entity that the trustee \*acquires under the \*scheme are taken to have been acquired before 20 September 1985 if any of the stapled entity's assets as at the completion time were acquired by it before that day.

Note: Generally, a capital gain or capital loss from a CGT asset acquired before 20 September 1985 can be disregarded: see Division 104.

- (3) The number (worked out as at the completion time) is the greatest possible that (when expressed as a percentage of all the \*ownership interests in the \*stapled entity \*acquired by the trustee) does not exceed:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the \*market value of the stapled entity's assets that it acquired before 20 September 1985; less
  - (b) its liabilities (if any) in respect of those assets;
- expressed as a percentage of the market value of all the stapled entity's assets less all of its liabilities. The amounts in paragraphs (a) and (b) are to be worked out as at the completion time.
- (4) The first element of the \*cost base and \*reduced cost base of each of the trustee's \*ownership interests in that \*stapled entity that are not taken by subsection (3) to have been \*acquired before 20 September 1985 is such proportion as is reasonable of the total of the cost bases (as at the completion time) of that stapled entity's assets that it acquired on or after that day less its liabilities (if any) in respect of those assets.
  - (5) In applying this section:
    - (a) a liability of a \*stapled entity that is not a liability in respect of a specific asset or assets of the stapled entity is a liability in respect of all the assets of the stapled entity; and
    - (b) if a liability is in respect of 2 or more assets, the proportion of the liability that is in respect of any one of those assets is such amount as is reasonable having regard to the \*market values of each of those assets.

## **Subdivision 124-R—Water entitlements**

### **Guide to Subdivision 124-R**

#### **124-1100 What this Subdivision is about**

There is a roll-over if a CGT event happens to you because of something occurring in relation to one or more water entitlements. You do not need to own water entitlements for the event to happen to you.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-1105

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- 124-1115 Roll-over consequences—partial roll-over
- 124-1120 Roll-over consequences—all original entitlements post-CGT
- 124-1125 Roll-over consequences—all original entitlements pre-CGT
- 124-1130 Roll-over consequences—some original entitlements pre-CGT, others post-CGT

**Reduction case**

- 124-1135 Reduction in water entitlements roll-over
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- 124-1155 Roll-over for variation to CGT asset
- 124-1160 Roll-over consequences
- 124-1165 Roll-over consequences—partial roll-over

**Replacement case**

**124-1105 Replacement water entitlements roll-over**

*Automatic roll-over for single water entitlements*

- (1) There is a roll-over if:
  - (a) your ownership of a \*water entitlement (the **original entitlement**) ends, resulting in a \*CGT event happening; and
  - (b) as a result of your ownership of the original entitlement ending, you \*acquire one or more water entitlements (each of which is a **new entitlement**); and
  - (c) if you are a foreign resident just before your ownership of the original entitlement ends, or you are the trustee of a trust that is a \*foreign trust for CGT purposes for the income year in which your ownership of the original entitlement ends:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) the original entitlement was \*taxable Australian property just before you stopped owning it; and
- (ii) if there is only one new entitlement—the new entitlement is taxable Australian property just after you acquire it; and
- (iii) if there is more than one new entitlement—each new entitlement is taxable Australian property just after you acquire it; and
- (d) you have not chosen a roll-over in relation to the original entitlement under subsection (2).

*Elective roll-over for bundled water entitlements*

- (2) There is a roll-over if:
- (a) your ownership of more than one \*water entitlement (each of which is an **original entitlement**) ends, resulting in a \*CGT event happening; and
  - (b) as a result of your ownership of the original entitlements ending, you \*acquire one or more water entitlements (each of which is a **new entitlement**); and
  - (c) if you are a foreign resident just before your ownership of the original entitlements ends, or you are the trustee of a trust that is a \*foreign trust for CGT purposes for the income year in which your ownership of the original entitlements ends:
    - (i) each original entitlement was \*taxable Australian property just before you stopped owning it; and
    - (ii) if there is only one new entitlement—the new entitlement is taxable Australian property just after you acquire it; and
    - (iii) if there is more than one new entitlement—each new entitlement is taxable Australian property just after you acquire it; and
  - (d) you choose to obtain the roll-over.

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

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-1110

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*No roll-over if Subdivision 124-C applies*

- (3) However, there is no roll-over in relation to a \*water entitlement under this section if there is a roll-over in relation to the water entitlement under Subdivision 124-C (statutory licences).

*Meaning of water entitlement*

- (4) A **water entitlement** is a legal or equitable right that an entity owns that relates to water, including a right to:
- (a) receive water; or
  - (b) take water from a water resource; or
  - (c) have water delivered; or
  - (d) deliver water;

and includes a right that must be owned by the entity in order to own a right covered by paragraph (a), (b), (c) or (d).

Example: Philip owns a share in Big Pump Irrigation Ltd. The share provides Philip with the right to receive dividends, to participate in the running of the company and to have a separate contractual agreement with Big Pump Irrigation Ltd for the delivery of 1 megalitre of water. Philip has such an agreement. Philip's agreement is a **water entitlement**. Philip's share is also a **water entitlement** because he must own the share in order to have a contractual arrangement with Big Pump Irrigation Ltd for the delivery of water.

**124-1110 Roll-over consequences—capital gain or loss disregarded**

Disregard a \*capital gain or \*capital loss you make from each original entitlement that qualifies for a roll-over.

**124-1115 Roll-over consequences—partial roll-over**

- (1) You can obtain only a partial roll-over in relation to an original entitlement if the \*capital proceeds for that entitlement includes something (the **ineligible proceeds**) other than a new entitlement or new entitlements. There is no roll-over for that part (the **ineligible part**) of the entitlement for which you received the ineligible proceeds.

Note: If the roll-over is under subsection 124-1105(2), some or all of the original entitlements may each have an ineligible part.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (2) The \*cost base of the ineligible part is that part of the cost base of the original entitlement as is reasonably attributable to the ineligible part.
- (3) The \*reduced cost base of the ineligible part is worked out similarly.
- (4) In working out what is reasonably attributable to the ineligible part for the purposes of subsections (2) and (3), have regard to the \*market value of the new entitlement relative to the market value of the ineligible proceeds.
- (5) If the roll-over is under subsection 124-1105(2), for the purposes of sections 124-1120 and 124-1130, for each original entitlement that has an ineligible part:
  - (a) reduce the \*cost base of that entitlement (just before you stopped owning it) by so much of that cost base as is attributable to that ineligible part; and
  - (b) reduce the \*reduced cost base of that entitlement similarly.

#### **124-1120 Roll-over consequences—all original entitlements post-CGT**

- (1) In a situation covered by subsection 124-1105(1), if you \*acquired the original entitlement on or after 20 September 1985, the first element of the \*cost base of the new entitlement (or of each of the new entitlements) is such amount as is reasonable having regard to:
  - (a) the cost base and \*market value of the original entitlement; and
  - (b) the number and market value of the new entitlements; and
  - (c) any amount you paid to get the new entitlement (which can include giving property: see section 103-5).
- (2) In a situation covered by subsection 124-1105(2), if you \*acquired the original entitlements on or after 20 September 1985, the first element of the \*cost base of the new entitlement (or of each of the new entitlements) is such amount as is reasonable having regard to:
  - (a) the total of the cost bases of all the original entitlements; and
  - (b) the number and \*market value of the original entitlements; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-1125

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- (c) the number and market value of the new entitlements; and
  - (d) any amount you paid to get the new entitlements (which can include giving property: see section 103-5).
- (3) In the situation covered by subsection 124-1105(1) or (2), the first element of the \*reduced cost base of the new entitlement (or of each of the new entitlements) is worked out similarly.
- (4) For the purposes of paragraphs (1)(b) and (2)(c), the \*market value of the new entitlements is their market value at the time you \*acquired them.

**124-1125 Roll-over consequences—all original entitlements pre-CGT**

- (1) In the situation covered by subsection 124-1105(1), if you \*acquired the original entitlement before 20 September 1985, you are taken to have acquired the new entitlement (or all of the new entitlements) before that day.
- (2) In the situation covered by subsection 124-1105(2), if you \*acquired the original entitlements before 20 September 1985, you are taken to have acquired the new entitlement (or all of the new entitlements) before that day.

**124-1130 Roll-over consequences—some original entitlements pre-CGT, others post-CGT**

- (1) This section applies if:
- (a) the roll-over is under subsection 124-1105(2); and
  - (b) you \*acquired one or more of the original entitlements before 20 September 1985; and
  - (c) you acquired one or more of the original entitlements on or after that day.
- (2) You are taken to have \*acquired so many of your new entitlements before 20 September 1985 as is reasonable, having regard to:
- (a) the number and \*market value of your original entitlements; and
  - (b) the number and market value of your new entitlements.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) The first element of the \*cost base of each of your new entitlements that are not taken by subsection (2) to have been \*acquired before 20 September 1985 (your *post-CGT entitlements*) is such amount as is reasonable having regard to:
- (a) the total of the cost bases of the original entitlements you acquired on or after 20 September 1985; and
  - (b) the number and \*market value of your post-CGT entitlements; and
  - (c) any amount you paid to get the new entitlements (which can include giving property: see section 103-5).
- (4) The reduced cost base of each of your post-CGT entitlements is worked out similarly.

## **Reduction case**

### **124-1135 Reduction in water entitlements roll-over**

There is a roll-over if:

- (a) you own more than one \*water entitlement; and
- (b) under an \*arrangement:
  - (i) your ownership of one or more of the water entitlements (each of which is an *original entitlement*) ends, resulting in a \*CGT event happening; and
  - (ii) you do not receive anything for the original entitlement or entitlements; and
  - (iii) you retain one or more of your original entitlements (the *retained entitlements*); and
- (c) the total of the \*market values of all of the retained entitlements immediately after the CGT event happens is substantially the same as the total of the market values of all of the original entitlements immediately before the CGT event happened.

### **124-1140 Roll-over consequences—capital gain or loss disregarded**

A \*capital gain or \*capital loss you make from your ownership of the original entitlements ending is disregarded.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 124-1145

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**124-1145 Roll-over consequences—all original entitlements post-CGT**

- (1) This section applies if you \*acquired the original entitlement (or all of the original entitlements) on or after 20 September 1985.
- (2) The first element of the \*cost base of the retained entitlement (or of each of the retained entitlements) is such amount as is reasonable having regard to:
  - (a) the total of the cost bases of all the original entitlements; and
  - (b) the number and \*market value of the original entitlements; and
  - (c) the number and market value of the retained entitlements.
- (3) The first element of the \*reduced cost base of the retained entitlements is worked out similarly.
- (4) For the purposes of paragraph (2)(c), the \*market value of the retained entitlements is their market value just after the \*CGT event referred to in section 124-1135 happens.

**124-1150 Roll-over consequences—some original entitlements pre-CGT, others post-CGT**

- (1) This section applies if:
  - (a) you \*acquired one or more of the original entitlements before 20 September 1985; and
  - (b) you acquired one or more of the original entitlements on or after that day.
- (2) You are taken to have \*acquired so many of your retained entitlements before 20 September 1985 as is reasonable, having regard to:
  - (a) the number and \*market value of your original entitlements; and
  - (b) the number and market value of your retained entitlements.
- (3) The first element of the \*cost base of each of your retained entitlements that are not taken by subsection (2) to have been

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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\*acquired before 20 September 1985 (your *post-CGT entitlements*) is such amount as is reasonable having regard to:

- (a) the total of the cost bases of the original entitlements you acquired on or after 20 September 1985; and
  - (b) the number and \*market value of the your post-CGT entitlements.
- (4) The reduced cost base of each of your post-CGT entitlements is worked out similarly.

## Variation to CGT asset case

### 124-1155 Roll-over for variation to CGT asset

There is a roll-over if:

- (a) a \*CGT event happens to a \*CGT asset that you own; and
- (b) the CGT event happens as a direct result of the circumstances that gave rise to a roll-over under section 124-1105; and
- (c) you continue to be the owner of the asset (the *retained asset*) immediately after the CGT event has happened.

### 124-1160 Roll-over consequences

A \*capital gain or \*capital loss you make from the \*CGT event is disregarded.

### 124-1165 Roll-over consequences—partial roll-over

- (1) You can obtain only a partial roll-over in relation to a \*CGT asset if the \*capital proceeds for that asset includes something (the *ineligible proceeds*) other than your retained asset. There is no roll-over for that part (the *ineligible part*) of the asset for which you received the ineligible proceeds.
- (2) The \*cost base of the ineligible part is that part of the cost base of the \*CGT asset as is reasonably attributable to the ineligible part.
- (3) The \*reduced cost base of the ineligible part is worked out similarly.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-3** Capital gains and losses: special topics

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- (4) In working out what is reasonably attributable to the ineligible part for the purposes of subsections (2) and (3), have regard to the \*market value of the retained asset relative to the market value of the ineligible proceeds.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 125—Demerger relief**

### **Table of Subdivisions**

	Guide to Division 125
125-A	Object of this Division
125-B	Consequences for owners of interests
125-C	Consequences for members of demerger group
125-D	Corporate unit trusts and public trading trusts
125-E	Miscellaneous

### **Guide to Division 125**

#### **125-1 What this Division is about**

Entities can obtain CGT relief for a demerger.

Owners of ownership interests in the head entity of a demerger group can obtain a roll-over to defer CGT consequences for the CGT events that happen to their interests under the demerger (see Subdivision 125-B).

Capital gains and capital losses made by members of the demerger group from certain CGT events that happen under the demerger are disregarded (see Subdivision 125-C).

Note: Dividend relief is also available: see section 44 of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 125-5

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## Subdivision 125-A—Object of this Division

### Table of sections

125-5 Object of this Division

### 125-5 Object of this Division

The object of this Division is to facilitate the demerging of entities by ensuring that capital gains tax considerations are not an impediment to restructuring a \*business.

## Subdivision 125-B—Consequences for owners of interests

### Guide to Subdivision 125-B

#### 125-50 Guide to Subdivision 125-B

You can choose to obtain a roll-over if a CGT event happens to your interests in a company or trust because of a demerger of an entity from the group of which the company or trust is the head entity.

There are cost base adjustments if you receive new interests under a demerger and no CGT event happens to your original interests.

### Table of sections

#### Operative provisions

125-55	When a roll-over is available for a demerger
125-60	Meaning of <i>ownership interest</i> and related terms
125-65	Meanings of <i>demerger group</i> , <i>head entity</i> and <i>demerger subsidiary</i>
125-70	Meanings of <i>demerger</i> , <i>demerged entity</i> and <i>demerging entity</i>
125-75	Exception: employee share schemes
125-80	What is the roll-over?
125-85	Cost base adjustments where CGT event happens but no roll-over chosen
125-90	Cost base adjustments where no CGT event
125-95	No other cost base adjustment after demerger
125-100	No further demerger relief in some cases

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Operative provisions

### 125-55 When a roll-over is available for a demerger

- (1) You can choose to obtain a roll-over if:
- (a) you own an \*ownership interest in a company or trust (your *original interest*); and
  - (b) the company or trust is the \*head entity of a \*demerger group; and
  - (c) a \*demerger happens to the demerger group; and
  - (d) under the demerger, a \*CGT event happens to your original interest and you \*acquire a new or replacement interest (your *new interest*) in the \*demerged entity.

Note 1: Section 125-80 sets out what the roll-over is.

Note 2: You have to make cost base adjustments even if there is no CGT event: see section 125-90.

Example: Peter owns shares (his original interests) in Company A, a public company. Company B is a wholly owned subsidiary of Company A. Company A announces a demerger utilising a proportionate capital reduction and the disposal of all its shares in Company B to its 320,000 shareholders. Following the demerger all of the shareholders in Company A, including Peter, will own all of the shares in Company B (their new interests).

- (2) You cannot choose to obtain a roll-over under this Subdivision for an original interest if:
- (a) you are a foreign resident; and
  - (b) the new interest you \*acquire under the \*demerger in exchange for that original interest is not \*taxable Australian property just after you acquire it.

Note: For *taxable Australian property*, see section 855-15.

### 125-60 Meaning of *ownership interest* and related terms

- (1) An *ownership interest* in a company or trust is:
- (a) for a company, a \*share in the company or an option, right or similar interest issued by the company that gives the owner an entitlement to \*acquire a share in the company; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) for a trust, a unit or other interest in the trust or an option, right or similar interest issued by the trustee that gives the owner an entitlement to acquire a unit or other interest in the trust.
- (2) However, this Subdivision applies to a \*dual listed company voting share in a company that is the \*head entity of a \*demerger group as if it were not an **ownership interest** if there are not more than 5 of those \*shares in the company.
- (3) A **dual listed company voting share** is a \*share in a company:
- (a) issued:
    - (ii) as part of a \*dual listed company arrangement; and
    - (iii) mainly for the purpose of ensuring that shareholders of both companies involved in the arrangement vote as a single decision-making body on matters affecting them; and
  - (b) that does not carry rights to financial entitlements (except the return of the amount paid up on the share and a dividend that is the equivalent of a dividend paid on an ordinary share).
- (4) A **dual listed company arrangement** is an \*arrangement under which 2 publicly listed companies, while maintaining their separate legal entity status, shareholdings and listings, align their strategic directions and the economic interests of their respective shareholders through:
- (a) the appointment of common (or almost identical) boards of directors, except where the effect of the relevant regulatory requirements prevents this; and
  - (b) management of the operations of the 2 companies on a unified basis; and
  - (c) the shareholders of both companies voting in effect as a single decision-making body on substantial issues affecting their combined interests; and
  - (d) equalised distributions to shareholders in accordance with an equalisation ratio applying between the 2 companies, both generally and in the event of a winding up of one or both of the companies; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (e) cross-guarantees as to, or similar financial support for, each other's substantial obligations or operations, except where the effect of the relevant regulatory requirements prevents those guarantees or that financial support.
- (5) However, an arrangement is not a **dual listed company arrangement** unless one but not both of the companies is an Australian resident.

### **125-65 Meanings of *demerger group*, *head entity* and *demerger subsidiary***

- (1) A **demerger group** comprises the \*head entity of the group and one or more \*demerger subsidiaries.  
Note: An entity may be a member of one or more demerger groups.
- (2) A trust cannot be a member of a **demerger group** unless \*CGT event E4 is capable of applying to all of the units and interests in the trust.  
Note: A discretionary trust cannot be a member of a demerger group.
- (2A) Neither a corporation sole nor a \*complying superannuation entity is a member of a \*demerger group.
- (3) A company or trust is the **head entity** of a \*demerger group if no other member of the group owns \*ownership interests in the company or trust.
- (4) If apart from this subsection, a company or trust would be the \*head entity of a \*demerger group and the company or trust, and all of its \*demerger subsidiaries, are also demerger subsidiaries of another company or trust in another demerger group, the first-mentioned company or trust is not the **head entity** of a demerger group.
- (5) A company or trust (the **first company or trust**) that would, apart from this subsection, be a member of a **demerger group** is not a member of the **demerger group** if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) the first company or trust owns, either alone or together with another company or trust that would, apart from this subsection, be a member of the \*demerger group, more than 20% but less than 80% of the \*ownership interests in a \*listed public company or \*listed widely held trust; and
  - (b) the listed public company or listed widely held trust chooses that the first company or trust not be a member of the demerger group.
- (6) A company is a *demerger subsidiary* of another company or a trust that is a member of a \*demerger group if the other company or the trust, either alone or together with other members of the group, owns, or has the right to \*acquire, \*ownership interests in the company that carry between them:
- (a) the right to receive more than 20% of any distribution of income or capital by the company; or
  - (b) the right to exercise, or control the exercise of, more than 20% of the voting power of the company.
- (7) A trust is a *demerger subsidiary* of another trust or a company that is a member of a \*demerger group if the other trust or the company, either alone or together with other members of the group, owns, or has the right to \*acquire, \*ownership interests in the trust that carry between them the right to receive more than 20% of any distribution of income or capital by the trustee.

**125-70 Meanings of *demerger*, *demerged entity* and *demerging entity***

- (1) A *demerger* happens to a \*demerger group if:
- (a) there is a restructuring of the demerger group; and
  - (b) under the restructuring:
    - (i) members of the demerger group \*dispose of at least 80% of their total \*ownership interests in another member of the demerger group to owners of original interests in the \*head entity of the demerger group; or
    - (ii) at least 80% of the total ownership interests of members of the demerger group in another member of the demerger group end and new interests are issued to owners of original interests in the head entity; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (iii) the demerged entity issues sufficient new ownership interests in itself with the result that owners of original interests in the head entity own at least 80% of the total ownership interests in the demerged entity; or
- (iv) some combination of the processes referred to in subparagraphs (i), (ii) and (iii) happens with the effect that members of the demerger group stop owning at least 80% of the total ownership interests owned by members of the demerger group in another member of the group; and

Note: CGT event C2 and CGT event C3 are the only relevant CGT events in a subparagraph (ii) case.

- (c) under the restructuring:
  - (i) a \*CGT event happens to an original interest owned by an entity in the head entity of the group and the entity \*acquires a new interest and nothing else; or
  - (ii) no CGT event happens to an original interest owned by an entity in the head entity of the group and the entity acquires a new interest and nothing else; and
- (d) the acquisition by entities of new interests happens only because those entities own or owned original interests; and
- (e) the new interests acquired are:
  - (i) if the head entity is a company—ownership interests in a company; or
  - (ii) if the head entity is a trust—ownership interests in a trust; and
- (g) neither the original interests nor the new interests are in a trust that is a \*non-complying superannuation fund; and
- (h) the requirements of subsection (2) are met.

Example: To continue the example from subsection 125-55(1), Peter owns 400 post-CGT shares in Company A. Companies A and B are both members of a demerger group. Company A is the head entity of the demerger group and Company B is a demerger subsidiary.

Company A proceeds to demerge 100% of its shares in Company B to its shareholders.

Company A enters into a proportionate capital reduction, returning 40 cents per share to its ordinary shareholders. Peter is entitled to \$160 (40c times 400 shares) under the capital reduction.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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For Peter, the capital reduction amount of \$160 is compulsorily applied to acquire Company A's shares in Company B, at \$6.75 (a discount of 10% to current market value). Company A rounds up the fractional amounts in calculating the number of whole shares to be distributed to each shareholder. This gives Peter 24 shares in Company B (160 divided by 6.75, rounded up to the nearest whole number).

Note: Acquiring new interests by an owner of original interests may include the allocation of the owner's entitlement to new interests to a nominee:

- to sell on the owner's behalf; or
- to hold pending the owner being located.

- (2) Each owner (an *original owner*) of original interests in the \*head entity of the \*demerger group must:
- \*acquire, under the \*demerger, the same proportion, or as nearly as practicable the same proportion, of new interests in the \*demerged entity as the original owner owned in the head entity just before the demerger; and
  - just after the demerger, have the same proportionate total \*market value of \*ownership interests in the head entity and demerged entity as the original owner owned in the head entity just before the demerger.

Note 1: There is an exception: see section 125-75.

Note 2: Dual listed company voting shares are not treated as ownership interests: see section 125-60.

Note 3: Fractional interests will generally not affect your ability to choose a roll-over.

Example: To continue the example from subsection (1), Company A concludes, given the circumstances of the demerger, that the market values of Peter's and the other shareholders' shares in A and B are expected to be in proportion with their original interests in Company A, and advises the shareholders of this position.

- (3) In working out whether an original owner complies with subsection (2):
- disregard \*ownership interests that are original interests the owner owns in the \*demerged entity; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) an anticipated reasonable approximation of the \*market value of ownership interests is sufficient.

Example: An anticipated reasonable approximation of market values of ownership interests may include:

- valuations provided to shareholders in scheme documents;
- the price selected for use under a sale facility;

and may be made by reference to long-term value.

*Exception: off-market buy-backs*

- (4) A buy-back of \*shares that is an off-market purchase for the purposes of Division 16K of Part III of the *Income Tax Assessment Act 1936* is not a \*demerger.

*Exception: roll-over available under another provision*

- (5) Circumstances where an owner of original interests can obtain a roll-over under a provision of this Act outside this Division for all of the CGT events that happened to the owner's original interests under the circumstances cannot be a **demerger**.

Note: An owner might be able to obtain a roll-over for the CGT events under Subdivision 124-E, 124-G, 124-H or 124-M.

*Meaning of demerged entity*

- (6) An entity that is a former member of a \*demerger group is a **demerged entity** if, under a \*demerger that happens to the group, \*ownership interests in the entity are acquired by:
- (a) shareholders in the \*head entity of the group; or
  - (b) unitholders or holders of interests in the head entity of the group.

