Australian Government
Australian Taxation Office

Capital gains tax

- https://www.ato.gov.au/Individuals/Capital-gains-tax/
- Last modified: 01 Jul 2022
- QC 66013

How to calculate capital gains tax (CGT) on your assets, assets that are affected, and the CGT discount.

What is capital gains tax?
How capital gains tax (CGT) works, and how you report and pay tax on capital gains when you sell assets.

List of CGT assets and exemptions
Check if your assets are subject to CGT, exempt, or pre-date CGT.

Acquiring CGT assets
Establish the date you buy or acquire an asset, your share of ownership and records to keep.

CGT events
How and when CGT is triggered, such as when an asset is sold, lost or destroyed.

CGT discount
Find out if your asset is eligible for the 50% CGT discount.

Calculating your CGT
Use the calculator or steps to work out your CGT, including your capital proceeds and cost base.

Property and capital gains tax
How CGT affects real estate, including rental properties, land, improvements and your home.

Shares and similar investments
Check if you are an investor or trader, and how it affects tax on your shares or units in a fund.

Inherited assets and capital gains tax
How and when CGT applies if you sell assets you inherited, including properties and shares.

Foreign residents and capital gains tax
How CGT affects your assets if you are a foreign or temporary resident, or change your residency.

Relationship breakdown and capital gains tax
Find out if you can defer, or 'roll over', CGT on assets that transfer to you in a divorce.

Market valuation of assets
When and how to get your assets valued for CGT purposes.

How to complete the capital gains section in your tax return
Instructions for completing the CGT section of the individual income tax return.

Small business CGT concessions
Find out if your small business can reduce, disregard or defer CGT on an active asset.

Depreciating assets
How CGT affects depreciating assets like business equipment.

What is capital gains tax?

- https://www.ato.gov.au/Individuals/Capital-gains-tax/What-is-capital-gains-tax-/
- Last modified: 01 Jul 2022
- QC 69844

Capital gains tax (CGT) is the tax you pay on profits from selling assets, such as property.

You report capital gains and capital losses in your income tax return and pay tax on your capital gains. Although it is referred to as 'capital gains tax,' it is part of your income tax. It is not a separate tax.

If you have a capital gain, it will increase the tax you need to pay. You may want to work out how much tax you will owe and set aside funds to cover it.

Example: calculating CGT

Maree buys some shares for $5,000.

She owns the shares for 6 months and sells them for $5,500. She has no other capital gains or losses.

Maree declares a capital gain of $500 in her tax return. She will pay tax on this gain at her individual income tax rate.

List of CGT assets and exemptions

- https://www.ato.gov.au/Individuals/Capital-gains-tax/List-of-CGT-assets-and-exemptions/
- Last modified: 01 Jul 2022
- QC 66014

Check if your assets are subject to CGT, exempt, or pre-date CGT.

On this page

Assets acquired before 20 September 1985

Assets you acquired before 20 September 1985 are exempt from CGT.

Real estate

Most property is subject to CGT.

This includes:

- vacant land
- business premises
- rental properties
- holiday houses
- hobby farms.

If you acquired property before 20 September 1985, any property improvements or additions you make after that date may be subject to CGT.

Your main residence is generally exempt from CGT.

Your main residence (your home)

Your main residence (your home) is exempt from CGT.

However, CGT may apply if:

- you rent out part of it
- you use it for business
- it is on more than 2 hectares of land
- you are a foreign resident and you do not satisfy the requirements of the life events test at the time the 'CGT event' happens.

Granny flat arrangements

CGT does not apply when an eligible granny flat arrangement is created, varied or terminated.

Cars and motorcycles

Your car or motorcycle is exempt from CGT.

A car is defined as a motor vehicle that carries a load of less than 1 tonne and fewer than 9 passengers.

Shares and units

CGT applies to shares, units and similar investments when a 'CGT event' happens. This includes when you sell them or receive a distribution (other than a dividend) from a managed fund.

Crypto assets

CGT may apply when you dispose of your crypto assets.

If your crypto is a personal use asset, capital gains or losses from disposing of it may be exempt from CGT. Crypto is a personal use asset if it is kept or used mainly to purchase items for personal use or consumption.

Personal use assets

A capital gain on a personal use asset is subject to CGT if it cost you more than $10,000 to acquire the asset.

Capital losses on personal use assets are ignored. This means you cannot use a capital loss on a personal use asset to reduce capital gains on other assets (including other personal use assets).

Personal use assets are CGT assets that you keep for your personal use or enjoyment.

They include:

- boats
- furniture
- electrical goods
- household items
- an option or right to acquire a personal use asset
- a debt resulting from
  - a CGT event involving a CGT asset kept for your personal use
  - making a private loan to a family member or friend.

The following are not classed as personal use assets:

- collectables – these may be subject to CGT
- your main residence, which is generally exempt from CGT
- cars, which are exempt from CGT.

If you dispose of personal use assets individually that would usually be sold as a set, you get the exemption only if you acquired the set for $10,000 or less.

Collectables

A collectable is subject to CGT unless:

- you acquired the collectable for $500 or less
- you acquired a share in the collectable for $500 or less before 16 December 1995
- you acquired a share in the collectable when the collectable had a market value of $500 or less.

Collectables include:

- artwork
- jewellery
- antiques
- coins or medallions
- rare folios, manuscripts or books
- postage stamps or first day covers.

If you make a capital loss on a collectable you can only deduct it against capital gains from collectables, not from other capital gains.

If you dispose of collectables individually that would usually be disposed of as a set, they are exempt only if you acquired the set for $500 or less after 16 December 1995.

Intangible assets

Intangible assets may be subject to CGT.

They include:

- leases
- goodwill
- licences
- contractual rights.

A number of CGT events, other than disposal, can happen to these assets. For example, granting a lease is a CGT event.

Foreign currency

Foreign currency is subject to CGT. You make a capital gain or loss on fluctuations in the foreign currency exchange rate.

Foreign currency is subject to foreign exchange gains and losses. A capital gain or loss arises from the acquisition or disposal of foreign currency when there is a fluctuation in the exchange rate.

This applies to foreign currency held as cash and CGT assets denominated in a foreign currency (such as an overseas rental property).

Depreciating assets

CGT does not apply to depreciating assets used solely for taxable purposes.

This includes:

- business equipment
- items in a rental property.

Gains or losses made on these assets are treated as assessable income or claimed as deductions.

However, if you have used a depreciating asset for private purposes, CGT may apply.

Specific exemptions such as awards and payouts

The following are exempt from CGT:

- a decoration awarded for valour or brave conduct (unless you paid or exchanged property for it)
- assets used solely to produce exempt income or some types of non-assessable, non-exempt income
- compensation or damages received for any
  - wrong or injury you suffered at work
  - wrong, injury or illness you or your relatives suffered

- winnings or losses from gambling, a game or a competition with prizes
- payment of your expenses under the following
  - Unlawful Termination Assistance Scheme
  - Alternative Dispute Resolution Assistance Scheme
  - M4/M5 Cashback Scheme
  - a scheme established under legislation by an Australian Government agency, a local government body or a foreign government agency (except a payment for the loss, destruction or transfer of an asset)

- the transfer of a super interest in one small super fund (a complying fund that has no more than 6 members) to another because of a relationship breakdown between spouses or former spouses
- rights created or ended in a superannuation agreement (as defined in the *Family Law Act 1975*)
- a CGT event happening to the segregated current pension asset of a complying super fund
- some payouts under a general insurance policy, life insurance policy or annuity instrument, such as payments from the maturity of a life insurance policy
- a payment for surrender of an insurance policy where you are the original beneficial owner of the policy
- shares in a pooled development fund
- shares of certain profits, gains or losses arising from disposal of investments by certain venture capital and early stage venture capital limited partnership entities
- a financial arrangement where gains and losses are calculated under the taxation of financial arrangements (TOFA) rules
- gifts made through a will to a deductible gift recipient beneficiary.

Norfolk Island residents

CGT does not apply to an asset if both the following are true:

- you were a resident of Norfolk Island before 24 October 2015
- you acquired the asset on Norfolk Island before 24 October 2015.

All other assets are subject to the normal CGT rules. This includes assets acquired on Norfolk Island by people who were not residents of Norfolk Island.

CGT for Norfolk Island residents

If you have an asset on …	and you acquired the asset …	then …
Norfolk Island and you were a resident of Norfolk Island on 23 October 2015	on or before 23 October 2015	CGT doesn’t apply
	on or after 24 October 2015	Normal CGT

		rules apply
Norfolk Island and you were not a resident of Norfolk Island on 23 October 2015	on or before 23 October 2015	Normal CGT rules apply
	on or after 24 October 2015	Normal CGT rules apply
the Australian mainland (or anywhere worldwide)	on or before 19 September 1985	CGT doesn't apply
	on or after 20 September 1985	Normal CGT rules apply

Acquiring CGT assets

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Acquiring-CGT-assets/
- Last modified: 01 Jul 2022
- QC 66015

Establish the date you buy or acquire an asset, your share of ownership and records to keep.

On this page

What to do when you acquire an asset

When you acquire a capital gains tax (CGT) asset, you should establish your acquisition date and share of ownership, and start keeping records.

This will help you work out your capital gain or loss correctly, so you pay the correct amount of CGT when you dispose of the asset.

Acquisition date

Generally, the acquisition date is when you become the owner of the asset – for example, when you purchase it.

However, there are 2 common situations where your acquisition date might differ from the date you become the owner:

- When you buy an asset under contract and do not take immediate possession. This commonly happens with real estate. In this case, your acquisition date is the date on the contract, not when you settle.
- When you inherit a CGT asset. In this case, the acquisition date is the date of death of the former owner.

You should establish the date of acquisition because you will need it to work out your CGT when you dispose of the asset.

It is important because:

- CGT does not apply if you owned the asset before CGT started on 20 September 1985 (but major improvements to a property since 20 September 1985 may be subject to CGT)
- the rules for working out a capital gain or loss have changed over time
- to qualify for the CGT discount you need to own the asset for at least 12 months.

Joint ownership

If you share ownership of an asset with others, each person makes a capital gain or loss.

There are 2 types of shared ownership:

- tenants in common
- joint tenants.

Tenants in common

Tenants in common are 2 or more people who co-own an asset in defined shares. The shares may be unequal.

When a CGT event occurs (such as selling the asset), the individuals split the capital gain or loss between them according to their share of ownership.

Example: tenants in common

Lui and Monica own a rental property as tenants in common.

Lui has a 20% share and Monica has an 80% share.

Lui and Monica decide to sell their rental property. They make a capital gain of $200,000.

Lui and Monica split the capital gain according to their share of ownership:

- Lui has a capital gain of $40,000 (20%)
- Monica has a capital gain of $160,000 (80%).

Joint tenants

Joint tenants have equal shares in the asset. Therefore, each person has an equal share of any capital gain or loss from a CGT event.

When one joint tenant dies, their share in the asset is acquired in equal shares by the surviving joint tenants.

Example: joint tenants

Carmen and Joe own a rental property as joint tenants.

They decide to sell their rental property. They make a capital gain of $68,000.

Carmen and Joe each has a capital gain of $34,000 (50%).

Partnerships

For CGT purposes, a partnership does not own an asset. Instead, each partner owns a proportion of the asset.

When a CGT event occurs, the partners use their proportion to work out their capital gain or loss.

Keeping records

You must keep records of all transactions or events that are relevant to working out your capital gain or loss.

What to record

Your records must be in English or be translatable to English.

Keep the following records:

- receipts of purchase or transfer
- details of interest on money you borrowed relating to the asset

- records of agent, accountant, legal and advertising costs
- receipts of insurance costs, rates and land taxes
- market valuations
- receipts of maintenance, repair and modification costs
- bank accounts showing brokerage fees on shares.

You should also keep records to establish whether you have claimed an income tax deduction for an item of expenditure. If you have claimed a deduction, you cannot include the amount in the cost base of the asset.

How long to keep records

Keep records for 5 years after the year that the CGT event occurs.

Example: keeping records for 5 years

Liz sold some shares in September 2021 and made a capital gain.

This means the CGT event happened in the 2021–22 financial year.

Liz needs to keep purchase and sale records of the shares until the end of the 2026–27 financial year (30 June 2027).

Net capital loss

If you have a net capital loss for the year, you should keep records of the loss. You can use the loss to offset a capital gain in a later year.

There is no time limit on how long you can carry forward a net capital loss.

Once you have offset the loss against a capital gain, you should keep records of the CGT event that resulted in the loss.

Keep records for a further:

- 2 years for individuals and small and medium businesses
- 4 years for other taxpayers.

Missing or destroyed records

If you do not have records for your CGT assets, there are ways you can get the information you need. If you:

- bought a property, ask your solicitor or estate agent to give you copies of the records
- made improvements to an investment property, ask the builder for a copy of the receipt for payment
- bought shares in a company or units in a managed fund, ask your stockbroker or investment adviser to give you the relevant information

- received an asset as a gift, ask a professional valuer to tell you what the market value would have been
- lost your records in a natural disaster, we can help you reconstruct them.

CGT events

- https://www.ato.gov.au/Individuals/Capital-gains-tax/CGT-events/
- Last modified: 21 Jun 2022
- QC 66016

How and when CGT is triggered, such as when an asset is sold, lost or destroyed.

On this page

What is a CGT event?

When you sell an asset that is subject to capital gains tax (CGT), it is called a CGT event. This is the point at which you make a capital gain or loss.

There are other CGT events, such as the loss or destruction of an asset, or creating contractual or other rights.

The type of CGT event that applies to your situation may affect:

- the time when the CGT event happens
- how to calculate your capital gain or loss.

Watch: CGT events

Media: CGT Events
http://tv.ato.gov.au/ato-tv/media?v=bi9or7odtmhqdk (Duration: 01:50)

Sale or disposal of asset

If there is a contract of sale, the CGT event happens when you enter into the contract. For example, if you sell a house, the CGT event happens on the date of the contract, not when you settle.

If there is no contract of sale, the CGT event is usually when you stop being the asset's owner. For example, if you sell shares, the CGT event happens on the date of sale.

Example: contract of sale

In June 2021, Sue entered into a contract to sell land she owned.

The contract settled in October 2021.

Sue made the capital gain in the 2020–21 income year (the year she entered into the contract), not the 2021–22 income year (the year settlement took place).

Your capital gain or loss for an asset is usually the selling price less the original cost and certain other costs associated with acquiring, holding and disposing of the asset. Find out how to calculate your CGT.

Loss, theft or destruction of asset

If your CGT asset is lost, stolen or destroyed:

- the CGT event happens when you first receive compensation for the loss, theft or destruction
- your capital gain is the amount of compensation less the asset's original cost.

If you do not receive any compensation, the CGT event happens when the loss is discovered or the destruction occurred.

If you replace the asset with a similar asset, you may be able to defer (or 'roll over') your capital gain until another CGT event happens, such as selling the replacement asset. See Involuntary disposal of a CGT asset.

Example: insurance policy

Laurie's rental property was destroyed by fire in June 2021.

He received compensation under an insurance policy in October 2021.

The CGT event happened in October 2021 when he received the compensation.

Example: no compensation or insurance policy

Christine owned a rental property that was damaged by floods in May 2021.

The local council deemed the property uninhabitable in August 2021. The property was demolished in November 2021 and Christine did not receive any compensation.

The CGT event happened in May 2021 when the damage happened.

All CGT events

All CGT events are listed below.

If more than one CGT event happens, you apply the rules for the one that best matches your situation.

For more information about the CGT events listed below see Division 104 of the *Income Tax Assessment Act 1997*.

Disposal (A)

CGT event	Time of event	Capital gain	Capital loss
A1 – Disposal of a CGT asset	When the disposal contract is entered into or, if none, when the entity stops being the asset's owner	The capital proceeds from disposal *less* the asset's cost base	The asset's reduced cost base *less* the capital proceeds

Hire purchase and similar agreements (B)

CGT event	Time of event	Capital gain	Capital loss
B1 – Use and enjoyment before title passes	When use of the CGT asset passes	The capital proceeds *less* the asset's cost base	The asset's reduced cost base *less* the capital proceeds

End of a CGT asset (C) – includes loss or destruction

CGT event	Time of event	Capital gain	Capital loss
C1 – Loss or destruction of a CGT asset	When compensation is first received or, if none, when the loss is discovered or destruction occurred	The capital proceeds *less* the asset's cost base	The asset's reduced cost base *less* the capital proceeds

C2 – Cancellation, surrender and similar endings	When the contract ending an asset is entered into or, if none, when an asset ends	The capital proceeds from the ending *less* the asset's cost base	The asset's reduced cost base *less* the capital proceeds
C3 – End of an option to acquire shares etc	When the option ends	The capital proceeds from granting the option *less* the expenditure in granting it	The expenditure in granting the option *less* the capital proceeds

Bringing a CGT asset into existence (D)

CGT event	Time of event	Capital gain	Capital loss
D1 – Creating contractual or other rights	When the contract is entered into or the right is created	The capital proceeds from creating the right *less* the incidental costs of creating the right	The incidental costs of creating the right *less* the capital proceeds
D2 – Granting an option	When the option is granted	The capital proceeds from the grant *less* the expenditure to grant it	The expenditure to grant the option *less* the capital proceeds
D3 – Granting a right to income from mining	When the contract is entered into or, if none, when the right is granted	The capital proceeds from the grant of right *less* the expenditure to grant it	The expenditure to grant the right *less* the capital proceeds
D4 – Entering into a conservation covenant	When covenant is entered into	The capital proceeds from covenant *less* the cost base apportioned to the covenant	The reduced cost base apportioned to the covenant *less* the capital proceeds from covenant

Trusts (E)

CGT event	Time of event	Capital gain	Capital loss
E1 – Creating a trust over a CGT asset	When the trust is created	Capital proceeds from creating the trust *less* the asset's cost base	The asset's reduced cost base *less* the capital proceeds
E2 – Transferring a CGT asset to a trust	When the asset is transferred	Capital proceeds from the transfer *less* the asset's cost base	The asset's reduced cost base *less* the capital proceeds

E3 – Converting a trust to a unit trust	When the trust is converted	Market value of the asset at that time *less* its cost base	The asset's reduced cost base *less* that market value
E4 – Capital payment for trust interest	When the trustee makes the payment	Non-assessable part of the payment *less* the cost base of the trust interest	No capital loss
E5 – Beneficiary becoming entitled to a trust asset	When the beneficiary becomes absolutely entitled	For a trustee: market value of the CGT asset at that time *less* its cost base For a beneficiary: that market value *less* the cost base of the beneficiary's capital interest	For a trustee: the reduced cost base of the CGT asset at that time *less* that market value For a beneficiary: the reduced cost base of the beneficiary's capital interest *less* that market value
E6 – Disposal to a beneficiary to end an income right	The time of the disposal	For a trustee: market value of the CGT asset at that time *less* its cost base For a beneficiary: that market value *less* the cost base of the beneficiary's right to income	For a trustee: the reduced cost base of the CGT asset at that time *less* that market value For a beneficiary: the reduced cost base of the beneficiary's right to income *less* that market value
E7 – Disposal to a beneficiary to end capital interest	The time of the disposal	For a trustee: market value of the CGT asset at that time *less* its cost base For a beneficiary: that market value *less* the cost base of the beneficiary's capital interest	For a trustee: the reduced cost base of the CGT asset at that time *less* that market value For a beneficiary: the reduced cost base of the beneficiary's capital interest *less* that market value
E8 – Disposal by a beneficiary of capital interest	When the disposal contract is entered into or, if none, when the beneficiary ceases to own the CGT asset	Capital proceeds *less* the appropriate proportion of the trust's net assets	The appropriate proportion of the trust's net assets *less* the capital proceeds
E9 – Creating a trust over future property	When the entity makes an agreement	Market value of the property (as if it existed when the agreement was made) *less*	The incidental costs in making the agreement *less* the market value of the property (as if it

		incidental costs in making the agreement	existed when the agreement was made)
E10 – Annual cost base reduction exceeds cost base of interest in attribution managed investment trust	When the reduction happens	Excess of cost base reduction over cost base	No capital loss

Leases (F)

CGT event	Time of event	Capital gain	Capital loss
F1 – Granting a lease	For granting a lease: when the entity enters into the lease contract or, if none, at the start of the lease For a lease renewal or extension: at the start of the renewal or extension	Capital proceeds *less* the expenditure on grant, renewal or extension	Expenditure on grant, renewal or extension *less* the capital proceeds
F2 – Granting a long-term lease	For granting a lease: when the lessor grants the lease For a lease renewal or extension: at the start of the renewal or extension	Capital proceeds from the grant, renewal or extension *less* the cost base of the leased property	Reduced cost base of the leased property *less* the capital proceeds from the grant, renewal or extension
F3 – Lessor pays lessee to get lease changed	When the lease term is varied or waived	No capital gain	Amount of expenditure to get lessee's agreement
F4 – Lessee receives payment for changing a lease	When the lease term is varied or waived	Capital proceeds *less* the cost base of lease	No capital loss
F5 – Lessor receives payment for changing a lease	When the lease term is varied or waived	Capital proceeds *less* expenditure in relation to variation or waiver	Expenditure in relation to variation or waiver *less* the capital proceeds