*Meaning of demerging entity*

- (7) An entity that is a member of a \*demerger group just before the \*CGT event referred to in section 125-155 happens is a **demerging entity** if, under a \*demerger that happens to the group:
- (a) the entity (either alone or together with other members of the demerger group)\*dispose of at least 80% of their total \*ownership interests in another member of the demerger

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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group to owners of original interests in the \*head entity of the demerger group; or

- (b) at least 80% of the total ownership interests of that entity and of other members of the demerger group in another member of the demerger group end and new interests are issued to owners of original interests in the head entity; or

Note: CGT event C2 and CGT event C3 are the only relevant CGT events.

- (c) the demerged entity issues sufficient new ownership interests in itself with the result that owners of original interests in the head entity own at least 80% of the total ownership interests in the demerged entity; or
- (d) some combination of the processes referred to in paragraphs (a), (b) and (c) happens with the effect that members of the demerger group stop owning at least 80% of the total ownership interests owned by members of the demerger group in another member of the group.

**125-75 Exceptions to subsection 125-70(2)**

*Employee share schemes*

- (1) In working out whether the requirements in subsection 125-70(2) are met, disregard each of the \*ownership interests described in subsections (2) and (3) if, just before the \*demerger, those interests (taking into account either or both of their number and value) represented not more than 3% of the total \*ownership interests in the entity.
- (2) An \*ownership interest, in a company, that is owned by an entity is disregarded under subsection (1) if:
  - (a) the entity acquired a beneficial interest in the ownership interest under an \*employee share scheme; and
  - (b) either Subdivision 83A-B and subsections 83A-35(3) to (9), or Subdivision 83A-C, applies to the beneficial interest; and
  - (c) the ownership interest is not a fully-paid ordinary \*share.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) An \*ownership interest, in a trust, that is owned by an entity is disregarded under subsection (1) if:
- (a) both of the following would apply if Division 83A (about employee share schemes) applied to ownership interests in trusts in the same way as it applies to \*shares:
    - (i) the entity acquired a beneficial interest in the ownership interest under an \*employee share scheme;
    - (ii) either Subdivision 83A-B and subsections 83A-35(3) to (9), or Subdivision 83A-C, applies to the beneficial interest; and
  - (b) the ownership interest is not a fully-paid unit.

*Adjusting instruments*

- (4) In working out whether the requirements in subsection 125-70(2) are met, disregard each of the \*ownership interests described in subsection (5) (*adjusting instruments*) if, just before the \*demerger, those interests represented not more than 10%, or such greater percentage (not exceeding 17%) as is prescribed, of the ownership interests in the entity.
- (5) An \*ownership interest in a \*listed public company or a \*listed widely held trust that is the \*head entity of a \*demerger group is disregarded under subsection (4) if:
- (a) the adjusting instrument was issued on terms that ensure that its value is not adversely affected by an \*arrangement undertaken by the company or trust in relation to other ownership interests in the company or trust; and
  - (b) if the adjusting instrument can be converted into an ordinary \*share in the company or an ordinary unit in the trust, any conversion will occur on a basis:
    - (i) that is set out in the terms of the issue of the instrument; and
    - (ii) that is adjusted to take into account a capital reduction or a capital reconstruction; and
  - (c) before conversion, the owner of the adjusting instrument does not have a right to participate in distributions of profit or capital except as set out in the terms of the issue of the instrument; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 125-80

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- (d) the adjusting instrument deals with the effect of a \*demerger that happens to the demerger group on the value of the instrument.

Example: Some examples of adjusting instruments are:

- convertible preference shares, including reset preference shares;
- convertible notes;
- partly paid shares where the paid-up amount is adjusted to reflect a capital reduction.

*Additional exceptions*

- (6) The regulations may provide that, in working out whether the requirements in subsection 125-70(2) are met, other \*ownership interests of a kind specified in the regulations are to be disregarded if, just before the \*demerger, those interests represented not more than a prescribed percentage of the ownership interests in the entity.
- (7) However, the total percentage of \*ownership interests to be disregarded under this section must not exceed 20% of the ownership interests in the entity.

**125-80 What is the roll-over?**

- (1) If you choose the roll-over, a \*capital gain or \*capital loss you make from a \*CGT event happening under the \*demerger to an original interest you own is disregarded.
- (2) If you choose the roll-over, the first element of the \*cost base and \*reduced cost base of:
- (a) each new interest that you are not taken to have \*acquired before 20 September 1985; and
  - (b) if not all of your original interests ended under the \*demerger—each of your remaining original interests that you acquired on or after 20 September 1985;
- is such proportion of the sum of the cost bases of all your original interests that you acquired on or after 20 September 1985 (worked out just before the demerger) as is reasonable having regard to the matters specified in subsection (3).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note 1: These rules replace the cost base and reduced cost base adjustments in CGT event E4 and CGT event G1.

Note 2: The head entity or the demerging entity may advise you of the proportions.

- (3) The matters are:
- (a) the \*market values of your remaining original interests just after the \*demerger, or an anticipated reasonable approximation of those market values; and
  - (b) the market values of your new interests just after the demerger, or an anticipated reasonable approximation of those market values.

Example: To continue the example from subsection 125-70(2), Company A advises its shareholders that Company B at that time represents 5% of the market value of the group as a whole. Peter's cost base for each of his shares in A is \$4.60, and Peter recalculates his cost base as follows:

$$\text{Total cost base} = \$1840 (4.60 \times 400 \text{ shares})$$

to be spread over 400 shares in A and 24 shares in B.

$$5\% \text{ of } 1840 = 92$$

$$92 \div 24 \text{ shares} = \$3.83 \text{ per B share}$$

$$1840 - 92 = 1748$$

$$1748 \div 400 = \$4.37 \text{ per A share}$$

*Pre-CGT interests*

- (4) The following subsections apply if you choose the roll-over and you \*acquired some or all of your original interests before 20 September 1985.
- (5) If you \*acquired all of your original interests before 20 September 1985, you are taken to have acquired all of your new interests before that day.
- (6) If you \*acquired some of your original interests before 20 September 1985, you are taken to have acquired a reasonable whole number of your new interests before that day having regard to:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 125-85

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- (a) the \*market values of your original interests and your remaining original interests just after the \*demerger, or an anticipated reasonable approximation of those market values; and
  - (b) the market values of your new interests just after the demerger, or an anticipated reasonable approximation of those market values.
- (7) If a proportion, but not all, of your original interests ends under the \*demerger and you \*acquired some of your original interests before 20 September 1985, that same proportion of those interests you acquired before that day ends.

Note: CGT event K6 may be relevant if you later dispose of your interests that are treated as being pre-CGT.

Example: Bert owned 100 shares in a company of which 50 were acquired pre-CGT. Under a demerger 20 of Bert's 100 shares were cancelled in exchange for new interests. As 20% of his shares were cancelled, 10 of his pre-CGT shares are taken to have been cancelled.

*Partial roll-over*

- (8) If you choose a roll-over for some but not all of your original interests, you apply the rules in this section as if your original interests for which you chose the roll-over were your only original interests.

**125-85 Cost base adjustments where CGT event happens but no roll-over chosen**

- (1) You must adjust the \*cost base and \*reduced cost base of an \*ownership interest you own in a company or trust if:
- (a) a \*demerger happens to a \*demerger group of which the company or trust is a member; and
  - (b) you owned an original interest in the \*head entity of the demerger group just before the demerger; and
  - (c) a \*CGT event happens to the original interest and you \*acquire a new interest under the demerger; and
  - (d) you do not choose a roll-over under this Subdivision for the original interest.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) The adjustments you must make are the same as the adjustments you would have to make under section 125-80 for the \*cost bases and \*reduced cost bases of the remaining original interests and new interests just after the \*CGT event if you could have chosen a roll-over under this Subdivision for the \*demerger and you had done so.

### **125-90 Cost base adjustments where no CGT event**

- (1) You must adjust the \*cost base and \*reduced cost base of an \*ownership interest you own in a company or trust if:
- (a) a \*demerger happens to a \*demerger group of which the company or trust is a member; and
  - (b) you owned an original interest in the \*head entity of the demerger group just before the demerger; and
  - (c) no \*CGT event happens to the original interest, but you \*acquire a new interest under the demerger.
- (2) The adjustments you must make are the same as the adjustments you would have to make under section 125-80 if you could have chosen a roll-over under this Subdivision for the \*demerger and you had done so.

### **125-95 No other cost base adjustment after demerger**

If you have to make adjustments to the \*cost base and \*reduced cost base of your \*ownership interests under section 125-80, 125-85 or 125-90 because of a \*demerger, no other adjustment can be made under this Act to those cost bases and reduced cost bases because of something that happens under the demerger.

Note: Those sections deal with any value shift that might occur under the demerger and avoid the need for the general value shifting regime to apply.

### **125-100 No further demerger relief in some cases**

This Division does not apply to the remaining \*ownership interests in a \*demerged entity if one or more members of the \*demerger group \*disposed of or cancelled less than 100% of the total ownership interests of that group in the demerged entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: After the demerger, a former member of the demerger group can undertake a further demerger to which this Division can apply.

**Subdivision 125-C—Consequences for members of demerger group**

**Guide to Subdivision 125-C**

**125-150 Guide to Subdivision 125-C**

Certain capital gains and capital losses that members of a demerger group make under a demerger are disregarded.

Certain capital losses made under a demerger are reduced where the demerger results in a value shift.

**Table of sections**

**Operative provisions**

- 125-155 Certain capital gains or losses disregarded for demerging entity
- 125-160 No CGT event J1
- 125-165 Adjusted capital loss for value shift under a demerger
- 125-170 Reduced cost base reduction if demerger asset subject to roll-over

**Operative provisions**

**125-155 Certain capital gains or losses disregarded for demerging entity**

Any \*capital gain or \*capital loss a \*demerging entity makes from \*CGT event A1, \*CGT event C2, \*CGT event C3 or \*CGT event K6 happening to its \*ownership interests in a \*demerged entity under a \*demerger is disregarded.

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

Note 2: This section will not apply if section 125-100 applies.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **125-160 No CGT event J1**

\*CGT event J1 does not happen to a \*demerged entity or a member of a \*demerger group under a \*demerger.

### **125-165 Adjusted capital loss for value shift under a demerger**

A \*capital loss made by an entity that was a member of a \*demerger group from a \*CGT event happening to a \*CGT asset under a \*demerger or after a demerger is reduced to the extent that the capital loss is reasonably attributable to a reduction in the \*market value of the asset because of the demerger.

Example: The market value of equity or loan interests in the demerging entity may be reduced by the disposal, for inadequate value, of ownership interests of another member of the demerger group to owners of original interests in the head entity of the group.

### **125-170 Reduced cost base reduction if demerger asset subject to roll-over**

- (1) The \*reduced cost base of a \*CGT asset is reduced if:
  - (a) the \*market value of the asset is reduced because of a \*demerger; and
  - (b) after the demerger the asset is \*acquired by an entity from another entity (the *transferor*) in a situation where the transferor obtained a roll-over for the disposal; and
  - (c) the reduction occurred when the transferor owned the asset.
- (2) The \*reduced cost base of the asset as determined under the roll-over is reduced just after the roll-over to the extent of the reduction in \*market value caused by the \*demerger.

Note: The rules in section 125-165 and this section deal with any value shift that might occur under the demerger and avoid the need for the general value shifting regime to apply.

- (3) If the \*reduced cost base of a \*CGT asset is reduced under this section because of a \*demerger, no other adjustment can be made under this Act to that reduced cost base because of something that happens under the demerger.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Subdivision 125-D—Corporate unit trusts and public trading trusts

### Guide to Subdivision 125-D

#### 125-225 Guide to Subdivision 125-D

This Division applies to corporate unit trusts and public trading trusts as if they were companies.

#### Table of sections

##### Operative provisions

125-230 Application of Division to corporate unit trusts and public trading trusts

#### Operative provisions

##### 125-230 Application of Division to corporate unit trusts and public trading trusts

This Division applies to a trust to which section 102K or 102S of the *Income Tax Assessment Act 1936* applies for an income year in which a \*demerger happens as if:

- (a) the trust were a company; and
- (b) \*ownership interests in it were interests in a company.

#### Subdivision 125-E—Miscellaneous

#### Table of sections

125-235 Share and interest sale facilities

##### 125-235 Share and interest sale facilities

###### *Share and interest sale facilities*

- (1) An entity (the *investor*) is treated as owning an \*ownership interest (the *roll-over interest*) in a \*demerged entity at a time (the *deeming time*), if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) the investor owned an ownership interest in a company or trust that was the \*head entity of a \*demerger group; and
  - (b) a \*demerger happens to the demerger group; and
  - (c) because:
    - (i) a \*foreign law impedes the ability of a member of the demerger group to issue or transfer the roll-over interest to the investor; or
    - (ii) it would be impractical or unreasonably onerous to determine whether a foreign law impedes the ability of a member of the demerger group to issue or transfer the roll-over interest to the investor;it is \*arranged that the member will issue or transfer the roll-over interest to another entity (the *facility*) under the demerger instead of to the investor; and
  - (d) in accordance with that arrangement and as a result of the demerger, the facility:
    - (i) becomes the owner of the roll-over interest (which is a new or replacement interest in the demerged entity); and
    - (ii) owns the roll-over interest at the deeming time; and
  - (e) under the arrangement, the investor is entitled to receive from the facility:
    - (i) an amount equivalent to the \*capital proceeds of any \*CGT event that happens in relation to the roll-over interest (less expenses); or
    - (ii) if a CGT event happens in relation to the roll-over interest together with CGT events happening in relation to other ownership interests—an amount equivalent to the investor's proportion of the total capital proceeds of the CGT events (less expenses).
- (2) The facility is treated as not owning the roll-over interest at the deeming time.
- (3) This section applies for the purposes of:
- (a) applying this Division in relation to the demerger; and
  - (b) item 2 of the table in subsection 115-30(1), to the extent that it relates to a roll-over under this Division that involves the demerger.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 126—Same-asset roll-overs**

### **Table of Subdivisions**

	Guide to Division 126
126-A	Marriage or relationship breakdowns
126-B	Companies in the same wholly-owned group
126-C	Changes to trust deeds
126-D	Small superannuation funds
126-E	Entitlement to shares after demutualisation and scrip for scrip roll-over
126-F	Transfer of assets of superannuation funds to meet licensing requirements
126-G	Transfer of assets between certain trusts

### **Guide to Division 126**

#### **126-1 What this Division is about**

A same-asset roll-over allows a capital gain or loss an entity makes from disposing of a CGT asset to, or creating a CGT asset in, another entity to be disregarded. For a disposal, certain attributes of the asset are transferred to the receiving entity.

### **Subdivision 126-A—Marriage or relationship breakdowns**

#### **Table of sections**

126-5	CGT event involving spouses
126-15	CGT event involving company or trustee
126-20	Subsequent CGT event happening to roll-over asset where transferor was a CFC or a non-resident trust
126-25	Conditions for the purposes of subsections 126-5(3A) and 126-15(5)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 126-5 CGT event involving spouses

- (1) There is a roll-over if a \*CGT event (the **trigger event**) happens involving an individual (the **transferor**) and his or her \*spouse (the **transferee**), or a former \*spouse (also the **transferee**), because of:
- (a) a court order under the *Family Law Act 1975* or under a \*State law, \*Territory law or \*foreign law relating to breakdowns of relationships between spouses; or
  - (b) a maintenance agreement approved by a court under section 87 of the *Family Law Act 1975* or a corresponding agreement approved by a court under a corresponding \*foreign law; or
  - (d) something done under:
    - (i) a financial agreement made under Part VIIIA of the *Family Law Act 1975* that is binding because of section 90G of that Act; or
    - (ii) a corresponding written agreement that is binding because of a corresponding foreign law; or
  - (da) something done under:
    - (i) a Part VIIIAB financial agreement (within the meaning of the *Family Law Act 1975*) that is binding because of section 90UJ of that Act; or
    - (ii) a corresponding written agreement that is binding because of a corresponding foreign law; or
  - (e) something done under:
    - (i) an award made in an arbitration referred to in section 13H of the *Family Law Act 1975*; or
    - (ii) a corresponding award made in an arbitration under a corresponding State law, Territory law or foreign law; or
  - (f) something done under a written agreement:
    - (i) that is binding because of a State law, Territory law or foreign law relating to breakdowns of relationships between spouses; and
    - (ii) that, because of such a law, prevents a court making an order about matters to which the agreement applies, or that is inconsistent with the terms of the agreement in

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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relation to those matters, unless the agreement is varied or set aside.

- (2) Only these \*CGT events are relevant:
- (a) CGT events A1 and B1 (a *disposal case*); and
  - (b) CGT events D1, D2, D3 and F1 (a *creation case*).
- Note: The full list of CGT events is in section 104-5.
- (3) However, there is no roll-over if:
- (a) the \*CGT asset involved is \*trading stock of the transferor; or
  - (b) for \*CGT event B1—title in the CGT asset does not pass to the transferee at or before the end of the agreement.
- (3A) There is no roll-over because of paragraph (1)(d), (da) or (f) unless the conditions set out in section 126-25 are met.
- (4) A \*capital gain or a \*capital loss the transferor makes from the \*CGT event is disregarded.

*Consequences for the transferee (disposal case)*

- (5) For a disposal case where the transferor \*acquired the asset on or after 20 September 1985:
- (a) the *first* element of the asset's \*cost base (in the hands of the transferee) is the asset's cost base (in the hands of the transferor) at the time the transferee acquired it; and
  - (b) the *first* element of the asset's \*reduced cost base (in the hands of the transferee) is worked out similarly.

Example: Your spouse transfers land to you because of a court order under the *Family Law Act 1975*. Any capital gain or loss your spouse makes is disregarded.

If the land's cost base at the time you acquired it is \$10,000, the first element of the land's cost base in your hands becomes \$10,000.

Note 1: There are special indexation rules for roll-overs: see Division 114.

Note 2: A roll-over under this Subdivision may have an effect on the transferee's main residence exemption: see sections 118-178 and 118-180.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (6) For a disposal case where the transferor \*acquired the asset before 20 September 1985, the transferee is taken to have acquired it before that day.

Note: A capital gain or loss you make from a CGT asset you acquired before 20 September 1985 is generally disregarded: see Division 104. This exemption is removed in some situations: see Division 149.

- (7) For a disposal case where the transferor \*disposed of a \*collectable or \*personal use asset, the transferee is taken to have \*acquired one.

Note 1: Capital losses from collectables can be subtracted only from capital gains from collectables: see section 108-10.

Note 2: Capital losses from personal use assets are disregarded: see section 108-20.

*Consequences for the transferee (creation case)*

- (8) For a creation case, the *first* element of the asset's \*cost base (in the hands of the transferee) is the amount applicable under this table. The first element of its \*reduced cost base is worked out similarly.

<b>Creation case</b>	
<b>Event No.</b>	<b>Applicable amount</b>
D1	the *incidental costs the transferor incurred that relate to the trigger event
D2	the expenditure the transferor incurred to grant the option
D3	the expenditure the transferor incurred to grant the right
F1	the expenditure the transferor incurred on the grant, renewal or extension of the lease

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

**126-15 CGT event involving company or trustee**

- (1) There are the roll-over consequences in section 126-5 if the trigger event involves a company (the *transferor*) or a trustee (also the *transferor*) and a \*spouse or former spouse (the *transferee*) of another individual because of:

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) a court order under the *Family Law Act 1975* or under a \*State law, \*Territory law or \*foreign law relating to breakdowns of relationships between spouses; or
- (b) a maintenance agreement approved by a court under section 87 of the *Family Law Act 1975* or a corresponding agreement approved by a court under a corresponding \*foreign law; or
- (d) something done under:
  - (i) a financial agreement made under Part VIIIA of the *Family Law Act 1975* that is binding because of section 90G of that Act; or
  - (ii) a corresponding written agreement that is binding because of a corresponding foreign law; or
- (da) something done under:
  - (i) a Part VIIIAB financial agreement (within the meaning of the *Family Law Act 1975*) that is binding because of section 90UJ of that Act; or
  - (ii) a corresponding written agreement that is binding because of a corresponding foreign law; or
- (e) something done under:
  - (i) an award made in an arbitration referred to in section 13H of the *Family Law Act 1975*; or
  - (ii) a corresponding award made in an arbitration under a corresponding State law, Territory law or foreign law; or
- (f) something done under a written agreement:
  - (i) that is binding because of a State law, Territory law or foreign law relating to breakdowns of relationships between spouses; and
  - (ii) that, because of such a law, prevents a court making an order about matters to which the agreement applies, or that is inconsistent with the terms of the agreement in relation to those matters, unless the agreement is varied or set aside.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 126-15

- (2) There are other consequences if:
- (a) just before the time of the trigger event, an entity (including the transferee) owned another \*CGT asset of a kind covered by this table; and
  - (b) the entity \*acquired it on or after 20 September 1985; and
  - (c) a \*CGT event happens in relation to it.

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**Relevant CGT assets**

Item	For this transferor:	The entity can own these assets:
1	Company	(a) a *share in the company; or (b) a loan to the company; or (c) an indirect interest (through one or more interposed companies or trusts) in a *share in, or loan to, the company
2	Trustee	(a) an interest or unit in the trust; or (b) a loan to the trustee; or (c) an indirect interest (through one or more interposed companies or trusts) in an interest or unit in the trust or in a loan to the trustee

Example: An individual owns all the shares in a company. The company owns land. The individual's marriage breaks down. The Family Court orders that the company transfer the land it owns to the individual's spouse. The individual later sells the shares.

- (3) The \*cost base and \*reduced cost base of the other asset are reduced by an amount that reasonably reflects the fall in its \*market value because of the trigger event. The reduction occurs at the time of the trigger event.
- (4) If the entity owning the other asset is also the transferee, the \*cost base and \*reduced cost base of the other asset are then increased by any amount that is included in the entity's assessable income for any income year because of the trigger event.

Note: The reduced cost base may be modified for a roll-over happening after a demerger: see section 125-170.

- (5) There is no roll-over because of paragraph (1)(d), (da) or (f) unless the conditions set out in section 126-25 are met.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**126-20 Subsequent CGT event happening to roll-over asset where transferor was a CFC or a non-resident trust**

- (1) This section applies if:
  - (a) there is a roll-over for the trigger event under section 126-15; and
  - (b) the transferor was:
    - (i) a \*CFC; or
    - (ii) a trustee of a trust that is a non-resident trust estate within the meaning of section 102AAB of the *Income Tax Assessment Act 1936* for the income year of the trigger event; and
  - (c) section 126-15 is relevant to:
    - (i) the calculation of the \*attributable income of the CFC under Division 7 of Part X of the *Income Tax Assessment Act 1936*; or
    - (ii) the calculation of the attributable income of the trust under Subdivision D of Division 6AAA of Part III of that Act;  
because (ignoring the residency assumptions in that Division or Subdivision) the roll-over asset was not \*taxable Australian property; and
  - (d) a subsequent \*CGT event happens in relation to the roll-over asset.
- (2) In working out the amount of any \*capital gain or \*capital loss the transferee (or a subsequent owner of the roll-over asset if there is a series of roll-overs until there is no roll-over) makes when a subsequent \*CGT event happens in relation to the asset, the modifications specified in Division 7 of Part X, or Subdivision D of Division 6AAA of Part III, of the *Income Tax Assessment Act 1936* apply.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**126-25 Conditions for the purposes of subsections 126-5(3A) and 126-15(5)**

- (1) The conditions referred to in subsections 126-5(3A) and 126-15(5) are that:
  - (a) at the time of the trigger event:
    - (i) the \*spouses, or former spouses, involved are separated; and
    - (ii) there is no reasonable likelihood of cohabitation being resumed; and
  - (b) the trigger event happened because of reasons directly connected with the breakdown of the relationship between the spouses or former spouses.
- (2) For the purposes of this section, the question whether \*spouses or former spouses have separated is to be determined in the same way as it is for the purposes of section 48 of the *Family Law Act 1975* (as affected by sections 49 and 50 of that Act).

**Subdivision 126-B—Companies in the same wholly-owned group**

**Guide to Subdivision 126-B**

**126-40 What this Subdivision is about**

A roll-over may be available for the transfer of a CGT asset between 2 companies, or the creation of a CGT asset by one company in another, if:

- (a) both companies are members of the same wholly-owned group; and
- (b) at least one of the companies is a foreign resident.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 126-45

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**Table of sections**

**Operative provisions**

126-45	Roll-over for members of wholly-owned group
126-50	Requirements for roll-over
126-55	When there is a roll-over
126-60	Consequences of roll-over
126-75	Originating company is a CFC
126-85	Effect of roll-over on certain liquidations

**Operative provisions**

**126-45 Roll-over for members of wholly-owned group**

(1) There may be a roll-over if a \*CGT event (the *trigger event*) happens involving a company (the *originating company*) and another company (the *recipient company*) in the circumstances set out in section 126-50.

(2) Only these \*CGT events are relevant:

- (a) CGT events A1 and B1 (a *disposal case*); and
- (b) CGT events D1, D2, D3 and F1 (a *creation case*).

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

(3) However, there is no roll-over for \*CGT event B1 if title in the \*CGT asset does not pass to the transferee at or before the end of the agreement.

Note: CGT event J1 can happen if the recipient company stops being a 100% subsidiary of a company in the relevant group: see section 104-175.

**126-50 Requirements for roll-over**

(1) The originating company and recipient company must be members of the same \*wholly-owned group at the time of the trigger event.

Note: This requirement is taken to be satisfied in the case of the transfer of the life insurance business of a life insurance company: see section 121AS of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) The \*CGT asset involved (the *roll-over asset*) must not be:
- (a) \*trading stock of the recipient company just after the time of the trigger event; or
  - (b) a \*registered emissions unit \*held by the recipient company just after the time of the trigger event.
- (3) If:
- (a) the roll-over asset is a right or \*convertible interest referred to in Division 130, or an option referred to in Division 134, or an \*exchangeable interest; and
  - (b) the recipient company \*acquires another \*CGT asset by exercising the right or option or by converting the convertible interest or in exchange for the disposal or redemption of the exchangeable interest;
- the other asset cannot become \*trading stock of the recipient company just after the recipient company acquired it.
- (3A) If:
- (a) the roll-over asset is an option referred to in Division 134; and
  - (b) the recipient company \*acquires another \*CGT asset by exercising the option;
- the other asset cannot become a \*registered emissions unit \*held by the recipient company just after the recipient company acquired it.
- (4) The \*ordinary income and \*statutory income of the recipient company must not be exempt from income tax because it is an \*exempt entity for the income year of the trigger event.
- (5) The requirements in one of the items in this table must be satisfied.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 126-50

<b>Additional requirements</b>			
<b>Item</b>	<b>At the time of the trigger event the originating company must be:</b>	<b>At the time of the trigger event the recipient company must be:</b>	<b>The roll-over asset must be taxable Australian property:</b>
1	Either: (a) a foreign resident; or (b) an Australian resident but not a *prescribed dual resident	A foreign resident	Either: (a) just before and just after the trigger event, for a disposal case; or (b) just after that event, for a creation case
2	A foreign resident	An Australian resident but not a *prescribed dual resident	Either: (a) just before the trigger event, for a disposal case; or (b) just after that event, for a creation case

- (6) If the originating company or the recipient company is an Australian resident at the time of the trigger event, that company must:
- (a) be a \*member of a \*consolidated group or \*MEC group at that time; or
  - (b) *not* be a member of a \*consolidatable group at that time.
- (7) If the originating company is a foreign resident, it must *not* have \*acquired the \*CGT asset described in subsection (8) because of:
- (a) a single \*CGT event giving rise to a roll-over under a previous application of this Subdivision (as amended by the *New Business Tax System (Consolidation) Act (No. 1) 2002*) involving an Australian resident originating company other than the company that is the recipient company for the current application of this Subdivision; or
  - (b) a series (whether or not it is the longest possible series) of consecutive CGT events giving rise to roll-overs under previous applications of this Subdivision (as amended by the *New Business Tax System (Consolidation) Act (No. 1) 2002*), the earliest involving an Australian resident originating

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

company other than the company that is the recipient company for the current application of this Subdivision.

- (8) Subsection (7) operates in relation to the \*CGT asset:
- (a) that was involved in the trigger event in a disposal case; or
  - (b) because of which the originating company was able to create the CGT asset that was involved in the trigger event in a creation case.
- (9) Subsection (7) does not apply if each of the following companies mentioned in that subsection:
- (a) the recipient company for the roll-over under the current application of this Subdivision;
  - (b) the Australian resident originating company for the roll-over under:
    - (i) for paragraph (7)(a)—the previous application of this Subdivision; or
    - (ii) for paragraph (7)(b)—the earliest previous application of this Subdivision for that series of consecutive \*CGT events;
- was, at the time of its roll-over, the \*head company of the same \*MEC group.

### **126-55 When there is a roll-over**

#### *Capital gain or no loss*

- (1) There is a roll-over if:
- (a) either:
    - (i) the trigger event would have resulted in the originating company making a \*capital gain, or making no \*capital loss and not being entitled to a deduction; or
    - (ii) the originating company \*acquired the roll-over asset before 20 September 1985; and
  - (b) the originating company and recipient company both choose to obtain it.

Note: Section 103-25 sets out when the choice must be made.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 126-60

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**126-60 Consequences of roll-over**

*Consequences for the originating company in all cases*

- (1) A \*capital gain the originating company makes from the trigger event is disregarded.

*Consequences for the recipient company (disposal case)*

- (2) For a disposal case, if the originating company \*acquired the roll-over asset on or after 20 September 1985:
- (a) the *first* element of the asset's \*cost base (in the hands of the recipient company) is the asset's cost base (in the hands of the originating company) when the recipient company acquired it; and
  - (b) the *first* element of the asset's \*reduced cost base (in the hands of the recipient company) is worked out similarly.

Note 1: There are special indexation rules for roll-overs: see Division 114.

Note 2: The reduced cost base may be modified for a roll-over happening after a demerger: see section 125-170.

- (3) If the originating company \*acquired the roll-over asset before 20 September 1985, the recipient company is taken to have acquired it before that day.

Note 1: A capital gain or loss you make from a CGT asset you acquired before 20 September 1985 is generally disregarded: see Division 104. This exemption is removed in some situations: see, for example, Division 149.

Note 2: Under section 716-855, where there have been certain roll-overs, the cost base and reduced cost base of pre-CGT assets for the purposes of Part 3-90 (Consolidated groups) are worked out by applying subsection (2), rather than subsection (3), of this section.

- (4) If the trigger event involved a \*personal use asset of the originating company, the recipient company is taken to have \*acquired one.

*Consequences for the recipient company (creation case)*

- (5) For a creation case, the *first* element of the asset's \*cost base (in the hands of the recipient company) is the amount applicable under this table. The first element of its \*reduced cost base is worked out similarly.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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<b>Creation case</b>	
<b>Event No.</b>	<b>Applicable amount</b>
D1	the * incidental costs the originating company incurred that relate to the trigger event
D2	the expenditure the originating company incurred to grant the option
D3	the expenditure the originating company incurred to grant the right
F1	the expenditure the originating company incurred on the grant, renewal or extension of the lease

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

Note: CGT event J1 may occur if the recipient company stops being a member of the wholly-owned group while still owning the roll-over asset: see section 104-175.

### **126-75 Originating company is a CFC**

- (1) This section applies if:
  - (a) there is a roll-over for the trigger event under this Subdivision; and
  - (b) the originating company was a \*CFC at the time of the trigger event; and
  - (c) this Subdivision is relevant to the calculation of the \*attributable income of the originating company under Division 7 of Part X of the *Income Tax Assessment Act 1936* because (ignoring the residency assumptions in that Division) the roll-over asset was not \*taxable Australian property for the originating company; and
  - (d) a subsequent \*CGT event happens in relation to the roll-over asset.
- (2) In working out the amount of any \*capital gain or \*capital loss the recipient company (or a subsequent owner of the roll-over asset if there is a series of roll-overs until there is no roll-over) makes when a subsequent \*CGT event happens in relation to the asset, the modifications specified in Division 7 of Part X of the *Income Tax Assessment Act 1936* apply.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 126-85

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**126-85 Effect of roll-over on certain liquidations**

- (1) A \*capital gain a company (the **holding company**) makes because \*shares in its \*100% subsidiary are cancelled (an example of \*CGT event C2: see section 104-25) on the liquidation of the subsidiary is reduced if the conditions in subsection (2) are satisfied. The reduction is worked out under subsection (3).
- (2) These conditions must be satisfied:
  - (a) there must be a roll-over under this Subdivision for at least one \*CGT asset that the subsidiary \*acquired on or after 20 September 1985 (the **CGT roll-over asset**) being \*disposed of by the subsidiary to the holding company in the course of the liquidation of the subsidiary;
  - (c) the disposals must either:
    - (i) be part of the liquidator's final distribution in the course of the liquidation; or
    - (ii) have occurred within 18 months of the dissolution of the subsidiary if they are part of an interim distribution in the course of the liquidation;
  - (d) the holding company must have beneficially owned all of the shares in the subsidiary for the whole period from the time of the disposal, or the first disposal, of a CGT roll-over asset until the cancellation of the shares;
  - (e) the \*market value of the CGT roll-over asset or assets must comprise at least part of the \*capital proceeds for the cancellation of the shares in the subsidiary that are beneficially owned by the holding company;
  - (f) one or more of the shares that were cancelled (the **post-CGT shares**) must have been acquired by the holding company on or after 20 September 1985.
- (3) The reduction of the \*capital gain is worked out in this way.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Method statement*

- Step 1. Work out (disregarding this section) the sum of the \*capital gains and the sum of the \*capital losses the holding company would make on the cancellation of its shares in the subsidiary.
- Step 2. Work out (disregarding this Subdivision):
- (a) the sum of the \*capital gains the subsidiary would make on the \*disposal of its CGT roll-over assets to the holding company; and
  - (b) the sum of the \*capital losses it would make except for Subdivision 170-D on the disposal of its \*CGT assets to the holding company;
- in the course of the liquidation assuming the \*capital proceeds were the assets' \*market values at the time of the disposal.
- Step 3. If, after subtracting the sum of the \*capital losses from the sum of the \*capital gains, there is an overall capital gain from step 1 and an overall capital gain from step 2, then continue. Otherwise there is no adjustment.
- Step 4. Express the number of post-CGT shares as a fraction of the total number of shares the holding company owned in the subsidiary.
- Step 5. Multiply the overall \*capital gain from Step 2 by the fraction from Step 4.
- Step 6. Reduce the overall \*capital gain from Step 1 by the amount from Step 5. The result is the \*capital gain the holding company makes from the cancellation of its shares in the subsidiary.

Note: This Subdivision is modified in calculating the attributable income of a CFC: see section 419 of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 126-125

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## Subdivision 126-C—Changes to trust deeds

### Guide to Subdivision 126-C

#### 126-125 What this Subdivision is about

This Subdivision sets out when there is a roll-over for a CGT event that happens because of an amendment to or replacement of the trust deed of a complying approved deposit fund, a complying superannuation fund or a fund that accepts worker entitlement contributions.

#### Table of sections

126-130	Changes to trust deeds
126-135	Consequences of roll-over

#### 126-130 Changes to trust deeds

- (1) There is a roll-over if:
- (a) \*CGT event E1 or E2 happens in relation to a \*CGT asset because the trust deed of a \*complying approved deposit fund or \*complying superannuation fund is amended or replaced; and
  - (b) the amendment or replacement is done for the purpose of:
    - (i) complying with the *Superannuation Industry (Supervision) Act 1993*; or
    - (ii) enabling a \*complying approved deposit fund to become a \*complying superannuation fund; and
  - (c) the assets and members of the fund do not change as a consequence of the amendment or replacement.
- Note: The full list of CGT events is in section 104-5.
- (2) There is a roll-over if:
- (a) \*CGT event E1 or E2 happens in relation to a \*CGT asset because the trust deed of a fund is amended or replaced; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) the amendment or replacement is done for the purpose of having:
  - (i) the fund endorsed as an approved worker entitlement fund under subsection 58PB(3) of the *Fringe Benefits Tax Assessment Act 1986*; or
  - (ii) the entity that operates the fund endorsed for the operation of the fund as an approved worker entitlement fund under subsection 58PB(3A) of that Act.
- (c) the assets and members of the fund do not change as a consequence of the amendment or replacement.

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

### **126-135 Consequences of roll-over**

- (1) A \*capital gain or \*capital loss made from the \*CGT event is disregarded.
- (2) If the fund that owned the \*CGT asset just before the time of the \*CGT event \*acquired it before 20 September 1985, the asset retains its status as a \*pre-CGT asset in the hands of the fund that owned it after the time of the event.
- (3) If the fund that owned the \*CGT asset just before the time of the \*CGT event \*acquired it on or after 20 September 1985:
  - (a) the first element of the asset's \*cost base (in the hands of the fund that owned the asset after the time of the event) is its cost base just before that time; and
  - (b) the first element of the asset's \*reduced cost base asset is worked out similarly; and
  - (c) the fund that owned the asset after the time of the event is taken to have acquired the asset at that time.

### **Subdivision 126-D—Small superannuation funds**

#### **Table of sections**

126-140 CGT event involving small superannuation funds

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 126-140

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**126-140 CGT event involving small superannuation funds**

*Payment splits under Family Law Act*

- (1) There is a roll-over if:
- (a) an interest in a \*small superannuation fund is subject to a \*payment split; and
  - (b) the \*non-member spouse in relation to that interest serves a waiver notice under section 90MZA of the *Family Law Act 1975* in respect of that interest; and
  - (c) as a result of serving the notice, the trustee (the **transferor**) of the fund transfers a \*CGT asset to the trustee (the **transferee**) of another \*complying superannuation fund for the benefit of the non-member spouse.

Note: CGT event E2 may apply to the transfer.

*Payment splits under the Superannuation Industry (Supervision) Regulations*

- (2) There is also a roll-over if:
- (a) an interest in a \*small superannuation fund (the **first fund**) is subject to a \*payment split; and
  - (b) as a result of the payment split, there is a transfer or roll over of benefits, for the benefit of the \*non-member spouse, from the first fund to another \*complying superannuation fund; and
  - (c) the transfer is under provisions of the Superannuation Industry (Supervision) Regulations 1994 dealing with superannuation interests that are subject to payment splits; and
  - (d) in order to give effect to the payment split, the trustee (the **transferor**) of the first fund transfers a \*CGT asset to the trustee (the **transferee**) of the other fund for the benefit of the non-member spouse.

Note: CGT event E2 may apply to the transfer.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Transfer of own interest in a small superannuation fund*

- (2A) There is also a roll-over if:
- (a) an individual has an interest in a \*small superannuation fund (the **first fund**); and
  - (b) the individual's \*spouse, or former spouse, also has an interest in the first fund; and
  - (c) the trustee (the **transferor**) of the first fund transfers a \*CGT asset to the trustee (the **transferee**) of another \*complying superannuation fund for the benefit of the individual; and
  - (d) the transfer is in accordance with an award, order or agreement mentioned in subsection (2B); and
  - (e) if the transfer is part of a series of transfers in accordance with the award, order or agreement—the individual will no longer have an interest in the first fund when the series of transfers is complete; and
  - (f) if the transfer is not part of a series of transfers in accordance with the award, order or agreement—as a result of the transfer, the individual no longer has an interest in the first fund; and
  - (g) there has not been a roll-over under subsection (1) or (2) or this subsection in relation to the transfer of another CGT asset from the first fund, where the transfer was:
    - (i) made because of the award, order or agreement; and
    - (ii) for the benefit of that spouse, or former spouse; and
  - (h) if the transfer is in accordance with an agreement mentioned in paragraph (2B)(d), (da) or (e), the conditions in subsection (2C) are satisfied.

Note: CGT event E2 may apply to the transfer.

- (2B) The awards, orders and agreements are:
- (a) an award made in an arbitration referred to in section 13H of the *Family Law Act 1975* or a corresponding award made in an arbitration under a corresponding \*State law, \*Territory law or \*foreign law; or
  - (b) a court order made under section 79, subsection 90AE(2) or 90AF(2) or section 90SM of the *Family Law Act 1975*; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 126-140

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- (c) a court order made under a State law, Territory law or foreign law relating to breakdowns of relationships between \*spouses that corresponds to an order made under subsection 90AE(2) or 90AF(2) or section 90SM of the *Family Law Act 1975*; or
  - (d) a financial agreement made under Part VIIIA of the *Family Law Act 1975* that is binding because of section 90G of that Act or a corresponding written agreement that is binding because of a corresponding foreign law; or
  - (da) a Part VIIIAB financial agreement (within the meaning of the *Family Law Act 1975*) that is binding because of section 90UJ of that Act; or
  - (e) a written agreement:
    - (i) that is binding under a State law, Territory law or foreign law relating to breakdowns of relationships between spouses; and
    - (ii) that, because of such a law, prevents a court making an order about matters to which the agreement applies, or that is inconsistent with the terms of the agreement in relation to those matters, unless the agreement is varied or set aside.
- (2C) The conditions are that:
- (a) at the time of the transfer:
    - (i) the \*spouses, or former spouses, involved are separated; and
    - (ii) there is no reasonable likelihood of cohabitation being resumed; and
  - (b) the transfer happened because of reasons directly connected with the breakdown of the relationship between the spouses or former spouses.
- (2D) For the purposes of subsection (2C), the question whether \*spouses, or former spouses, have separated is to be determined in the same way as it is for the purposes of section 48 of the *Family Law Act 1975* (as affected by sections 49 and 50 of that Act).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Roll-over consequences*

- (3) A \*capital gain or \*capital loss the transferor makes from the transfer of the asset is disregarded.
- (4) If the transferor \*acquired the asset on or after 20 September 1985:
  - (a) the first element of the asset's \*cost base (in the hands of the transferee) is the asset's cost base (in the hands of the transferor) at the time the transferee acquired it; and
  - (b) the first element of the asset's \*reduced cost base (in the hands of the transferee) is worked out similarly.
- (5) If the transferor \*acquired the asset before 20 September 1985, the transferee is taken to have acquired it before that day.

Note: A capital gain or loss you make from a CGT asset you acquired before 20 September 1985 is generally disregarded: see Division 104. This exemption is removed in some situations: see Division 149.

**Subdivision 126-E—Entitlement to shares after demutualisation and scrip for scrip roll-over**

**Guide to Subdivision 126-E**

**126-185 What this Subdivision is about**

This Subdivision sets out when there is a roll-over for a CGT event that happens because a beneficiary becomes absolutely entitled to a share as against the trustee where the trustee obtained a roll-over under Subdivision 124-M following a demutualisation.

**Table of sections**

**Operative provisions**

- 126-190 When there is a roll-over  
126-195 Consequences of roll-over

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 126-190

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## Operative provisions

### 126-190 When there is a roll-over

There is a roll-over if:

- (a) an insurance company demutualises; and
- (b) the trustee of a trust holds a \*share issued under the demutualisation in trust for an entity to whom the share would have been issued if the entity could, and were in a position to, prove the entity's entitlement to the share; and
- (c) the trustee obtains a roll-over under Subdivision 124-M of this Act (Scrip for scrip roll-over) for the share because the trustee exchanges the share for a share (the **replacement share**) in another company (whether or not the trustee receives something in addition to the replacement share); and
- (d) a \*CGT event happens in relation to the replacement share because the entity becomes absolutely entitled to the share as against the trustee.

Note: This Subdivision does not apply to the demutualisation of a private health insurer: see section 315-160.

### 126-195 Consequences of roll-over

- (1) A \*capital gain or \*capital loss the trustee makes from the \*CGT event is disregarded.
- (2) The first element of the \*cost base of the replacement share for the entity is the cost base of the replacement share in the hands of the trustee just before the \*CGT event happened. The first element of the \*reduced cost base of the replacement share for the entity is worked out similarly.

Example: The JB mutual insurance company demutualises, issuing shares in JB Limited to its policyholders. It is unable to locate some of its policyholders so it establishes a trust and issues shares to the trustee on behalf of those policyholders. Steve is one of those policyholders (being potentially entitled to 50 shares).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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JB Limited is taken over by PVDM Limited. Members of JB are issued with 2 shares in PVDM for each share they have in JB. The trustee obtains a roll-over under Subdivision 124-M for the exchange. Each PVDM share held by the trustee has a cost base and reduced cost base of \$15.

Steve writes to the trustee and proves his entitlement to the shares held in trust for him.

There is a roll-over under this Subdivision so that any capital gain or loss made by the trustee is disregarded. The first element of the cost base and reduced cost base of each of Steve's PVDM shares is \$15.

## **Subdivision 126-F—Transfer of assets of superannuation funds to meet licensing requirements**

### **Guide to Subdivision 126-F**

#### **126-200 What this Subdivision is about**

There is a roll-over for the transfer of assets of a superannuation fund to one or more other superannuation funds that is made between 30 June 2004 and 1 July 2006 because the trustee of the first fund will not be licensed by 1 July 2006 and the other funds have or will have licensed trustees.

#### **Table of sections**

##### **Operative provisions**

- 126-205 Object of this Subdivision
- 126-210 When there is a roll-over and what its effects are

#### **Operative provisions**

##### **126-205 Object of this Subdivision**

The object of this Subdivision is to encourage compliance with the requirements of the *Superannuation Industry (Supervision) Act 1993* for the licensing of trustees of registrable superannuation entities.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 126-210

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**126-210 When there is a roll-over and what its effects are**

*When there is a roll-over*

- (1) There is a roll-over if:
- (a) after 30 June 2004 and before 1 July 2006, one or more \*CGT events happen because the trustee (the **first RSE trustee**) of a registrable superannuation entity, as defined in section 10 of the *Superannuation Industry (Supervision) Act 1993*, ceases to hold all its \*CGT assets; and
  - (b) because of the cessation, CGT assets (the **identical assets**) that, together, are identical to all the first RSE trustee's CGT assets just before the CGT events start to be held after 30 June 2004 and before 1 July 2006 by:
    - (i) the trustee (the **successor RSE trustee**) of another such registrable superannuation entity; or
    - (ii) the trustees (each of whom is a **successor RSE trustee**) of 2 or more other such registrable superannuation entities;(whether or not all the identical assets were the first RSE trustee's assets just before the CGT events); and
  - (c) the cessation and starting occur because:
    - (i) it is reasonable to assume that the first RSE trustee will not have an RSE licence under Part 2A of that Act by 1 July 2006; and
    - (ii) each successor RSE trustee has such an RSE licence, or it is reasonable to assume that each successor RSE trustee will have such an RSE licence by 1 July 2006.

Note: Under section 10 of the *Superannuation Industry (Supervision) Act 1993*, **registrable superannuation entity** is defined as covering certain kinds of superannuation funds, approved deposit funds and pooled superannuation trusts.

*Effects of the roll-over*

- (2) A \*capital gain or \*capital loss the first RSE trustee makes from each of the \*CGT events is disregarded.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) For a successor RSE trustee, the first element of the \*cost base of each of the identical assets the successor RSE trustee holds is the cost base of the corresponding asset for the first RSE trustee at the time of the relevant \*CGT event.
- (4) For a successor RSE trustee, the first element of the \*reduced cost base of each of the identical assets the successor RSE trustee holds is the reduced cost base of the corresponding asset for the first RSE trustee at the time of the relevant \*CGT event.

Example: There is a roll-over if the first RSE trustee had a block of land and 10,000 units in a unit trust and the following events happen on 30 June 2006 because the first RSE trustee does not have an RSE licence but each of the 2 successor RSE trustees (successor RSE trustee A and successor RSE trustee B) does:

- (a) the first RSE trustee transfers the block to successor RSE trustee A;
- (b) the first RSE trustee's units in the unit trust are cancelled at the first RSE trustee's request;
- (c) 10,000 identical units in the unit trust are issued to successor RSE trustee B because of the cancellation.

The first RSE trustee disregards any capital gain or capital loss from the transfer of the block or the cancellation of the units.

The first element of successor RSE trustee A's cost base and reduced cost base for the block is the same as the first RSE trustee's cost base and reduced cost base respectively for the block at the time of the transfer.

The first element of successor RSE trustee B's cost base and reduced cost base for the units issued to successor RSE trustee B is the same as the first RSE trustee's cost base and reduced cost base respectively for its units at the time they were cancelled.

- (5) A successor RSE trustee that starts to hold one of the identical assets because of the cessation is taken to have \*acquired the asset before 20 September 1985 if the first RSE trustee acquired the corresponding asset before that day.

Note 1: A capital gain or loss you make from a CGT asset you acquired before 20 September 1985 is generally disregarded: see Division 104. This exemption is removed in some situations: see Division 149.