Shares (G)

CGT event	Time of event	Capital gain	Capital loss
G1 – Capital payment for shares	When the company pays a non-assessable amount	Payment *less* the cost base of shares	No capital loss
G3 – Liquidator or administrator declares shares or financial instruments worthless	When declaration was made	No capital gain	Reduced cost base of shares or financial instruments

Special capital receipts (H)

CGT event	Time of event	Capital gain	Capital loss
H1 – Forfeiture of a deposit	When the deposit is forfeited	Deposit *less* expenditure in connection with the prospective sale	Expenditure in connection with the prospective sale *less* deposit
H2 – Receipt for an event relating to a CGT asset	When the act, transaction or event occurred	Capital proceeds *less* the incidental costs	Incidental costs *less* the capital proceeds

Cessation of residency (I)

CGT event	Time of event	Capital gain	Capital loss
I1 – Individual or company stops being an Australian resident	When the individual or company stops being an Australian resident	For each CGT asset the individual or company owns, its market value *less* its cost base	For each CGT asset the individual or company owns, its reduced cost base *less* its market value
I2 – Trust stops being a resident trust	When the trust ceases to be a resident trust for CGT purposes	For each CGT asset the trustee owns, its market value *less* its cost base	For each CGT asset the trustee owns, its reduced cost base *less* its market value

Rollovers (J)

CGT event	Time of event	Capital gain	Capital loss
J1 – Company stops being a member of a wholly	When the company stops	Market value of the asset at the time of	Reduced cost base of the asset *less* that

owned group after a rollover	being a member of a wholly owned group after a rollover	the event *less* its cost base	market value
J2 – Change in relation to a replacement asset or improved asset after a rollover under Subdivision 152-E	When the change happens	The amount mentioned in subsection 104-185(5)	No capital loss
J4 – Trust failing to cease to exist after rollover under Subdivision 124-N	When the failure to cease to exist happens	For a company: market value of the asset at the time the company acquired it *less* its cost base at that time For a shareholder: market value of the share at the time the shareholder acquired it *less* its cost base at that time	For a company: reduced cost base of the asset at the time the company acquired it *less* its market value at that time For a shareholder: reduced cost base of the share at the time the shareholder acquired it *less* its market value at that time
J5 – Failure to acquire a replacement asset and to incur fourth element expenditure after a rollover under Subdivision 152E	At the end of the replacement asset period	The amount of the capital gain that you disregarded under Subdivision 152E	No capital loss
J6 – Cost of acquisition of replacement asset or amount of fourth element expenditure, or both, not sufficient to cover disregarded capital gain	At the end of the replacement asset period	The amount mentioned in subsection 104-198(3)	No capital loss

Other CGT events (K)

CGT event	Time of event	Capital gain	Capital loss
K1 – As the result of an incoming international transfer of a Kyoto unit or an Australian carbon credit unit from your foreign account or your nominee's foreign account, you start to hold the unit as a	When you start to hold the unit as a registered emissions unit	Market value of unit *less* its cost base	Reduced cost base of the unit *less* its market value

registered emissions unit			
K2 – Bankrupt pays an amount in relation to debt	When payment is made	No capital gain	That part of the payment that relates to the denied part of a net capital loss
K3 – Asset passing to a tax-advantaged entity	When an individual dies	Market value of the asset at death *less* its cost base	Reduced cost base of the asset *less* that market value
K4 – CGT asset starts being trading stock	When the asset starts being trading stock	Market value of asset *less* its cost base	Reduced cost base of the asset *less* that market value
K5 – Special capital loss from a collectable that has fallen in market value	When CGT event A1, C2 or E8 happens to shares in the company, or an interest in the trust, that owns the collectable	No capital gain	Market value of the shares or interest (as if the collectable had not fallen in market value) *less* the capital proceeds from CGT event A1, C2 or E8
K6 – Pre-CGT shares or trust interest	When another CGT event involving the shares or interest happens	Capital proceeds from the shares or trust interest that are attributable to post-CGT assets owned by the company or trust, *less* the assets' cost bases	No capital loss
K7 – Balancing adjustment occurs for a depreciating asset that you used for purposes other than taxable purposes	When the balancing adjustment event occurs	Termination value *less* cost times fraction	Cost *less* termination value times fraction
K8 – Direct value shifts affecting your equity or loan interests in a company or trust	The decrease time for the interests	Capital gain worked out under section 725-365	No capital loss
K9 – Entitlement to receive payment of a carried interest	When you become entitled to receive the payment	Capital proceeds from the entitlement	No capital loss
K10 – You make a forex realisation gain as a result of forex realisation event 2 and item 1 of the table in subsection	When the forex realisation event happens	Equal to the forex realisation gain	No capital loss

775-70(1) applies			
K11 – You make a forex realisation loss as a result of [forex realisation event 2](#) and item 1 of the table in subsection 775-75(1) applies	When the forex realisation event happens	No capital gain	Equal to the forex realisation loss
K12 – Foreign hybrid loss exposure adjustment	Just before the end of the income year	No capital gain	The amount stated in subsection 104-270(3)

Consolidations (L)

CGT event	Time of event	Capital gain	Capital loss
L1 – Reduction under section 705-57 in tax cost setting amount of assets of entity becoming subsidiary member of consolidated group or multiple entry consolidated group	Just after entity becomes subsidiary member	No capital gain	Amount of reduction
L2 – Amount remaining after step 3A (of the table in section 705-60) of joining 'allocable cost amount' is negative	Just after entity becomes subsidiary member	Amount remaining	No capital loss
L3 – Tax cost setting amounts for retained cost base assets exceed joining 'allocable cost amount'	Just after entity becomes subsidiary member	Amount of excess	No capital loss
L4 – No reset cost base assets against which to apply excess of net 'allocable cost amount' on joining	Just after entity becomes subsidiary member	No capital gain	Amount of excess
L5 – Amount remaining after step 4 (of the table in section 711-20) of leaving 'allocable cost amount' is negative	When entity ceases to be subsidiary member	Amount remaining	No capital loss
L6 – Error in calculation of tax cost setting amount for joining entity's assets	Start of the income year when the Commissioner becomes aware of the errors	The net overstated amount resulting from the errors, or a portion of that amount	The net understated amount resulting from the errors, or a portion of that amount
L8 – Reduction in tax cost setting amount for reset cost base assets on	Just after entity becomes a	No capital gain	Amount of reduction that

joining cannot be allocated	subsidiary member		cannot be allocated

Involuntary disposal of a CGT asset

- https://www.ato.gov.au/Individuals/Capital-gains-tax/CGT-events/Involuntary-disposal-of-a-CGT-asset/
- Last modified: 01 Jul 2022
- QC 66017

How to roll over or defer your CGT liability when your asset is lost, destroyed or compulsorily acquired.

On this page

Choosing to roll over your CGT liability

If your capital gains tax (CGT) asset is involuntarily disposed of (lost, destroyed or compulsorily acquired) and you receive compensation for it, you can roll over your CGT liability.

If you choose to roll over your CGT liability, you defer your liability to pay tax on any capital gain from the involuntary disposal of the asset.

You do not need make a choice in writing – it will be clear from the way you prepare your tax return.

If the involuntary disposal results in a capital loss, you can use it to reduce any capital gain made in the same or later income year.

There are no CGT obligations for assets acquired before 20 September 1985. If you acquired the original asset before this date, any replacement asset is generally exempt from CGT.

Events eligible for the rollover

The rollover is available if any of the following events occur:

- all or part of your CGT asset is lost or destroyed
- your CGT asset is compulsorily acquired by an Australian government agency

(Australian, state or territory) or by a non-government entity under a power given by an Australian or foreign law
- you dispose of your CGT asset to an entity (other than a foreign government agency) after a notice is served on you inviting you to negotiate a sale agreement. You must have been informed that if the negotiations are unsuccessful the asset will be compulsorily acquired
- you dispose of land to an entity (other than a foreign government agency) where
  - a mining lease was, or would have been, compulsorily granted over the land
  - the lease significantly affected, or would have affected, your use of the land
  - the entity to which you disposed of the land was, or would have been, the lessee
- a lease that had been granted to you by an Australian government agency under a Commonwealth, state or territory law expires and is not renewed.

The rollover is not available for the compulsory acquisition of minority interests in CGT assets. For example, the acquisition of shares in a company, under the *Corporations Act 2001* or similar foreign law, is excluded.

Main residence

A compulsory acquisition of part of your main residence may not qualify for the rollover. This is because you may not meet the requirement that you acquire a replacement asset that is used for the same or a similar purpose.

However, the main residence exemption may apply.

Depreciating assets

A rollover is not available for depreciating assets, which are exempt from CGT when used solely for taxable purposes. Depreciating assets include business equipment and fittings in a rental property.

The capital allowances provisions may allow for a balancing adjustment offset if the depreciating asset is:

- lost or destroyed
- compulsorily acquired
- compulsorily acquired by forced negotiation (other than by a foreign government agency).

With the capital allowances provision, you can offset the balancing adjustment amount against the cost of the replacement asset.

Vehicles

For rollover relief to apply, the replacement asset cannot be a car, motorcycle or similar vehicle.

Compensation

Eligibility when money is received

You can choose the rollover only if:

- you incur expenditure in acquiring another CGT asset that is used
    - in your business (or installed ready for use in the business for a reasonable period), if the original asset was a business asset
    - for a reasonable period for the same or a similar purpose as the original asset
- part of the original asset is lost or destroyed, and you incur expenditure of a capital nature in repairing or restoring it.

You must incur at least some of the expenditure:

- no earlier than one year before the CGT event occurs
- within one year of the end of the income year in which the CGT event occurs.

This period may be extended in special circumstances.

The replacement asset does not need to be identical to the one it is replacing for the rollover to apply. However, you must use the asset in the same business or for the same or similar purpose as the original asset.

Example: rollover applies

Trish owns a bakery. On 1 September 2021 part of her bakery was destroyed in an electrical fire.

Trish paid for repairing the bakery early in the following year and later received an insurance payout in compensation for her loss. Her expenditure would qualify for the rollover if it was incurred any time from 1 September 2019 to 30 June 2022.

Example: rollover does not apply

Denise is compensated when her manufacturing business premises are destroyed. With this money, she buys a rental property.

Denise cannot access the rollover because she does not use the rental property for the same or similar purpose as her old business premises.

Eligibility when a replacement asset is received

You can choose a rollover only if the:

- replacement asset is not a depreciating asset or held as trading stock when you acquire it
- market value of the replacement asset is more than the cost base of the original asset just before the event occurred.

Eligibility when both money and a replacement asset are received

You can choose to apply a rollover. However, the requirements and consequences are different for each part of the compensation.

Working out the timing of the CGT event

You need to know when the CGT event occurred to work out in which income year a capital gain or loss affects your income tax.

- If an asset is lost or destroyed and you receive compensation, the time of the CGT event is when you first received the compensation, such as when you received an insurance pay out.
- If you do not receive any compensation, the time of the CGT event is when the loss was discovered or the destruction occurred.
- If your asset was compulsorily acquired by an entity under an Australian or foreign law, the time of the CGT event is the earlier of when
  - you first received compensation from the entity
  - the entity occupied the asset (for example, land) or took possession of it.
- If an entity acquires your asset following negotiation (rather than compulsorily acquiring it), the time of the CGT event is either
  - the date of the contract to acquire it
  - the date of the change of ownership if there was no contract.
- If a lease that had been granted to you by an Australian government agency (Australian, state or territory) expires and is not renewed, the time of the CGT event is when the lease expired.

Applying the rollover

You may receive money or another CGT asset (or both) as compensation for the involuntary disposal of your CGT asset. The type of compensation you receive affects how you roll over your CGT liability.

Receiving money

Original asset acquired before 20 September 1985

If you acquired the original asset before 20 September 1985, you are taken to have acquired the repaired or replacement asset before that day if you either:

- repair or restore the original asset
- replace the original asset at either
  - a cost of no more than 120% of its market value at the time of the event
  - any cost, provided all or part of it was lost or destroyed by a natural disaster and the replacement asset is substantially the same.

If a CGT event later occurs to the repaired or replacement asset, you disregard any capital gain or capital loss you make.

Original asset acquired on or after 20 September 1985

The way the rollover applies depends on whether the money you received exceeds the cost of repairing or replacing the asset.

Money received exceeds the repair or replacement cost

If the money you received exceeds the cost you have incurred to repair or replace the original asset, you may have a CGT liability.

The capital gain you include on your tax return depends on whether your capital gain from the compensation is more or less than the amount by which the compensation exceeds the cost of repair or replacement.

When the capital gain is more than the excess

If the capital gain is more than the excess, you reduce the capital gain you report to the amount of the excess. Include this amount on your tax return in the year the event happens. This capital gain may be eligible for the CGT discount.

When a later CGT event happens, you reduce the amount of expenditure included in the cost base of the asset by the difference between the capital gain before it is reduced and the excess. This enables you to defer part of your CGT liability until a later CGT event happens.

When the capital gain is less than or equal to the excess

If the capital gain is less than or equal to the excess (the compensation amount less the cost of the repair or replacement), you do not reduce the capital gain, and the amount of the expenditure on the repair or replacement is included in the cost base.

Example: money received is more than the replacement expenditure

Gerard's business premises were destroyed by fire on 15 January 2022. He received $246,000 in compensation from his insurance company.

It cost him $240,000 to reconstruct the premises, and the cost base attributed to the building was $230,000.

Money received	$246,000
Cost base	$230,000
Capital gain	$16,000
Money received	$246,000

Replacement expenditure	$240,000
Excess	$6,000

The compensation money ($246,000) is $6,000 more than the replacement expenditure ($240,000). The capital gain ($16,000) is $10,000 more than the excess of $6,000. The capital gain is reduced to the excess amount of $6,000.

Gerard's capital gain (before applying the CGT discount of 50%) is $6,000. Therefore, assuming he has not made any other capital losses or capital gains in the 2021–22 income year (and does not have any unapplied net capital losses from earlier years), Gerard includes $3,000 ($6,000 × 50%) as his net capital gain for the 2021–22 income year.

Also, he reduces the expenditure he incurred on the replacement asset by the balance of the capital gain ($10,000) to $230,000. This means $10,000 of the capital gain is deferred. In effect, this reduces the cost base of the new asset.

Money received does not exceed the repair or replacement cost

You disregard any capital gain and reduce the replacement expenditure you include in the cost base of the asset under a later CGT event by the amount of the capital gain.

Example: money received is less than the replacement expenditure

Assume that, in the previous example, Gerard spent $257,000 for repairs, and the cost base for the building was $244,000.

Gerard made a capital gain of $2,000 because the cost base of the building was $244,000 at the time of the fire.

Money received	$246,000
Cost base	$244,000
Capital gain	$2,000

Money received	$246,000
Replacement expenditure	$257,000
Shortfall	$11,000

As the compensation money does not exceed the replacement expenditure, Gerard disregards the capital gain.

However, the amount of expenditure that Gerard can include in the cost base of the replacement building is reduced by the amount of the capital gain ($2,000) to $255,000.

Receiving a replacement asset

If you receive a replacement asset as compensation and you choose to apply a rollover, you disregard any capital gain you make from the original asset.

Original asset acquired before 20 September 1985

You can treat the replacement asset as if you acquired it before that date.

Original asset acquired on or after 20 September 1985

The first element of the cost base or reduced cost base of the replacement asset is taken to be the cost base or reduced cost base of the original asset at the time of the event.

However, you may have to recalculate the first element of the cost base of your replacement asset if:

- the cost base of the original asset included an amount of indexation, and
- you wish to apply the CGT discount to a capital gain from the replacement asset.

Example: asset received

The state government compulsorily acquired land that Jon had bought after 19 September 1985.

The cost base of the land at the time it was compulsorily acquired was $180,000. As compensation, Jon received another piece of land with a market value of $200,000.

Because the market value of the replacement land was greater than the cost base of the original land just before it was compulsorily acquired, Jon disregards the capital gain made on the disposal of the original land.

He is taken to have paid $180,000 to acquire the replacement land (the cost base of the original land at the time it was compulsorily acquired). This is the cost base of the replacement land in the event of a future CGT event.

Choosing the indexation or discount method

If a CGT event occurs to the replacement asset, you may be able to use the indexation method or the discount method to calculate your capital gain.

You can use either of these methods if the periods of ownership of the original asset and the replacement asset add up to at least 12 months.

To apply the indexation method, you must also have acquired the asset before 11:45am (ACT time) on 21 September 1999.

Receiving both money and an asset

You need to separately determine what happens to the replacement asset and the money. Consider the proportion of the original asset attributable to each type of compensation.

Example: money and an asset received as compensation

The state government compulsorily acquired land Kris bought in 2002. Its cost base at the time was $150,000, but Kris received compensation worth $160,000.

Half of the total compensation was money ($80,000) and half was replacement land (market value $80,000).

Therefore, the cost base of the original land attributable to each part of the compensation is $75,000 (50% × $150,000). Kris bought additional replacement land for $82,000.

The total capital gain is $10,000, which is capital proceeds of cash and property totalling $160,000, less the cost base of $150,000.

Half of this capital gain can be attributed to the money and half to the asset (the replacement land).

The money Kris received as compensation is less than the amount he paid to buy the additional land. He can, therefore, disregard the $5,000 of the capital gain that is attributable to the money compensation. He reduces the expenditure on the additional land by $5,000, so the first element of its cost base is only $77,000.

As the market value of the replacement land is more than that part of the cost base of the original land, Kris can choose to take rollover relief and disregard the capital gain of $5,000 relating to the land.

As a result, the value of the replacement land ($75,000) forms the first element of its cost base, not its market value ($80,000) when it was acquired.

Applying for an extension on a capital gain rollover

- https://www.ato.gov.au/Individuals/Capital-gains-tax/CGT-events/Applying-for-an-extension-on-a-capital-gain-rollover/
- Last modified: 01 Jul 2022
- QC 66018

Find out when and how you can choose to roll over a capital gain, and how to get an extension of time.

On this page

When and how you make a choice

The capital gains tax (CGT) rules allow you to roll over capital gains in some situations. For example, a business that replaces an asset with a similar asset can roll over the capital gain on the original asset.

As a rule, if you want to roll over a capital gain:

- you must make your choice by the date you lodge your tax return for the year in which the relevant CGT event happened
- the information you report in your tax return is sufficient evidence of your choice
- once you make a choice, it cannot be changed.

Applying for an extension of time

We may give you more time to make a choice if you lodged your tax return without being aware that:

- events had happened that required you to make a choice
- a choice was available
- a choice you made was not valid.

You can apply for an extension by completing a Private ruling application form

We will consider your request and tell you our decision. We consider whether:

- you have an acceptable explanation for not making the choice by the time it should have been made
- it would be fair and equitable in the circumstances to allow you more time to make a choice
- prejudice to the ATO might result from additional time being allowed to you (the absence of prejudice by itself is not enough to justify granting an extension)

- it would be fair to people in similar positions and the wider public interest
- any mischief is involved.

Businesses wishing to use the small business CGT concessions can also apply for an extension in situations where they need to take a certain action within a certain period of time.

For example, a business can apply for an extension if it needs to replace a rollover asset and has not acquired the asset in the time allowed.

CGT discount

- https://www.ato.gov.au/Individuals/Capital-gains-tax/CGT-discount/
- Last modified: 01 Jul 2022
- QC 66019

Find out if your asset is eligible for the 50% CGT discount.

On this page

How the CGT discount works

When you sell or otherwise dispose of an asset, you can reduce your capital gain by 50%, if both of the following apply:

- you owned the asset for at least 12 months
- you are an Australian resident for tax purposes.

This is called the capital gains tax (CGT) discount.

12-month ownership requirement

For an asset to qualify for the CGT discount you must own it for at least 12 months before the 'CGT event' happens. The CGT event is the point at which you make a capital gain or loss. You exclude the day of acquisition and the day of the CGT event when working out if you owned the CGT asset for at least 12 months before the 'CGT event' happens.

- If you sell the asset and there is no contract of sale, the CGT event happens at the time of sale.

- If there is a contract to sell the asset, the CGT event happens on the date of the contract, not when you settle. Property sales usually work this way.
- If the asset is lost or destroyed, the CGT event happens when:
  - you first receive an insurance payment or other compensation
  - if there is no insurance payment or compensation, when the loss occurred or was discovered.

You can count an asset's previous ownership towards your 12-month ownership period if you acquired it:

- through a deceased estate if the asset was acquired by the deceased on or after 20 September 1985
- through a relationship breakdown – you will satisfy the 12-month requirement if the combined period your spouse and you owned the asset was more than 12 months
- as a rollover replacement for an asset that was lost, destroyed or compulsorily acquired if the period of ownership of the original asset and the replacement asset was at least 12 months.

Exclusions from the CGT discount

You cannot use the CGT discount in the following circumstances.

Home first used for rental or business in last 12 months

If the asset is your home and you first started using it for rental or business less than 12 months before disposing of it, you can't use the CGT discount.