Note 2: Subsection (5) cannot apply if the first RSE trustee was the trustee of a complying superannuation fund, complying approved deposit fund or pooled superannuation trust. This is because section 295-90 treats such a trustee as having acquired on 30 June 1988 any assets it owned on that day.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 126-215

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*No roll-over if successor RSE trustee not licensed*

- (6) A roll-over under this section is taken never to have happened if each successor RSE trustee does not have an RSE licence under Part 2A of the *Superannuation Industry (Supervision) Act 1993* by 1 July 2006.

**Subdivision 126-G—Transfer of assets between certain trusts**

**Guide to Subdivision 126-G**

**126-215 What this Subdivision is about**

Roll-overs may be available when CGT assets are transferred between certain trusts.

**Table of sections**

**Operative provisions**

- 126-220 Object of this Subdivision
- 126-225 When a roll-over may be chosen
- 126-230 Beneficiaries' entitlements not be discretionary etc.
- 126-235 Exceptions for roll-over
- 126-240 Consequences for the trusts
- 126-245 Consequences for beneficiaries—general approach for working out cost base etc.
- 126-250 Consequences for beneficiaries—other approach for working out cost base etc.
- 126-255 No other cost base etc. adjustment for beneficiaries
- 126-260 Giving information to beneficiaries
- 126-265 Interest sale facilities

**Operative provisions**

**126-220 Object of this Subdivision**

The object of this Subdivision is to ensure that CGT considerations are not an impediment to the restructure of trusts, whilst ensuring that subsequent changes to the manner and extent to which

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

beneficiaries can benefit from the trusts are subject to appropriate tax consequences.

### **126-225 When a roll-over may be chosen**

- (1) A roll-over may be chosen for a \*CGT asset (the *roll-over asset*) if:
  - (a) the trustee of a trust (the *transferring trust*):
    - (i) creates a trust (the *receiving trust*), by declaration or settlement, over one or more CGT assets that include the roll-over asset; or
    - (ii) transfers the roll-over asset to an existing trust (the *receiving trust*);  
at a particular time (the *transfer time*); and
  - (b) if subparagraph (a)(ii) applies—the receiving trust has no CGT assets, other than small amounts of cash or debt, just before the transfer time; and
  - (c) just after the transfer time:
    - (i) each of the trusts has the same beneficiaries; and
    - (ii) the receiving trust has the same \*classes of \*membership interests that the transferring trust had just before, and has just after, the transfer time; and
    - (iii) the sum of the \*market values of each beneficiary's membership interests of a particular class in both trusts is substantially the same as the sum of the market values, just before the transfer time, of the beneficiary's membership interests of that class in both trusts; and
  - (d) the requirement in section 126-230 is met; and
  - (e) the exceptions in section 126-235 do not apply.

#### *Exception if other roll-over assets already transferred*

- (2) However, paragraph (1)(b) does not apply if:
  - (a) the roll-over asset is transferred to the receiving trust under an \*arrangement; and
  - (b) the roll-over asset was an asset of the transferring trust just before the arrangement was made; and
  - (c) at least one other asset of the receiving trust:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (i) is an asset for which a roll-over was obtained under this Subdivision for the trusts; and
- (ii) is an asset over which the receiving trust was created, or was transferred by the transferring trust to the receiving trust under the arrangement; and
- (d) the transfer time is in the income year for the transferring trust that includes the earliest transfer time (the *start time*) for the assets covered by paragraph (c).

*Obtaining the roll-over*

- (3) The roll-over only happens if both the trustee of the transferring trust and the trustee of the receiving trust choose to obtain it.

**126-230 Beneficiaries' entitlements not be discretionary etc.**

- (1) The conditions in subsections (2) and (3) must be met:
  - (a) if subsection 126-225(2) applies—at all times during the period:
    - (i) starting at the start time; and
    - (ii) ending at the transfer time; and
  - (b) otherwise—at the transfer time.

*CGT event E4 is capable of happening*

- (2) The first condition is met at a particular time if, at that time, \*CGT event E4 is capable of happening to all of the \*membership interests in each of the trusts.

Note: A roll-over cannot be chosen if either trust is a discretionary trust.

*Beneficiaries' entitlements not discretionary*

- (3) The second condition is met at a particular time if, at that time, the manner or extent to which each beneficiary of each trust can benefit from the trust is not capable of being significantly affected by the exercise, or non-exercise, of a power.
- (4) However, if both trusts are \*managed investment trusts, disregard a power if the power's existence at that time does not significantly

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

affect the \*market value at that time of each \*membership interest in each of the trusts.

### **126-235 Exceptions for roll-over**

#### *Foreign trusts*

- (1) An exception applies for a \*CGT asset if:
  - (a) the receiving trust is a \*foreign trust for CGT purposes for the income year that includes the transfer time; and
  - (b) the roll-over asset is not \*taxable Australian property just after the transfer time.

#### *Corporate unit trusts and public trading trusts*

- (2) Another exception applies if either trust is a trust to which section 102K or 102S of the *Income Tax Assessment Act 1936* applies for the income year that includes the transfer time.

#### *Choices*

- (3) Another exception applies if, just after the transfer time:
  - (a) a choice (however described) under a provision of a \*taxation law is in force for either of the trusts in relation to particular circumstances; and
  - (b) the same choice (however described) under that provision for the other trust in relation to those circumstances (a ***mirror choice***) is not also in force; and
  - (c) the absence of a mirror choice would or could have an ongoing effect on the calculation of an entity's \*net income, or taxable income, for:
    - (i) the entity's income year that includes the transfer time; or
    - (ii) a later income year.
- (4) However, the exception in subsection (3) does not apply if:
  - (a) the other trust makes a mirror choice before the first time after the transfer time when the absence of the mirror choice would affect the calculation of an entity's \*net income, or taxable income, for an income year; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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(b) it would not be reasonable for subsection (3) to apply.

Note: For paragraph (a), the other trust must still be able, under the relevant provision of the taxation law, to make the mirror choice.

(5) If, just after the transfer time:

(a) a choice (however described) referred to in paragraph (3)(a) is in force for either of the trusts (the **first choice**); and

(b) a provision of a \*taxation law:

(i) prevents the revocation or variation of that choice; or

(ii) sets out a consequence for an entity if that choice is revoked or varied;

that provision is taken to apply for a mirror choice, in force for the other trust at or after that time, in a way corresponding to the way in which it applies for the first choice.

Note: For example, if the provision sets out consequences that flow from the revocation of the first choice, then those consequences will also flow if the mirror choice is revoked.

**126-240 Consequences for the trusts**

*Disregard any capital gain or loss*

(1) If the roll-over is chosen, disregard any \*capital gain or \*capital loss the trustee of the transferring trust makes from:

(a) creating the receiving trust over the roll-over asset; or

(b) transferring the roll-over asset to the receiving trust; at the transfer time.

*Adjust roll-over asset's cost base and reduced cost base*

(2) If the roll-over is chosen:

(a) the first element of the roll-over asset's \*cost base, in the hands of the receiving trust, is its cost base just before the transfer time; and

(b) the first element of the roll-over asset's \*reduced cost base is worked out similarly.

*Any pre-transfer losses of receiving trust cannot be utilised*

(3) If the roll-over is chosen:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) any \*net capital loss of the receiving trust for an income year ending before the transfer time cannot be applied after the transfer time to reduce an amount of that trust's \*capital gains; and
- (b) the sum of the receiving trust's \*capital losses for the income year that includes the transfer time (the *transfer year*) is reduced by an amount equal to any net capital loss that the trust would have had for that year had that year ended just before the transfer time; and
- (c) any \*tax loss of the receiving trust for an income year ending before the transfer time cannot be deducted after the transfer time from an amount of that trust's assessable income or \*net exempt income; and
- (d) the sum of the receiving trust's deductions for the transfer year is reduced by an amount equal to any tax loss that the trust would have had for that year had that year ended just before the transfer time.

References in this subsection to the transfer time are to be read as references to the start time if subsection 126-225(2) applies.

Note: Subsection 126-225(2) applies if the roll-over asset is transferred to the receiving trust after an earlier roll-over under this Subdivision, for another asset, was obtained for the trusts.

*Pre-CGT assets*

- (4) If:
  - (a) the roll-over is chosen; and
  - (b) the transferring trust last \*acquired the roll-over asset before 20 September 1985;the receiving trust is taken to have acquired it before that day.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 126-245

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**126-245 Consequences for beneficiaries—general approach for working out cost base etc.**

- (1) If the roll-over is chosen, each of the following:
- (a) the \*cost base and \*reduced cost base of each of a beneficiary's \*membership interests in each trust;
  - (b) the time each of the beneficiary's membership interests in the receiving trust is treated as having been \*acquired;
- is adjusted under this section for the transfer time unless the beneficiary has chosen for them to be adjusted under section 126-250.

Note: The beneficiary can choose for these things to be adjusted once for several consecutive transfer times (for multiple roll-over assets) if the beneficiary owned the interests at all of those times (see section 126-250).

*First element of cost base of interests in transferring trust*

- (2) The first element of the \*cost base, just after the transfer time, of each of the beneficiary's \*membership interests in the transferring trust is an amount equal to such proportion of the interest's cost base just before the transfer time as is reasonable having regard to:
- (a) the \*market value of the interest just after the transfer time, or a reasonable approximation of that market value; and
  - (b) the market value of the interest just before the transfer time, or a reasonable approximation of that market value.

*First element of cost base of interests in receiving trust*

- (3) The first element of the \*cost base, just after the transfer time, of each of the beneficiary's \*membership interests in the receiving trust is such amount so that the sum of:
- (a) the cost base, just before the transfer time, of that membership interest in the receiving trust; and
  - (b) if, just after the transfer time, that interest in the receiving trust corresponds to at least one of the beneficiary's membership interests in the transferring trust—the cost base, just before the transfer time, of each of those corresponding membership interests in the transferring trust; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) if, just after the transfer time, that interest in the receiving trust corresponds to a proportion of one of the beneficiary's membership interests in the transferring trust—that proportion of the cost base, just before the transfer time, of that corresponding membership interest in the transferring trust;

reasonably approximates:

- (d) if paragraph (b) applies—the sum of the cost bases, just after the transfer time, of each of the interests referred to in paragraphs (a) and (b); and
- (e) if paragraph (c) applies—the sum of:
- (i) the cost base, just after the transfer time, of the interest referred to in paragraph (a); and
  - (ii) the proportion of the cost base, just after the transfer time, of the interest referred to in paragraph (c).

*First element of reduced cost base of interests in each trust*

- (4) The first element of the \*reduced cost base, just after the transfer time, of each of the beneficiary's \*membership interests in each trust is worked out similarly.

*Time of acquisition for interests in the receiving trust*

- (5) Each of the beneficiary's \*membership interests in the receiving trust is treated as having been \*acquired just after the transfer time.

*Time of acquisition for pre-CGT interests in the receiving trust*

- (6) However, if one or more of the beneficiary's \*membership interests in the transferring trust were \*pre-CGT assets just before the transfer time, the beneficiary is treated as having \*acquired before 20 September 1985 its interests in the receiving trust that correspond to those interests in the transferring trust.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 126-250

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**126-250 Consequences for beneficiaries—other approach for working out cost base etc.**

- (1) This section applies if the beneficiary owns one or more \*membership interests in the transferring trust at all times during the period:
  - (a) starting just before this time (the *starting time*):
    - (i) the transfer time; or
    - (ii) the transfer time for an asset referred to in paragraph 126-225(2)(c) (assuming subsection 126-225(2) applies); and
  - (b) ending just after this time (the *ending time*):
    - (i) the transfer time (assuming this is not also the starting time); or
    - (ii) a later time in the transfer year that is the transfer time for another asset for which a roll-over is obtained under this Subdivision for the trusts.

Note: Subsection 126-225(2) applies if the roll-over asset is transferred to the receiving trust after an earlier roll-over under this Subdivision, for another asset, was obtained for the trusts.
- (2) The beneficiary may choose for each of the following:
  - (a) the \*cost base and \*reduced cost base of each of those \*membership interests and of the beneficiary's corresponding membership interests in the receiving trust;
  - (b) the time each of those corresponding interests in the receiving trust is treated as having been \*acquired; to be adjusted under subsection (3) for the period.
- (3) For each of the interests referred to in subsection (2), subsections 126-245(2), (3), (4), (5) and (6) apply as if:
  - (a) references in those subsections to just before the transfer time were references to just before the starting time; and
  - (b) references in those subsections to just after the transfer time were references to just after the ending time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **126-255 No other cost base etc. adjustment for beneficiaries**

If a beneficiary of the trusts makes adjustments under section 126-245 or 126-250 to the \*cost base and \*reduced cost base of the beneficiary's \*membership interests in relation to the \*CGT event that is:

- (a) the creation of the receiving trust over the roll-over asset; or
- (b) the transfer of the roll-over asset to the receiving trust;

no other adjustment is to be made under this Act to those cost bases and reduced cost bases because of something that happens in relation to that event.

Note: This section prevents the general value shifting regime from applying in relation to the event because sections 126-245 and 126-250 deal with any value shift that might occur.

### **126-260 Giving information to beneficiaries**

*Beneficiaries must be given particulars of the roll-over*

- (1) If the roll-over is chosen, the trustee of the transferring trust must, within 3 months after the end of the transfer year, send written notice of the particulars set out in subsection (2) to each of the trust's beneficiaries:
  - (a) by post to the address most recently notified by the beneficiary as the beneficiary's address; or
  - (b) by any other means notified by the beneficiary for receiving correspondence from the trust.

Note: The trustee may also notify beneficiaries of other details of the roll-over.

*The particulars that must be given*

- (2) The particulars are as follows:
  - (a) the roll-over asset's transfer time;
  - (b) sufficient information to enable a beneficiary to work out which of the beneficiary's \*membership interests in the receiving trust correspond to each of the beneficiary's membership interests in the transferring trust;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) the \*market value of each of the membership interests held by the beneficiary in the transferring trust just after the roll-over asset's transfer time, or a reasonable approximation of that market value;
- (d) the market value of each of the membership interests held by the beneficiary in the transferring trust just before the roll-over asset's transfer time, or a reasonable approximation of that market value.

*Offence*

- (3) A trustee commits an offence if the trustee contravenes subsection (1).

Penalty: 30 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

*If the transferring trust has multiple trustees*

- (5) If the transferring trust has 2 or more trustees, the obligation imposed by subsection (1) is imposed on each of the trustees, but may be discharged by any of the trustees.

Note: Each of the trustees commits an offence against subsection (3) if none of them discharges the obligation imposed by subsection (1).

- (6) In a prosecution of a trustee for an offence against subsection (3) for an act or omission contravening subsection (1), it is a defence if the trustee proves that the trustee:

- (a) did not aid, abet, counsel or procure the act or omission; and
- (b) was not in any way knowingly concerned in, or party to, the act or omission (whether directly or indirectly and whether by any act or omission of the trustee).

Note: A defendant bears a legal burden in relation to the matters in subsection (6): see section 13.4 of the *Criminal Code*.

*Obligations of beneficiary unaffected if not notified of roll-over*

- (7) A failure by a trustee to comply with subsection (1) does not affect the application of section 126-245 to the beneficiary.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## 126-265 Interest sale facilities

### *Interest sale facilities*

- (1) For the purposes of this Subdivision, an entity (the *investor*) is treated as owning a \*membership interest (the *roll-over interest*) in the receiving trust at a time (the *deeming time*), if:
- (a) the investor owned a membership interest in the transferring trust; and
  - (b) a trust is created, or a transfer happens, (the *transaction*) as mentioned in paragraph 126-225(1)(a) in relation to \*CGT assets of the transferring trust; and
  - (c) because:
    - (i) a \*foreign law impedes the ability of the receiving trust to issue or transfer the roll-over interest to the investor; or
    - (ii) it would be impractical or unreasonably onerous to determine whether a foreign law impedes the ability of the receiving trust to issue or transfer the roll-over interest to the investor;it is \*arranged that the receiving trust will issue or transfer the roll-over interest to another entity (the *facility*) under the transaction instead of to the investor; and
  - (d) in accordance with that arrangement and as a result of the transaction, the facility:
    - (i) becomes the owner of the roll-over interest; and
    - (ii) owns the roll-over interest at the deeming time; and
  - (e) under the arrangement, the investor is entitled to receive from the facility:
    - (i) an amount equivalent to the \*capital proceeds of any \*CGT event that happens in relation to the roll-over interest (less expenses); or
    - (ii) if a CGT event happens in relation to the roll-over interest together with CGT events happening in relation to other membership interests—an amount equivalent to the investor's proportion of the total capital proceeds of the CGT events (less expenses).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) The facility is treated as not owning the roll-over interest at the deeming time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## Division 128—Effect of death

### Guide to Division 128

#### 128-1 What this Division is about

This Division sets out what happens when you die and a CGT asset you owned just before dying devolves to your legal personal representative or passes to a beneficiary in your estate.

It also contains rules about what happens when a joint tenant dies.

#### General rules

- 128-10 Capital gain or loss when you die is disregarded
- 128-15 Effect on the legal personal representative or beneficiary
- 128-20 When does an asset *pass* to a beneficiary?
- 128-25 The beneficiary is a trustee of a superannuation fund etc.

#### Special rules for joint tenants

- 128-50 Joint tenants

### General rules

#### 128-10 Capital gain or loss when you die is disregarded

When you die, a \*capital gain or \*capital loss from a \*CGT event that results for a \*CGT asset you owned just before dying is disregarded.

Note 1: Section 104-215 sets out an exception to this rule if the CGT asset passes to a beneficiary in your estate who is:

- an exempt entity; or
- the trustee of a complying superannuation entity; or
- a foreign resident.

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

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 128-15

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**128-15 Effect on the legal personal representative or beneficiary**

- (1) This section sets out what happens if a \*CGT asset you owned just before dying:
- (a) devolves to your \*legal personal representative; or
  - (b) \*passes to a beneficiary in your estate.

Note 1: Section 128-25 has different rules if the asset passes to a beneficiary in your estate who is the trustee of a complying superannuation entity.

Note 2: If the beneficiary is an exempt entity, Division 57 in Schedule 2D to the *Income Tax Assessment Act 1936* has rules about exempt entities that become taxable. It sets out what the entity is taken to have purchased its assets for when it becomes taxable.

Note 3: If the beneficiary is a foreign resident, Subdivision 855-B sets out what happens if the beneficiary becomes an Australian resident. The beneficiary is taken to have acquired each asset owned just before becoming an Australian resident for the market value of the asset at that time.

- (2) The \*legal personal representative, or beneficiary, is taken to have \*acquired the asset on the day you died.

*Special rule for legal personal representative*

- (3) Any \*capital gain or \*capital loss the \*legal personal representative makes if the asset \*passes to a beneficiary in your estate is disregarded.

*Cost base rules for both*

- (4) This table sets out the modifications to the \*cost base and \*reduced cost base of the \*CGT asset in the hands of the \*legal personal representative or beneficiary.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Modifications to cost base and reduced cost base**

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Item	For this kind of CGT asset:	The first element of the asset's cost base is:	The first element of the asset's reduced cost base is:
1	One you *acquired on or after 20 September 1985, except one covered by item 2, 3, 3A or 3B	the *cost base of the asset on the day you died	the *reduced cost base of the asset on the day you died
2	One that was *trading stock in your hands just before you died	the amount worked out under section 70-105	the amount worked out under section 70-105
3	A *dwelling that was your main residence just before you died, and was not then being used for the *purpose of producing assessable income	the *market value of the *dwelling on the day you died	the market value of the *dwelling on the day you died
3A	If you were a foreign resident just before you died—an asset that was not *taxable Australian property just before you died, except one covered by item 2	the *market value of the asset on the day you died	the market value of the asset on the day you died
3B	One that *passes to a trustee of a *special disability trust	the *market value of the asset on the day you died	the market value of the asset on the day you died
4	One you *acquired before 20 September 1985	the *market value of the asset on the day you died	the market value of the asset on the day you died

Note 1: Section 70-105 has a general rule that the person on whom the trading stock devolves is taken to have bought it for its market value. There are some exceptions though.

Note 2: Subdivision 118-B contains other rules about dwellings acquired through deceased estates.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 128-20

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Note 3: The rule in item 3 in the table does not apply to a dwelling that devolved to your legal personal representative, or passed to a beneficiary in your estate, on or before 7.30 pm on 20 August 1996: see section 128-15 of the *Income Tax (Transitional Provisions) Act 1997*.

*Further rule for a beneficiary*

- (5) A beneficiary can include in the \*cost base or \*reduced cost base of the asset any expenditure that the \*legal personal representative *would* have been able to include at the time the asset \*passes to the beneficiary. The beneficiary can include the expenditure on the day the representative incurred it.

Example: You die on 1 May 1995 owning land. On 15 June 1995 your legal personal representative pays \$500 council rates for the land.

On 31 July 1995 your representative transfers it to a beneficiary in your estate, who is taken to have acquired it on 1 May 1995.

The beneficiary can include the \$500 in the third element of the cost base of the land. It is included on 15 June 1995.

*Collectables and personal use assets*

- (6) The \*legal personal representative or beneficiary is taken to have \*acquired a \*collectable or a \*personal use asset if:
- (a) you acquired it on or after 20 September 1985; and
  - (b) it was a \*collectable or a \*personal use asset (as appropriate) in your hands when you died.

Note 1: Capital losses from collectables can be used only to reduce capital gains from collectables: see section 108-10.

Note 2: Capital losses from personal use assets are disregarded: see section 108-20.

**128-20 When does an asset *pass* to a beneficiary?**

- (1) A \*CGT asset *passes* to a beneficiary in your estate if the beneficiary becomes the owner of the asset:
- (a) under your will, or that will as varied by a court order; or
  - (b) by operation of an intestacy law, or such a law as varied by a court order; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (c) because it is appropriated to the beneficiary by your legal personal representative in satisfaction of a pecuniary legacy or some other interest or share in your estate; or
- (d) under a deed of arrangement if:
  - (i) the beneficiary entered into the deed to settle a claim to participate in the distribution of your estate; and
  - (ii) any consideration given by the beneficiary for the asset consisted only of the variation or waiver of a claim to one or more other \*CGT assets that formed part of your estate.

(It does not matter whether the asset is transmitted directly to the beneficiary or is transferred to the beneficiary by your \*legal personal representative.)

- (2) A \*CGT asset does *not pass* to a beneficiary in your estate if the beneficiary becomes the owner of the asset because your \*legal personal representative transfers it under a power of sale.

#### **128-25 The beneficiary is a trustee of a superannuation fund etc.**

- (1) This section has rules about \*cost base and \*reduced cost base that are relevant if you die and a \*CGT asset you owned just before dying \*passes to a beneficiary in your estate who (when the asset passes) is the trustee of a \*complying superannuation entity.

Note: A capital gain or loss is also made: see section 104-215.
- (2) The beneficiary is taken to have \*acquired the asset on the day you died. The first element of the \*cost base and \*reduced cost base of the asset is its \*market value on that day.
- (3) The beneficiary can include in the \*cost base or \*reduced cost base of the asset any expenditure that your \*legal personal representative *would* have been able to include at the time the asset \*passes to the beneficiary. The beneficiary can include the expenditure on the day the representative incurred it.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 128-50

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## Special rules for joint tenants

### 128-50 Joint tenants

- (1) This section has rules that are relevant if a \*CGT asset is owned by joint tenants and one of them dies.
- (2) The survivor is taken to have \*acquired (on the day the individual died) the individual's interest in the asset. If there are 2 or more survivors, they are taken to have acquired that interest in equal shares.

Note: Joint tenants are treated as owning a CGT asset in equal shares: see section 108-7.

- (3) If the individual who died \*acquired his or her interest in the asset on or after 20 September 1985, the first element of the \*cost base of the interest *each* survivor is taken to have acquired is:

$$\frac{\text{Cost base of the interest of the individual who died (worked out on the day the individual died)}}{\text{Number of survivors}}$$

The first element of the \*reduced cost base of the interest each survivor is taken to have \*acquired is worked out similarly.

Example: In 1999 2 individuals buy land for \$50,000 as joint tenants. Each one is taken to have a 50% interest in it. On 1 May 2001 one of them dies.

The survivor is taken to have acquired the interest of the individual who died on 1 May 2001. If the cost base of that interest on that day is \$27,000, the survivor is taken to have acquired that interest for that amount.