You use the indexation method instead

If you have owned the asset since before 21 September 1999, you can index the cost of the asset for inflation instead of using the CGT discount. But in most cases you will get a better result (a smaller capital gain) by using the discount.

Foreign or temporary residents

The full CGT discount cannot be used for capital gains made by foreign or temporary residents after 8 May 2012.

Creation of new asset

The CGT discount is not available for a CGT event that creates a new asset and a capital gain. This might happen, for example, with a restrictive covenant, where you receive payment for agreeing not to do something or granting a lease.

In these cases the asset has not been acquired at least 12 months before the CGT event.

Disposal of interest in a non-widely held entity

The CGT discount may be denied when you dispose of certain shares or trust interests in non-widely held companies and trusts. These are companies and trusts with fewer than 300 members.

Conversion of income asset

If an income asset is converted into a capital asset for the purposes of claiming the CGT discount, the discount may be denied (under Part IVA of the *Income Tax Assessment Act 1936*).

Trusts and companies

If an asset is owned for at least 12 months:

- Australian trusts can discount a capital gain by 50%
- complying super funds can discount a capital gain by 33.33%.

Companies cannot use the CGT discount.

How to use the CGT discount

Calculating your CGT explains how to use the CGT discount to reduce your tax. Briefly, this is how it works:

1. If you have any capital losses from other assets, you must subtract these from your capital gains before applying the discount.
2. If you are entitled to the discount for an asset, you reduce the remaining capital gain on that asset by 50% and report this amount in your income tax return. Complying super funds reduce their capital gain by 33.33%.

Extra discount for affordable rental housing

There is an additional CGT discount of up to 10% for individuals who are Australian residents for tax purposes who provide affordable rental housing to people earning low to moderate income.

This increases the CGT discount to up to 60% for owners of these residential rental properties.

Calculating your CGT

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Calculating-your-CGT/
- Last modified: 01 Jul 2022
- QC 66020

Use the calculator or steps to work out your CGT, including your capital proceeds and cost base.

On this page

- What you pay tax on
- How to calculate your CGT

What you pay tax on

If you sold assets during the year, such as property or shares, you need to work out your capital gain or loss for each asset.

When you sell an asset for:

- more than it cost you – you have a capital gain
- less than it cost you – you have a capital loss.

You pay tax on your net capital gains. This is:

1. your total capital gains
2. less any capital losses
3. less any discount you are entitled to on your gains.

There is a capital gains tax (CGT) discount of 50% for Australian individuals who own an asset for 12 months or more. This means you pay tax on only half the net capital gain on that asset.

Some assets are exempt from CGT, such as your home.

Example: CGT with discount

Justin, an Australian resident, buys a block of land. He owns it for 18 months and sells it, making a profit of $10,000. He has no capital losses.

Justin is entitled to the 50% CGT discount for the land. He will declare a capital gain of $5,000 in his tax return.

How to calculate your CGT

Work out your CGT using our online calculator and record keeping tool. You can also access the tool and save your data through your myGov account.

CGT calculator and record keeping tool

Calculate CGT yourself

Step 1: Work out what you received for the asset

- This is your capital proceeds. It is what you receive when you sell the asset or another CGT event happens to it – for example, if the asset is destroyed and you receive an insurance payout.
- If you give an asset away or sell it to a friend for less than it is worth, your capital proceeds are the market value of the asset.

Step 2: Work out your costs for the asset

- This is your cost base. It is what it cost you to acquire the asset, plus certain other costs you had to acquire, hold and dispose of the asset.
- If you made a loss on the asset, you work out the loss amount using the reduced cost base.
- If you made a gain on the asset and acquired it before 21 September 1999 you can index the costs for inflation up to that date instead of using the CGT discount to reduce your capital gain. This may give you a lower net capital gain in some circumstances, such as if you also have capital losses.

Step 3: Subtract the costs (2) from what you received (1). If the result is:

- more than zero, you have a capital gain for this asset
- less than zero, you have a capital loss for this asset (make sure you used the *reduced* cost base at step 2).

Step 4: Repeat steps 1–3 for each CGT event you have had this financial year

- for example, for each asset you have sold.

Step 5: Subtract your capital losses from your capital gains

- If you have no allowable capital losses, skip to step 7.
- If you have a net capital loss carried forward from previous years, subtract this first.
- You can choose which capital gains to subtract your losses from. If you have any capital gains that are not eligible for the CGT discount, subtract your losses from these gains first. This will give you the best result (the lowest CGT).

Step 6: If the remaining amount is:

- more than zero – go to step 7
- less than zero – this is your net capital loss. Go to step 8.

Step 7: Apply the CGT discount (50% for individuals and trusts) to any remaining capital gains that are eligible

- Generally, a capital gain is eligible for the discount if you are an Australian resident and you owned the asset for at least 12 months.
- If you owned an asset less than 12 months you cannot discount a capital gain on that asset.
- For complying super funds the discount is 33.33%. Companies cannot use the discount.
- If you acquired the asset before 21 September 1999 and chose to index its cost base at step 2, you cannot use the discount.

Step 8: Report your net capital gain or loss in your income tax return

- If you have a net capital gain you pay tax on the gain at your marginal income tax rate.
- If you have a net capital loss you cannot deduct it from your other income but you can carry it forward to reduce capital gains you make in future years.

Example: working out CGT for a single asset

Rhi buys an investment property for $500,000 and sells it 5 years later for $600,000.

She has no other capital gains or losses.

Using the steps above, Rhi works out her capital gain as follows.

1. The capital proceeds from the CGT event are $600,000.
2. The cost base is $530,000, made up of:
    - purchase costs of $500,000 + $15,000 stamp duty + $1,200 conveyancing fees
    - sale costs of $1,300 conveyancing fees + $12,500 agent's commission.

3. Rhi’s capital gain on the investment property is:
   $600,000 − $530,000 = $70,000
4. Rhi has no other capital gains or losses, so she skips to step 7.
5. This step is not applicable.
6. This step is not applicable.
7. Rhi can use the CGT discount to reduce her capital gain because she is an Australian resident and owned the asset for at least 12 months:
   $70,000 × 50% = $35,000
8. Rhi reports a net capital gain of $35,000 in her income tax return. She will pay tax on this gain at her marginal income tax rate.

The capital gain for the property happens on the date of the sale contract, not the date of settlement. For example, if contracts are exchanged on 4 June 2022 and settlement happens on 6 July 2022, Rhi must report her capital gain in her income tax return for the financial year ending 30 June 2022.

Example: working out CGT for multiple assets

Take the same facts as above, except that in addition to the investment property, Rhi also sells some shares in the same financial year.

- Rhi bought 1,000 shares at $10 each for a total of $10,000, including stamp duty and brokerage costs.
- Rhi sells the shares (at a loss) for $5,500. There are no brokerage costs on the sale of the shares.

Using the steps above, Rhi works out her net capital gain or loss as follows.

1. The capital proceeds from the sale of the shares are $5,500.
2. The reduced cost base is $10,000. This includes stamp duty and brokerage, which are costs Rhi had to acquire the asset.
3. Rhi's capital loss on the shares is:
   $5,500 − $10,000 = ($4,500)
4. Rhi also had a capital gain of $70,000 on her investment property (see previous example).
5. $70,000 (gains) − $4,500 (losses) = $65,500
6. Rhi has a capital gain so she continues to step 7.
7. Rhi can use the CGT discount to reduce the remaining capital gain on her investment property:
   $65,500 × 50% = $32,750
8. Rhi reports a net capital gain of $32,750 in her income tax return. She will pay tax on this gain at her marginal income tax rate.

Capital proceeds from disposing of assets

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Calculating-your-CGT/Capital-proceeds-from-disposing-of-assets/
- Last modified: 01 Jul 2022
- QC 66021

Money and other types of capital proceeds, market valuation of an asset, and reductions to your capital proceeds.

On this page

Types of capital proceeds

Capital proceeds are what you receive, or are entitled to receive, from a capital gains tax (CGT) event, such as selling an asset.

For most CGT events your capital proceeds will be money. They can also be the value of any property you receive or are entitled to receive.

If you receive:

- foreign currency – work out the capital proceeds by converting it to Australian currency at the time of the CGT event
- property (including shares) subject to a deed of escrow – your capital proceeds include the market value of the property at the time of the CGT event. (A deed of escrow imposes a restriction on dealing in that property.)

If you give away or sell an asset for less than it is worth, your capital proceeds equal the market value of the asset.

Market value substitution

If you receive nothing in exchange for a CGT asset, you are taken to have received the market value of the asset at the time of the CGT event.

This is the market value substitution rule for capital proceeds.

You may also be taken to have received the market value if both of the following apply:

- what you received was more or less than the market value of the CGT asset
- you and the new owner were not dealing with each other at arm's length.

You are dealing at 'arm's length' with someone when each party acts independently. This occurs when neither party exercises influence or control over the other in connection with the transaction.

The law looks at the relationship between the parties and the quality of the bargaining between them.

The market value substitution rule may apply when transferring property to family or friends.

Example: gifting an asset

Martha and Stephen bought a block of land in 2010.

In 2020, they completed a transfer form to have the block transferred to their son, Paul, as a gift.

As Martha and Stephen received nothing for it, they are taken to have received the market value of the land at the time it was transferred to Paul.

Reducing your capital proceeds

You reduce your capital proceeds from a CGT event if:

- you are not likely to receive some or all of the proceeds
- it is not due to anything you have done or failed to do
- you took all reasonable steps to get payment.

If you repay part of the proceeds and you are not entitled to a tax deduction for the repayment, your capital proceeds are reduced by the amount you repaid. The same applies to compensation you pay that can reasonably be regarded as a repayment of the proceeds.

If you are registered for GST, any GST payable on the amount you receive is not part of the capital proceeds.

Proceeds from a depreciating asset

CGT does not apply to depreciating assets you use solely for taxable purposes. This includes assets such as business equipment or items in a rental property. If you have used a depreciating asset for private purposes, CGT may apply.

There are special rules for calculating the proceeds from a depreciating asset.

If you sold assets during the year, such as property or shares, see Calculating your CGT to work out your capital gain or loss for each asset.

Cost base of assets

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Calculating-your-CGT/Cost-base-of-assets/
- Last modified: 01 Jul 2022
- QC 66022

Work out the cost base of an asset, including foreign currency and excluded amounts, and when not to use the cost base.

On this page

Work out the cost base for a capital gain

The cost base of a capital gains tax (CGT) asset is generally what it cost you to buy it, plus other costs you incur to hold and dispose of it.

Work out your cost base using our online calculator and record keeping tool. You can also access the tool and save your data through your myGov account.

CGT calculator and record keeping tool

To work out the cost base of a CGT asset yourself, add these 5 elements:

1. Money paid or property given for the CGT asset
2. Incidental costs of acquiring the CGT asset or that relate to the CGT event
3. Costs of owning the CGT asset
4. Capital costs to increase or preserve the value of your asset or to install or move it
5. Capital costs of preserving or defending your title or rights to your CGT asset

Generally you do not include any costs for which you can claim a tax deduction. For example, you do not include the cost of capital works for which you can claim a deduction.

First element: money paid or property given for the CGT asset

This is the money paid (or required to be paid) for the asset and the market value of property given (or required to be given) to acquire the asset.

Second element: incidental costs of acquiring the CGT asset or that relate to the CGT event

There are 10 incidental costs you may have incurred when you acquired the asset or when the CGT event (such as selling the asset) occurred.

They are:

- Remuneration for the services of a surveyor, valuer, auctioneer, accountant, broker, agent, consultant or legal adviser. You can include the cost of tax advice as an incidental cost if the advice was provided by a recognised tax adviser and you incurred it after 30 June 1989.
- Costs of transfer.
- Stamp duty or other similar duty.
- Costs of advertising or marketing (but not entertainment) to find a seller or buyer.
- Costs of making a valuation or apportionment to calculate your capital gain or loss.
- Search fees for an asset. This includes fees to check land titles but not travel costs to find an asset suitable for purchase.
- Cost of a conveyancing kit (or a similar cost).

- Borrowing expenses, such as loan application fees and mortgage discharge fees.
- Expenditure incurred as a direct result of your ownership of a CGT asset ending. This includes termination and exit fees.
- Expenditure by the head company of a consolidated group where the expenditure:
  - is to an entity that is not a member of the group
  - reasonably relates to a CGT asset held by the head company
  - is incurred because of a transaction between members of the group.

Third element: costs of owning the CGT asset

The costs of owning an asset include:

- rates
- land taxes
- repairs
- insurance premiums
- any non-deductible interest on loans used to finance
  - the acquisition of a CGT asset
  - capital expenditure to increase an asset’s value.

These expenses can be included in the cost base only if they are not deductible. This would happen if, for example, they were incurred for vacant land.

You cannot:

- include costs for which you can claim an income tax deduction
- include these costs in the cost base of collectables or personal use assets
- index these costs
- use these costs to work out a capital loss
- include these costs if you acquired the asset before 21 August 1991.

Fourth element: capital costs to increase or preserve the value of your asset or to install or move it

This is capital costs you incurred:

- for the purpose of increasing or preserving the asset’s value – for example, the costs of applying (successfully or unsuccessfully) for zoning changes
- to install or move an asset.

The fourth element does not include capital expenditure for goodwill. This may be deductible as a business-related cost.

Fifth element: capital costs of preserving or defending your title or rights to your CGT asset

This is your capital expenditure to preserve or defend your ownership of, or rights to, the asset – for example, if you paid a call on shares.

Work out the reduced cost base for a capital loss

The reduced cost base of a CGT asset has the same 5 elements as the cost base, except that the third element is different.

Use the Capital gains tax calculator

To work out the reduced cost base of a CGT asset yourself, add these 5 elements:

1. Money paid or property given for the CGT asset
2. Incidental costs of acquiring the CGT asset or that relate to the CGT event
3. Balancing adjustment amount for the asset. This is any amount that is assessable because of a balancing adjustment for the asset. It includes amounts that would be assessable if certain balancing adjustment relief were not available.
4. Capital costs to increase or preserve the value of your asset or to install or move it
5. Capital costs of preserving or defending your title or rights to your CGT asset.

You do not index these elements because you cannot use indexation for capital losses.

Generally you do not include any costs for which you can claim a tax deduction, such as the cost of capital works.

Foreign currency amounts

If the cost base or reduced cost base includes an amount paid in a foreign currency, you must convert it to Australian currency.

You use the exchange rate at the time of the relevant transaction or event – for example, when the money was paid for the asset.

Amounts not included

The following amounts are not included in the cost base or the reduced cost base.

Deductible costs

The cost base and reduced cost base do not include any costs you can claim as a tax deduction.

Example: effect of capital works deduction on reduced cost base

Danuta acquired a new income-producing asset on 28 September 2005 for $100,000.

She sold it for $90,000 in November 2017.

While she owned it she claimed capital works deductions of $7,500 for expenditure she incurred.

Her capital loss is worked out as follows:

Cost base	$100,000
less capital works deductions	$7,500
Reduced cost base	$92,500
less capital proceeds	$90,000
Capital loss	$2,500

In some cases, a deduction you have claimed on a CGT asset can be partly or wholly 'reversed'. This happens if the value of part or all of the deduction may be declared as income in the year the CGT event happens.

In this case, the cost base of the CGT asset is increased by the amount you have to include in your assessable income.

GST for registered businesses

If you are:

- registered for GST, you reduce each element by the amount of any GST net input tax credits included in the cost
- not registered for GST, you do not make any adjustment. The GST is included in the cost base.

Expenditure on heritage conservation, land care and water facilities

If you acquired a CGT asset after 13 May 1997, the cost base and reduced cost base do not include:

- heritage conservation expenditure
- land care and water facilities expenditure incurred after 12 November 1998 that gave rise to a tax offset.

Recouped expenditure

Recouped expenditure includes insurance payouts you receive or an amount paid for by someone else.

You do not include expenditure you subsequently recoup in the cost base and reduced cost of a CGT asset, except to the extent you include the recouped amount in your assessable income.

Example: recouped expenditure

John bought a building in 2000 for $200,000 and incurred $10,000 in legal costs associated with the purchase.

As part of the settlement, the vendor agreed to pay $4,000 of the legal costs. John did not claim any part of the $6,000 he paid in legal costs as a tax deduction.

John later sells the building. As he received reimbursement of $4,000 of the legal costs, he includes only the $6,000 he incurred in the cost base in working out his capital gain.

Expenditure not attributable to asset

If only part of your expenditure can be reasonably attributed to acquiring a CGT asset, only that part can be included in the asset's cost base or reduced cost base.

The same applies to other elements of the cost base and reduced cost base.

Similarly, if a CGT event happens to only part of a CGT asset, you apportion the cost base or reduced cost base of the asset to work out your capital gain or loss.

CGT events where cost base is not used

For some CGT events the cost base and reduced cost base are not relevant. For example, if you enter into an agreement not to work in a particular industry for a period of time, you calculate your capital gain or loss by comparing the capital proceeds with the incidental costs, which is only one element of the cost base.

For depreciating assets there are special rules for calculating capital gains – the cost base is not relevant.

Interaction with other rules

There are other CGT rules that may affect the cost base or reduced cost base of an asset. You should check these rules if:

- the asset is your home and you used your home to produce income
- the asset is a property and you have capital works expenses for which you can claim a deduction
- the asset is an inherited dwelling
- the asset is bonus shares, bonus units, rights and options to acquire shares or

units, or convertible notes
- the asset is a depreciating asset
- the CGT event happens under a demerger
- you are in a consolidated group
- you are affected by the general value shifting regime
- you have been freed from paying a debt
- you start or cease to have a financial arrangement as consideration for acquiring a CGT asset.

If you sold assets during the year, such as property or shares, see Calculating your CGT to work out your capital gain or loss for each asset.

Cost base adjustments for capital works

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Calculating-your-CGT/Cost-base-of-assets/Cost-base-adjustments-for-capital-works/
- Last modified: 01 Jul 2022
- QC 66023

Capital works expenses you can claim as deductions against income cannot be included in either:

- the cost base of an asset (including a structure or other capital improvement treated as a separate asset for capital gains tax purposes)
- the reduced cost base of an asset.

There are 2 exceptions to this rule:

- you acquired the asset before 7:30 pm (ACT time) on 13 May 1997 and incurred the capital works expense by 30 June 1999 – see the Guide to capital gains tax for more information about this situation
- you were unable to claim a deduction because you did not know the full amount or exact nature of the construction expense – you can include the expense in your cost base or reduced cost base.

Example: adjusting cost for capital works

Brett purchased a residential rental property on 1 July 2003 for $150,000.

- As part of the purchase he had non-deductible expenses of $20,000 for pest and building inspections, stamp duty and solicitor's fees.
- Over the next few years, Brett incurred deductible expenses of $33,000 for interest on money borrowed, council rates and deductible (non-capital) repairs.
- In 2021 Brett decided to sell the property. Prior to the sale he spent

$30,000 on major structural repairs to increase the value of the property. The repairs were completed on 1 October 2021.
- On 1 February 2022 he sold the property. The real estate agent's fees and solicitor's fees for the sale of the property totalled $12,500.

The purchasing expenses of $20,000 and sale expenses of $12,500 are capital costs and not deductible. These are added to the cost base of the property.

The deductible expenses of $33,000 are not added to the cost base because Brett is able to claim deductions for them.

Brett can claim a capital works deduction for the major structural repairs:

- at the depreciation rate for capital works of 2.5% per year (365 days)
- for the period between completing the capital works and selling the property (124 days).

Therefore, Brett's deduction for the major structural repairs is:

- $30,000 × 2.5% × 124 ÷ 365 = $255

When working out his cost base, Brett reduces the capital costs element by the amount that he was able to claim as a deduction:

Purchase price of property	$150,000
Purchase-related costs	$20,000
Capital costs (major structural repairs): $30,000 less capital works deduction ($255)	$29,745
Sale-related costs	$12,500
Cost base	$212,245

Indexing the cost base

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Calculating-your-CGT/Cost-base-of-assets/Indexing-the-cost-base/
- Last modified: 01 Jul 2022

- QC 66024

If you acquired an asset before 21 September 1999, you can index the asset's cost base for inflation up to that date instead of using the capital gains tax (CGT) discount.

On this page

How indexation works

The indexation method adjusts the amount of an asset's costs by the rate of inflation. The adjustment is based on the consumer price index (CPI).

The increased cost amounts will reduce your capital gain on the asset.

However, you:

- must have incurred the costs by 21 September 1999
- can index for inflation only up to 30 September 1999
- cannot index the third element of the cost base (costs of owning the asset).

When to use indexation

If your asset is eligible for indexation, it is probably also eligible for the 50% CGT discount for individuals.

You can use whichever of these methods gives you the best result (the lowest capital gain), but not both.

In most cases the discount will give you the best result. Indexation may give you a better result in some situations, such as if you also have capital losses. The Guide to capital gains tax has information on choosing the indexation or discount method.

Companies cannot use the CGT discount. They should use indexation for assets acquired before 21 September 1999.

If you have had a capital loss on an asset, you cannot use indexation.

How to apply indexation

You can use the CGT calculator to work out your capital gain. It will automatically apply the method (indexation or discount) that gives you the best result.