- (4) If the individual who died \*acquired his or her interest in the asset before 20 September 1985, the first element of the \*cost base and \*reduced cost base of the interest *each* survivor is taken to have acquired is:

$$\frac{\text{*Market value of the interest of the individual who died (worked out on the day the individual died)}}{\text{Number of survivors}}$$

Note: There is a special indexation rule for surviving joint tenants: see section 114-10.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Division 130—Investments**

### **Table of Subdivisions**

	Guide to Division 130
130-A	Bonus shares and units
130-B	Rights
130-C	Convertible interests
130-D	Employee share schemes
130-E	Exchangeable interests

### **Guide to Division 130**

#### **130-1 What this Division is about**

This Division sets out the rules for these kinds of investments:

- bonus shares and units; and
- rights; and
- convertible interests; and
- shares acquired under an employee share scheme; and
- exchangeable interests.

Most are about modifying the cost base and reduced cost base of a CGT asset.

#### **Subdivision 130-A—Bonus shares and units**

### **Guide to Subdivision 130-A**

#### **Table of sections**

130-15	Acquisition time and cost base of bonus equities
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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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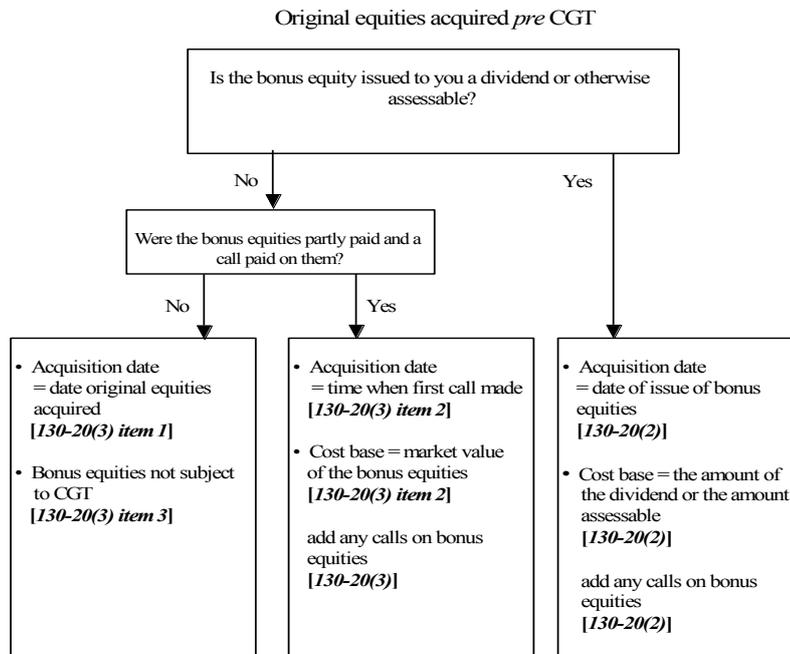
Section 130-15

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**Operative provisions**

130-20 Issue of bonus shares or units

**130-15 Acquisition time and cost base of bonus equities**




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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Section 130-20

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- (2) The first element of your \*cost base and \*reduced cost base for the bonus equities includes:
- (a) for \*shares—any part of the shares that are a \*dividend (or taken to be a dividend under subsection 45(2) or 45C(1) of the *Income Tax Assessment Act 1936*); and
  - (b) for units—any part of the other units that are or will be included in your assessable income.

You are taken to have \*acquired the bonus equities when they were issued.

Note 1: There are special indexation rules for cost base modifications: see Division 114.

Note 2: The amounts of calls you pay on partly-paid equities will also form part of the first element of their cost base and reduced cost base.

Note 3: There is a special rule for shares issued on or before 30 June 1987: see subsection 130-20(2) of the *Income Tax (Transitional Provisions) Act 1997*.

Note 4: Certain capital distributions are taken to be dividends under subsections 45(2) and 45C(1) if a company has entered into a capital streaming or dividend substitution arrangement.

- (3) This table sets out what happens if:
- (a) none of the shares are a \*dividend (or taken to be a dividend under subsection 45(2) or 45C(1) of the *Income Tax Assessment Act 1936*); or
  - (b) none of the other units are or will be included in your assessable income.

Note: Certain capital distributions are taken to be dividends under subsections 45(2) and 45C(1) if a company has entered into a capital streaming or dividend substitution arrangement.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 130-20

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**Modifications where neither a dividend nor assessable**

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<b>Item</b>	<b>In this situation:</b>	<b>You are taken to have *acquired the bonus equities when:</b>	<b>There is this effect:</b>
1	You *acquire the original equities on or after 20 September 1985	You *acquired the original equities	You apportion the first element of your *cost base and *reduced cost base for the original equities in a reasonable way over both the original and bonus equities
2	You *acquire the original equities before 20 September 1985 and an amount has been paid for the bonus equities that you were required to pay	The liability to pay the amount arose	The first element of your *cost base and *reduced cost base for the bonus equities includes their *market value just before that time
3	You *acquire the original equities before 20 September 1985 and the bonus equities are fully paid	You *acquired the original equities	Any *capital gain or *capital loss you make from the bonus equities is disregarded
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

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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The amount paid or payable can include giving property: see section 103-5.

Note 1: The amounts of calls you pay on partly-paid equities will also form part of the first element of their cost base and reduced cost base.

Note 2: There is a special rule for bonus equities issued on or before 1 pm on 10 December 1986 that affects item 2 of the table: see subsection 130-20(3) of the *Income Tax (Transitional Provisions) Act 1997*.

- (3A) If only a part of a capital benefit that is bonus equities is a \*dividend, or is taken to be a dividend under subsection 45(2) or 45C(1) of the *Income Tax Assessment Act 1936*, you apportion the first element of your \*cost base and \*reduced cost base for the original equities in a reasonable way over both the original equities and the bonus equities.

*Special rule for unit trusts*

- (4) The modifications in this section are not made if, for the income year in which the bonus equities are issued, the unit trust is:
- (a) a corporate unit trust within the meaning of section 102J of the *Income Tax Assessment Act 1936*; or
  - (b) a public trading trust within the meaning of section 102R of that Act.

Note: Subsection 26BC(9E) of the *Income Tax Assessment Act 1936* (about securities lending arrangements) modifies the operation of this section.

**Subdivision 130-B—Rights**

**Table of sections**

130-40	Exercise of rights
130-45	Timing rules
130-50	Application to options

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### 130-40 Exercise of rights

- (1) The table in this section sets out the modifications to the rules about \*cost base and \*reduced cost base that happen if you exercise rights to \*acquire:
- (a) \*shares, or options to acquire shares, in a company; or
  - (b) units, or options to acquire units, in a unit trust.

Note: For rights acquired under employee share schemes, see Division 83A, Subdivision 130-D and Division 134.

- (2) The modifications happen only if:
- (a) you did not pay for the rights and the condition in subsection (3) is satisfied; or
  - (b) the condition in subsection (4) is satisfied.
- The payment can include giving property: see section 103-5.
- (3) When you were issued the rights, you must:
- (a) already own shares in, or \*convertible interests issued by, the company or a company that is a member of the same \*wholly-owned group (the ***original shares or interests***); or
  - (b) already own units in, or convertible interests issued by the trustee of, the unit trust (the ***original units or interests***).
- (4) You must have \*acquired the rights from an entity that already owned shares, units or convertible interests of the kind referred to in subsection (3).
- (5) The company that is a member of the same \*wholly-owned group mentioned in paragraph (3)(a) includes a company that would cease to be a member of that group by the exercise of the rights.
- (6) The rights to \*acquire units or to acquire an option to acquire units in a unit trust must have been issued by the trustee after 28 January 1988.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 130-40

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<b>Modifications on exercise of rights</b>		
<b>Item</b>	<b>In this situation:</b>	<b>The modification is...</b>
1	You exercise rights issued to you to *acquire the *shares, units or options.	<p>The first element of your *cost base for the shares, units or options is the sum of:</p> <ul style="list-style-type: none"> <li>(a) the cost base of the rights at the time of exercise; and</li> <li>(b) any amount paid to exercise the rights, except to the extent that the amount is represented in the paragraph (a) amount; and</li> <li>(c) all the amounts to be added under subsection (6A).</li> </ul> <p>The first element of their *reduced cost base is worked out similarly.</p>
2	You exercise rights you *acquired from another entity to acquire the *shares, units or options.	<p>The first element of your *cost base for the shares, units or options is the sum of:</p> <ul style="list-style-type: none"> <li>(a) the cost base of the rights at the time of exercise; and</li> <li>(b) any amount paid to exercise the rights, except to the extent that the amount is represented in the paragraph (a) amount; and</li> <li>(c) all the amounts to be added under subsection (6A).</li> </ul> <p>The first element of their *reduced cost base is worked out similarly.</p>

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Modifications on exercise of rights**

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Item	In this situation:	The modification is...
3	You exercise rights issued to you to *acquire the * shares, units or options, and you acquired the original shares or * convertible interests, or the original units or convertible interests, before 20 September 1985.	The first element of your *cost base for the shares, units or options is the sum of: <ul style="list-style-type: none"> <li>(a) the *market value of the rights when they were exercised; and</li> <li>(b) any amount paid to exercise the rights, except to the extent that the amount is represented in the paragraph (a) amount; and</li> <li>(c) all the amounts to be added under subsection (6A).</li> </ul> The first element of their *reduced cost base is worked out similarly.

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- (6A) An amount is to be added under this subsection if a \*capital gain made from the right has been reduced under section 118-20. This is so even though a capital gain that is made on exercise is disregarded under subsection (7). The amount to be added is the amount of the reduction.

Note: For example, a capital gain made on the exercise of the right under section 118-20 may be reduced because an amount is included in the owner's assessable income under subsection 26BB(2) of the *Income Tax Assessment Act 1936* (about assessing a gain on disposal or redemption of a traditional security) or section 159GS of that Act (about balancing adjustments on transfer of a qualifying security).

- (7) A \*capital gain or \*capital loss you make from the exercise of the rights is disregarded.

Note 1: The exercise of the rights would be an example of CGT event C2 (about a CGT asset ending).

Note 2: There are transitional rules for some rights: see section 130-40 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 3: The effect of this Subdivision is modified in 2 cases by sections 102AAZBA (about non-resident trusts) and 414 (about CFC's) of the *Income Tax Assessment Act 1936*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 130-45

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**130-45 Timing rules**

*Acquisition of rights*

- (1) If you \*acquired the rights from the company or trustee, you are taken to have acquired the rights when you acquired the original shares or interests or the original units or interests.

*Acquisition of shares, units or options on exercise of rights*

- (2) You are taken to have \*acquired the new \*shares, units or options when you exercise the rights.

**130-50 Application to options**

This Subdivision applies to options in the same way that it applies to rights.

**Subdivision 130-C—Convertible interests**

**130-60 Shares or units acquired by converting a convertible interest**

- (1) This table sets out the modification to the rules about \*cost base and \*reduced cost base that happens if you \*acquire \*shares, or units in a unit trust, by converting a \*convertible interest.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Conversion of a convertible interest**

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Item	In this situation:	The modification is...
1	You *acquire *shares or units in a unit trust by converting a *convertible interest that is a *traditional security.	The first element of the *cost base of the shares or units is the sum of: <ul style="list-style-type: none"> <li>(a) the cost base of the convertible interest at the time of conversion; and</li> <li>(b) any amount paid to convert the convertible interest, except to the extent that the amount is represented in the paragraph (a) amount; and</li> <li>(c) all the amounts to be added under subsection (1A).</li> </ul> The first element of their *reduced cost base is worked out similarly.
2	You *acquire *shares (except shares acquired under an *employee share scheme) by converting a *convertible interest that is not a *traditional security.	The first element of the *cost base of the shares is the sum of: <ul style="list-style-type: none"> <li>(a) the cost base of the convertible interest at the time of conversion; and</li> <li>(b) any amount paid to convert the convertible interest, except to the extent that the amount is represented in the paragraph (a) amount; and</li> <li>(c) all the amounts to be added under subsection (1A).</li> </ul> The first element of their *reduced cost base is worked out similarly.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 130-60

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**Conversion of a convertible interest**

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<b>Item</b>	<b>In this situation:</b>	<b>The modification is...</b>
3	You *acquire units in a unit trust by converting a *convertible interest (except one that is a *traditional security) that was issued by the trustee of the unit trust after 28 January 1988.	<p>The first element of the *cost base of the units is the sum of:</p> <p>(a) the cost base of the convertible interest at the time of conversion; and</p> <p>(b) any amount paid to convert the convertible interest, except to the extent that the amount is represented in the paragraph (a) amount; and</p> <p>(c) all the amounts to be added under subsection (1A).</p> <p>The first element of their *reduced cost base is worked out similarly.</p>

(1A) An amount is to be added under this subsection if a \*capital gain from the \*convertible interest has been reduced under section 118-20. This is so even though a capital gain that is made on conversion is disregarded under subsection (3). The amount to be added is the amount of the reduction.

Note: For example, a capital gain made on the conversion under section 118-20 may be reduced because an amount is included in the owner's assessable income under subsection 26BB(2) of the *Income Tax Assessment Act 1936* (about assessing a gain on disposal or redemption of a traditional security) or section 159GS of that Act (about balancing adjustments on transfer of a qualifying security).

(1B) The payment to convert the convertible interest can include giving property (see section 103-5).

(2) You are taken to have \*acquired the shares or units when the conversion of the convertible interest happened.

(3) A \*capital gain or \*capital loss you make from converting the convertible interest is disregarded.

Note 1: The conversion of the convertible interest would be an example of CGT event C2 (about a CGT asset ending).

Note 2: There are transitional rules for some convertible notes: see section 130-60 of the *Income Tax (Transitional Provisions) Act 1997*.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 130-D—Employee share schemes**

### **Table of sections**

130-75	Objects of Subdivision
130-80	ESS interests acquired under employee share schemes
130-85	Interests in employee share trusts
130-90	Shares held by employee share trusts
130-95	Shares and rights in relation to ESS interests
130-97	Application of certain provisions of Division 83A

### **130-75 Objects of Subdivision**

The objects of this Subdivision are:

- (a) to recognise that:
  - (i) Division 83A contains the primary rules for taxing gains on \*ESS interests acquired under \*employee share schemes; and
  - (ii) \*capital gains and \*capital losses on such interests should usually be disregarded during the period in which Division 83A applies to them; and
- (b) to align the treatment of ESS interests under Division 83A and the CGT provisions by, for example:
  - (i) turning off certain special CGT rules; and
  - (ii) extending some of the deeming provisions of that Division into the CGT provisions; and
- (c) to disregard \*employee share trusts for most CGT purposes, by treating ESS interests owned by such trusts as being directly owned by the beneficiaries of the trusts.

### **130-80 ESS interests acquired under employee share schemes**

#### *Capital gains and losses*

- (1) Disregard any \*capital gain or \*capital loss to the extent that it results from a \*CGT event if:
  - (a) the CGT event happens in relation to an \*ESS interest you \*acquire under an \*employee share scheme; and
  - (b) the CGT event is not CGT event E4, G1 or K8; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) if Subdivision 83A-B applies to the interest—the time of the acquisition is the time when the CGT event happens; and
  - (d) if Subdivision 83A-C applies to the interest:
    - (i) the time of the acquisition is the time when the CGT event happens; or
    - (ii) the CGT event happens on or before the \*ESS deferred taxing point for the ESS interest.
- (2) Subsection (1) does not apply if:
- (a) Subdivision 83A-C applies to the \*ESS interest; and
  - (b) the \*CGT event happens because you forfeit or lose the ESS interest (other than by disposing of it) on or before the \*ESS deferred taxing point for the interest.

*General acquisition rule*

- (3) Subsection 109-5(2) (about when you acquire a CGT asset) does not apply to a \*CGT asset and a \*CGT event if:
- (a) the CGT asset is:
    - (i) a \*share; or
    - (ii) a right to acquire a beneficial interest in a share; and
  - (b) the CGT event is CGT event A1; and
  - (c) you acquire an \*ESS interest; and
  - (d) the ESS interest is a beneficial interest in the share or right; and
  - (e) Subdivision 83A-B or 83A-C (about employee share schemes) applies to the ESS interest.

*Market value substitution rule*

- (4) Sections 112-20 and 116-30 (about the market value substitution rule) do not apply to the extent that they relate to:
- (a) you acquiring an \*ESS interest to which Subdivision 83A-C (about employee share schemes) applies; or
  - (b) you:
    - (i) forfeiting an ESS interest; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) forfeiting or losing an ESS interest that is a beneficial interest in a right (without you having disposed of the interest or exercised the right);  
if Subdivision 83A-B or 83A-C applies to the ESS interest (ignoring section 83A-310).

### **130-85 Interests in employee share trusts**

#### *Scope*

- (1) This section applies if:
  - (a) you \*acquire an \*ESS interest under an \*employee share scheme; and
  - (b) Subdivision 83A-B or 83A-C applies to the ESS interest; and
  - (c) the ESS interest is, or arises because of, an interest you hold in an \*employee share trust.

#### *Application of Division 83A, Part 3-1 and this Part*

- (2) Division 83A (Employee share schemes), Part 3-1 (Capital gains and losses: general topics) and this Part apply as if you were absolutely entitled to the relevant \*share or right:
  - (a) from the time of acquisition of the \*ESS interest; and
  - (b) until you no longer have an ESS interest in the share or right.

Note 1: An interest you hold in an employee share trust may give rise to an ESS interest because of the operation of section 83A-320.

Note 2: As a result of subsection (2) of this section, CGT event E5 might happen at the time of acquisition. This may result in the trustee making a capital gain. However, any capital gain made by the beneficiary would be disregarded under section 130-80.

- (3) However, if this section applies to you because an \*associate of yours \*acquired the \*ESS interest, Division 83A, this Part and Part 3-3 apply as if your associate were absolutely entitled to the relevant \*share or right (instead of you):
  - (a) either:
    - (i) if Subdivision 83A-B applies to the ESS interest—from the time of acquisition; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) if Subdivision 83A-C applies to the ESS interest—from immediately after the \*ESS deferred taxing point for the ESS interest; and
- (b) until your associate no longer has an ESS interest in the share or right.

Note: Once the ESS interest has been taxed to you under Subdivision 83A-B or 83A-C, section 83A-305 (which treats the interest as having been acquired by you, rather than your associate) is no longer relevant. Subsection (3) of this section ensures that your associate then gets the same tax treatment as you would have, had you originally acquired the interest. This does not, however, imply a disposal from you to your associate.

*Meaning of employee share trust*

- (4) An **employee share trust**, for an \*employee share scheme, is a trust whose sole activities are:
  - (a) obtaining \*shares or rights in a company; and
  - (b) ensuring that \*ESS interests in the company that are beneficial interests in those shares or rights are provided under the employee share scheme to employees, or to \*associates of employees, of:
    - (i) the company; or
    - (ii) a \*subsidiary of the company; and
  - (c) other activities that are merely incidental to the activities mentioned in paragraphs (a) and (b).

**130-90 Shares held by employee share trusts**

*Shares held for future acquisition under employee share schemes*

- (1A) Disregard any \*capital gain or \*capital loss made by an \*employee share trust to the extent that it results from a \*CGT event, if:
  - (a) immediately before the event happens, an \*ESS interest is a \*CGT asset of the trust; and
  - (b) either of the following subparagraphs applies:
    - (i) the event is CGT event E5, and the event happens because a beneficiary of the trust becomes absolutely entitled to the ESS interest as against the trustee;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) the event is CGT event E7, and the event happens because the trustee \*disposes of the ESS interest to a beneficiary of the trust; and
- (c) Subdivision 83A-B or 83A-C (about employee share schemes) applies to the ESS interest.

*Shares held to satisfy the future exercise of rights acquired under employee share schemes*

- (1) Disregard any \*capital gain or \*capital loss made by an \*employee share trust, or a beneficiary of the trust, to the extent that it results from a \*CGT event, if:
  - (a) the CGT event is CGT event E5 or E7; and
  - (b) the CGT event happens in relation to a \*share; and
  - (c) the beneficiary had acquired a beneficial interest in the share by exercising a right; and
  - (d) the beneficiary's beneficial interest in the right was an \*ESS interest to which Subdivision 83A-B or 83A-C (about employee share schemes) applied.
- (2) Subsection (1A) or (1) does not apply if the beneficiary acquired the beneficial interest in the \*share for more than its \*cost base in the hands of the \*employee share trust at the time the \*CGT event happens.

### **130-95 Shares and rights in relation to ESS interests**

For the purposes of Part 3-1 (Capital gains and losses: general topics) and this Part, treat a \*CGT event that happens in relation to a \*share or right in the same way as a CGT event that happens in relation to an \*ESS interest, if:

- (a) Subdivision 83A-B or 83A-C (about employee share schemes) applies to the ESS interest; and
- (b) the ESS interest forms part of the share or right.

### **130-97 Application of certain provisions of Division 83A**

The following provisions have effect for the purposes of this Subdivision in the same way as they have for the purposes of Division 83A:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) section 83A-130 (about takeovers and restructures);
- (b) section 83A-305 (about associates);
- (c) section 83A-320 (about trusts);
- (d) section 83A-325 (about relationships similar to employment);
- (e) section 83A-335 (about stapled securities);
- (f) section 83A-340 (about indeterminate rights).

**Subdivision 130-E—Exchangeable interests**

**Table of sections**

130-100	Exchangeable interest
130-105	Shares acquired in exchange for the disposal or redemption of an exchangeable interest

**130-100 Exchangeable interest**

An *exchangeable interest* is a \*traditional security or \*qualifying security that:

- (a) was issued on the basis that it will or may be:
  - (i) disposed of to the issuer of the traditional security or the qualifying security or to a \*connected entity of the issuer of the traditional security or the qualifying security; or
  - (ii) redeemed;in exchange for \*shares in a company that is neither:
  - (iii) the issuer of the traditional security or the qualifying security; nor
  - (iv) a connected entity of the issuer of the traditional security or the qualifying security; and
- (b) was issued on or after 1 July 2001.

**130-105 Shares acquired in exchange for the disposal or redemption of an exchangeable interest**

*Cost base and reduced cost base*

- (1) The table has effect:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Exchange of an exchangeable interest**

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Item	In this situation:	The rules about cost base and reduced cost base are modified in this way...
1	You *acquire shares in a company in exchange for the disposal of an *exchangeable interest, and the disposal of the exchangeable interest was to: (a) the issuer of the exchangeable interest; or (b) a *connected entity of the issuer of the exchangeable interest.	The first element of the *cost base of the shares is the sum of: (a) the cost base of the exchangeable interest at the time of the disposal; and (b) any amount paid for the exchange, except to the extent that the amount is represented in the paragraph (a) amount; and (c) all the amounts to be added under subsection (2).  The first element of their *reduced cost base is worked out similarly.
2	You *acquire shares in a company in exchange for the redemption of an *exchangeable interest.	The first element of the *cost base of the shares is the sum of: (a) the cost base of the exchangeable interest at the time of the redemption; and (b) any amount paid for the exchange, except to the extent that the amount is represented in the paragraph (a) amount; and (c) all the amounts to be added under subsection (2).  The first element of their *reduced cost base is worked out similarly.

- (2) An amount is to be added under this subsection if a \*capital gain on the disposal or redemption of the exchangeable interest has been reduced under section 118-20. This is so even though a capital gain that is made on the disposal or redemption of the exchangeable interest is disregarded under subsection (4). The amount to be added is the amount of the reduction.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (3) The payment for the exchange can include giving property (see section 103-5).

*Other CGT consequences*

- (4) The table has effect:

<b>Exchange of an exchangeable interest</b>		
<b>Item</b>	<b>In this situation:</b>	<b>This is the result:</b>
1	You *acquire shares in a company in exchange for the disposal of an *exchangeable interest, and the disposal of the exchangeable interest was to: (a) the issuer of the exchangeable interest; or (b) a *connected entity of the issuer of the exchangeable interest.	(a) you are taken to have acquired the shares when the disposal of the exchangeable interest happened; and (b) a *capital gain or *capital loss you make from the disposal of the exchangeable interest is disregarded.
2	You *acquire shares in a company in exchange for the redemption of an *exchangeable interest.	(a) you are taken to have acquired the shares when the redemption of the exchangeable interest happened; and (b) a *capital gain or *capital loss you make from the redemption of the exchangeable interest is disregarded.

*Application*

- (5) This section applies to the disposal or redemption of an \*exchangeable interest on or after 1 July 2001.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

## **Division 132—Leases**

### **Table of sections**

132-1	Lessee incurs expenditure to get lease term varied or waived
132-5	Lessor pays lessee for improvements
132-10	Grant of a long-term lease
132-15	Lessee of land acquires reversionary interest of lessor

### **132-1 Lessee incurs expenditure to get lease term varied or waived**

If the lessee of property incurs expenditure in obtaining the consent of the lessor to vary or waive a term of the lease, the fourth element of the lease's \*cost base and \*reduced cost base includes the amount of that expenditure.