Use the Capital gains tax calculator

If you prefer to index your asset cost base yourself, follow these steps.

Step 1: Identify your eligible capital costs

- The costs must be incurred no later than 21 September 1999.
- Costs of owning the asset (the third element of the cost base) cannot be indexed.

Step 2: For each eligible cost, identify the CPI rate for the quarter in which the cost was incurred

- Use the CPI quarter-ending rates table to find the applicable rate.
- If there is a call on partly paid shares or units you acquired after 15 August 1989, you index the full cost of buying them from the date you made the later payment.

Step 3: Calculate the indexation factor for the cost

- Divide 68.7 (the CPI for 30 September 1999) by the CPI from step 2.
- Limit the indexation factor to 3 decimal places. If the fourth decimal figure is 5 or higher, round it up (for example, 1.4125 would become 1.413).

Step 4: Multiply the cost by the indexation factor

Step 5: Total your indexed eligible costs and any non-indexed capital costs

- This is your indexed cost base for the asset.

Step 6: Subtract the indexed cost base from your capital proceeds for the asset

- This is your capital gain for the asset.
- Remember, if you index the cost base you cannot apply the CGT discount.

Example – indexing the cost base

Val bought an investment property for $150,000 under a contract dated 24 June 1991. She paid:

- a deposit of $15,000 on 24 June 1991
- the balance of $135,000 on settlement on 5 August 1991
- stamp duty of $5,000 on 20 July 1991
- solicitor's fees of $2,000 on 5 August 1991 as part of settlement.

Val sold the property on 15 October 2016 (the day contracts were exchanged) for $600,000. She incurred costs of:

- $1,500 in solicitor's fees
- $15,000 in agent's commission.

Using the steps above, Val works out her cost base as follows.

1. The costs of buying the property are eligible for indexation. They were incurred prior to 21 September 1999.

2. The CPI rates for the quarters in which Val incurred her eligible costs are:
    - deposit and balance: CPI for June 1991 quarter = 59.0
    - stamp duty and solicitor's fees: CPI for September 1991 quarter = 59.3

   Although the balance was paid in the September quarter, it is indexed from the date of contract, which was in the June quarter.

3. The indexation factors are:
    - for the June 1991 quarter: 68.7 ÷ 59.0 = 1.164
    - for the September 1991 quarter: 68.7 ÷ 59.3 = 1.159

4. The indexed costs are:

   Deposit × indexation factor
   $15,000 × 1.164 = $17,460

   Balance × indexation factor
   $135,000 × 1.164 = $157,140

   Stamp duty × indexation factor
   $5,000 × 1.159 = $5,795

   Solicitors' fees for purchase of property × indexation factor
   $2,000 × 1.159 = $2,318

5. Val's total cost base is $199,213, made up of:
    - indexed costs $17,460 + $157,140 + $5,795 + $2,318 = $182,713
    - $1,500 solicitor's fees for sale of property (not eligible for indexation)
    - $15,000 agent's commission for sale of property (not eligible for indexation)

6. Using indexation, Val's capital gain for the asset is:

   Capital proceeds − cost base (indexed) = capital gain
   $600,000 − $199,213 = $400,787

Val is eligible to use the CGT discount instead of indexation. Unless she has significant capital losses to apply, she will get a better result by using the CGT discount to calculate CGT.

Next step

- Calculating your CGT

Using capital losses to reduce capital gains

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Calculating-your-CGT/Using-capital-losses-to-reduce-capital-gains/
- Last modified: 01 Jul 2022
- QC 66025

Find out when you can and can't use losses to reduce your capital gains, and how to carry forward a net capital loss.

On this page

When to use losses

You can deduct allowable capital losses from your capital gains to reduce your capital gains tax (CGT).

Capital losses must be used at the first opportunity.

If you have any capital losses in the current year, or unused capital losses from previous years, you must:

- use these losses to reduce any capital gains in the current year (but check the restrictions below)
- use the earliest losses first.

Carrying forward a net capital loss

If your allowable capital losses are greater than your capital gains, you have a net capital loss.

You cannot deduct a net capital loss from your income but you can carry it forward and deduct it from capital gains in later years.

There is no time limit on how long you can carry forward a net capital loss.

Non-allowable capital losses

You cannot deduct capital losses you make from:

- personal use assets, such as boats or furniture
- assets that are exempt from CGT, such as cars and motorcycles

- collectables below a certain value
- a lease (whether the result of expiry, forfeiture, surrender or assignment) – except if its main purpose is producing income, such as for a commercial rental property or a car
- paying personal services income to yourself through an entity you have set up.

Losses from collectables

Capital losses from collectables can only be deducted from capital gains made from collectables. They cannot be deducted from gains made from other assets.

If you do not have a capital gain from another collectable, you can carry forward the capital loss to deduct it against a gain from a collectable in a future year.

A collectable is not subject to CGT if you acquired it for $500 or less (or acquired an interest in it when it had a market value of $500 or less). This means you ignore a capital gain or loss from the collectable.

Company losses

A company can deduct previous net capital losses from capital gains in the current year as long as it is either:

- substantially under the same ownership and control
- still in the same line of business.

Trust losses

Capital losses made by a trust cannot be distributed to the trust's beneficiaries. The trust can carry forward its losses and deduct them from capital gains in future years.

Exempt entity losses

Losses made by an entity that is exempt from income tax are disregarded.

Next step

- Calculating your CGT

Property and capital gains tax

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Property-and-capital-gains-tax/
- Last modified: 01 Jul 2022
- QC 66026

How CGT affects real estate, including rental properties, land, improvements and your home.

[Keeping records for property]
Which records to keep for your property so you can work out CGT when you sell it.

[Your main residence (home)]
Find out if your home is exempt from CGT, and what happens if you rent it out.

[Granny flat arrangements and CGT]
Find out if your granny flat arrangement is exempt from CGT.

[CGT when selling your rental property]
How CGT applies to your rental property and what expenses you can include in your costs.

[CGT discount for affordable housing]
How to get an extra 10% CGT discount by providing affordable rental housing.

[Transferring property to family or friends]
Check if you need to work out CGT using the market value of your property.

[Subdividing and combining land]
How to work out CGT when you sell land that you subdivided or amalgamated.

[Property improvements and additions]
Use the cost thresholds to check if your capital improvements are subject to CGT.

[Calculating your CGT]
Use the calculator or steps to work out your CGT, including your capital proceeds and cost base.

[Clearance certificates and withholding from property sales]
How to get a clearance certificate or withhold on properties sold for $750,000 or more.

Keeping records for property

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Property-and-capital-gains-tax/Keeping-records-for-property/
- Last modified: 01 Jul 2022
- QC 66027

Which records to keep for your property so you can work out CGT when you sell it.

On this page

- Property records you should keep
- Main residence
- Inherited dwellings
- Records held by former spouse

Property records you should keep

For your property, you should keep records of:

- your acquisition of the property and related expenses, such as
  - purchase contract
  - stamp duty
  - legal fees
  - settlement statement
  - survey and valuation fees

- your disposal of the property and related expenses, such as
  - the sale contract
  - sale settlement statement
  - legal fees
  - sales commission

- your costs of owning the property, including
  - interest
  - rates
  - land taxes
  - insurance premiums
  - the cost of repairs

- capital expenditure on improvements, such as
  - extensions or additions.

The records for buying, owning and selling the property need to be kept for at least 5 years after you dispose of the property.

If you acquired your property before 20 September 1985, it is exempt from capital gains tax (CGT). You do not need to keep records for CGT purposes unless you later add a capital improvement.

However, you still need to keep records of any property income, such as rent, for income tax purposes.

Main residence

Your main residence (home) is generally exempt from CGT. However, you should keep all records in case circumstances change and it is no longer exempt from CGT.

For example, if you start renting out part of your home, you will need records.

Using your main residence to produce income

If you rent out part of your home or run a business from home, it may be subject to CGT.

Keep records of:

- expenses during the time you produced income
- the proportion of the property used to produce income.

If you first use your home to produce income after 20 August 1996, you need a record of your home's market value at the time you first used it to produce income.

It is best to get a market valuation of your home at the time. However, you can arrange a valuation later if necessary.

Inherited dwellings

If you inherit a dwelling that was the main residence of the person who left it to you, any capital gain when you later dispose of it may be exempt from CGT. The exemption depends on a number of things, such as when you inherit the property and how long you own it before disposing of it.

Until you are sure of the circumstances, you should keep records of:

- relevant costs incurred by you, the previous owner and the trustee or executor
- the market value of the dwelling at the time the deceased died.

If the executor or trustee has a record of a market valuation, get a copy of the valuation report.

Records held by former spouse

If a property transfers to you because of a relationship breakdown, get copies of the property records that show:

- how and when your former spouse acquired the property
- the property's cost base when they transferred it to you.

If the property was your former spouse's main residence, get copies of records that show:

- the extent to which they used it to produce income during their ownership period
- the number of days it was their main residence during their ownership period.

You'll need these records to show how much of your spouse's ownership period is eligible for the main residence exemption.

If you do not have these records, you may be liable for CGT for periods when the property would have qualified for the exemption.

Your main residence (home)

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Property-and-capital-gains-tax/Your-main-residence-(home)/
- Last modified: 01 Jul 2022
- QC 66028

Find out if your home is exempt from CGT, and what happens if you rent it out.

Eligibility for main residence exemption
Check if you qualify for the main residence exemption and whether your home is considered a dwelling.

Moving to a new main residence
Find out when the exemption starts for your new home and ends for your old home.

Treating former home as main residence
How to continue the exemption if you move out, and use the 6-year rule if you rent out your former home.

Living separately to your spouse or children
How to use the main residence exemption if you live in a different home to your spouse or children.

Using your home for rental or business
Find out how your main residence exemption will be affected if you earn income from your home.

Building or renovating your home
How to get the main residence exemption for your land while your build your future home.

Destruction of your home
Check if your insurance payment or land is exempt from CGT.

Compulsory acquisition of your home
Find out if the payment you receive for compulsory acquisition of your home is exempt from CGT.

Home on more than 2 hectares
Choose which part of your property is exempt from CGT if it is larger than 2 hectares.

Main residence exemption for foreign residents
Check if you satisfy the life events test to qualify for the main residence exemption.

Moving to a new main residence

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Property-and-capital-gains-tax/Your-main-residence-(home)/Moving-to-a-new-main-residence/
- Last modified: 01 Jul 2022
- QC 66029

Find out when the exemption starts for your new home and ends for your old home.

On this page

Moving in

Your main residence is generally exempt from capital gains tax (CGT).

For CGT purposes, your home qualifies for the main residence exemption from the time you acquire it, provided you move in as soon as practicable.

If you buy your home, the 'time you acquire it' is the settlement date of the contract.

If:

- there is a delay moving in because of illness or other unforeseen circumstances – your home is still exempt, provided you move in as soon as the cause of the delay is removed (for example, when you recover from the illness)
- you cannot move in because the property is being rented to someone – the property does not become your main residence until you move in
- you have not yet sold your old home – you can treat both homes as your main residence for up to 6 months.

Example: moving in as soon as practicable

Li Jing signed a contract to buy a townhouse in March. She took possession when settlement occurred in April.

In late March, Li Jing's employer sent her overseas on an assignment for 4 months. She moved into the townhouse when she returned in late July.

Li Jing's overseas assignment was unforeseen at the time she bought the townhouse. She moved in as soon as practicable after settlement of the contract. Therefore, she can treat the townhouse as her main residence from the date she acquired it.

If Li Jing treats the townhouse as her main residence for this period, she cannot treat any other property as her main residence (except for a limited time if she is moving house).

Moving to another main residence

If you acquire a new home before you dispose of your old one, you can treat both as your main residence for up to 6 months.

You can do this if all of the following are true:

- you lived in your old home as your main residence for a continuous period of at least 3 months in the 12 months before you disposed of it
- you did not use your old home to produce income (such as rent) in any part of that 12 months when it was not your main residence
- the new property becomes your main residence.

Example: full exemption for both homes

Jill and Norman bought their new home under a contract that settled in January and they moved in immediately.

They sold their old home under a contract that settled in April.

Both the old and new homes are treated as their main residence for the period January to April, even though they did not live in the old home during that period.

Exceeding the 6-month limit

If it takes longer than 6 months to dispose of your old home, the main residence exemption applies to both homes only for the last 6 months before you dispose of your old home.

For the period before this, when you owned both homes, you can choose which home to treat as your main residence. The other will be subject to CGT for that period.

Example: partial main residence exemption for one home

Jeneen and John bought their old home under a contract that settled on 1 January 1999 and moved in immediately. It was their main residence until they bought another home, under a contract that settled on 1 January 2021.

They retained their old home after moving into the new one. They did not use the old home to produce income.

They sold the old home under a contract that settled on 1 October 2021. Jeneen and John owned this home for a total of 8,310days.

Both homes are treated as their main residence for the period 1 April 2021 to 1 October 2021, the last 6 months that Jeneen and John owned their old home. One of the homes will not get the main residence exemption for 91 days from 1 January 2021 to 31 March 2021.

Jeneen and John have 2 options:

- They can claim the main residence exemption for their new home from the time they first move in. The capital gain on their old home is then partially assessable for CGT. The assessable proportion is 91 ÷ 8,310, which is the number of days the old home was not their main residence divided by the total days they owned the old home.
- They can treat their old home as their main residence for the period 1 January 2021 to 31 March 2021, even though they have moved out. This means it is fully exempt. If they later sell their new home, it will be assessable for CGT for the 91-day period.

You can choose to continue treating your former home as your main residence after you move out. If you do this, you cannot treat your new home as your main residence (except for up to 6 months while you are moving house).

Treating former home as main residence

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Property-and-capital-gains-tax/Your-main-residence-(home)/Treating-former-home-as-main-residence/
- Last modified: 22 Aug 2022
- QC 66030

How the CGT main residence exemption works if you move out and use the 6-year rule when renting out your former home.

On this page

How it works

Your main residence (your home) is generally exempt from CGT.

Usually, a property stops being your main residence when you stop living in it. However, for CGT purposes you can continue treating a property as your main residence:

- for up to 6 years if it's used to produce income, such as rent (sometimes called the '6-year rule')
- indefinitely if it is not used to produce income.

During the time that you treat the property as your main residence after you stop living in it:

- It continues to be exempt from CGT (the same as if you were still living in it, even if you start renting it out after you leave).
- You can't treat any other property as your main residence (except for up to 6 months if you are moving house).

Eligibility

The property must have:

- been your main residence first – you can't apply the main residence exemption to a period before a property first becomes your main residence (for example, if you rented out your home before you lived in it, the main residence exemption doesn't apply to the period you rented out your home)
- stopped being your actual main residence – that is, you stopped living in it.

If the property was continuously your main residence, the usual rules for the main residence exemption apply. This means if you use it to produce income, such as rent, you will be entitled to only a partial main residence exemption from CGT.

If you are a foreign resident when a CGT event happens to your residential property in Australia (for example, you sell it), you aren't entitled to claim the main residence exemption. See Main residence exemption for foreign residents.

When and how to make the choice

You choose to treat a property as your main residence in the income year a CGT event happens to the property when preparing your tax return – for example, the year you sell it based on the contract sale date, not the settlement date.

You may own both the property:

- you choose to treat as your main residence when you no longer live in it
- you actually lived in.

In this case, you make the choice in the income year you first sell one of those properties.

To see how to complete myTax when you've sold a rental property, watch our video How to complete myTax when you've sold a rental property.

Former home not used for income

If you don't use your former home to produce income (for example, you leave it vacant or use it as a holiday house) you can treat it as your main residence for an unlimited period after you stop living in it. This only applies if you aren't treating another property at the same time as your main residence.

Example: former home not used to produce income

Bill bought a unit and lived in it for 3 years. He then moved out to live with a friend while his son occupied the unit rent free.

Bill didn't treat any other property as his main residence.

Twelve years later, he sold the unit and claimed the main residence exemption from CGT.

Former home used for income

If you use your former home to produce income (for example, you rent it out or make it available for rent), you can choose to treat it as your main residence for up to 6 years after you stop living in it. This is sometimes called the '6-year rule'.

You can choose when to stop the period covered by your choice. For example, if you rented it out for 5 years, you can choose to treat the property as your main residence for 3 years.

If you're absent more than once when owning the property, the 6-year period applies to each period of absence. A period of absence stops when you either stop renting your home and:

- move back in
- leave it vacant.

Watch: Selling a rental property that was your home

Media: Selling a rental property that was your home
http://tv.ato.gov.au/ato-tv/media?v=bd1bdiubfs6pgq (Duration: 03:17)

Example: ending the period covered by the choice early

James:

- bought a house in Brisbane on 15 September 2012 and moved in immediately
- moved to Perth on 10 October 2014 and rented out his Brisbane house
- bought and moved into a new house in Perth on 3 October 2019
- sold the house in Brisbane on 1 March 2022.

When he completed his 2021–22 tax return, James decided to treat the Brisbane house as his main residence for the period after he moved out in October 2014 until he purchased his new main residence in Perth in October 2019. This is a period of less than 6 years. This means James is entitled to claim a partial main residence exemption under the '6-year rule'.

As James decided not to treat the Brisbane house as his main residence after he bought the Perth house, he is subject to CGT for that period. This means James must include a capital gain or loss in the period not covered by the main residence exemption in his 2022 tax return (from October 2019 until March 2022).

Example: dwelling used to produce income for up to 6 years

Lisa:

- bought and moved into a house in 2002
- stopped living in the house in 2012
- sold the house in 2022.

While she lived in the house, she didn't use it to produce income.

During the 10-year period after she moved out, Lisa:

- rented the house out for 3 years
- left it vacant for 2 years
- rented it out again for 3 years
- left it vacant again for 2 years.

The total period Lisa used the house to produce income was 6 years, which meets the 6-year limit for treating it as her main residence. It doesn't matter if the 6 years is broken. While the house is vacant, the period is unlimited because the house is not being used to produce income.

Lisa can choose to treat the house as her main residence for the entire 10-year period after she stopped living in it and disregard her capital gain or loss on the sale of the house.

Lisa must include the CGT event in her tax return in the year of the contract sale date, even if she chooses to treat the house as her main residence for the period she stopped living in it. Lisa can claim the 'Main residence exemption' in her tax return.

Example: dwelling used to produce income during multiple absences

Jez bought and moved into a house in 2003:

- In 2012, he had to move for work, so he stopped living in the house and rented it out for the next 5 years.
- In 2017 he moved back into the house and treated it as his main residence for 2 years.
- In 2019 he again moved and rented the house out, this time for 3 years.
- In 2022 he sold the house.

While Jez lived in the house, he did not use it to produce income.

The 6-year limit applies separately to each period of absence immediately following a period Jez lived in the property. This means Jez can choose to treat the house as his main residence for both rental periods and disregard his capital gain or loss on the sale of the house.

Jez must include the CGT event in his tax return in the year of the contract sale date and claim the 'Main residence exemption' in his tax return.

What happens if the 6-year limit is exceeded

If you use your former home to produce income for more than 6 years in one absence, it is subject to CGT for the period after the 6-year limit.

To work out your CGT when you dispose of your home:

- you need to work out your cost base, which is the market value of your home at the time you first used it to produce income, plus any allowable costs since then (this is the home first used to produce income rule)
- your capital gain or loss is based on the portion of time after first using your home to produce income; that is, over the 6-year limit.

Example: former home used to produce income for more than 6 years

Roya bought an apartment for $180,000. She immediately started living in the apartment as her main residence:

- On 29 September 1996, Roya moved interstate and rented out the apartment and at that time the market value of the apartment was $220,000.
- During her time interstate she didn't acquire another property.
- In July 2021, she returned to her home state and continued to rent out the apartment.
- She sold the apartment for $555,000 under a contract that settled on 29 September 2021.
- She incurred $15,000 in agent’s and solicitor’s fees when she sold.
- She had no other capital gains or losses.

As Roya rented out the apartment, she can treat it as her main residence during her absence for a maximum of 6 years. This is the period 29 September 1996 to 29 September 2002.

Roya must treat the apartment as though she acquired it:

- on the date she first used it produce income (29 September 1996)
- at the market value at that time ($220,000).

Roya works out her CGT as follows:

- Capital proceeds − cost base = capital gain
  $555,000 − ($220,000 + $15,000) = $320,000
- Non-main residence days (days over 6-year limit)
  30 September 2002 to 29 September 2021= 6,940 days
- Ownership period days (from deemed acquisition date)
  29 September 1996 to 29 September 2021= 9,132 days
- Assessable capital gain
  $320,000 × (6,940 days ÷ 9,132 days) = $243,188

She is eligible to use the 50% CGT discount to reduce her capital gain:

- $243,188 × 50% = $121,594

Roya is not entitled to a full main residence exemption. She must also report a net capital gain of $121,594 on her 2022 tax return for the period the main residence exemption wasn't applied.

Former home used for income before you move out

If you use any part of your home to produce income before you stop living in it, you can't apply the continuing main residence exemption to that part.

This means you can't get the main residence exemption for that part of your home either before or after you stop living in it.