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

### **132-5 Lessor pays lessee for improvements**

The fourth element of the \*cost base and \*reduced cost base of property that was subject to a lease includes any payment (because of the lease expiring or being surrendered or forfeited) by the lessor to the lessee for expenditure of a capital nature incurred by the lessee in making improvements to the lease property.

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

### **132-10 Grant of a long-term lease**

- (1) These rules apply if \*CGT event F2 happens for a lessor of property.
- (2) For any later \*CGT event that happens to the land or the lessor's lease of it, its \*cost base and \*reduced cost base (including the cost base and reduced cost base of any building, part of a building, structure or improvement that is treated as a separate \*CGT asset) excludes:
  - (a) any expenditure incurred before \*CGT event F2 happens; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) the \*cost of any \*depreciating asset for which the lessor has deducted or can deduct an amount for the asset's decline in value under this Act.

Note: Subdivision 108-D sets out when a building, structure or improvement is treated as a separate CGT asset.

- (3) The fourth element of the property's \*cost base and \*reduced cost base includes any payment by the lessor to the lessee to vary or waive a term of the lease or for the forfeiture or surrender of the lease, reduced by the amount of any \*input tax credit to which the lessor is entitled for the variation or waiver.
- (4) The expenditure or payment can include giving property: see section 103-5.

**132-15 Lessee of land acquires reversionary interest of lessor**

- (1) This table sets out what happens if:
  - (a) the lessee of land \*acquires the reversionary interest of the lessor in the land; and
  - (b) Subdivision 124-J (roll-over provisions for Crown leases) does not apply to the acquisition.

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**Lessee acquires reversionary interest of lessor**

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<b>Item</b>	<b>In this situation:</b>	<b>The lessee is taken to have *acquired the land at this time:</b>	<b>The lessee is taken to have acquired the land for:</b>
1	The lease was originally granted for 99 years or more	When the lease was granted or assigned to the lessee	Any premium the lessee paid for the grant or assignment of the lease, plus the amount the lessee paid to *acquire the reversionary interest

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Lessee acquires reversionary interest of lessor**

<b>Item</b>	<b>In this situation:</b>	<b>The lessee is taken to have *acquired the land at this time:</b>	<b>The lessee is taken to have acquired the land for:</b>
2	The lease was originally granted for less than 99 years	When the lessee *acquired the reversionary interest	(a) if the lessee *acquired the lease after 19 September 1985—any premium the lessee paid for the grant or assignment of the lease, plus the amount the lessee paid to acquire the reversionary interest; or  (b) if the lessee acquired the lease before 20 September 1985—the *market value of the land when the lessee acquired it

(2) All the payments can include giving property: see section 103-5.

Note: CGT events F1 to F5 deal specifically with leases. See also (in particular) CGT event C2 (about cancellation, surrender and similar endings).

\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 134-1

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## Division 134—Options

### 134-1 Exercise of options

- (1) This table sets out the effects of the exercise of an option (including an option that has been renewed or extended) on the \*cost bases and \*reduced cost bases of the grantor and the entity that exercises the option (the *grantee*).

<b>Exercise of options</b>		
<b>Item</b>	<b>In this situation:</b>	<b>Effect on cost base and reduced cost base:</b>
1	Option binds grantor to: (a) *dispose of a *CGT asset; or (b) create (including grant or issue) a CGT asset (call option)	<i>For the grantee</i> The first element of the grantee's *cost base and *reduced cost base for the CGT asset is what the grantee paid for the option (or to renew or extend it) plus any amount the grantee paid to exercise it <i>For the grantor</i> See section 116-65
2	Option binds grantor to *acquire a *CGT asset (put option)	<i>For the grantor</i> The first element of the grantor's *cost base and *reduced cost base for the asset acquired is any amount paid to exercise the option reduced by any payment received by the grantor for the option (or to renew or extend it) <i>For the grantee</i> The second element of the grantee's cost base and reduced cost base for the asset acquired by the grantor includes any payment the grantee made to acquire the option (or to renew or extend it)

Note 1: If you granted, renewed or extended an option, CGT event C3 or D2 may happen.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 134-1

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Note 2: Item 1 in the table is modified for certain options granted before 20 September 1985: see section 134-1 of the *Income Tax (Transitional Provisions) Act 1997*.

Note 3: Item 1 in the table is modified for ESS interests acquired under employee share schemes: see Division 83A and section 112-97.

Note 4: This Division has no operation in relation to an option acquired under an employee share scheme if the option is exercised before the ESS deferred taxing point for the option: see Subdivision 130-D. Division 83A applies instead.

(2) All the payments can include giving property: see section 103-5.

Example 1: Steven obtains an option to buy a yacht (for \$75,000) from Tom. Steven pays \$5,000 for the option.

Steven exercises the option. The first element of his cost base and reduced cost base for the yacht includes the expenditure he incurred for the option.

So, the first element of his cost base and reduced cost base for the yacht is:

$$\$75,000 + \$5,000 = \$80,000$$

Example 2: An entity owns 1,000 shares in a company. Bill grants the entity an option which, if exercised, would require him to buy the shares for \$2 each. The entity pays Bill 10 cents per share for the option.

The entity exercises the option. Bill paid \$2,000 for the shares. He received \$100 from the entity for granting the option.

The first element of Bill's cost base and reduced cost base for the shares is:

$$\$2,000 - \$100 = \$1,900$$

In working out whether the entity made a capital gain or loss on the sale of the shares, the second element of its cost base (and reduced cost base) includes the \$100 the entity paid for the option.

(4) A \*capital gain or \*capital loss the grantee makes from exercising the option is disregarded. However, this rule does not apply if the grantee \*acquired the option under a trust restructure (see Subdivision 124-N) and, on exercising the option, held the resulting asset as an item of \*trading stock.

Note 1: The exercise of the option would be an example of CGT event C2 (about a CGT asset ending).

Note 2: There is an exemption for the grantor if the option is exercised: see subsection 104-40(5).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 134-1

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- (5) This Division does not apply to rights or options to which Subdivision 130-B applies.

Note: Subdivision 130-B deals (amongst other things) with rights and options issued by a company or trust where you did not pay or give anything to acquire them.

- (6) This Division does not apply to:
- (a) an option to the extent that the option binds the grantor to \*dispose of \*foreign currency; or
  - (b) an option to the extent that the option binds the grantor to \*acquire \*foreign currency.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 149—When an asset stops being a pre-CGT asset**

### **Table of Subdivisions**

- 149-A Key concepts
- 149-B When asset of non-public entity stops being a pre-CGT asset
- 149-C When asset of public entity stops being a pre-CGT asset
- 149-F How to treat a “demutualised” public entity

### **Subdivision 149-A—Key concepts**

#### **Table of sections**

- 149-10 What is a pre-CGT asset?
- 149-15 Majority underlying interests in a CGT asset

### **149-10 What is a pre-CGT asset?**

A \*CGT asset that an entity owns is a *pre-CGT asset* if, and only if:

- (a) the entity last acquired the asset before 20 September 1985; and
- (b) the entity was not, immediately before the start of the 1998-99 income year, taken under:
  - (i) former subsection 160ZZS(1) of the *Income Tax Assessment Act 1936*; or
  - (ii) Subdivision C of Division 20 of former Part IIIA of that Act;to have acquired the asset on or after 20 September 1985; and
- (c) the asset has not stopped being a pre-CGT asset of the entity because of this Division.

Note: There are transitional rules for assets that stopped being pre-CGT assets under the *Income Tax Assessment Act 1936*: see section 149-5 of the *Income Tax (Transitional Provisions) Act 1997*.

### **149-15 Majority underlying interests in a CGT asset**

- (1) *Majority underlying interests* in a \*CGT asset consist of:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 149-15

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- (a) more than 50% of the beneficial interests that \*ultimate owners have (whether directly or \*indirectly) in the asset; and
  - (b) more than 50% of the beneficial interests that ultimate owners have (whether directly or indirectly) in any \*ordinary income that may be \*derived from the asset.
- (2) An **underlying interest** in a \*CGT asset is a beneficial interest that an \*ultimate owner has (whether directly or \*indirectly) in the asset or in any \*ordinary income that may be \*derived from the asset.
- (3) An **ultimate owner** is:
- (a) an individual; or
  - (b) a company whose \*constitution prevents it from making any distribution, whether in money, property or otherwise, to its members; or
  - (c) the Commonwealth, a State or a Territory; or
  - (d) a municipal corporation; or
  - (e) a local governing body; or
  - (f) the government of a foreign country, or of part of a foreign country.
- (4) An \*ultimate owner **indirectly** has a beneficial interest in a \*CGT asset of another entity (that is *not* an ultimate owner) if he, she or it would receive for his, her or its own benefit any of the capital of the other entity if:
- (a) the other entity were to distribute any of its capital; and
  - (b) the capital were then successively distributed by each entity interposed between the other entity and the ultimate owner.
- (5) An \*ultimate owner **indirectly** has a beneficial interest in \*ordinary income that may be \*derived from a \*CGT asset of another entity (that is *not* an ultimate owner) if he, she or it would receive for his, her or its own benefit any of a \*dividend or income if:
- (a) the other entity were to pay that dividend, or otherwise distribute that income; and
  - (b) the dividend or income were then successively paid or distributed by each entity interposed between the other entity and the ultimate owner.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 149-B—When asset of non-public entity stops being a pre-CGT asset**

### **Table of sections**

149-25	Which entities are affected
149-30	Effects if asset no longer has same majority underlying ownership
149-35	Cost base elements of asset that stops being a pre-CGT asset

### **149-25 Which entities are affected**

This Subdivision provides for when a \*CGT asset of an entity stops being a \*pre-CGT asset (unless the entity is covered by section 149-50).

Note: Subdivision 149-C deals with when an asset of such an entity stops being a pre-CGT asset.

### **149-30 Effects if asset no longer has same majority underlying ownership**

- (1) The asset stops being a \*pre-CGT asset at the earliest time when \*majority underlying interests in the asset were *not* had by \*ultimate owners who had \*majority underlying interests in the asset immediately before 20 September 1985.
- (1A) Also, Part 3-1 and this Part (except this Division) apply to the asset as if the entity had acquired it at that earliest time.
- (2) If the Commissioner is satisfied, or thinks it reasonable to assume, that at all times on and after 20 September 1985 and before a particular time \*majority underlying interests in the asset *were* had by \*ultimate owners who had \*majority underlying interests in the asset immediately before that day, subsections (1) and (1A) apply as if that were in fact the case.

*New owner standing in shoes of former owner*

- (3) Subsection (4) affects how the \*majority underlying interests in the asset are worked out if an \*ultimate owner (the *new owner*) has acquired a percentage (the *acquired percentage*) of the \*underlying interests in the asset because of an event described in column 2 of

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Chapter 3** Specialist liability rules

**Part 3-3** Capital gains and losses: special topics

**Division 149** When an asset stops being a pre-CGT asset

Section 149-35

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an item in the table. The *former owner* is the entity described in column 3 of that item.

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**Events leading to new owner standing in for former owner**

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<b>Item</b>	<b>For this kind of event:</b>	<b>The <i>former owner</i> is:</b>
1	*CGT event A1 or B1 if there is a roll-over under Subdivision 126-A (about marriage or relationship breakdowns) for the event	the entity that, immediately before the event happened, owned the *CGT asset to which the event relates
2	the death of a person	that person

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- (4) This section applies as if the new owner had (in addition to any other \*underlying interests), at any time when the former owner had a percentage (the *former owner's percentage*) of the underlying interests in the asset, a percentage of the underlying interests in the asset equal to the acquired percentage, or the former owner's percentage at that time, whichever is the less.

**149-35 Cost base elements of asset that stops being a pre-CGT asset**

- (1) This section affects the \*cost base and \*reduced cost base of the asset if it stops being a \*pre-CGT asset.
- (2) The first element of each is the asset's \*market value at the time referred to in subsection 149-30(1).

**Subdivision 149-C—When asset of public entity stops being a pre-CGT asset**

**Table of sections**

149-50	Which entities are affected
149-55	Entity to give the Commissioner evidence periodically as to whether asset still has same majority underlying ownership
149-60	What the evidence must show
149-70	Effects if asset no longer has same majority underlying ownership
149-75	Cost base elements of asset that stops being a pre-CGT asset
149-80	No more evidence needed after asset stops being a pre-CGT asset

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**149-50 Which entities are affected**

- (1) This Subdivision provides for when a \*CGT asset of an entity of any of these kinds stops being a \*pre-CGT asset:
  - (a) a company \*shares in which (except shares that carry the right to a fixed rate of \*dividend) are listed for quotation in the official list of an \*approved stock exchange;
  - (b) a \*publicly traded unit trust;
  - (c) a \*mutual insurance company;
  - (d) a \*mutual affiliate company;
  - (e) a company (other than one covered by paragraph (a)) all the \*shares in which are beneficially owned, whether directly, or indirectly through one or more interposed entities, 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;
- (2) A **publicly traded unit trust** is a unit trust the units in which:
  - (a) are listed for quotation in the official list of an \*approved stock exchange; or
  - (b) are ordinarily available for subscription or purchase by the public.
- (3) This Division applies as if what is done or not done by the trustee of a \*publicly traded unit trust had been done or not done by the trust.

**149-55 Entity to give the Commissioner evidence periodically as to whether asset still has same majority underlying ownership**

- (1) Within 6 months after each \*test day, the entity must give the Commissioner written evidence about the \*majority underlying interests in the asset at the end of that day. (The Commissioner can extend the period for doing so.)

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 149-55

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- (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.

*Test days*

- (2) Each of these days is a **test day**:
    - (aa) 30 June 1999;
    - (a) a day that is 5 years (or a multiple of 5 years) after 30 June 1999 (but see subsection (3));
    - (b) if the entity is covered by paragraph 149-50(1)(a) or (e)—a day on which there is \*abnormal trading in \*shares in the company;
    - (c) if the entity is a \*publicly traded unit trust—a day on which there is \*abnormal trading in units in the trust;
    - (d) if the entity is a company all the \*shares in which are beneficially owned, whether directly, or indirectly through one or more interposed entities, by one or more of the following:
      - (i) 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;
      - (ii) a \*publicly traded unit trust;a day on which there is \*abnormal trading in \*shares in the other company or in units in that unit trust.
- Note: Subsections (6) and (7) change the normal rules about abnormal trading.
- (3) If a day (the **fifth anniversary**) that would otherwise be a \*test day because of paragraph (2)(a) is:
    - (a) a Saturday; or
    - (b) a Sunday; or
    - (c) a day that is a public holiday or a bank holiday in the place where the records of ownership of shares or other interests in the entity are kept;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

the next day that is *not* covered by a paragraph of this subsection is a **test day** instead of the fifth anniversary.

*Determining the end of a day*

- (4) For the purposes of this section, the end of a day is determined according to legal time in the place where the records of ownership of shares or other interests in the entity are kept.

*Special rules about abnormal trading*

- (5) Subsections (6) and (7) change how Subdivision 960-H applies for the purposes of determining under this section whether there is \*abnormal trading in \*shares in a company or in units in a unit trust.
- (6) An issue, redemption or transfer, or any other dealing, is a **trading** if, and only if, it changes the respective proportions in which \*ultimate owners have \*underlying interests in \*CGT assets of the company or trust.
- (7) Section 960-235 (about suspected transactions involving 5% or more of \*shares in the company or units in the trust) is disregarded.

**149-60 What the evidence must show**

- (1A) To avoid the consequences in section 149-70, the following condition must be complied with.
- (1) 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, at the end of the \*test day, \*majority underlying interests in the asset were had by \*ultimate owners who also had \*majority underlying interests in the asset at the end of the starting day. The **starting day** is:
- (a) a day the entity chooses under subsection (2); or
  - (b) if no day is so chosen—19 September 1985.
- (2) The day chosen:
- (a) must be no earlier than 1 July 1985 and no later than 30 June 1986; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) must be one the choice of which will allow evidence to be given that enables a reasonable approximation of the \*ultimate owners who had \*underlying interests in the assets of the entity at the end of 19 September 1985.

*How unidentified owners are treated*

- (3) So far as the evidence does not show who had \*underlying interests in the asset at the end of the \*starting day, the evidence must be treated on the assumption that those interests were then had by \*ultimate owners who did *not* have \*underlying interests in the asset at the end of the \*test day.

*New owner standing in the shoes of former owner*

- (4) Subsection (5) affects how the evidence must be treated if an \*ultimate owner (the ***new owner***) has acquired a percentage (the ***acquired percentage***) of the \*underlying interests in the asset because of an event described in column 2 of an item in the table. The ***former owner*** is the entity described in column 3 of that item.

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**Events leading to new owner standing in for former owner**

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<b>Item</b>	<b>For this kind of event:</b>	<b>The <i>former owner</i> is:</b>
1	*CGT event A1 or B1 if there is a roll-over under Subdivision 126-A (about marriage or relationship breakdowns) for the event	the entity that, immediately before the event happened, owned the *CGT asset to which the event relates
2	the death of a person	that person

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- (5) The evidence must be treated on the assumption that the new owner had (in addition to any other \*underlying interests), at any time when the former owner had a percentage (the ***former owner's percentage***) of the \*underlying interests in the asset, a percentage of the underlying interests in the asset equal to the acquired percentage, or the former owner's percentage at that time, whichever is the less.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Determining the end of a day*

- (6) For the purposes of this section, the end of a day is determined according to legal time in the place where the records of ownership of shares or other interests in the entity are kept.

**149-70 Effects if asset no longer has same majority underlying ownership**

- (1) The asset stops being a \*pre-CGT asset if the condition in subsection 149-60(1) is not satisfied.
- (2) Also, Part 3-1 and this Part (except this Division) apply to the asset as if the entity had acquired it at the end of the \*test day (as determined under subsection 149-55(4)).

**149-75 Cost base elements of asset that stops being a pre-CGT asset**

- (1) This section affects the \*cost base and \*reduced cost base of the asset if it stops being a \*pre-CGT asset.
- (2) The first element of each is the asset's \*market value at the time referred to in subsection 149-70(2).

**149-80 No more evidence needed after asset stops being a pre-CGT asset**

After the asset stops being a \*pre-CGT asset, the entity need not give the Commissioner any more evidence about it under section 149-55.

**Subdivision 149-F—How to treat a “demutualised” public entity**

**Table of sections**

149-162	Subdivision applies only if entity gives sufficient evidence
149-165	Members treated as having underlying interests in assets until demutualisation
149-170	Effect of demutualisation of interposed company

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 149-162

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**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.

**149-165 Members treated as having underlying interests in assets until demutualisation**

- (1) This section modifies the treatment of evidence that an entity gives the Commissioner under section 149-55 as to the \*ultimate owners who had \*underlying interests in the asset at a particular time if the entity:
  - (a) was:
    - (i) a \*mutual insurance company; or
    - (ii) a \*mutual affiliate company;at the end of the \*starting day (as determined under subsection 149-60(6)); and
  - (b) has since stopped being a company of either of those kinds, but either:
    - (i) has continued in existence as a company covered by paragraph 149-50(1)(a) or (e) or a \*publicly traded unit trust; or
    - (ii) has undergone a demutualisation in relation to which Division 316 (Demutualisation of friendly society health or life insurers) applied and has continued in existence as a company; and
  - (c) when it stopped being an entity of either of those kinds (the **stopping time**), had more than 50 members.
- (2) The entity may require the Commissioner to treat the evidence on the assumption that an \*ultimate owner who:
  - (a) immediately before the stopping time was a member of the entity; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) immediately after the stopping time had an \*underlying interest in the asset;  
had the interest at all times from and including the end of the \*starting day until immediately after the stopping time.

### **149-170 Effect of demutualisation of interposed company**

- (1) This section modifies the treatment of evidence that an entity (the **head entity**) gives the Commissioner under section 149-55 as to the \*ultimate owners who had \*underlying interests in the asset at a particular time if another entity (the **interposed company**):
  - (a) was:
    - (i) a \*mutual insurance company; or
    - (ii) a \*mutual affiliate company;at the end of the \*starting day (as determined under subsection 149-60(6)) for the head entity; and
  - (b) has since stopped being a company of either of those kinds, but either:
    - (i) has continued in existence as a company covered by paragraph 149-50(1)(a) or (e) or a \*publicly traded unit trust; or
    - (ii) has undergone a demutualisation in relation to which Division 316 (Demutualisation of friendly society health or life insurers) applied and has continued in existence as a company; and
  - (c) when it stopped being an entity of either of those kinds (the **stopping time**), had more than 50 members.
- (2) The head entity may require the Commissioner to treat the evidence on the assumption that an \*ultimate owner who:
  - (a) immediately before the stopping time was a member of the interposed company; and
  - (b) immediately after the stopping time had, through the interposed company, an \*underlying interest in the asset;had the interest at all times from and including the end of the \*starting day until immediately after the stopping time.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Division 152—Small business relief**

### **Guide to Division 152**

#### **152-1 What this Division is about**

To help small business, if the basic conditions for relief are satisfied, capital gains can be reduced by the various concessions in this Division. Those basic conditions are in Subdivision 152-A. Some of the concessions have additional, specific conditions that must also be satisfied.

The 4 available small business concessions are:

- (a) the 15-year exemption (in Subdivision 152-B);
- (b) the 50% reduction (in Subdivision 152-C);
- (c) the retirement concession (in Subdivision 152-D);
- (d) the roll-over (in Subdivision 152-E).

A capital gain that qualifies for the 15-year exemption is disregarded entirely and is not taken into account under the method statement in subsection 102-5(1). By contrast, the other concessions are only activated by step 4 of that method statement. This means that you must apply all available capital losses against your capital gains (under steps 1 and 2) before you can reduce them using those 3 concessions.

#### **Table of Subdivisions**

152-A	Basic conditions for relief under this Division
152-B	Small business 15-year exemption
152-C	Small business 50% reduction
152-D	Small business retirement exemption
152-E	Small business roll-over

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**Subdivision 152-A—Basic conditions for relief under this Division**

**Guide to Subdivision 152-A**

**152-5 What this Subdivision is about**

This Subdivision sets out some basic conditions for relief. If the basic conditions are satisfied, an entity may be able to reduce its capital gains using the small business concessions in this Division.

The 3 major basic conditions are:

- (a) the entity must be a small business entity or a partner in a partnership that is a small business entity, or the net value of assets that the entity and related entities own must not exceed \$6,000,000;
- (b) the CGT asset must be an active asset;
- (c) if the asset is a share or interest in a trust, there must be a CGT concession stakeholder just before the CGT event, and the entity claiming the concession must be a CGT concession stakeholder in the company or trust or CGT concession stakeholders in the company or trust must have a small business participation percentage in the entity of at least 90%.

Some of the concessions have additional, specific conditions that also must be satisfied. For example, the 15-year exemption applies only if you have held the CGT asset for at least 15 years and you retire.

There are limitations on the availability of the small business concessions for CGT events J2, J5 and J6.

You do not need to satisfy the basic conditions for the retirement exemption in relation to CGT events J5 and J6.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 152-5

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**Table of sections**

**Basic conditions for relief**

- 152-10 Basic conditions for relief
- 152-12 Special conditions for CGT event D1

**Maximum net asset value test**

- 152-15 Maximum net asset value test
- 152-20 Meaning of net value of the CGT assets

**Active asset test**

- 152-35 Active asset test
- 152-40 Meaning of active asset
- 152-45 Continuing time periods for involuntary disposals

**Treatment of passively held CGT assets**

- 152-47 Spouses or children taken to be affiliates for certain passively held CGT assets
- 152-48 Working out an entity's aggregated turnover for passively held CGT assets
- 152-49 Businesses that are winding up

**Significant individual test**

- 152-50 Significant individual test
- 152-55 Meaning of *significant individual*

**CGT concession stakeholder**

- 152-60 Meaning of *CGT concession stakeholder*

**Small business participation percentage**

- 152-65 Small business participation percentage
- 152-70 Direct small business participation percentage
- 152-75 Indirect small business participation percentage

**Nomination of controllers of discretionary trust**

- 152-78 Trustee of discretionary trust may nominate beneficiaries to be controllers of trust

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**CGT event happens to asset or interest within 2 years of an individual's death**

152-80 CGT event happens to an asset or interest within 2 years of individual's death

**Basic conditions for relief**

**152-10 Basic conditions for relief**

- (1) A \*capital gain (except a capital gain from \*CGT event K7) you make may be reduced or disregarded under this Division if the following basic conditions are satisfied for the gain:
- (a) a \*CGT event happens in relation to a \*CGT asset of yours in an income year;  
Note: This condition does not apply in the case of CGT event D1: see section 152-12.
  - (b) the event would (apart from this Division) have resulted in the gain;
  - (c) at least one of the following applies:
    - (i) you are a \*small business entity for the income year;
    - (ii) you satisfy the maximum net asset value test (see section 152-15);
    - (iii) you are a partner in a partnership that is a small business entity for the income year and the CGT asset is an interest in an asset of the partnership;
    - (iv) the conditions mentioned in subsection (1A) or (1B) are satisfied in relation to the CGT asset in the income year;  
Note: For determining whether an entity is a small business entity, see Subdivision 328-C (as affected by sections 152-48 and 152-78).
  - (d) the CGT asset satisfies the active asset test (see section 152-35).  
Note: This condition does not apply in the case of CGT event D1: see section 152-12.

*Passively held assets—affiliates and entities connected with you*

- (1A) The conditions in this subsection are satisfied in relation to the \*CGT asset in the income year if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) your \*affiliate, or an entity that is \*connected with you, is a \*small business entity for the income year; and
- (b) you do not carry on a \*business in the income year (other than in partnership); and
- (c) if you carry on a business in partnership—the CGT asset is not an interest in an asset of the partnership; and
- (d) in any case—the small business entity referred to in paragraph (a) is the entity that, at a time in the income year, carries on the business (as referred to in subparagraph 152-40(1)(a)(ii) or (iii) or paragraph 152-40(1)(b)) in relation to the CGT asset.

- Note 1: The meaning of *connected with* is affected by section 152-78.
- Note 2: For determining whether an entity is a small business entity, see Subdivision 328-C (as affected by sections 152-48 and 152-78).
- Note 3: For businesses that are winding up, see section 152-49 and subsection 328-110(5).

*Passively held assets—partnerships*

- (1B) The conditions in this subsection are satisfied in relation to the \*CGT asset in the income year if:
- (a) you are a partner in a partnership in the income year; and
  - (b) the partnership is a \*small business entity for the income year; and
  - (c) you do not carry on a \*business in the income year (other than in partnership); and
  - (d) the CGT asset is not an interest in an asset of the partnership; and
  - (e) the business you carry on as a partner in the partnership referred to in paragraph (a) is the business that you, at a time in the income year, carry on (as referred to in subparagraph 152-40(1)(a)(i) or paragraph 152-40(1)(b)) in relation to the CGT asset.

- Note 1: For determining whether an entity is a *small business entity*, see Subdivision 328-C (as affected by section 152-48).
- Note 2: For businesses that are winding up, see section 152-49 and subsection 328-110(5).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Additional basic conditions for shares in a company or interests in a trust*

- (2) If the \*CGT asset is a \*share in a company or an interest in a trust (the ***object company or trust***), one of these additional basic conditions must be satisfied just before the \*CGT event:
- (a) you are a \*CGT concession stakeholder in the object company or trust; or
  - (b) CGT concession stakeholders in the object company or trust together have a \*small business participation percentage in you of at least 90%.

Example: A discretionary trust sells shares in an operating company (the object company). Anna receives 90% of the distributions from the trust, and the trust has a 50% interest in the object company.

The trust cannot be a CGT concession stakeholder in the object company because it is not an individual and therefore cannot satisfy paragraph (2)(a).

However, the trust can satisfy paragraph (2)(b) because Anna is a CGT concession stakeholder in the object company (because her small business participation percentage in the object company is 45%, which is greater than 20%) and her small business participation percentage in the trust is 90%.

*Extra conditions for some concessions*

- (3) In addition to the basic conditions in this section, some of the concessions in this Division have extra conditions that must be satisfied for the concession to be available. These extra conditions are set out in the relevant Subdivisions.

*Special rules for certain CGT events*

- (4) Subdivisions 152-B and 152-C do not apply to \*CGT events J2, J5 and J6. In addition, Subdivision 152-E does not apply to CGT events J5 and J6.

Note 1: Those CGT events are about previous applications of the roll-over in Subdivision 152-E.

Note 2: This Subdivision does not apply to CGT events J5 and J6 in relation to the retirement exemption (see subsection 152-305(4)).

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 152-12

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**152-12 Special conditions for CGT event D1**

- (1) Paragraphs 152-10(1)(a) and (d) do not apply in the case of \*CGT event D1.
- (2) Instead, it is a basic condition that the right you create that triggers the \*CGT event must be inherently connected with a \*CGT asset of yours that satisfies the active asset test (see section 152-35).

**Maximum net asset value test**

**152-15 Maximum net asset value test**

You satisfy the maximum net asset value test if, just before the \*CGT event, the sum of the following amounts does not exceed \$6,000,000:

- (a) the \*net value of the CGT assets of yours;
- (b) the net value of the CGT assets of any entities \*connected with you;
- (c) the net value of the CGT assets of any \*affiliates of yours or entities connected with your affiliates (not counting any assets already counted under paragraph (b)).

Note 1: Some assets are not included in the definition of *net value of the CGT assets*: see subsections 152-20(2), (3) and (4).

Note 2: The meaning of *connected with* is affected by section 152-78.

**152-20 Meaning of net value of the CGT assets**

*Meaning of net value of the CGT assets*

- (1) The *net value of the CGT assets* of an entity is the amount (whether positive, negative or nil) obtained by subtracting from the sum of the \*market values of those assets the sum of:
  - (a) the liabilities of the entity that are related to the assets; and
  - (b) the following provisions made by the entity:
    - (i) provisions for annual leave;
    - (ii) provisions for long service leave;
    - (iii) provisions for unearned income;
    - (iv) provisions for tax liabilities.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*Assets to be disregarded*

- (2) 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 or with an \*affiliate of the first-mentioned entity, but include any liabilities related to any such shares, units or interests; and
  - (b) if the entity is an individual, disregard:
    - (i) assets being used solely for the personal use and enjoyment of the individual, or the individual's \*affiliate (except a \*dwelling, or an \*ownership interest in a dwelling, that is the individual's main residence, including any adjacent land to which the main residence exemption can extend because of section 118-120); and
    - (ii) except for an amount included under subsection (2A), the \*market value of a dwelling, or an ownership interest in a dwelling, that is the individual's main residence (including any relevant adjacent land); and
    - (iii) 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
    - (iv) a right to, or to any part of, an asset of a superannuation fund or of an approved deposit fund; and
    - (v) a policy of insurance on the life of an individual.

Note: The meaning of **connected with** is affected by section 152-78.

*Individual's dwelling*

- (2A) In working out the **net value of the CGT assets** of an individual, if:
- (a) a \*dwelling of the individual, an \*ownership interest in such a dwelling or any relevant adjacent land, was used, during all or part of the \*ownership period of the dwelling, by the individual to produce assessable income to a particular extent; and
  - (b) the individual satisfied paragraph 118-190(1)(c) (about interest deductibility) at least to some extent;
- include such amount as is reasonable having regard to the extent to which that paragraph was satisfied.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: The net value of the CGT assets of the individual will be reduced by the same proportion of the individual's liabilities related to the dwelling, ownership interest or adjacent land.

*Net value of the CGT assets of others*

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

- (a) your \*affiliate; or
- (b) an entity that is \*connected with your affiliate;

include only those assets that are used, or held ready for use, in the carrying on of a \*business by you or another entity \*connected with you (whether the business is carried on alone or jointly with others).

Note: The meaning of **connected with** is affected by section 152-78.

(4) However, disregard assets under subsection (3) that are used, or held ready for use, in the carrying on of a \*business by an entity that is \*connected with you only because of your \*affiliate.

Example: You and your husband sell a florist's business that you jointly carry on. Your husband also wholly owns a company that carries on a newsagency business. You yourself have no other involvement with the newsagency business.

Under subsection (4), you disregard the newsagency company's assets in working out whether you satisfy the maximum net asset value test because, although the company is "connected" with you, it is so connected only because of your affiliate (your husband).

Note: The meaning of **connected with** is affected by section 152-78.

**Active asset test**

**152-35 Active asset test**

(1) A \*CGT asset satisfies the active asset test if:

- (a) you have owned the asset for 15 years or less and the asset was an \*active asset of yours for a total of at least half of the period specified in subsection (2); or
- (b) you have owned the asset for more than 15 years and the asset was an active asset of yours for a total of at least 7<sup>1</sup>/<sub>2</sub> years during the period specified in subsection (2).

(2) The period:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (a) begins when you \*acquired the asset; and
- (b) ends at the earlier of:
  - (i) the \*CGT event; and
  - (ii) if the relevant business ceased to be carried on in the 12 months before that time or any longer period that the Commissioner allows—the cessation of the business.

#### **152-40 Meaning of *active asset***

- (1) A \*CGT asset is an ***active asset*** at a time if, at that time:
  - (a) you own the asset (whether the asset is tangible or intangible) and it is used, or held ready for use, in the course of carrying on a \*business that is carried on (whether alone or in partnership) by:
    - (i) you; or
    - (ii) your \*affiliate; or
    - (iii) another entity that is \*connected with you; or
  - (b) if the asset is an intangible asset—you own it and it is inherently connected with a business that is carried on (whether alone or in partnership) by you, your affiliate, or another entity that is connected with you.

Note 1: An intangible asset need satisfy only paragraph (a) or paragraph (b).

Note 2: The meaning of ***connected with*** in subparagraph (1)(a)(iii) and paragraph (b) is affected by section 152-78.

Note 3: An example of an asset that is inherently connected with a business is goodwill or the benefit of a restrictive covenant.

Note 4: For businesses that are winding up, see section 152-49 and subsection 328-110(5).

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

Note: An entity 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 the entity is presently entitled to trust income.

- (3) A \*CGT asset is also an ***active asset*** at a given time if, at that time, you own it and:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) it is either a \*share in a company that is an Australian resident at that time or an interest in a trust that is a \*resident trust for CGT purposes for the income year in which that time occurs; and
  - (b) the total of:
    - (i) the \*market values of the active assets of the company or trust; and
    - (ii) the market value of any financial instruments of the company or trust that are inherently connected with a business that the company or trust carries on; and
    - (iii) any cash of the company or trust that is inherently connected with such a business;is 80% or more of the market value of all of the assets of the company or trust.
- (3A) A \*share in a company, or an interest in a trust, mentioned in paragraph (3)(a) is an **active asset** at a time (the **later time**) if:
- (a) the share or interest was an active asset at an earlier time; and
  - (b) it is reasonable to conclude that the share or interest is still an active asset at the later time.

Note: This ensures that the 80% test does not need to be applied on a day to day basis.

- (3B) A \*share in a company, or an interest in a trust, mentioned in paragraph (3)(a) is an **active asset** at a time if:
- (a) the share or interest fails to meet the requirements under subsection (3) at that time; and
  - (b) the failure is of a temporary nature only.

Note: If a share in a company or an interest in a trust is chosen as a replacement asset, this ensures that a temporary failure of the 80% test does not automatically lead to CGT event J2 happening.

*Exceptions*

- (4) However, the following \*CGT assets cannot be **active assets**:
- (a) interests in an entity that is \*connected with you, other than \*shares and interests covered by subsection (3);
  - (b) shares in a company, other than:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (i) shares in a \*widely held company that are covered by subsection (3), (3A) or (3B) and held by a \*CGT concession stakeholder of the company; and
- (ii) shares in any other company that are covered by subsection (3), (3A) or (3B);
- (c) interests in a trust, other than:
  - (i) interests in a trust to which subsection (5) applies that are covered by subsection (3), (3A) or (3B) and held by a CGT concession stakeholder of the trust; and
  - (ii) interests in any other trust that are covered by subsection (3), (3A) or (3B);
- (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 by you 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.

Example: A company uses a house purely as an investment property and rents it out. The house is not an **active asset** because the company is not using the house in the course of carrying on a business. If, on the other hand, the company ran the house as a guest house the house would be an **active asset** because the company would be using it to carry on a business and not to derive rent.

Note: The meaning of **connected with** is affected by section 152-78.

- (4A) For the purposes of paragraph (4)(e), in determining the main use of an asset:
  - (a) disregard any personal use or enjoyment of the asset by you; and
  - (b) treat any use by your \*affiliate, or an entity that is \*connected with you, as your use.

Note: The meaning of **connected with** is affected by section 152-78.

- (5) This subsection applies to a trust if:

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (a) interests in the trust are listed for quotation in the official list of an \*approved stock exchange; or
- (b) the trust has more than 50 \*members, unless the trust is a discretionary trust or a trust where at least one of the following conditions is met during an income year:
  - (i) no more than 20 persons held, or had the right to acquire or become the holders of, \*membership interests representing at least 75% of the value of the membership interests in the trust;
  - (ii) if there are \*trust voting interests in the trust—at least 75% of the trust voting interests in the trust was capable of being controlled by no more than 20 persons;
  - (iii) at least 75% of the amount of any distribution made by the trustee during the year was made to no more than 20 persons;
  - (iv) if no distribution was made by the trustee during the year—the Commissioner is of the opinion that, if a distribution had been made during the year, at least 75% of the distribution would have been made to no more than 20 persons.

**152-45 Continuing time periods for involuntary disposals**

*Asset compulsorily acquired, lost or destroyed*

- (1) If a \*CGT asset is an asset (the ***new asset***) you acquired to satisfy the requirement in subsection 124-70(2) or 124-75(2) for a roll-over under Subdivision 124-B, then the active asset test in section 152-35 applies as if:
  - (a) you had acquired the new asset when you acquired the old asset; and
  - (b) the new asset had been your \*active asset at all times when the original asset was your active asset; and
  - (c) the new asset had not been your active asset at all times when the original asset was not your active asset.

Note 1: Subdivision 124-B allows you to choose a roll-over if your CGT asset is compulsorily acquired, lost or destroyed.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note 2: If this subsection applies to a CGT asset, then section 152-115 (which is about continuing time periods) will apply for the 15-year exemption.

*Assets replaced during FSR transition (same owner roll-overs)*

- (1A) If a \*CGT asset is an asset (the *new asset*) you acquired in a situation covered by section 124-880, 124-885 or 124-890, then the active asset test in section 152-35 applies as if:
- (a) you had acquired the new asset when you acquired the original asset; and
  - (b) the new asset had been your \*active asset at all times when the original asset was your active asset; and
  - (c) the new asset had not been your active asset at all times when the original asset was not your active asset.

Note 1: Subdivision 124-O provides a roll-over for certain CGT assets that come to an end as a result of an FSR transition.

Note 2: If this subsection applies to a CGT asset, then section 152-115 (which is about continuing time periods) will apply for the 15-year exemption.

*Assets replaced during FSR transition (new owner roll-overs)*

- (1B) If a \*CGT asset is an asset (the *new asset*) acquired in a situation covered by section 124-900, 124-905 or 124-910, then the active asset test in section 152-35 applies as if:
- (a) the new owner had acquired the new asset when the original owner acquired the original asset; and
  - (b) the new asset had been the \*active asset of the new owner at all times when the original asset was the original owner's active asset; and
  - (c) the new asset had not been the active asset of the new owner at all times when the original asset was not the original owner's active asset.

Note 1: Subdivision 124-O provides a roll-over for certain CGT assets that come to an end as a result of an FSR transition.

Note 2: If this subsection applies to a CGT asset, then section 152-115 (which is about continuing time periods) will apply for the 15-year exemption.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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*Marriage or relationship breakdowns*

- (2) If you were the transferee of a \*CGT asset for which there has been a roll-over under Subdivision 126-A, then you may choose that the active asset test in section 152-35 applies as if:
- (a) you had acquired the asset when the transferor acquired the asset; and
  - (b) the asset had been an \*active asset of yours at all times when the asset was an active asset of the transferor; and
  - (c) the asset had not been an active asset of yours at all times when the asset was not an active asset of the transferor.

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

Note 2: There is a roll-over under Subdivision 126-A if CGT assets are transferred because of a marriage or relationship breakdown.

Note 3: If you don't make the choice, the time of acquisition is simply the time of the transfer.

Note 4: Making the choice here has certain consequences for the 15-year exemption: see section 152-115.

## **Treatment of passively held CGT assets**

### **152-47 Spouses or children taken to be affiliates for certain passively held CGT assets**

- (1) This section applies if:
- (a) one entity (the *asset owner*) owns a \*CGT asset (whether the asset is tangible or intangible); and
  - (b) either:
    - (i) the asset is used, or held ready for use, in the course of carrying on a \*business in an income year by another entity (the *business entity*); or
    - (ii) the asset is inherently connected with a business that is carried on in an income year by another entity (the *business entity*); and
  - (c) the business entity is not (apart from this section) an \*affiliate of, or \*connected with, the asset owner.

Note: The meaning of *connected with* an entity is affected by section 152-78.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) For the purposes of this Subdivision, in determining whether the business entity is an \*affiliate of, or is \*connected with, the asset owner, take the following to be affiliates of an individual:
- (a) a \*spouse of the individual;
  - (b) a \*child of the individual, being a child who is under 18 years.
- (3) If an entity is an \*affiliate of, or \*connected with, another entity as a result of subsection (2), then the \*spouse or \*child mentioned in that subsection is, in addition, taken to be an affiliate of the individual for the purposes of this Subdivision, and for the purposes of sections 328-110 to 328-125 to the extent that they relate to this Subdivision.
- Example: The spouse or child mentioned in subsection (2) is taken to be an affiliate of the individual for the purposes of working out which entities are affiliates of or connected with entities under section 152-48.
- (4) To avoid doubt, subsection (2) applies:
- (a) for the purposes of reducing or disregarding, under this Division, any \*capital gain from any \*CGT asset; but
  - (b) only while:
    - (i) a \*spouse remains a spouse; or
    - (ii) a \*child remains a child who is under 18 years.

#### **152-48 Working out an entity's aggregated turnover for passively held CGT assets**

- (1) This section applies for the purposes of section 328-115 to determine whether an entity (the *test entity*) is a \*small business entity for the purposes of subsection 152-10(1A) or (1B).
- (2) An entity (the *deemed entity*) is taken to be an \*affiliate of, or \*connected with, the test entity (as the case requires) if:
- (a) the deemed entity is an affiliate of, or connected with, the entity that owns the \*CGT asset referred to in subsection 152-10(1A) or (1B); and
  - (b) the deemed entity is not (apart from this section) an affiliate of, or connected with, the test entity.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Note: Paragraphs (a) and (b)—the meaning of *connected with* is affected by section 152-78.

- (3) If:
- (a) the entity that owns the \*CGT asset referred to in subsection 152-10(1B) is a partner in 2 or more partnerships; and
  - (b) the asset is:
    - (i) used, or held ready for use, in the course of carrying on a \*business that is carried on by at least 2 of those partnerships; or
    - (ii) inherently connected with businesses that are carried on by at least 2 of those partnerships;
- then, each partnership referred to in paragraph (b) that is not (apart from this section) \*connected with the test entity is taken to be connected with the test entity.

**152-49 Businesses that are winding up**

- (1) This section applies to an entity in an income year (the *CGT event year*) if:
- (a) a \*business that the entity previously carried on (including in partnership) is being wound up in that year; and
  - (b) either:
    - (i) the asset was used, or held ready for use, in the course of carrying on the business at a time in the income year in which the business stopped being carried on; or
    - (ii) if the asset is an intangible asset—the asset was inherently connected with the business that was carried on at a time in the income year in which the business stopped being carried on.
- (2) For the purposes of paragraphs 152-40(1)(a) and (b) as they apply for the purposes of paragraphs 152-10(1A)(d) and (1B)(e):
- (a) the entity is taken to carry on the \*business at a time in the CGT event year; and
  - (b) either:
    - (i) the \*CGT asset is taken to be used, or held ready for use, in the course of carrying on the business at that time; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (ii) if the asset is an intangible asset—the CGT asset is taken to be inherently connected with the business at that time.

Note: The entity might also be taken to be a small business entity in the CGT event year (see subsection 328-110(5)).

## Significant individual test

### 152-50 Significant individual test

An entity satisfies the significant individual test if the entity had at least one \*significant individual just before the \*CGT event.

### 152-55 Meaning of *significant individual*

An individual is a *significant individual* in a company or a trust at a time if, at that time, the individual has a \*small business participation percentage in the company or trust of at least 20%.

## CGT concession stakeholder

### 152-60 Meaning of *CGT concession stakeholder*

An individual is a *CGT concession stakeholder* of a company or trust at a time if the individual is:

- (a) a \*significant individual in the company or trust; or
- (b) a spouse of a significant individual in the company or trust, if the spouse has a \*small business participation percentage in the company or trust at that time that is greater than zero.

## Small business participation percentage

### 152-65 Small business participation percentage

An entity's *small business participation percentage* in another entity at a time is the percentage that is the sum of:

- (a) the entity's \*direct small business participation percentage in the other entity at that time; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) the entity's \*indirect small business participation percentage in the other entity at that time.

**152-70 Direct small business participation percentage**

- (1) An entity holds a *direct small business participation percentage* at the relevant time in an entity equal to the percentage worked out using this table:

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**An entity's *direct small business participation percentage***

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<b>In this entity:</b>	<b>Is:</b>
1 A company	This percentage that the entity has because of holding the legal and equitable interests in *shares in the company: (a) the percentage of the voting power in the company; or (b) the percentage of any *dividend that the company may pay; or (c) the percentage of any distribution of capital that the company may make; or, if they are different, the smaller or smallest.
2 A trust (where entities have entitlements to all the income and capital of the trust)	This percentage: (a) the percentage of any distribution of income that the trustee may make to which the entity would be beneficially entitled; or (b) the percentage of any distribution of capital that the trustee may make to which the entity would be beneficially entitled; or, if they are different, the smaller.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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**An entity's direct small business participation percentage**

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<b>In this entity:</b>	<b>Is:</b>
3 A trust (where entities do not have entitlements to all the income and capital of the trust)	This percentage: (a) if the trustee makes distributions of income during the income year (the <i>relevant year</i> ) in which that time occurs—the percentage of the distributions to which the entity was beneficially entitled; or (b) if the trustee makes distributions of capital during the relevant year—the percentage of the distributions to which the entity was beneficially entitled; or, if 2 different percentages are applicable, the smaller.

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*Companies*

- (2) For item 1 of the table, ignore \*redeemable shares.
- (3) Paragraph (a) of item 1 of the table does not apply if the entity holds the legal and equitable interests in the \*shares jointly with another entity.

*Discretionary trusts*

- (4) Subsections (5) and (6) apply for the purpose of working out the \*direct small business participation percentage in an entity in connection with a \*CGT event that happened in an income year (the *CGT event year*), if:
  - (a) the entity is a trust (where entities do not have entitlements to all the income and capital of the trust); and
  - (b) during the relevant year mentioned in item 3 of the table in subsection (1) (disregarding subsection (5)), the trustee mentioned in that item:
    - (i) does not make a distribution of income; and
    - (ii) does not make a distribution of capital.
- (5) Treat the references in that item to the relevant year as being references to:
  - (a) if the trustee made a distribution of income or capital during the CGT event year—the CGT event year; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (b) otherwise—the last income year before the CGT event year in which the trustee did make a distribution of income or capital.
- (6) Despite subsection (5), an entity holds a ***direct small business participation percentage*** of 0% in the trust at the relevant time if either:
  - (a) the trust:
    - (i) had a \*net income for the relevant year; and
    - (ii) did not have a \*tax loss for the relevant year; or
  - (b) the trustee did not make a distribution of income or capital at any time before the end of the CGT event year.

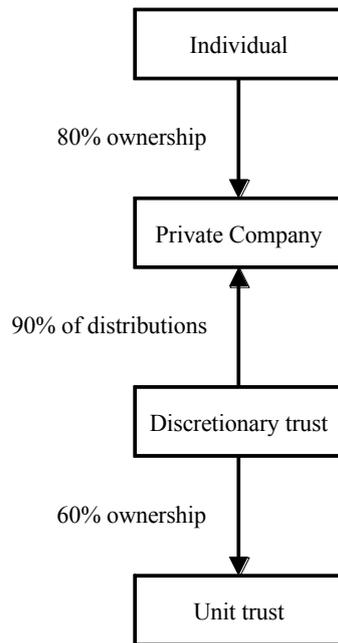
**152-75 Indirect small business participation percentage**

- (1) Work out the ***indirect small business participation percentage*** that an entity (the ***holding entity***) holds at a particular time in another entity (the ***test entity***) by multiplying:
  - (a) the holding entity's \*direct small business participation percentage (if any) in another entity (the ***intermediate entity***) at that time; by
  - (b) the sum of:
    - (i) the intermediate entity's direct small business participation percentage (if any) in the test entity at that time; and
    - (ii) the intermediate entity's indirect small business participation percentage (if any) in the test entity at that time (as worked out under one or more other applications of this section).
- Note: When testing an intermediate entity's indirect small business participation percentage in another entity, the intermediate entity becomes the holding entity.
- (2) If there is more than one intermediate entity to which paragraph (1)(a) applies at that time, the holding entity's ***indirect small business participation percentage*** is the sum of the percentages worked out under subsection (1) in relation to each of those intermediate entities.