Example: home used for income before ceasing to live in it

Helen bought a house in 2005 and moved in immediately:

- She used 75% of the house as her main residence and the remaining 25% as a doctor's surgery.
- In 2016, she moved out and rented out the house.
- She sold the house in 2022, making a capital gain of $400,000.

Helen chooses to treat the house as her main residence for the 6 years it was rented out.

As 25% of the house was used to produce income during the period before Helen stopped living in it, the same proportion of the capital gain is assessable:

$400,000 × 25% = $100,000

When does a property stop being your main residence?

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Property-and-capital-gains-tax/Your-main-residence-(home)/Treating-former-home-as-main-residence/When-does-a-property-stop-being-your-main-residence-/
- Last modified: 01 Jul 2022
- QC 66031

A property usually stops being your main residence when you stop living in it.

However, you can choose to continue treating your former home as your main residence for capital gains tax purposes even if you no longer live in it.

There are a number of factors that indicate whether a property is no longer your main residence:

- you and your family no longer live in it
- your personal belongings are not kept in it
- it is no longer the address your mail is delivered to
- it is no longer your address on the electoral roll
- services such as gas and power are no longer connected.

The weight given to each of these factors depends on individual circumstances. The length of time you are absent from the property, and any intention you have to re-occupy it, may also be relevant.

Example: property stops being main residence during work posting

Duc has lived in his house with his family for 5 years. It has been his main residence for the whole period he has owned it.

Duc accepts a 2-year posting overseas for work. During this period:

- Duc's family will travel and live with him overseas
- Duc cancels his utility connections and places all of his personal belongings in storage
- he has his mail redirected to his overseas address and updates his address on the electoral roll.

The house stops being Duc's main residence for the period of his absence.

Depending on his other circumstances, he may choose to continue to treat the house as his main residence while he is away.

Example: property stops being main residence during extended travel

Eric and Lorraine have owned their family home for 10 years.

They have both retired and for the past few years have travelled the country for 3 to 4 months of each year in their caravan.

When they travel, Eric and Lorraine:

- take some personal items with them and leave the rest in storage at their home
- divert their mail to their daughter, who looks after anything urgent
- notify their utility providers and government agencies of their travel plans and provide an email address for anything that needs their immediate attention
- turn off the mains gas and water to their house but do not disconnect their utilities accounts
- leave their mains electricity switched on as they have solar panels, which generate a feed-in credit for them while they are away.

Eric and Lorraine are away from their home for a significant part of the year. While they are away, they make the caravan their home.

The house stops being Eric and Lorraine's main residence for the period of their absence.

Depending on their other circumstances, they may choose to continue to treat the house as their main residence while they are absent.

Example: property does not stop being main residence during holiday

Rajini bought a unit in which she has lived for 2 years. It has been her main residence for the whole period she has owned it.

Rajini goes on holiday to Bali for 2 weeks each year over the summer.

Rajini leaves some of her more personal possessions, such as her jewellery and laptop, with her parents while she is away.

The unit does not stop being Rajini's main residence while she is on holiday.

Living separately to your spouse or children

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Property-and-capital-gains-tax/Your-main-residence-(home)/Living-separately-to-your-spouse-or-children/
- Last modified: 01 Jul 2022
- QC 66032

How to use the main residence exemption if you live in a different home to your spouse or children.

On this page

Having a different home from your dependent child

If you and a dependent child under 18 years of age have different homes for a period, for capital gains tax (CGT) purposes you must choose one of the homes as the main residence for both of you for the period.

Having a different home from your spouse

If you and your spouse have different homes for a period, for CGT purposes you and your spouse must either:

- choose one of the homes as the main residence for both of you for the period
- each nominate one of the different homes as your main residence for the period.

If you nominate different homes for the period and you own 50% or less of the home you have nominated, you qualify for an exemption for your share. If you own more than 50%, your share is exempt for half the period you and your spouse have different homes. The same rule applies to your spouse.

This rule applies to each main residence the spouses nominate, whether they have sole ownership or own the home jointly (either as joint tenants or tenants in common).

Example: spouses with different main residences

On 1 July 1998 Kathy and her spouse Grahame settled the purchase of a townhouse and moved in together. Grahame owned 70% of the townhouse and Kathy owned the other 30%.

On 1 August 2000 they settled the purchase of a beach house, which they owned in equal shares.

From 1 May 2001:

- Kathy lived in their beach house and nominated it as her main residence.
- Grahame kept living in the townhouse and nominated it as his main residence.

On 15 April 2022 Kathy and Grahame sold both the townhouse and beach house.

Beach house

As the beach house was Kathy's main residence and she owned 50% of it, she disregards her share of any capital gain or loss for the period she and Grahame had different homes (1 May 2001 to 15 April 2021).

As Grahame did not live in the beach house or nominate it as his main residence when he and Kathy had different homes, he includes his share of any capital gain or loss for any of the period he owned it.

Townhouse

The total capital gain on the sale of the townhouse was $100,000.

Grahame's share of the capital gain is $70,000 (reflecting his 70% ownership interest). Because Grahame owned more than 50% of the townhouse, it is taken to have been his main residence for half of the period when he and Kathy had different homes. He is entitled to the main residence exemption for the entire period that he and Kathy lived together in the townhouse.

The amount of the gain that Grahame disregards under the main residence exemption is:

- share of capital gain
- multiplied by: days spouses have one main residence
- divided by: total days property owned
- equals: gain disregarded for period that spouses have one main residence

That is:

$70,000 × (1,036 days ÷ 8,689 days) = $8,346

plus

- share of capital gain
- multiplied by: 50%
- multiplied by: days spouses have separate main residences
- divided by: total days property owned
- equals: gain disregarded for period that spouses have separate main residences

That is:

$70,000 × 50% × (7,655 days ÷ 8,689 days) = $30,835

The total amount disregarded by Grahame is:

$8,346 + $30,835 = $39,181

Grahame's capital gain on the townhouse is therefore:

$70,000 − $39,181 = $30,819

Kathy's share of the $100,000 capital gain on the townhouse is $30,000, reflecting her 30% ownership interest. She is entitled to the main residence exemption for the period that she and Grahame lived together in the townhouse. The amount she disregards is:

- share of capital gain
- multiplied by: days spouses have one main residence
- divided by: total days property owned
- equals: gain disregarded for period that spouses have one main residence

That is:

$30,000 × (1,036 days ÷ 8,689 days) = $3,577

Kathy's capital gain on the townhouse is therefore:

$30,000 − $3,577 = $26,423

CGT discount

Kathy and Grahame can use the CGT discount to reduce their respective capital gains (after applying any capital losses) because they owned the townhouse and beach house for at least 12 months and are Australian residents. (For the townhouse, which was bought before 21 September 1999, they have the option of indexing the cost base instead of using the discount.)

This rule also applies if you choose to treat a property as your main residence after you move out, and this choice results in you having a different main residence from your spouse or a dependent child for a period.

Example: different main residences and continuing main residence

On 5 February 1999 Anna and her spouse Mark bought a townhouse and moved in together. Anna owned more than 50% of the townhouse.

Before moving into the townhouse Anna had lived alone in her own flat. After moving into the townhouse she rented out her flat.

On 11 March 2000 Anna sold her flat. She chose to treat the flat as her main residence from 5 February 1999 until she sold it, under the 'continuing main residence status after moving out' rule.

On 29 April 2022 Anna and Mark sold their townhouse.

Because of Anna's choice, Mark had a different main residence from Anna for the period 5 February 1999 to 11 March 2000. Therefore, Mark must either:

- treat Anna's flat as his main residence for that period, or
- nominate the townhouse as his main residence for that period.

If he chooses to treat Anna's flat as his main residence, a part of any capital gain Mark makes when he sells the townhouse will be taxable. He will not get an exemption for the townhouse for the period that he nominated Anna's flat as his main residence (that is, 5 February 1999 to 11 March 2000).

If Mark nominates the townhouse as his main residence, he qualifies for a full exemption on any capital gain he makes when it is sold because he owns 50% or less of it. However, because Mark and Anna had different main residences as a result of Mark's choice, and Anna owned more than 50% of the flat, her gain on the flat will only qualify for a 50% exemption for the period from 5 February 1999 to 11 March 2000.

Anna's capital gain on the townhouse for the period 5 February 1999 to 11 March 2000 is taxable.

Definition of spouse

Your spouse is another person who is:

- legally married to you
- in a relationship with you, and the relationship is registered under a prescribed state or territory law, or
- not legally married to you but lives with you on a genuine domestic basis in a relationship as a couple.

Using your home for rental or business

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Property-and-capital-gains-tax/Your-main-residence-(home)/Using-your-home-for-rental-or-business/
- Last modified: 01 Jul 2022
- QC 66033

Find out how your main residence exemption will be affected if you earn income from your home.

On this page

How it works

If you rent out part of your home or run a business from home, you do not get the full main residence exemption from capital gains tax (CGT).

When you sell your home, the part you used for rental or to run a business is subject to CGT.

You can usually claim income tax deductions for that part of your home because it has been used to produce assessable income.

To work out your assessable capital gain or loss, you take into account:

- the proportion of the floor area that was set aside for rental or to run a business
- the period you used it for this purpose
- the capital gain or loss on your home since you first started using it for rental or business, assuming this was after 20 August 1996. If it was before this, you use the gain or loss since you acquired your home.

It is a good idea to get your home valued when you first start using it for rental or business. You'll need to know this value later when you sell it.

If you move out of your home and rent it out, you can continue treating your former home as your main residence for up to 6years. However, you can’t claim a main residence exemption for any other property for the same period

Check whether CGT applies – the interest deductibility test

If you use part of your home for rent or business you would be allowed a tax deduction for part of any home loan interest.

Your home is subject to CGT to the same extent. This is called the interest deductibility test.

It does not matter whether you actually had a home loan or whether you actually claimed the deduction. You apply the test as if you did.

Renting out part of your home

If you rented out half your home for a period you would be entitled to claim a deduction for half of any home loan interest for that period. Therefore half of the capital gain or loss for the period would be assessable.

Running a business from home

You are running a business from home if it is your principal place of business and you have a space set aside just for this purpose. Merely working from home occasionally does not qualify.

You would be entitled to deduct part of any home loan interest if:

- part of your home is set aside exclusively as a place of business and is clearly identifiable as such
- that part of the home is not readily adaptable for private use – for example, a doctor's surgery located in a doctor's home.

You would not be entitled to deduct interest expenses if, for example:

- you use a home study to do work usually done at your place of work

- you do paid child-minding at home (unless a special part of the home was set aside exclusively for that purpose).

If you are not entitled to deduct interest expenses you are eligible for the full main residence exemption.

Claiming deductions and the CGT exemption

If you would be allowed a deduction for home loan interest for part of your home:

- you cannot get a CGT exemption for that part of the property by not claiming the deduction
- you cannot include the interest in the cost base of the property if you are entitled to a deduction but do not claim it.

You can still get a full main residence exemption if someone else (who does not own a share in the property) uses part of your home to produce income and you receive no income from that person.

Work out the assessable part of your capital gain or loss

You can use the CGT property exemption tool to calculate the proportion of your home that is subject to CGT.

Alternatively, you can work out the assessable part of your capital gain or loss as follows:

Step 1: Work out the capital gain or loss on your home based on its value when you first used it to produce income.

- There are exceptions if you first used your home to produce income before 21 August 1996 or inherited your home. See Value of home when first used to produce income

Step 2: Determine the proportion of your home's floor area that you set aside to produce income.

Step 3: Multiply steps 1 × 2. If you:

- used your home to produce income right up to when you sold it, this is your assessable capital gain or loss – you do not need to continue
- stopped using your home to produce income before you sold it – continue to step 4.

Step 4: Determine the number of days you used your home to produce income.

Step 5: Determine the number of days from when you first used your home to produce income until you sold it.

Step 6: Your assessable capital gain is step 3 × (step 4 ÷ step 5).

Example: part of home used for income throughout ownership period

Thomas bought a house on 1 July 2000 for $300,000. He sold it on 30 June 2022 for $700,000. The house was his main residence for the entire time.

Throughout the period Thomas owned the house a tenant rented one bedroom, which represented 20% of the house. Both Thomas and the tenant used the living room, bathroom, laundry and kitchen, which represented 30% of the house. Only Thomas used the remainder of the house. Therefore, Thomas would be entitled to a 35% deduction (20% + (30% ÷ 2 people) for home loan interest (if he incurred it).

Using the steps above, Thomas works out his assessable capital gain as follows.

1. Thomas used his home to produce income from the time he acquired it. Therefore he uses its initial value to work out his capital gain: $700,000 − $300,000 = $400,000.
2. The proportion of the floor area set aside for rental is 35%.
3. Thomas' assessable capital gain is $400,000 × 35% = $140,000. As he used his home for income right up to when he sold it, he does not need to apportion the time it was used to produce income.

As Thomas owned his house for at least 12 months he can use the CGT discount (50% for individuals) to reduce his capital gain. Therefore, Thomas's assessable capital gain would be $70,000.

Example: part of home used for income for part of ownership period

Fatima bought a house in December 1995 for $200,000. It was her main residence.

- On 1 November 2015 she started to use 40% of the house for a consultancy business. At that time the market value of the house was $520,000.
- On 1 August 2019 she shifted her consultancy practice to separate business premises and once again used her home solely for private purposes.
- On 1 May 2022 she sold her house for $620,000.

Using the steps above, Fatima works out her assessable capital gain as follows.

1. Her capital gain based on the value of her home when she first used it to produce income is $620,000 − $520,000 = $100,000.

2. The proportion of her home's floor area set aside for business was 40%.
3. $100,000 × 40% = $40,000. As Fatima stopped using her home for business before she sold it, she continues to step 4.
4. Fatima used her home to produce income from 1 November 2015 to 1 August 2019, a total of 1,370 days.
5. The period from when she first used her home to produce income until she sold it is 2,374 days.
6. Fatima's assessable capital gain is $40,000 × 1,370 ÷ 2,374 = $23,083.

For CGT purposes, Fatima is taken to have acquired the house on 1 November 2015. This is more than 12 months before she sold it, so she can use the CGT discount (50% for individuals) to reduce her capital gain. Therefore, Fatima's assessable capital gain would be $11,542.

Value of home when first used to produce income

If you use your home to produce income you are generally taken to have acquired it at the time you first used it for this purpose.

This means when you sell your home, you work out the capital gain or loss using its market value at the time you first used it to produce income.

It is called the 'home first used to produce income rule'.

If you sell your home within 12 months of when you first use it to produce income you cannot use the CGT discount.

Exclusions

If you:

- use your home to produce income from the time you acquire it, the rule does not affect you – for example, see Rental property becomes your main residence
- inherit a dwelling that was the deceased’s main residence – the rule does not apply if you sell the dwelling within 2 years
- choose to continue treating a property as your main residence after you move out – if the property is fully exempt, the rule does not apply.

Example – 'Home first used to produce income rule' does not apply

Peter bought a house on 1 October 2010 for $550,000. He rented it out until 30 June 2013.

Peter moved into the house on 1 July 2013 and lived in it for the entire period until it was sold on 30 March 2022 for $780,000.

The ‘home first used to produce income rule’ does not apply as the house was rented from the time Peter acquired it. This means that Peter is not required to use the market value of the house at the time it was first used to produce income.

Peter will work out the capital gain based on the cost base of $550,000. Peter is entitled to the main residence exemption from 1 July 2013 to 30 March 2022 (3195 days).

The assessable part of Peter’s capital gain will be calculated as follows:

1. Capital gain for the entire period is $780,000 − $550,000 = $230,000
2. Peter’s home was rented out for 1004 days (1 October 2010 to 30 June 2013)
3. Peter’s total period of ownership was 4199 days.
4. Capital gain for the period that was rented out is $230,000 × (1004 ÷ 4199) = $54,994

Peter is entitled to the CGT discount of 50% which will reduce his capital gain. This means Peter’s assessable capital gain would be $27,497.

When the rule applies

Apart from the exclusions above, the rule applies if all of the following are true:

- you acquired the property on or after 20 September 1985
- you first used the property to produce income after 20 August 1996
- when you sell the property (or another CGT event happens to it), you would get only a partial CGT exemption because you used it to produce income during the period you owned it
- you would have been entitled to a full exemption if the sale or other CGT event happened to the property immediately before you first used it to produce income.

Example: home becomes a rental property

Erin bought a house in July 2010 for $450,000.

- The house was her main residence until she moved into a new house on 1 August 2021.
- On 2 August 2021 she began renting out the old house.
- At that time, the market value of the old house was $650,000.

Erin did not want to treat the old house as her main residence under the ‘continuing main residence status after moving out’ option as she wanted the new house to be treated as her main residence from the date she moved into it.

In June 2022 Erin sold the old house for $696,000. Erin is taken to have acquired the old house for $650,000 on 2 August 2021 and calculates her capital gain to be $46,000.

Because Erin is taken to have acquired the old house on 2 August 2021, she is taken to have owned it for less than 12 months and therefore cannot use the CGT discount to reduce her capital gain.

Watch: Selling a rental property that was your home

Media: Selling a rental property that was your home
http://tv.ato.gov.au/ato-tv/media?v=bd1bdiubfs6pgq (Duration: 3:17)

Rental property becomes your main residence

If your rental property becomes your main residence, your eligibility for a main residence exemption is limited to the period you lived in the property. For the period the property was rented out, you will be liable for CGT when you sell the property.

Use the following formula to work out your CGT when you sell your property:

- Capital gain or loss × (number of days the property was used to produce income ÷ total number of days you owned the property)

The total number of days you owned the property is calculated using the contract purchase and sale dates, not settlement dates.

You can also use the Capital gains tax property exemption tool to work out what percentage of your capital gain is exempt from capital gains tax (CGT).

Example: Rental property becomes your home

Farnaz entered into a contract to purchase a property on 21 October 2016 for $449,000. She immediately rented out the property.

The property was rented for 2 years, until Farnaz moved into the property on 16 November 2018. Farnaz lived in the property as her main residence until she signed a contract to sell her home on 1 April 2022 for $987,500.

Farnaz works out her net capital gain as follows:

1. Capital gain is $538,500 (worked out as $987,500 − $449,000)
2. Number of days owned is 1,988
3. Number of days the property was used to produce income is 756
4. Assessable capital gain is $538,500 × (756- ÷ 1,988) = $204,782
5. Net capital gain after applying the 50% CGT discount for owning the property for over 12 months is $102,391 (worked out as

$204,782 × 50%)

Farnaz includes a net capital gain of $102,391 in her 2022 tax return.

Small business CGT concessions

If you are not entitled to a full main residence exemption because you use your home for business purposes, you may be able to apply the small business CGT concessions to reduce your capital gain.

The concessions are not available if the main use of the premises is to earn rental income.

Building or renovating your home

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Property-and-capital-gains-tax/Your-main-residence-(home)/Building-or-renovating-your-home/
- Last modified: 01 Jul 2022
- QC 66034

How to get the main residence exemption for your land while your build your future home.

On this page

Eligibility for exemption before you move in

If you build a dwelling on land you already own, the land normally is not exempt from capital gains tax (CGT) until the dwelling becomes your main residence.

However, you can treat the land as your main residence for up to 4 years before you move in if you:

- have an ownership interest (other than a life interest) in the land
- build, repair or renovate a dwelling on the land, or finish a partly constructed dwelling
- move into the dwelling as soon as practicable after it is finished and continue to use it as your main residence for at least 3 months.

The same option is available if you build a new dwelling to replace a dwelling that was demolished or destroyed. You can treat the vacant land as your main residence for up to 4 years while building your new home.

How to apply the exemption

If you choose to treat land as your main residence until your home is finished:

- the land is exempt from the time you acquire it or for up to 4 years before you move in, whichever is shorter
- if you or anyone else occupies a dwelling that is already on the land, the exemption period does not start until that dwelling is vacated
- you cannot treat any other dwelling as your main residence for the same period (except for a limited time if you are moving from one main residence to another)
- you cannot choose to have a shorter period of exemption for the new dwelling in order to exempt your old home for part of the construction period.

Example: treating land as main residence

Ahmed built a new dwelling on a vacant block of land he bought, and moved from his old home into the new one. His key dates are:

- 3 November 1994 – bought old home
- 3 September 2007 – bought land for new dwelling
- 2 September 2021 – finished building new dwelling
- 1 October 2021 – sold old home
- 7 October 2021 – moved into new dwelling (this was as soon as practicable after completion).

Ahmed can treat the new dwelling as his main residence from 7 October 2017. This is the 4 years immediately before the new dwelling actually becomes his main residence.

If he chooses to do this, Ahmed's old home is exempt:

- from 3 November 1994 (when he acquired it) until 6 October 2017 (just before he began treating the dwelling under construction as his main residence)
- for the 6 months before he disposed of it – that is, from 1 April 2021 to 1 October 2021 – because during this period he can treat both dwellings as his main residence under the rules for moving from one main residence to another.

If the owner dies during construction

The exemption can still apply if the owner of the dwelling under construction were to die at any time between:

- entering into contracts for the construction work

- the end of the first 3 months of residence in the new home.

The surviving joint owner (or if none, the trustee of the deceased estate) can choose to treat the land and dwelling as the deceased's main residence. The conditions are the same, except that the exemption period ends when the deceased died.

Destruction of your home

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Property-and-capital-gains-tax/Your-main-residence-(home)/Destruction-of-your-home/
- Last modified: 01 Jul 2022
- QC 66035

If your home is destroyed accidentally (such as through a natural disaster), you can apply the main residence exemption to any money you receive as a result.

This means if your home was fully exempt before it was destroyed, then:

- if you sell your vacant land, it is exempt from capital gains tax (CGT)
- any insurance payment or other compensation is exempt from CGT.

If your home was only partially exempt before it was destroyed, CGT will apply to the part that was not exempt. For example, CGT will apply if:

- you used part of your home for rental or business
- your home was on more than 2 hectares of land

If you move to a new home before you sell the vacant land of your former home, you can treat both as your main residence for up to 6 months.

If you build a new home on your land, you can treat the land as your main residence for up to 4 years before you move in. During this period you cannot claim the main residence exemption for any other dwelling.

We can help you deal with a disaster – for example, by helping you reconstruct your tax records or allowing early access to refunds.

Compulsory acquisition of your home

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Property-and-capital-gains-tax/Your-main-residence-(home)/Compulsory-acquisition-of-your-home/

- Last modified: 01 Jul 2022
- QC 66036

Find out if the payment you receive for compulsory acquisition of your home is exempt from CGT.

On this page

How CGT applies when your home is compulsorily acquired

If all or part of your home is compulsorily acquired, you can apply the main residence exemption to any money or other compensation you receive.

If your home is compulsorily acquired and you are entitled to the full main residence exemption, you ignore any capital gain or loss.

You are also covered by the main residence exemption if only part of your property is compulsorily acquired, such as:

- land adjacent to your home
- a structure associated with your home, such as a garage.

You can apply the main residence exemption to a maximum of 2 hectares of your property during your ownership.

To be exempt the land must be used for private purposes.

If the land you use for private purposes is larger than 2 hectares, you can nominate which part the exemption will apply to. However the 2-hectare total must always include the land underneath your dwelling.

This limit may be reached in stages through multiple capital gains tax (CGT) events.

You also ignore a capital gain or loss from the compulsory acquisition of land adjacent to an inherited dwelling.

Example: compulsory acquisition and main residence exemption

Rene and Vidia live in a house on a 10-hectare block. It is their main residence. The land underneath the house is 0.03 hectares of the block.

The Department of Roads compulsorily acquired a 1.2-hectare strip of their land.

Rene and Vidia chose to treat the 1.2-hectare strip as part of their main residence. The money they received from the acquisition was therefore exempt from CGT.

A few years later, Rene and Vidia had a second compulsory acquisition. The Water Company purchased one hectare of their remaining land.

This time the couple could not claim a full exemption from CGT.

Their home still qualified as their main residence, but the main residence exemption is limited to 2 hectares during their ownership.

As they had previously used the exemption for 1.2 hectares, and their house occupies 0.03 hectares, the maximum they can claim for the second acquisition is:

2 hectares − 1.2 hectares − 0.03 hectares = 0.77 hectares

Since 0.77 hectares is 77% of the one hectare that was compulsorily acquired, Rene and Vidia could only treat this percentage of the proceeds as exempt from CGT.

What is compulsory acquisition?

Compulsory acquisition is when a government agency takes possession of all or part of your property.

It may also be done by an entity acting on behalf of government.

Records you need to keep

You must keep records when you claim the main residence exemption from CGT.

We sometimes request evidence (for a review or audit) to support your income tax self-assessment.

The records you may be asked to provide include, but are not limited to:

- proof of the compulsory acquisition arrangement
- evidence of how your property qualifies as a main residence
- calculations of your capital gain or loss
- site plans or other documents showing that the total compulsorily acquired land during your ownership is 2 hectares or less.

Home on more than 2 hectares

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Property-and-capital-gains-tax/Your-main-residence-(home)/Home-on-more-than-2-hectares/
- Last modified: 01 Jul 2022
- QC 66037

Choose which part of your property is exempt from CGT if it is larger than 2 hectares.

On this page

- Which part of your land is exempt
- Selling land separately from dwelling

Which part of your land is exempt

When selling your home you can claim the main residence exemption from capital gains tax (CGT) for up to 2 hectares of the land your home is on.

If your land is used for private purposes and is greater than 2 hectares, you can choose which 2 hectares are exempt. The rest is subject to CGT.

If any part of the land is used to produce income it is not exempt. This is the case even if the total land area is less than 2 hectares.

The 2 hectares you choose must include the land that is under your dwelling.

Example: land used for private purposes

Mohammed bought a house with 15 hectares of land. He used 10 hectares for apple farming and 5 hectares for private purposes. Mohammed can get the main residence exemption for:

- the house
- 2 hectares of land he selects out of the 5 hectares that he uses for private purposes. The land he selects must include the land under the house.

After 9 years, Mohammed decided to sell. He had his house valued. The valuation stated that the house and the 2 hectares of land he had selected were worth two-thirds of the total value of the property.

Mohammed can claim the main residence exemption for two-thirds of the capital gain on the sale of the property.

Selling land separately from dwelling

If you sell land separately from your dwelling it is subject to CGT unless either:

- your dwelling has been accidentally destroyed and you sell the vacant land

- vacant land adjacent to your dwelling is compulsorily acquired

If the dwelling is not sold with the land – for example, because the dwelling is a caravan and has been removed or sold separately – the sale of the land is subject to CGT.

Eligibility for main residence exemption

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Property-and-capital-gains-tax/Your-main-residence-(home)/Eligibility-for-main-residence-exemption/
- Last modified: 01 Jul 2022
- QC 69710

Check if you qualify for the main residence exemption and whether your home is considered a dwelling.

On this page

Eligibility conditions

Your main residence (your home) is exempt from CGT if you are an Australian resident and the dwelling:

- has been the home of you, your partner and other dependants for the whole period you have owned it
- has not been used to produce income – that is, you have not run a business from it, rented it out or 'flipped' it (bought it to renovate and sell at a profit)
- is on land of 2 hectares or less.

If you meet these conditions, you do not pay tax on any capital gain when you sell your home and you ignore any capital loss.

If you do not meet all these conditions, you may still be entitled to a partial exemption. You can work out the proportion that is exempt using the CGT property exemption tool.

CGT property exemption tool

What is a main residence?

Generally, a dwelling is considered to be your main residence if:

- you and your family live in it
- your personal belongings are in it
- it is the address your mail is delivered to
- it is your address on the electoral roll
- services such as gas and power are connected.

The length of time you stay in the dwelling and whether you intend to occupy it as your home may also be relevant.

To be your main residence, your property must have a dwelling on it and you must have lived in it. You are not entitled to the exemption for a vacant block.

What is a dwelling?

A dwelling is anything used wholly or mainly for residential accommodation, such as:

- a house or cottage
- an apartment or flat
- a strata title unit
- a unit in a retirement village
- a caravan, houseboat or other mobile home.

A flat or home unit often includes areas that are physically separate, such as a laundry, storeroom or garage. They are exempt from CGT on the same basis as the flat or unit. However, if you dispose of one of these structures separately from the flat or home unit (for example, you sell the garage), they are not exempt from CGT unless they were compulsorily acquired.

Foreign residents

If you were not a resident of Australia for tax purposes while you were living in the property, you are unlikely to satisfy the requirements for the main residence exemption.

If you are a foreign resident when a CGT event happens to your residential property in Australia (for example, you sell it), you may not be entitled to claim the main residence exemption.

Granny flat arrangements and CGT

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Property-and-capital-

gains-tax/Granny-flat-arrangements-and-CGT/
- Last modified: 01 Jul 2022
- QC 66038

Find out if your granny flat arrangement is exempt from CGT.

On this page

CGT exemption for granny flat arrangements

A granny flat arrangement is a written agreement that gives an eligible person the right to occupy a property for life.

From 1 July 2021, capital gains tax (CGT) does not apply when a granny flat arrangement is created, varied or terminated.

When the CGT exemption applies

A granny flat arrangement is exempt from CGT if:

- the owner or owners of the property are individuals
- one or more eligible individuals have an eligible granny flat interest in the property
- the owners and the individuals with the granny flat interest enter into a written and binding granny flat arrangement. This arrangement must not be commercial in nature.

The exemption only applies to creating, changing or terminating a granny flat arrangement.

Other CGT events that are not related to a granny flat arrangement, or sit outside the arrangement, are subject to normal CGT rules and may be liable to CGT. For example, the sale of a property that was used in a granny flat arrangement, which has since terminated, is subject to the normal CGT rules.

Example: eligibility of events for the CGT exemption

Garry is eligible for a granny flat interest and enters into a granny flat arrangement with his daughter Sandra.

Under the arrangement, Sandra agrees to build an attached flat on her property for Garry to live in.

Garry agrees to pay $500,000 to Sandra to finance the build. Garry obtains the money from selling shares in his investment portfolio.

For Sandra:

- Ordinarily an arrangement like this may trigger CGT because it is the creation of a contractual or other right (CGT event D1).
- However, under the CGT exemption, the CGT event will not happen. Sandra will have no CGT liability from the creation of the right.

For Garry:

- The sale of his shares is not exempt from CGT under these provisions.
- Although the proceeds from the sale are used to finance the building of the attached flat, the sale is not sufficiently related to the creation of the granny flat interest.

Granny flat interest

An individual has an eligible granny flat interest if they have a right to occupy a property for life under a granny flat arrangement.

A granny flat interest can be held in any type of property, provided it is a dwelling. This includes the owner's main residence or a separate property. It is not restricted to what is commonly referred to as a 'granny flat'.

The interest may be in part or all of the property.

For more information on granny flat interest, visit the Services Australia website.

Granny flat arrangement

To be exempt from CGT, a granny flat arrangement must:

- be in writing
- indicate an intention that the parties are legally bound
- not be commercial in nature

It should include:

- the parties involved in the arrangement, including the individual(s) with an ownership interest in the property
- the circumstances in which the arrangement can be varied or terminated
- what happens when the arrangement is varied or terminated

A granny flat arrangement can be entered into with any party, including family or friends.

Varying or terminating an arrangement

A granny flat arrangement might need to be varied when something happens that was not included in the original arrangement.

The parties involved in the original arrangement can vary the existing arrangement, adding in new terms and conditions.

They can also terminate the existing arrangement and create a new one.

The following examples explain the tax consequences of the granny flat rules. For information on the social security consequences, visit the Services Australia website.

Example: creating and varying a granny flat arrangement

Jim and Joan are of pension age. They live in a home on a large block, which they are struggling to maintain.

They decide to sell their home and buy a 6-bedroom home in their son, Isaac's, name. The home can accommodate themselves and Isaac's family.

Jim and Joan:

- sell their old home for $800,000. The sale is exempt from CGT under the main residence exemption
- buy a new home for $600,000
- transfer the additional $200,000 to Isaac
- create a written granny flat arrangement with Isaac.

All the requirements of a granny flat arrangement have been met. Therefore, Isaac will have no CGT consequences for granting the granny flat interest to Jim and Joan.

Some years later, Isaac and his spouse separate. Isaac sells the 6-bedroom family home and buys another home not too far away.

- Isaac is entitled to the main residence exemption on the 6-bedroom home, so there is no CGT when he sells it.
- Jim, Joan and Isaac move into the new family home and vary their written granny flat arrangement so that it covers the new home.
- As Jim and Joan are still eligible to enter a granny flat arrangement, there are no CGT consequences for Isaac when the arrangement is varied.

Eligible individuals

For a granny flat arrangement to be exempt from CGT, the individual with the granny flat interest must either:

- have reached pension age
- require assistance for day-to-day activities because of a disability.

Individual with a disability

Eligibility to hold a granny flat interest is based on the disability at the time of entering into or varying the granny flat arrangement.

A individual with a disability is eligible to hold a granny flat interest if they:

- need assistance to carry out most day-to-day activities because of their disability
- are likely to continue needing assistance because of their disability for at least 12 months after the arrangement or variation is made.

Generally, an individual who is eligible for the disability support pension would meet this requirement.

However, the individual does not need to be eligible for the disability support pension to meet this requirement.

The individual does not meet the eligibility requirements if they only need assistance due to injuries they expect to recover from within 12 months.

Types of arrangements

A granny flat arrangement typically happens between an older individual and their adult child. However, the parties in a granny flat arrangement do not need to be related.

A formal arrangement makes it easier for the older individual to establish, assert and enforce rights. These rights are agreed upon by all parties involved in the arrangement, including the owner of the property.

The arrangement:

- reduces the risk of financial abuse or exploitation of older individuals
- provides benefits to the older individual, like housing, care and support
- can also benefit the adult child with managing property and funds.

Example: creating, varying or terminating a granny flat arrangement

Sophia and Mateo are of pension age. They:

- sell their home for $500,000
- transfer these funds to their daughter, Ava, in return for a right to accommodation for life in a unit owned by Ava.

To secure their interest, Sophia and Mateo create a granny flat arrangement with Ava.

Under the terms of the arrangement, an amount will only be repaid in specific circumstances:

- Sophia or Mateo need to vacate the property due to ill-health

- Sophia or Mateo need to vacate the property due to a breakdown in their relationship with Ava
- Ava sells the property
- any of the parties die.

If Sophia or Mateo had to vacate the property, their $500,000 would be repaid to them.

Sophia and Mateo are entitled to disregard any capital gain or capital loss on the sale of their home as it was their main residence.

All the requirements of a granny flat arrangement have been met. Therefore, Ava will be exempt from any CGT that would have applied when she granted the right to accommodation for life.

If the arrangement is varied or terminated, and the amount is returned, there will be no CGT consequences.

If Ava sells her unit, any proceeds from the sale will be subject to the normal CGT rules. If Ava never lived in the unit she will not be entitled to the main residence exemption.

Arrangements involving the main residence

A individual's main residence (their home) is generally exempt from CGT.

The creation, variation or termination of a granny flat arrangement does not affect the main residence exemption. This is because the granny flat arrangement is a right to occupy the property, not a right to the property itself.

Example: mother transfers home ownership to daughter

Mary is 70 years old. She lives in her own house, which is currently valued at $400,000.

Her daughter, Isabella, lives with friends in a different house.

To secure her house for her daughter’s inheritance, Mary:

- transfers the ownership of her house to Isabella
- creates a granny flat arrangement with Isabella under which Mary retains a right to accommodation for life.

After taking ownership of the property, Isabella moves in and lives with her mother.

When Mary transfers her home to Isabella there is a CGT event. However, Mary is entitled to the main residence exemption on the transfer of her home, so there is no CGT liability.

The requirements of a granny flat arrangement have been met. Therefore, Isabella will have no CGT liability for granting her mother a right to accommodation for life.

As Isabella moves into the home once she owns it, she will be entitled to the main residence exemption from CGT if she later sells it.

Commercial arrangements

If the granny flat arrangement is commercial in nature, it is not exempt from CGT.

The most obvious commercial arrangement is where the holder of a granny flat interest is required to make payments (such as rent) at a market rate.

However, if the individual with a granny flat interest only contributes towards ongoing household costs (such as electricity and water), the arrangement is unlikely to be considered commercial. This is because the arrangement is a reimbursement of actual costs.

Example: arrangement not commercial in nature

Yu Yan and Wang Shu have both reached pension age. They:

- sell their home for $400,000
- pay $152,000 to construct a granny flat on their son Fei Hong's property
- only pay for the construction of the granny flat and do not transfer any additional assets.

Yu Yan and Wang Shu agreed to pay Fei Hong $150 per week to cover electricity, gas and water rate costs.

As the payments are a reimbursement to Fei Hong for the household costs associated with the granny flat, the arrangement is not commercial in nature.

CGT when selling your rental property

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Property-and-capital-gains-tax/CGT-when-selling-your-rental-property/
- Last modified: 20 Dec 2022

- QC 66039

How CGT applies to your rental property and what expenses you can include in your costs.

On this page

How capital gains or losses apply

When you sell or dispose of a rental property you may make a capital gain or loss.

A capital gain or loss is the difference between what it cost you to obtain and improve the property (the cost base) and the amount you receive when you dispose of it.

If you make a:

- net capital gain in an income year, you'll generally be liable for capital gains tax (CGT)
- net capital loss, you can carry it forward and deduct it from your capital gains in later years.

Use our calculator or steps to calculate your CGT.

To see how to enter your capital gains or losses when completing your tax return in myTax, watch our video on how to complete myTax when you have sold a rental property .

You may be entitled to a part or full main residence exemption if you:

- lived in the property before renting it out (see Treating former home as main residence)
- rented out part of your home.

If you are a co-owner of the property, you'll make a capital gain or loss in accordance with your ownership interest in the property.

The application of a capital gain or loss depends on when you acquired the property:

- If you acquired the property before 20 September 1985 then it will only apply to certain capital improvements made after that date.
- If you acquired the property after 20 September 1985, then it will apply to the entire property.

Watch: Selling your rental property

Media: Selling your rental property
http://tv.ato.gov.au/ato-tv/media?v=bd1bdiubfs6pgx (Duration: 2:46)

Watch: Selling a rental property that was your home

Media: Selling a rental property that was your home
http://tv.ato.gov.au/ato-tv/media?v=bd1bdiubfs6pgq (Duration: 3:17)

Working out your costs

The cost base and reduced cost base of a property include the amount you paid for it together with some incidental costs associated with acquiring, holding and disposing of it (such as legal fees, stamp duty and real estate agent's commissions).

It does not include amounts that you have claimed or plan to claim as a tax deduction.

When you sell your rental property, the time of the event (the time at which you make a capital gain or loss) is when you enter into the contract, not when you settle.

Example: capital gains on the sale of a co-owned rental property

Karl and Louisa bought a residential rental property in November 2016 for a purchase price of $750,000.

They incur costs of purchase, including stamp duty and legal fees, of $30,000.

After purchase they improved the property by constructing a fence for $6,000.

Over the 5 years of ownership of the property, they claimed $5,000 in decline in value deductions and $35,000 in capital works deductions. (If they had purchased the property after 9 May 2017 then there would be no deductions for the decline in value of any second-hand depreciating assets.)

In June 2021, they entered into a contract to sell the property, and in November 2021 it was sold for $900,000. Their costs of sale, including legal fees, were $10,000.

A + B + C + D − E - F = Cost base

Where:

- A is the purchase price
- B is the costs of the purchase
- C is the cost of property improvements

- D is the legal fees
- E is the capital works deductions
- F is the total amount of decline in value deductions claimed over the period of ownership of the rental property

$750,000 + $30,000 + $6,000 + $10,000 − $35,000 − $5,000 = $756,000

The capital gains outcomes are:

Proceeds = 900,000

Proceeds − Cost base = Capital gain outcome

$900,000 − $756,000 = $144,000

As the property has been owned for more than a year, the discount capital gain rules reduce the capital gain to $72,000.

Karl and Louisa owned the property jointly. This means that they each have a capital gain of $36,000 which they will need to put in their tax return for the year in which the contract to sell the property was made, being the 2020–21 year.

For more information on working out your costs, see Rental properties.

Capital expenses

Expenses you incur when purchasing, acquiring, selling, or disposing of your rental property are capital expenses. You may be able to include capital expenses when calculating the 'cost base' of your property. This can help you reduce the amount of CGT you pay when you sell your property.

Capital expenses include:

- conveyancing costs paid to a conveyancer or solicitor
- title search fees
- valuation fees (when it is a private valuation conducted by your solicitor)
- stamp duty on the transfer of the property.

Example: capital expenses

Stephen recently purchased a rental property that needed repairs before the tenants moved in. He paid tradespeople to:

- repaint dirty walls
- replace broken light fittings
- repair doors on 2 bedrooms.

The house was also treated for damage by white ants.

Because Stephen incurred these expenses to make the property suitable for rent (not while he was using the property to generate rental income), these expenses are capital expenses and are added to the cost base of the property.

GST on rental properties

Generally, the sale of existing residential premises is input taxed. This means:

- you cannot claim GST credits on any costs associated with buying or selling
- GST does not apply to the rental payments you receive.

However, if you build new residential premises for sale, you may:

- be liable for GST on the sale (at settlement)
- need to register for GST depending on your turnover.

If you do need to register for GST, you may also be entitled to GST credits on construction and sale costs, even if the premises have been rented for a period before being sold.

For more information, see:

- GST and residential property
- Building and construction – residential premises

Foreign resident capital gains withholding

Foreign resident capital gains withholding (FRCGW) applies when selling your rental property where the contract price is $750,000 or more.

The FRCGW tax rate is 12.5%.

A clearance certificate application form should be completed and lodged by Australian resident sellers who don't wish to have amounts withheld by purchasers.

For more information on FRCGW, see Capital gains withholding: Impacts on foreign and Australian residents.

CGT discount for affordable housing

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Property-and-capital-gains-tax/CGT-discount-for-affordable-housing/

- Last modified: 01 Jul 2022
- QC 66040

When you sell a property that you used to provide affordable rental housing, you can reduce your capital gains tax (CGT) by up to 10% more than the 50% discount.