Example: The individual mentioned in the diagram has an indirect small business participation percentage in the unit trust.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.



Multiplying the percentages as mentioned in subsection (1) produces small business participation percentage of 43.2%.

If the individual had a direct small business participation percentage of 10% in the unit trust, that would be added to the individual's indirect small business participation percentage to produce a small business participation percentage in the trust of 53.2%.

## **Nomination of controllers of discretionary trust**

### **152-78 Trustee of discretionary trust may nominate beneficiaries to be controllers of trust**

- (1) This section applies for the purposes of determining whether an entity is \*connected with you, for the purposes of:
- (a) this Subdivision; and
  - (b) sections 328-110, 328-115 and 328-125 so far as they relate to this Subdivision.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (2) The trustee of a discretionary trust may nominate not more than 4 beneficiaries as being controllers of the trust for an income year (the *relevant income year*) for which the trustee did not make a distribution of income or capital if the trust had a \*tax loss, or no \*net income, for that year.
- (3) A nomination under subsection (2) has effect as if each nominated beneficiary controlled the trust for the relevant income year in a way described in section 328-125.

Note: This means each nominated beneficiary is connected with the trust.

- (4) A nomination under subsection (2) must:
  - (a) be in writing; and
  - (b) be signed by the trustee and by each nominated beneficiary.

**CGT event happens to asset or interest within 2 years of an individual's death**

**152-80 CGT event happens to an asset or interest within 2 years of individual's death**

- (1) This section applies if:
  - (a) a \*CGT asset:
    - (i) forms part of the estate of a deceased individual; or
    - (ii) was owned by joint tenants and one of them dies; and
  - (b) any of the following applies:
    - (i) the asset devolves to the individual's \*legal personal representative;
    - (ii) the asset \*passes to a beneficiary of the individual;
    - (iii) an interest in the asset is \*acquired by the surviving joint tenant or tenants (as the case may be) as mentioned in section 128-50;
    - (iv) the asset devolves to a trustee of a trust established by the will of the individual; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (c) the deceased individual referred to in subparagraph (a)(i) or (ii) would have been entitled to reduce or disregard a \*capital gain under this Division if a \*CGT event had happened in relation to the CGT asset immediately before his or her death; and
  - (d) a CGT event happens in relation to the CGT asset within 2 years of the individual's death.
- (2) A person mentioned in subsection (2A) is entitled to reduce or disregard a \*capital gain under this Division in the same way as the deceased individual would have been entitled to as if:
- (a) paragraph 152-105(d) only required the deceased individual to have been 55 or over, or permanently incapacitated, at the time of the \*CGT event referred to in paragraph (1)(c) of this section; and
  - (b) paragraph 152-305(1)(b) did not apply.
- (2A) The following persons (as the case requires) are entitled to reduce or disregard a \*capital gain under this Division in accordance with subsection (2):
- (a) the \*legal personal representative of the individual;
  - (b) the beneficiary of the individual;
  - (c) the surviving joint tenant or tenants;
  - (d) the trustee or a beneficiary of the trust.
- (3) The Commissioner may extend the time limit in paragraph (1)(d).

### **Subdivision 152-B—Small business 15-year exemption**

#### **Guide to Subdivision 152-B**

##### **152-100 What this Subdivision is about**

A small business entity can disregard a capital gain arising from a CGT asset that it has owned for at least 15 years if certain conditions are met. Capital losses are not affected.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 152-100

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Also, any amount of income a company or trust derives from a CGT event covered by this Subdivision is neither assessable income nor exempt income. If the company or trust makes payments to its CGT concession stakeholders that are attributable to the exempt amount, the payments will not be taken into account in determining the taxable income of the company, trust or recipient.

The main conditions are that:

- the basic conditions for relief in Subdivision 152-A are satisfied;
- the entity continuously owned the asset for the 15-year period leading up to the CGT event;
- if the entity is an individual, the individual retires or is permanently incapacitated;
- if the entity is a company or trust, the entity had a significant individual for a total of at least 15 years during which the entity owned the asset and the individual who was the significant individual just before the CGT event retires or is permanently incapacitated.

The Subdivision also allows time periods to continue to run if there has been a roll-over because of marriage or relationship breakdown or compulsory acquisition.

**Table of sections**

152-105	15-year exemption for individuals
152-110	15-year exemption for companies and trusts
152-115	Continuing time periods for involuntary disposals
152-125	Payments to company's or trust's CGT concession stakeholders are exempt

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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### **152-105 15-year exemption for individuals**

If you are an individual, you can disregard any \*capital gain arising from a \*CGT event if all of the following conditions are satisfied:

- (a) the basic conditions in Subdivision 152-A are satisfied for the gain;
- (b) you continuously owned the \*CGT asset for the 15-year period ending just before the CGT event;

Note: Section 152-115 allows for continuation of the period if there is an involuntary disposal of the asset.

- (c) if the CGT asset is a \*share in a company or an interest in a trust—the company or trust had a \*significant individual for a total of at least 15 years (even if the 15 years was not continuous and it was not always the same significant individual) during which you owned the CGT asset;
- (d) either:
  - (i) you are 55 or over at the time of the CGT event and the event happens in connection with your retirement; or
  - (ii) you are permanently incapacitated at the time of the CGT event.

### **152-110 15-year exemption for companies and trusts**

- (1) An entity that is a company or trust can disregard any \*capital gain arising from a \*CGT event if all of the following conditions are satisfied:

- (a) the basic conditions in Subdivision 152-A are satisfied for the gain;
- (b) the entity continuously owned the \*CGT asset for the 15-year period ending just before the CGT event;

Note: Section 152-115 allows for continuation of the period if there is an involuntary disposal of the asset.

- (c) the entity had a \*significant individual for a total of at least 15 years (even if the 15 years was not continuous and it was not always the same significant individual) during which the entity owned the CGT asset;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 152-115

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- (d) an individual who was a significant individual of the company or trust just before the CGT event either:
  - (i) was 55 or over at that time and the event happened in connection with the individual's retirement; or
  - (ii) was permanently incapacitated at that time.
- (1A) For the purposes of paragraphs (1)(b) and (c), disregard subsection 149-30(1A) (which applies if an asset stops being a pre-CGT asset).
- (2) Any \*ordinary income or \*statutory income the company or trust \*derives from a \*CGT event that would be covered by subsection (1) (assuming the event gave rise to a \*capital gain, even if it didn't) is neither assessable income nor \*exempt income.

*Exception*

- (3) However, subsection (2) does not apply to income \*derived by a company or trust as a result of a \*balancing adjustment event occurring to a \*depreciating asset:
  - (a) whose decline in value is worked out under Division 40; or
  - (b) deductions for which are calculated under Division 328.

**152-115 Continuing time periods for involuntary disposals**

*Asset compulsorily acquired, lost or destroyed*

- (1) If a \*CGT asset is an asset (the **new asset**) you acquired to satisfy the requirement in subsection 124-70(2) or 124-75(2) for a roll-over under Subdivision 124-B, then paragraphs 152-105(b) and 152-110(1)(b) and (c) (the 15-year and significant individual rules) apply as if you had acquired the new asset when you acquired the original asset.

Note: Subdivision 124-B allows you to choose a roll-over if your CGT asset is compulsorily acquired, lost or destroyed.

*Assets replaced during FSR transition (same owner roll-overs)*

- (1A) If a \*CGT asset is an asset (the **new asset**) you acquired in a situation covered by section 124-880, 124-885 or 124-890, then paragraphs 152-105(b) and 152-110(1)(b) and (c) (the 15-year and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

significant individual rules) apply as if you had acquired the new asset when you acquired the original asset.

Note: Subdivision 124-O provides a roll-over for certain CGT assets that come to an end as a result of an FSR transition.

*Asset replaced during FSR transition (new owner roll-overs)*

- (1B) If a \*CGT asset is an asset (the **new asset**) acquired in a situation covered by section 124-900, 124-905 or 124-910, then paragraphs 152-105(b) and 152-110(1)(b) and (c) (the 15-year and significant individual rules) apply as if the new owner had acquired the new asset when the original owner acquired the original asset.

Note: Subdivision 124-O provides a roll-over for certain CGT assets that come to an end as a result of an FSR transition.

*Marriage or relationship breakdowns*

- (2) If you made the choice mentioned in subsection 152-45(2) for a \*CGT asset, then paragraphs 152-105(b) and (c) and 152-110(1)(b) and (c) (the 15-year and significant individual rules) apply as if you had acquired the asset when the transferor acquired it.

Note: There is a roll-over under Subdivision 126-A if CGT assets are transferred because of a marriage or relationship breakdown.

### **152-125 Payments to company's or trust's CGT concession stakeholders are exempt**

- (1) This section applies if:
- (a) one or more of the following apply:
    - (i) under section 152-110, a \*capital gain (the **exempt amount**) of a company or trust is disregarded;
    - (ii) under section 152-110, an amount of income (the **exempt amount**) is \*non-assessable non-exempt income of a company or trust;
    - (iii) subparagraph (i) of this paragraph would have applied to an amount (the **exempt amount**) except that the capital gain was disregarded anyway because the relevant \*CGT asset was \*acquired before 20 September 1985;

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 152-125

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- (iv) subparagraph (i) of this paragraph would have applied to an amount (the *exempt amount*) if subsection 149-30(1A) and section 149-35 had not applied to the relevant asset; and
- (b) the company or trust makes one or more payments (whether directly or indirectly through one or more interposed entities) in relation to the exempt amount within 2 years after the relevant \*CGT event to an individual who was a \*CGT concession stakeholder of the company or trust just before the event.

Note: A normal business payment, for example, a payment of wages, would not be made “in relation to the exempt amount”.

- (2) In determining the taxable income of the company, the trust, the individual, or any of the interposed entities, disregard the total amount of the payment or payments made to the \*CGT concession stakeholder, up to the following limit:

$$\frac{\text{Stakeholder's participation percentage}}{\text{percentage}} \times \text{Exempt amount}$$

where:

*stakeholder's participation percentage* means:

- (a) in the case of a company or a trust referred to in item 2 of the table in subsection 152-70(1)—the stakeholder's \*small business participation percentage in the company or trust just before the relevant \*CGT event; or
- (b) in the case of a trust referred to in item 3 of that table—the amount (expressed as a percentage) worked out using the following formula:

$$\frac{100}{\text{Number of *CGT concession stakeholders of the trust just before the *CGT event}}$$

- (3) If a company makes such a payment, this Act applies to the payment, to the extent that it is less than or equal to the limit mentioned in subsection (2), as if:
  - (a) it were not a \*dividend; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

- (b) it were not a \*frankable distribution.
- (4) The Commissioner may extend the time limit under paragraph (1)(b).

## **Subdivision 152-C—Small business 50% reduction**

### **Guide to Subdivision 152-C**

#### **152-200 What this Subdivision is about**

This Subdivision tells you how to apply the small business CGT concessions mentioned in step 4 of the method statement in subsection 102-5(1).

A capital gain is reduced by 50% if the basic conditions in Subdivision 152-A are satisfied.

If the capital gain has already been reduced by the discount percentage, the 50% reduction under this Subdivision applies to that reduced gain.

The capital gain may be further reduced by the small business retirement exemption or a small business rollover, or both.

Alternatively, you may choose not to apply the 50% reduction and instead apply the small business retirement exemption or small business rollover.

None of these rules apply if the 15-year exemption already applies to the capital gain, since such a gain is disregarded anyway.

#### **Table of sections**

152-205	You get the small business 50% reduction
152-210	You may also get the small business retirement exemption and small business roll-over relief
152-215	15-year rule has priority
152-220	You may choose not to apply this Subdivision

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 152-205

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**152-205 You get the small business 50% reduction**

The amount of a \*capital gain remaining after applying step 3 of the method statement in subsection 102-5(1) is reduced by 50%, if the basic conditions in Subdivision 152-A are satisfied for the gain.

**Example:** For an individual (other than one who opts to claim indexation instead of the discount), the discount percentage that applies under step 3 of the method statement is 50%. Therefore, the combined effect of the discount percentage and this section would be to reduce the original capital gain by a total of 75%.

For an individual who opts to claim indexation, or a company, there is no discount percentage, so the individual or company would simply get the 50% reduction under this section.

**152-210 You may also get the small business retirement exemption and small business roll-over relief**

- (1) The \*capital gain, as reduced under section 152-205, may also qualify for:
  - (a) the small business retirement exemption (see Subdivision 152-D); or
  - (b) a small business roll-over (see Subdivision 152-E);or both.
- (2) If it qualifies for both of those concessions, you may choose which order to apply them in.

**152-215 15-year rule has priority**

This Subdivision does not apply to a \*capital gain to which Subdivision 152-B (15-year exemption) applies.

**Note:** Under that Subdivision, such a gain is entirely disregarded, so there is no need for any further concession to apply.

**152-220 You may choose not to apply this Subdivision**

You may choose not to apply the reduction mentioned in section 152-205 to a particular \*capital gain.

**Note:** Making this choice might allow a company or trust to make larger tax-free payments under the small business retirement exemption: see section 152-325.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## **Subdivision 152-D—Small business retirement exemption**

### **Guide to Subdivision 152-D**

#### **152-300 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 may choose not to apply the concession in section 152-205 (small business 50% reduction) before this one. For an additional concession, see also Subdivision 152-E (small business roll-over).

You do not need to satisfy the basic conditions for this exemption in relation to CGT events J5 and J6.

#### **Table of sections**

152-305	Choosing the exemption
152-310	Consequences of choice
152-315	Choosing the amount to disregard
152-320	Meaning of CGT retirement exemption limit
152-325	Company or trust conditions
152-330	15-year rule has priority

#### **152-305 Choosing the exemption**

##### *Individual*

- (1) If you are an individual, you can choose to disregard all or part of a \*capital gain if:
  - (a) the basic conditions in Subdivision 152-A are satisfied for the gain; and

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Section 152-305

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- (b) if you are under 55 just before you make the choice—you contribute an amount equal to the asset's \*CGT exempt amount to a \*complying superannuation fund or an \*RSA; and

Note: For the non-deductibility of the contribution, see subsection 290-150(4).

- (c) the contribution is made:
- (i) if the relevant CGT event is CGT event J2, J5 or J6—when you made the choice; or
  - (ii) otherwise—at the later of when you made the choice and when you received the proceeds.

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

- (1A) If you receive the \*capital proceeds from the \*CGT event in instalments, paragraphs (1)(b) and (c) apply to each instalment in succession (up to the asset's \*CGT exempt amount).

*Company or trust*

- (2) A company or a trust (except a public entity—see subsection (3)) can also choose to disregard such an amount if:
- (a) the basic conditions in Subdivision 152-A are satisfied for the \*capital gain; and
  - (b) the entity satisfies the significant individual test (see section 152-50); and
  - (c) the company or trust conditions in section 152-325 are satisfied.

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

- (3) Entities of a kind referred to in subsection 328-125(8) cannot make the choice.
- (4) Paragraphs (1)(a) and (2)(a) do not apply if the \*capital gain arose from \*CGT event J5 or J6.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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## 152-310 Consequences of choice

### *Consequences in all cases*

- (1) If the individual, company or trust makes the choice mentioned in section 152-305 for any part of the \*capital gain from the \*CGT asset, that part of the capital gain equal to its \*CGT exempt amount is disregarded.

### *Additional consequences in relation to company or trust*

- (2) Any payment or part of one the company or trust makes to comply with section 152-325:
  - (a) is not assessable income, and is not \*exempt income, of the \*CGT concession stakeholder to whom it is made; and
  - (b) cannot be deducted from the company's or trust's assessable income.

### *Additional consequences in relation to interposed entities*

- (3) If:
  - (a) an entity (the ***paying entity***) receives a payment (whether directly or indirectly through one or more interposed entities) that a company or trust makes to comply with section 152-325; and
  - (b) the paying entity passes on the payment to the \*CGT concession stakeholder or another interposed entity;then:
  - (c) the payment cannot be deducted from the paying entity's assessable income; and
  - (d) the payment received by the paying entity is not assessable income and is not \*exempt income.

## 152-315 Choosing the amount to disregard

- (1) You can choose to disregard all or part of each \*capital gain to which this Subdivision applies.

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

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

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 152-320

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- (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 each 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 more than one \*CGT concession stakeholder, it must specify in writing the percentage of each \*CGT asset's \*CGT exempt amount that is attributable to each of those stakeholders. One or more of the percentages may be nil, but all of the percentages must add up to 100%.

**Example:** Daryl is a significant individual in a company. The company specifies 90% for Daryl under subsection (5) (which means that the percentage specified for the other stakeholder 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.

**152-320 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.

**Note:** The \$500,000 is also reduced by any reduction under old provisions about reduction of the CGT retirement exemption limit: see item 62 of Schedule 1 to the *New Business Tax System (Capital Gains Tax) Act 1999*.

- (2) If the individual was one of at least 2 \*CGT concession stakeholders of a company or trust, and the company or trust made a choice for the individual, only the individual's percentage (see

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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subsection 152-315(5)) of the assets' \*CGT exempt amounts is taken into account under subsection (1) for that choice.

### **152-325 Company or trust conditions**

#### *Company or trust to make payments*

- (1) A company or trust must make a payment (whether directly or indirectly through one or more interposed entities) to at least one of its \*CGT concession stakeholders if:
  - (a) the company or trust makes a choice under this Subdivision to disregard a \*capital gain from \*CGT event J2, J5 or J6; or
  - (b) the company or trust receives an amount of \*capital proceeds from a \*CGT event for which it makes a choice under this Subdivision.
- (2) If the company or trust receives the \*capital proceeds from the CGT event in instalments, subsection (1) applies to each instalment in succession (up to the relevant \*CGT exempt amount).

#### *Amount and timing of payments*

- (3) If a payment is made to more than one \*CGT concession stakeholder, the amount of each such payment is to be worked out by reference to each individual's percentage (see subsection 152-315(5)) of the relevant \*CGT exempt amount.
- (3A) If the \*CGT concession stakeholder to whom the payment is made is an employee of the company or trust, the payment must not be of a kind mentioned in section 82-135 (disregarding paragraph (fa) of that section).
- (4) The payment must be made by:
  - (a) if paragraph (1)(a) applies—7 days after the company or trust makes the choice; and
  - (b) otherwise—the later of:
    - (i) 7 days after the company or trust makes the choice; and
    - (ii) 7 days after the company or trust receives an amount of \*capital proceeds from the \*CGT event.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 152-325

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- (5) The amount of the payment, or the sum of the amounts of the payments, required to be made under this section must be equal to the lesser of:
- (a) either:
    - (i) if paragraph (1)(a) applies—the amount of the \*capital gain from the \*CGT event that the company or trust disregarded; or
    - (ii) otherwise—the amount of \*capital proceeds received; and
  - (b) the relevant \*CGT exempt amount.

*Payments may be joint or separate*

- (6) If this section requires the company or trust to make 2 or more payments to a single \*CGT concession stakeholder (whether or not by the same time), the company or trust may meet that requirement by making one payment or by making separate payments.
- (7) If a \*CGT concession stakeholder is under 55 just before a payment is made under this section in relation to him or her:
- (a) the company or trust must make the payment to the CGT concession stakeholder by contributing it for the stakeholder to a \*complying superannuation fund or an \*RSA in respect of the stakeholder; and
  - (b) the company or trust must notify the trustee of the fund or the \*RSA provider at the time the contribution is made that the contribution is made in accordance with this section.

Note: For the non-deductibility of the contribution, see subsection 290-150(4).

- (8) For the purposes of Part 3-30, treat a payment mentioned in paragraph (7)(a), made in accordance with this section, as a contribution made by the \*CGT concession stakeholder.

*Payments are not dividends or frankable distributions*

- (9) Subsection (10) applies if:
- (a) a company makes a payment to comply with subsection (1) to:
    - (i) a \*CGT concession stakeholder; or

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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- (ii) an interposed entity, in relation to a CGT concession stakeholder; or
- (b) both of the following apply:
  - (i) an interposed entity receives a payment (whether directly or indirectly through one or more interposed entities) that a company or trust makes to comply with subsection (1), in relation to a CGT concession stakeholder;
  - (ii) the interposed entity passes on the payment to the CGT concession stakeholder or another interposed entity.
- (10) This Act applies to the payment, to the extent that it is less than or equal to the amount mentioned in subsection (3) for the stakeholder, as if:
  - (a) it were not a \*dividend; and
  - (b) it were not a \*frankable distribution.
- (11) Subsection (10) applies in relation to the payment despite section 109 and Division 7A of Part III of the *Income Tax Assessment Act 1936*.

### **152-330 15-year rule has priority**

This Subdivision does not apply to a \*capital gain to which Subdivision 152-B (15-year exemption) applies.

Note: Under that Subdivision, such a gain is entirely disregarded, so there is no need for any further concession to apply.

## **Subdivision 152-E—Small business roll-over**

### **Guide to Subdivision 152-E**

#### **152-400 What this Subdivision 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 the basic conditions in Subdivision 152-A are satisfied for the gain.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Section 152-410

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You may choose not to apply the concession in section 152-205 (small business 50% reduction) before this one. For an additional exemption, see also Subdivision 152-D (small business retirement exemption).

**Table of sections**

**Operative provisions**

- 152-410 When you can obtain the roll-over
- 152-415 What the roll-over consists of
- 152-420 Rules where an individual who has obtained a roll-over dies
- 152-430 15-year rule has priority

**Operative provisions**

**152-410 When you can obtain the roll-over**

You can choose to obtain a roll-over under this Subdivision for a \*capital gain if the basic conditions in Subdivision 152-A are satisfied for the gain.

- Note 1: You can choose the roll-over even if you have not yet acquired a replacement asset or incurred fourth element expenditure, but:
- (a) CGT event J5 happens if, by the end of the replacement asset period, you do not acquire the asset or incur the expenditure (see section 104-197); and
  - (b) CGT event J6 happens if, by the end of the replacement asset period, the cost of the replacement asset or the amount of fourth element expenditure incurred (or both) is less than the amount of the capital gain that you disregarded (see section 104-198).
- Note 2: If you have acquired a replacement asset or incurred fourth element expenditure but there is a change in relation to the replacement asset or improved asset after the end of the replacement asset period, CGT event J2 may happen: see section 104-185.

**152-415 What the roll-over consists of**

If you choose the roll-over, you can choose to disregard all or part of each \*capital gain to which this Subdivision applies.

- Note: If you choose to disregard only some of the capital gain, you make a capital gain equal to the remaining amount.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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Example: The original capital gain was \$100,000. You have reduced it to \$25,000 under other concessions (apart from the roll-over). If you choose to disregard \$20,000, you are left with a final capital gain of \$5,000.

### **152-420 Rules where an individual who has obtained a roll-over dies**

- (1) This section applies if:
  - (a) a replacement asset, or an asset in relation to which \*fourth element expenditure has been incurred, formed part of the estate of an individual who has died; and
  - (b) either or both of the following apply:
    - (i) the asset has devolved to the deceased's \*legal personal representative;
    - (ii) the asset has \*passed to a beneficiary of the deceased; and
  - (c) a change covered by subsection 104-185(2) or (3) did not happen while the deceased owned it or, if the asset has passed to a beneficiary, while the asset was in the hands of the deceased's legal personal representative.
- (2) For the purposes of this Subdivision, 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.
- (3) For the purposes of this Subdivision, if the asset has \*passed to a beneficiary, anything done or not done by the deceased or by the deceased's \*legal personal representative (including because of the operation of subsection (2)) in relation to the asset is treated as though it had been done or not done by the beneficiary.

### **152-430 15-year rule has priority**

This Subdivision does not apply to a \*capital gain to which Subdivision 152-B (15-year exemption) applies.

Note: Under that Subdivision, such a gain is entirely disregarded, so there is no need for any further concession to apply.

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\*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

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