On this page

Eligibility for the extra discount

When you sell a property, you can reduce your CGT by an extra 10% for any period that you used it to provide affordable housing. This is the affordable housing CGT discount.

To be eligible to claim the extra discount, you must meet the following conditions:

- you are eligible for the 50% CGT discount on the property (in whole or part)
- you used your property to provide affordable housing for a minimum of 3 years (1,095 days) since 1 January 2018
- your property rental was managed by a registered community housing provider (CHP)
- the capital gain was made by you as an individual, or distributed or attributed to you either
  - directly from a trust or managed investment trust (MIT)
  - indirectly from a trust through an interposed partnership, MIT or other trust (this does not include public unit trusts or super funds)
- you (or the trust you invested in) have an affordable housing certificate from the CHP for each income year for which you are claiming the discount
- no entity that has an ownership interest in the property received an incentive from the National Rental Affordability Scheme (NRAS) for the NRAS year
- if an MIT has an ownership interest in the property, the tenant and their associates do not have an interest of more than 10% of the MIT.

You're not eligible to claim the additional CGT discount for affordable housing if you invest through an entity that's not a trust, MIT or partnership. For example, if you invest through a company.

Other entities, for example Local Government Authorities (such as a council) that own properties used for affordable housing and are managed through a registered CHP, aren't eligible to claim the additional discount.

Affordable housing requirements

Your CHP will send you an annual affordable housing certificate confirming your property qualifies as affordable housing.

Your property must satisfy the following conditions:

- It must be fixed domestic residential premises, such as a house, unit or apartment.
  - Caravans, mobile homes and houseboats do not qualify.
  - Commercial residential premises do not qualify.
- It must be rented, or genuinely available for rent, at below-market rates to eligible tenants on low to moderate incomes.
- Rentals must be managed exclusively by a registered CHP

Working out the minimum 3-year period

To qualify for the affordable housing CGT discount, you must use your property to provide affordable housing for a minimum of 3 years (1,095 days) from the later of:

- 1 January 2018
- the time you acquired it.

The 3-year period can be continuous or an aggregation over a longer period.

Example: working out the minimum 3-year period

Lisa is an Australian resident. She:

- buys an apartment on 15 August 2018
- leaves it vacant to make repairs until 1 December 2018 (109 days)
- rents it out through a CHP as affordable housing from 2 December 2018 to 20 August 2020 (628 days)
- rents it out through a real estate property manager at market rates (that is, not providing affordable housing) from 21 August 2020 to 31 August 2021 (376 days)
- rents it out through a CHP as affordable housing from 1 September 2021 to 15 January 2023 (502 days)
- vacates the apartment and prepares it for sale from 16 January 2023 to 13 March 2023 (57 days).

Lisa signs a contract to sell the apartment on 13 March 2023. She makes a capital gain of $100,000.

Lisa has:

- held the apartment for a total of 1,672 days
- used the apartment to provide affordable housing for 1,130 days
- received an annual affordable housing certificate from her CHP, and met the other affordable housing requirements

Lisa is eligible for the affordable housing CGT discount because she has used the apartment to provide affordable housing for more than 1,095 days in total since 1 January 2018.

Property used to provide affordable housing before you acquire it

When working out if your property qualifies for the affordable housing CGT discount, you only count the period you owned it.

You cannot count any period a previous owner used the property to provide affordable housing.

This applies whether you acquired the property by:

- buying it
- inheriting it
- receiving it as a rollover from your former spouse after a relationship breakdown.

Calculating your affordable housing CGT discount

If you qualify for the CGT discount of 50%, you can reduce your CGT by another 10% for the period you used the property to provide affordable housing.

The 10% affordable housing discount is pro-rated (reduced proportionately) if you either:

- did not use the property for affordable housing for the entire period you owned it
- were a foreign or temporary resident for part of the time you owned the property.

Australian residents work out their affordable housing discount percentage as follows:

- 10% × (affordable housing days ÷ total ownership days).

In this equation:

- affordable housing days is the number of days you used the property to provide affordable housing (on or after 1 January 2018) during the time you owned it
- total ownership days is the number of days you owned the property, from the time you acquired it until a CGT event occurs (such as signing a contract to sell it).

Example: affordable housing discount percentage

In the previous example Lisa owned an apartment, for which she had:

- 1,130 affordable housing days
- 1,672 total ownership days.

Her affordable housing CGT discount percentage is:

10% × (1,130 ÷ 1,672) = 6.75%.

Lisa's total discount on her capital gain is the sum of the general CGT discount (50%) and her affordable housing CGT discount percentage:

50% + 6.75% = 56.75%

Lisa had a capital gain of $100,000 when she sold the apartment. She has no other capital gains or capital losses.

She can reduce her capital gain by her total discount percentage:

capital gain × (1 − discount percentage)

$100,000 × (1 − 56.75%) = $43,250.

Lisa reports a net capital gain of $43,250 in her income tax return.

Foreign or temporary residency

If you had a period of foreign or temporary residency during your ownership of the property, you are generally not entitled to the full 50% CGT discount (see CGT discount for foreign residents).

However, you may be entitled to a CGT discount of less than 50%. Your affordable housing discount percentage is reduced in proportion to the general CGT discount you are entitled to:

- (CGT discount percentage ÷ 5) × (affordable housing days ÷ total ownership days).

In addition, you do not count the period that you were a foreign or temporary resident when you work out:

- whether your property meets the requirement to be affordable housing for a minimum of 3 years
- the amount of your affordable housing CGT discount.

Example: affordable housing discount with a period of foreign or temporary residency

Klaus, an Australian resident, buys a house on 1 January 2015. He:

- rents the house out from 1 January 2015 to 31 December 2017 (1,096 days)
- uses it to provide affordable housing from 1 January 2018 to 30 June 2023 (2,007 days)
- moves to the USA on 1 July 2022, becoming a foreign resident for tax purposes

- sells the house on 30 June 2023, making a capital gain of $200,000.

This means Klaus owns the house for a total of 3,103 days. During this period he is:

- an Australian resident for 2,738 days (1 January 2015 to 30 June 2022)
- a foreign resident for 365 days.

Klaus does not have any other capital gains or capital losses.

To work out his net capital gain for the 2022–23 income year, Klaus first calculates his CGT discount percentage:

50% × (Australian resident days ÷ total ownership days)

50% × (2,738 ÷ 3,103) = 44.11%

To work out if he has met the qualifying requirement of at least 1,095 affordable housing days, Klaus ignores the period he was a foreign resident:

2,007 days offered for affordable housing
− 365 days of foreign residency in this period
= 1,642 days

Klaus has met the minimum affordable housing days requirement.

He then calculates his affordable housing CGT discount percentage:

(CGT discount percentage ÷ 5) × (affordable housing days less foreign or temporary residency days) ÷ (total ownership days less foreign or temporary residency days)

(44.11% ÷ 5) × (2,007 − 365) ÷ (3,103 − 365)

= 8.822% × 1,642 ÷ 2,738

= 5.29%.

Klaus's total discount on his capital gain is the sum of his CGT discount percentage and his affordable housing discount percentage:

44.11% + 5.29% = 49.4%

He can reduce his capital gain by his total discount percentage:

capital gain × (1 − discount percentage)

$200,000 × (1 − 49.4%) = $101,200

Klaus reports a net capital gain of $101,200 in his income tax return.

Engaging a community housing provider

Your property must be managed by a registered community housing provider (CHP) to qualify for the affordable housing CGT discount. Your CHP must be registered under either:

- a law of the Commonwealth or a state or territory
- an Australian government agency.

A CHP provides rental housing at below-market rates to tenants who earn low to moderate incomes.

You can find a CHP using:

- the National Provider Register
- the Victorian Housing Register
- the West Australian list of Registered providers

The registered CHP's reporting obligations include sending you an annual affordable housing certificate confirming that your property qualifies as affordable housing.

If you engage a CHP that isn't registered to manage your investment property, you're not eligible to claim the CGT affordable housing discount.

Affordable housing certificates

When you own a property that is used to provide affordable housing, your registered CHP will send you an annual affordable housing certificate.

The CHP will issue your certificate on or before 31 July immediately following the relevant income year. For example, a certificate covering the 2021–22 income year will be issued by your CHP on or before 31 July 2022.

Your certificate will:

- show the number of days your property was used to provide affordable housing during the income year
- state that your property met the residential premises and property management conditions for affordable housing.

Keep a record of your affordable housing certificates. You will need them to work out:

- your eligibility for the affordable housing CGT discount
- the discount percentage you can claim on any capital gain you make when you sell the property.

If you invested in the property through a trust, MIT or partnership, the CHP will send the certificate to that entity.

Investing in affordable housing through a trust

You can invest in affordable housing through a trust.

Only you, as an individual investor, can claim the additional affordable housing CGT discount. The trust cannot claim this discount.

For you to qualify for the affordable housing CGT discount:

- the trust can be a managed investment trust (MIT), but not a public unit trust or super fund
- the trust must be entitled to the general CGT discount on the capital gain on the property, either in full or part.

The capital gain can be distributed or attributed to you:

- directly from the trust or MIT
- indirectly from the trust or MIT through an interposed partnership, MIT or other trust, but not through a public unit trust or super fund.

When you receive the capital gain distribution, the trust, MIT or partnership will send you the information you need to work out your affordable housing discount percentage and net capital gain amount.

This information includes:

- number of days the property was used to provide affordable housing
  - the trust, MIT or partnership will have this information from the affordable housing certificates they received from the CHP
- total ownership days of the rental property.

If you were a foreign or temporary resident at any time during the investment period, you will also need to know the dates the property was used for affordable housing.

Community housing providers: reporting for affordable housing

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Property-and-capital-gains-tax/CGT-discount-for-affordable-housing/Community-housing-providers--reporting-for-affordable-housing/
- Last modified: 01 Jul 2022
- QC 66947

By 31 July each year (or the next business day if this date falls on a weekend), community housing providers (CHPs) must provide affordable housing certificates to property investors and an annual report to the ATO.

On this page

- CHP eligibility and regulation
- Issuing affordable housing certificates
- Lodging your annual report

CHP eligibility and regulation

CHPs provide rental housing to tenants who earn low to moderate incomes.

CHPs may own some properties and also manage properties on behalf of investors, institutions and state and territory governments.

For the purposes of the affordable housing discount on capital gains tax (CGT), an eligible CHP must be registered to provide community housing services under either:

- a law of the Commonwealth or a state or territory
- an Australian government agency.

CHPs are regulated under the National Regulatory System for Community Housing. This is monitored and enforced by state-based community housing registrars.

The registered CHP itself does not have to perform all aspects of the management of the properties. It can subcontract out any or all of the property management responsibilities, provided it retains oversight of decisions. For example, the CHP could outsource scheduling and carrying out repairs and maintenance or advertising of vacant affordable housing properties for rent.

Issuing affordable housing certificates

You only need to issue certificates to eligible investors.

As a registered CHP, you must issue affordable housing certificates:

- annually, by 31 July immediately following the relevant income year
- to each entity (including an individual, trust, managed investment trust (MIT), partnership, company or Local Government Authority such as a council) that has an ownership interest in an affordable housing property under your management
- with all the required information.

You can issue affordable housing certificates in electronic or paper format.

The investor needs the certificate to claim their affordable housing CGT discount.

Information to include in the certificate

You can create affordable housing certificates using either:

- our Affordable housing certificate form (NAT 75348)
- your own format, provided it includes the same information as our form.

Your affordable housing certificates must include:

- details of the owner of the property (the owner may be an individual investor, trust, MIT or partnership)
- details of the property used to provide affordable housing
- the number of days during the income year that the property was used or available for affordable housing
- details of your CHP
- a declaration confirming the status of the property and that it was exclusively managed by your CHP.

Issuing certificates for prior years

You need to issue certificates for all income years from 1 January 2018 in which properties under your management met the affordable housing conditions. This includes:

- 2017–18 (but only for the period 1 January 2018 to 30 June 2018)
- 2018–19
- 2019–20.

As the law for the affordable housing CGT discount did not pass until December 2019, there will be few properties requiring certificates for these years.

Lodging your annual report

For each income year that you issue affordable housing certificates, you must provide a CHP annual report to us.

Your report:

- must be lodged by 31 July immediately following the income year
- include details of all certificates you have issued for the income year, compiled in a CSV file
- be lodged online

The requirement to lodge a CHP annual report applies to the 2020–21 and later income years. You do not need to submit reports for the 2018–19 or 2019–20 income years.

For information on reporting for trusts, MITs and partnerships, see Trusts, MITs and partnerships: reporting for affordable housing.

Compiling your annual report

CSV file format

Your CHP annual report must be a comma-separated values (CSV) file. This is a text file that uses a comma to separate the values. Each line of the file is a data record.

You can create a CSV file from various business software products, such as Microsoft Excel.

Information to include in your annual report

The following is a list of the information that you may need to include in your CHP annual report.

Not all the information is mandatory. However, your report must have sufficient detail to identify the entities involved.

Intermediary details

Include the details of the entity lodging the annual report (this may be a CHP or their tax agent):

- Australian business number (ABN)
- branch number
- name
- contact name
- contact address
- contact phone number
- contact email address.

Provider and report details

Include the details of the CHP itself, and the report being lodged:

- ABN
- name
- contact name
- contact phone number
- address
- email address
- reporting period start date and end date
- financial year the report relates to
- whether it is an original or replacement report
- number of certificates issued during reporting period.

Investor details

Include the details of each investor that was issued with a certificate by the CHP (the investor may be an individual person, trust, partnership or MIT):

- ABN
- name
- surname or family name
- first name
- date of birth
- address
- contact name
- contact phone number
- property managed by CHP ('Yes' or 'No')
- number of days property used for affordable housing
- property address

- email address.

Declaration

Include a declaration that the report is true and correct with the following information:

- full name of signatory
- signatory position
- tax agent registration number (if lodged by tax agent)
- contact phone number
- declaration
- date authorised.

Report template and examples

The following documents can help you complete your CHP annual report:

- blank report template – includes instructions to complete the report to avoid errors when lodging
- completed report example – example reporting information has been added but the report hasn't been formatted for lodgment
- report ready for lodgment example – the report has been formatted to remove instructions and headings and is ready for lodgment.

To use these documents:

- go to Supported files
- find Community housing provider (CHP) annual report in the table.

For more information on lodging your report, see file transfer.

If you need assistance to complete this report or have questions, you can email the Individuals and small business new measures team at MEINewMeasures@ato.gov.au

Lodging online

To lodge your CHP annual report:

1. sign in to your CHP's account in Online services for business

Online services for business

2. select Lodgments, then File transfer (find out how to use file transfer)
3. attach and submit your CSV file

Alternatively, your CHP's tax agent can lodge the report through Online services for agents.

Lodgment deadline and extensions

Your CHP annual report should be lodged by 31 July (or the next business day if this date falls on a weekend) immediately following the relevant income year.

If you need more time to lodge, phone us on 13 28 66 and provide the following information:

- the CHP's name and ABN
- the reasons for requesting an extension
- the proposed new deadline for lodgment.

Trusts, MITs and partnerships: reporting for affordable housing

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Property-and-capital-gains-tax/CGT-discount-for-affordable-housing/Trusts,-MITs-and-partnerships--reporting-for-affordable-housing/
- Last modified: 01 Jul 2022
- QC 66950

If your trust or partnership sells a property used for affordable housing, your investors will need information to claim the extra capital gains tax (CGT) discount.

On this page

Claiming the affordable housing CGT discount

Your trust or partnership may invest in affordable housing, either:

- directly
- indirectly through another trust, managed investment trust (MIT) or partnership.

If your trust or partnership, or the interposed entity, makes a discount capital gain from the sale of the property, an extra discount of up to 10% is available if the property meets the affordable housing eligibility conditions.

Only your individual investors can claim the extra affordable housing CGT discount. The trust or partnership cannot claim this discount.

Who can't claim the affordable housing CGT discount

You're not eligible to claim the additional CGT discount for affordable housing if you invest through an entity that's not a trust, MIT or partnership. For example, if you invest through a company.

Other entities, for example Local Government Authorities (such as a council) that own properties used for affordable housing and are managed through a registered CHP, aren't eligible to claim the additional discount.

Information to provide to investors

To work out their additional discount, your investors will need information from you about the period the property was used for affordable housing.

You need to provide the following information to your individual investors (or the interposed entity):

- capital gain amount attributable to the sale of the affordable housing property
- number of days the property was used to provide affordable housing
  - this information is in the annual affordable housing certificates sent to you by the community housing provider who managed the property
- dates the investment property was used for affordable housing
  - investors will need these dates if they have to exclude any periods they were a foreign or temporary resident.

For information on reporting for Community housing providers, see Community housing providers: reporting for affordable housing.

How to provide the information

As the trustee or partner, you can decide how you provide the affordable housing capital gain information to your individual investors or interposed entity.

You may provide it through:

- additional notes in your attribution managed investment trust member annual (AMMA) statement or the standard distribution statement (SDS)
- a separate statement or courtesy letter
- information on your website.

If you are an interposed entity and receive the affordable housing information from a trustee or partner, you need to pass on the information to the individual investor.

Example – Trust distributing capital gain to an individual

Sunshine Coast Trust, an Attribution managed investment trust (AMIT), purchased a dwelling on 15 June 2018. The dwelling was used to provide affordable housing. Sunshine Coast Trust engaged CDE Community Housing Provider (CHP) to manage the property. CDE CHP issued annual affordable housing certificates to Sunshine Coast Trust.

On 20 May 2022, Sunshine Coast Trust signed a contract to sell the dwelling and settlement was 25 June 2022. The ownership period was 1,436 days (15 June 2018 to 20 May 2022). The dwelling was used to provide affordable housing for the whole ownership period.

When the dwelling was sold, Sunshine Coast Trust realised a capital gain of $150,000. This was reduced to $75,000 with the capital gain discount of 50%.

Sunshine Coast Trust attributed a capital gain of $25,000 to an individual investor, Mary, being her share of the capital gain. Sunshine Coast Trust provided Mary with an AMMA statement showing the distribution of the $25,000 gain. They also sent a courtesy letter containing the following information about the dwelling:

- ownership period (15 June 2018 to 20 May 2022, a total of 1,436 ownership days)
- number of days the dwelling was used for affordable housing (1,436 days)
- the dates the dwelling was used for affordable housing, in this case 15 June 2018 to 20 May 2022.

Mary meets the conditions to claim the additional 10% capital gains discount for affordable housing. Mary uses the information in the courtesy letter to calculate her affordable housing discount percentage and shows the net capital gain in her individual tax return.

Example – Trust distributing capital gain to an individual through an interposed entity

MFA Trust, an AMIT, acquired a dwelling on 1 March 2018. On 5 September 2022, they signed a contract to sell the dwelling and settlement was 5 October 2022.

MFA Trust owned the dwelling for a total of 1,650 days and used the dwelling to provide affordable housing for the whole ownership period. MFA engaged ABC Community Housing Provider (CHP) to manage the property. ABC CHP issued annual affordable housing certificates to MFA Trust. The certificates showed the number of days the dwelling was used for affordable housing. The total of 1,650 days is more than the 1,095 days (3 years) required for an individual investor or beneficiary to be eligible to claim the affordable housing discount.

MFA Trust had a capital gain of $200,000 from the sale of the dwelling, which was reduced to $100,000 with the capital gain discount of 50%. MFA Trust didn't have any other capital gains or losses during the income year.

MFA Trust attributed this capital gain in equal proportion to its unit holders. This included SMP Trust, which received an attribution of $20,000, being its share of the capital gain. MFA Trust provides SMP Trust with an AMMA statement showing the attribution of the $20,000 gain. MFA Trust also publishes the following information on their website so SMP Trust can find affordable housing details about the dwelling:

- total number of days the dwelling was used for affordable housing (1,650 days)
- total ownership days of the dwelling (1,650 days)
- the start and end date the dwelling was used for affordable housing (1 March 2018 to 5 September 2022)

SMP Trust then distributed the capital gain of $20,000 to Kevin, a beneficiary of the trust. SMP Trust advised Kevin of the capital gain distribution through a Standard Distribution Statement and provided the affordable housing information in a courtesy letter to Kevin.

As Kevin's capital gain has been distributed to him by a trust (MFA Trust) through an interposed entity (SMP Trust), he meets the conditions to claim the additional 10% capital gains discount for affordable housing.

Transferring property to family or friends

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Property-and-capital-gains-tax/Transferring-property-to-family-or-friends/
- Last modified: 01 Jul 2022
- QC 66041

Check if you need to use the market value of your property when working out your CGT.

On this page

- When to use market value
- Valuing your property

When to use market value

If you sell, transfer or gift property to family or friends for less than it is worth, your capital gains tax (CGT) is based on the market value of the property.

You use the market value of a property to calculate your CGT if both of the following are true:

- what you received was more or less than the market value of the property
- you and the new owner were not dealing with each other at arm's length.

This is called the 'market value substitution' rule.

You are dealing at 'arm’s length' with someone if each party acts independently.

- Neither party exercises influence or control over the other in connection with the transaction.
- We look at the relationship between the parties and the quality of the bargaining between them.

If the property was your main residence, you can claim the main residence exemption from CGT.

Exceptions

There are 2 exceptions to the market value substitution rule. If you transfer property to:

- your former spouse on the breakdown of your marriage or relationship, the rule may not apply
- the trustee of a special disability trust for no payment, you can disregard any capital gain or capital loss.

Valuing your property

You need to know the market value of the property at the time you disposed of it.

Example: selling property for less than market value

Antoine owned a rental property. The lease on the property was about to end.

Antoine owed $120,000 on the mortgage. He offered to sell the property to his son for the balance owing on the mortgage. His son accepted the offer and purchased the property for $120,000.

Antoine obtained a market valuation from a professional valuer. The market valuation showed the value of the property at the time of transfer was $450,000.

When Antoine calculates his capital gain or loss, the $450,000 market value is his capital proceeds.

Subdividing and combining land

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Property-and-capital-gains-tax/Subdividing-and-combining-land/
- Last modified: 01 Jul 2022
- QC 66042

How to work out CGT when you sell land that you subdivided or amalgamated.

On this page

Subdividing land

If you subdivide a block of land, it becomes 2 or more separate assets for capital gains tax (CGT) purposes.

You make a capital gain or loss when you sell the subdivided blocks.

For CGT purposes, the date you acquired the subdivided blocks is the same as the date you acquired the original land.

The cost base of the original land is divided between the subdivided blocks on a reasonable basis. Taxation determination TD 97/3 explains what is considered 'a reasonable basis'.

Example: land purchased before 20 September 1985 and later subdivided

In 1983, Mike bought a block of land.

- In May 2021, he subdivided the land into 2 blocks and began building a house on the rear block.
- The house cost $270,000 to build.
- He sold the rear block, including the house, in October 2021 for $500,000.
- Mike got a valuation from a qualified valuer, who valued the rear block at $200,000 and the house at $300,000.

Mike acquired the rear block before 20 September 1985 so it is not subject to CGT.

As the new house was built after 20 September 1985 on land purchased before that date, the house is treated as a separate asset from the land.

Mike made a capital gain of $30,000 ($300,000 − $270,000) when he sold the house.

Example: property purchased after 20 September 1985 and land later subdivided

Kym bought a house on a 0.2 hectare block of land in June 2021 for $700,000.

- The house was valued at $240,000 and the land at $460,000.
- She incurred $24,000 in stamp duty and legal fees purchasing the property.
- Kym lived in the house as her main residence.

In January 2022, Kym subdivided the land into 2 blocks of equal size.

- She incurred costs of $20,000 in survey, legal and subdivision application fees, and $2,000 to connect water and drainage to the rear block.
- In March 2022, she sold the rear block for $260,000 and incurred $6,000 legal fees on the sale.

As Kym sold the rear block of land separately, the main residence exemption does not apply to that land.

- She contacted several local real estate agents who advised her that the value of the front block was $30,000 higher than the rear block.
- Kym apportioned the $460,000 original cost base into $215,000 for the rear block (46.7%) and $245,000 for the front block (53.3%).

Kym works out the cost base of the rear block as follows:

1. cost of land is $215,000
2. stamp duty and legal fees on the purchase is 46.7% × $24,000 = $11,208
3. survey, legal and application fees is 46.7% × $20,000 = $9,340
4. cost of connecting water and drainage is $2,000
5. legal fees on sale is $6,000
6. total is $243,548.

The capital gain on the sale of the rear block was $16,452 (sale price of $260,000 less cost base of $243,548).

Kym will get a full exemption for her house and the front block if she uses them as her main residence for the whole time she owns them.

If you buy and subdivide for profit

If you buy and subdivide land with the intention of making a profit, it may be considered a business-like or commercial activity.

In this case, the profit is ordinary income and is included in your assessable income. You reduce any capital gain from the land by the amount otherwise included in your assessable income.

Taxation Ruling TR 92/3 explains the situations where profits on isolated transactions are treated as income.

Subdividing and GST

When you subdivide land that could be used to build new residential property (potential residential land), you need to consider if you have goods and services tax (GST) obligations. You need to determine if:

- you are running an enterprise – even a one-off property sale could mean you have a GST obligation depending on your turnover
- GST at settlement applies to the land sale.

For more information, see Property and registering for GST.

Combining land titles

Amalgamating the titles of 2 or more blocks of land that you own is not a CGT event so there is no capital gain or loss.

If you acquired land before 20 September 1985, it retains its pre-CGT status even if you merge it with land that you acquired on or after that date.

> Example: combining land titles
>
> Wang Cheng bought a block of land on 1 April 1984. On 1 June 2008, he bought another block adjacent to the first one.
>
> Wang Cheng merged the titles to the 2 blocks into one title.
>
> The 2 blocks are treated as separate assets. The first block continues to be exempt from CGT.

Property improvements and additions

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Property-and-capital-

gains-tax/Property-improvements-and-additions/
- Last modified: 21 Jun 2022
- QC 66043

Use the cost thresholds to check if your capital improvements to your property are subject to CGT.

On this page

How it works

A building and the land it is on are usually treated as a single asset. However, there are situations where they are treated as separate assets for CGT purposes.

The most common situation is when you acquire a property before CGT started in 1985 and make major capital improvements after CGT started.

The improvements are then treated as separate assets that are subject to CGT.

This rule does not affect you if you acquired the property on or after 20 September 1985. In this case, CGT applies as usual.

Main residence exemption

If the property is your main residence and you use the improvements as part of your home, they are still exempt.

This includes improvements on land adjacent to the dwelling (for example, a swimming pool) if the total land is 2 hectares or less.

The improvements are not exempt if you use them to produce income.

What is a major capital improvement?

An addition or improvement, such as renovating a house, is a major capital improvement if its original cost is both:

- more than 5% of the amount you receive when you dispose of the asset
- more than the improvement threshold for the income year in which you dispose of the asset.

If you began the improvements before 21 September 1999, you index the original cost for inflation.

If there was a contract to construct the improvements, the date you began the improvements is the date of the contract.

Improvement thresholds

The improvement threshold takes inflation into account.

Income year	Threshold
1985–86	$50,000
1986–87	$53,950
1987–88	$58,859
1988–89	$63,450
1989–90	$68,018
1990–91	$73,459
1991–92	$78,160
1992–93	$80,036
1993–94	$80,756
1994–95	$82,290
1995–96	$84,347
1996–97	$88,227
1997–98	$89,992
1998–99	$89,992
1999–2000	$91,072
2000–01	$92,802
2001–02	$97,721
2002–03	$101,239
2003–04	$104,377
2004–05	$106,882
2005–06	$109,447
2006–07	$112,512

2007–08	$116,337
2008–09	$119,594
2009–10	$124,258
2010–11	$126,619
2011–12	$130,418
2012–13	$134,200
2013–14	$136,884
2014–15	$140,443
2015–16	$143,392
2016–17	$145,401
2017–18	$147,582
2018–19	$150,386
2019–20	$153,093
2020–21	$155,849
2021–22	$156,784
2022–23	$162,899

Calculating your capital gain or loss on major improvements

You only need to do this calculation if all of the following are true:

- you acquired property before 20 September 1985
- you made capital improvements to it on or after that date
- the improvements are not exempt under the main residence exemption.

When you sell the property, you calculate your capital gain or loss on a major capital improvement as follows.

Step 1: Determine the cost base of the improvement.

- If you began the improvement before 21 September 1999, you index the cost base for inflation

Step 2: Is the cost base of the improvement (step 1) more than 5% of the capital proceeds from the sale of the property?

- No – it is not a major capital improvement and there is no CGT.
- Yes – go to step 3.

Step 3: Is the cost base of the improvement (step 1) more than the threshold amount for the year in which you sold the property?

- No – it is not a major capital improvement and there is no CGT.
- Yes – go to step 4.

Step 4: Work out how much of the sale proceeds are attributable to the improvement.

- You could ask a professional valuer to work this out. If you work it out yourself, your estimate must be reasonable and you must be able to show how you arrived at the estimated amount.

Step 5: Subtract the cost base (step 1) of the improvement from the proceeds attributable to the improvement (step 4).

- This is your capital gain or loss.
- If you will be using the CGT discount, do not index the cost base for inflation at this step.

Example: improvements to property acquired before 20 September 1985

Martin bought a home in 1984.

- On 1 December 1993, he undertook major renovations to his home costing $150,000. He used these renovations to earn rental income from the time they were finished until he sold his home.
- On 1 December 2021, he sold his home for $500,000.

The 'home first used to produce income' rule does not apply because the renovations were first used to produce income before 21 August 1996.

Using the steps above, Martin works out his capital gain as follows:

1. The unindexed cost base of the improvements is $150,000.
    - Because the improvements were made before 21 September 1999, Martin also needs to work out the indexed cost base. This is $168,450.
2. The indexed cost base is more than 5% of the $500,000 Martin received for his home (5% × $500,000 = $25,000).
3. The indexed cost base is more than the 2021–22 threshold of $156,784. The renovations are therefore subject to CGT.
4. Martin obtained a valuation that attributed $200,000 of the $500,000 sale proceeds to the renovations.

5. As Martin did the renovations before 21 September 1999 and owned them for at least 12 months, he can use either the indexation method or the CGT discount to calculate his capital gain.

Indexation method

Sale proceeds attributable to the improvements	$200,000
less cost base of improvements indexed for inflation	$168,450
Taxable capital gain	$31,550

Discount method

If Martin has any capital losses, he must use these before applying the discount. Assuming Martin has no capital losses, he can apply the discount to the entire capital gain.

Sale proceeds attributable to the improvements	$200,000
less cost base of improvements (without indexation)	$150,000
Capital gain	$50,000
less 50% discount	$25,000
Net capital gain	$25,000

Martin would choose the discount method because this gives him a smaller capital gain.

If construction of the renovations had started after 13 May 1997, Martin would also reduce the cost base by the amount of any capital works deductions he could claim.

If Martin made a capital loss, the reduced cost base of the improvements would be reduced by the amount of any capital works deductions no matter when construction started.

Other situations where assets are separate for CGT

As well as the major capital improvements discussed above, there are other situations where land and other assets are treated as separate assets for CGT purposes.

Relocation of buildings

A building is treated as part of new land if you:

- acquired the building and land before CGT started on 20 September 1985
- later relocate the building to new land you acquired on or after this date.

The building becomes part of a single post-CGT asset.

The cost base and reduced cost base of the building are added to the cost base and reduced cost base of the new land.

Adjacent land

If you acquire land on or after 20 September 1985 that is adjacent to land you already owned before that date, it is treated as a separate CGT asset from the original land.

This is the case even if you amalgamate the 2 titles.

Example: adjacent land treated as separate CGT asset

On 1 April 1984, Dani bought a block of land.

On 1 June 2022, she bought an adjacent block.

Dani amalgamated the titles of the 2 blocks into one title.

The second block is treated as a separate CGT asset acquired on or after 20 September 1985. It is subject to CGT.

Assets subject to a balancing adjustment

A building, structure or other capital improvement becomes a separate CGT asset from the land it is on if both the following are true:

- you acquired the land on or after 20 September 1985
- a ‘balancing adjustment provision’ applies to the asset.

For example, a timber mill building is subject to a balancing adjustment if it is sold or destroyed, so it is treated as a separate asset from the land it is on.

Depreciating asset that is part of a building

A depreciating asset that is part of a building is a separate CGT asset from the building.

For detailed information about depreciating assets, see the Guide to depreciating assets

Shares and similar investments

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Shares-and-similar-investments/
- Last modified: 08 Mar 2023
- QC 66044

Check if you are an investor or trader, and how it affects tax on your shares or units in a fund.

When CGT applies to shares and units
Find out which things trigger CGT, such as selling shares or receiving certain distributions.

Keeping records of shares and units
How to identify which shares you have sold, when you acquired them, and the records you need.

Share investing versus share trading
Work out if you are investing or trading in shares, and the difference it makes to your tax.

When you can claim losses on shares and units
Find out what triggers a claimable loss on shares and units, and how you claim it in your tax return.

Share buy-backs
How your tax is affected if you sell your shares back to the company.

Dividend reinvestment plans
How tax applies to your dividend if you use it to buy more shares from the same company.

Demergers CGT rollover for shareholders and unit holders
Find out if you should defer your gain or loss when a corporate group demerges.

CGT listed investment companies concession
Find out about dividends from a listed investment company (LIC) that include a LIC capital gain amount.

Investments in a company in liquidation or administration
Check if you can realise a capital loss on shares or investments in a company in liquidation or administration.

Trust non-assessable payments (CGT event E4)
When trusts make non-assessable payments to beneficiaries, CGT event E4 may occur.

Calculating your CGT
Use the calculator or steps to work out your CGT, including your capital proceeds

and cost base.

Bonus shares
What happens when a company you have shares in gives you additional shares.

Bonus units
What happens when a managed fund or unit trust gives you additional units.

Convertible notes
Find out if your gains from convertible notes are ordinary income or capital gains.

Corporate group restructures – consequences for shareholders
Get details of the tax effects for some of the biggest corporate restructures.

Demutualisation of insurance companies
What to do if your insurance company demutualises and gives you shares or cash.

Investments in foreign hybrids
How CGT works if you invest in an entity that is taxed as a company here and a partnership overseas.

Managed investment fund (trust) distributions
Find out if your distribution is a capital gain, and how to report it in your tax return.

Non-assessable payments in relation to shares and units
Check if you should adjust the cost base of your shares or units.

Rights and options to acquire shares or units
How to account for your new shares or units if you exercise a right or option.

Stapled securities
How CGT applies when different units or shares are bound together.

Takeovers and mergers, scrip-for-scrip rollover
Find out if you can defer CGT on your shares when there is a takeover or merger.

When CGT applies to shares and units

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Shares-and-similar-investments/When-CGT-applies-to-shares-and-units/
- Last modified: 01 Jul 2022
- QC 66045

Find out which things trigger CGT, such as selling shares or receiving certain distributions.

On this page

- When CGT applies
- When CGT does not apply

When CGT applies

Selling your shares or units is the most common CGT event, but there are others.

A CGT event may occur if you:

- redeem units in a managed fund by switching them from one fund to another
- make an *in specie* transfer
- accept an offer from a company to buy back your shares
- receive a distribution (other than a dividend) from a unit trust or managed fund
- receive non-assessable payments from a company
- own shares in a company that is taken over by or merges with another company
- own shares in a company that is placed in liquidation or administration and the shares (or other financial instruments) are declared worthless by the liquidator or administrator.

If you sell shares or have another CGT event, you need to calculate your CGT and report it in your income tax return.

When a corporate group restructures, we often publish a class ruling or fact sheet setting out the tax consequences for shareholders.

When CGT does not apply

CGT does not apply to:

- dividends you receive from your investments – these are taxed as ordinary income
- profits on the sale of shares if you are carrying on a business of share trading – these are taxed as ordinary business income rather than capital gains.

Keeping records of shares and units

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Shares-and-similar-investments/Keeping-records-of-shares-and-units/
- Last modified: 01 Jul 2022
- QC 66046

How to identify which shares you have sold, when you acquired them, and the records you need.

On this page

- Records you need to keep
- Identifying when shares or units were acquired

Records you need to keep

When you sell your shares in companies or units in managed funds, most of the records you need will be given to you by the company, the fund manager or your stockbroker. These records generally include:

- the date of purchase
- the purchase amount
- details of any non-assessable payments made to you
- the date and amount of any calls (if shares were partly paid)
- the sale price (if you sell them)
- any commissions paid to brokers when you buy or sell
- details of events such as share splits, share consolidations, returns of capital, takeovers, mergers, demergers and bonus share issues.

You may buy parcels of shares in the same company at different times. You need to keep details for each parcel as they are separate CGT assets.

Identifying when shares or units were acquired

When you sell only some of your shares or units in a company or trust, you need to be able to identify which ones you have sold and when you acquired them.

This is important because shares or units bought at different times may have different costs. This will affect your capital gain or loss.

Share transactions through the Australian Stock Exchange are recorded in the Clearing House Electronic Subregister System (CHESS). If you have the relevant records from your CHESS holding statement or your issuer sponsored statement, you can select which shares you have sold and identify their cost.

Example: identifying when shares or units were acquired

Boris is an investor. He:

- bought 1,000 shares in a company in 2020 for $5 each
- bought 3,000 shares in the same company in 2021 for $10 each
- sold 1,500 of the shares in 2022 for $8 each.

Boris must decide which of his shares in the company he is selling and which he is retaining.

He decides to sell 1,500 of the shares he bought in 2021 in order to claim a capital loss in the 2022 income year. As a result, Boris will still have:

- 1,000 shares with an acquisition cost of $5
- 1,500 shares with an acquisition cost of $10.

If Boris later decides to sell more of his shares in the company, he can choose which of his remaining shares he is selling.

Boris should keep records of which shares he has bought and sold so he can show that he has calculated CGT correctly on any sales of shares.

Share investing versus share trading

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Shares-and-similar-investments/Share-investing-versus-share-trading/
- Last modified: 26 Sep 2022
- QC 66047

Work out if you are investing or trading in shares, and the difference it makes to your tax.

On this page

Tax treatment

If you hold shares as an investor:

- your shares are assets and are subject to capital gains tax when you sell them
- your costs are taken into account at the time you sell your shares
- if you have a capital loss you can use it to offset capital gains but not to offset income from other sources
- income is earned from dividends and similar receipts.

If you are a share trader:

- your shares are treated like trading stock in a business
- your gains are treated as ordinary income
- your losses and costs are treated as deductible expenses in the year they are incurred.

If you change from an investor to a trader, or vice versa, the treatment of your profits or losses will also change.

Tax treatment of share investors and share traders

Cost or receipt	Share investor	Share trader
Profit from the sale of shares	Subject to capital gains tax	Assessable as ordinary income
Loss from the sale of shares	Used to offset capital gains or carried forward to offset future capital gains Cannot be used to offset income from other sources	Deductible against income
Dividends and similar receipts	Included in assessable income	Included in assessable income
Purchase price of shares	Taken into account in calculating capital gain or loss when shares are sold	Deductible in the year incurred
Transaction costs of buying or selling shares	Taken into account in calculating capital gain or loss when shares are sold	Deductible in the year incurred
Costs (such as interest on borrowed money) incurred in earning dividend income from shares	Deductible in the year incurred	Deductible in the year incurred

How to determine if you are a share trader

Determining if you are a share trader is the same as determining whether your activities are considered to be carrying on a business for tax purposes.

Under tax law, a business includes 'any profession, trade, employment, vocation or calling, but does not include occupation as an employee'.

To determine whether you are a share trader or a business of trading shares, the following factors have been taken into account in court cases:

- the nature and purpose of your activities
- the repetition, volume and regularity of your activities
- whether your activities are organised in a business-like way
- the amount of capital invested.

Nature of activity and purpose of profit making

The intention to make a profit is not, on its own, sufficient to establish that a business is being carried on.

A share trader carries on business activities for the purpose of earning income from buying and selling shares.

Shares may be held for either investment or trading purposes, and profits on sale are earned in either case. A person who invests in shares as a shareholder (rather than a share trader) does so with the intention of earning income from dividends and receipts, but is not carrying on business activities.

You need to consider not only your intention to make a profit, but also the facts of your situation. This includes how your activities have actually been carried out, or a business plan of how your activities will be carried out.

A business plan might show, for example:

- analysis of the current market and each potential investment
- research to show when or where a profit may arise
- the basis of your decision-making on when to hold or sell shares.

Repetition, volume and regularity

Repetition – that is, the frequency of transactions or the number of similar transactions – is a key characteristic of business activities.

The higher the volume of your share transactions, the more likely it is that you are carrying on a business.

A business of share trading would also be expected to involve the purchase of shares on a regular basis through a regular or routine method.

Organisation in a business-like way and keeping records

A share-trading business could reasonably be expected to involve:

- study of daily and longer-term trends
- analysis of companies' prospectuses and annual reports
- seeking advice from experts.

Your qualifications, expertise, training and skills in this area would also be relevant.

Failure to keep records of share transactions would make it difficult for you to establish that a business of share trading was being carried on.

Amount of capital invested

The amount of capital you invest in shares is not a crucial factor in determining whether you are carrying on a business of share trading.

It is possible to carry on business activities with a relatively small amount of capital. On the other hand, you could invest a substantial amount of capital and not be considered a share trader.

Example 1: share trader

Molly has a full-time job. After seeing a television program, she decides to start share trading on the side. Molly:

- sets up an office with a computer in one of the rooms in her house
- has $100,000 of her own funds available to buy shares and access to a $50,000 borrowing facility through her bank
- analyses daily developments in equity markets, using financial newspapers and stock market reports, charts and trend lines
- subscribes to news from online investment analysts.

Molly's objective is to identify stocks that will increase in value in the short term so she can turn them over quickly at a profit.

In the last income year Molly conducted 60 share transactions (35 buying and 25 selling). The average buying transaction was $1,000. The average selling transaction was $1,800. All the transactions were conducted through online stockbroking facilities. The average time that Molly held shares before selling them was twelve weeks. Molly's activities resulted in a loss of $5,000 after expenses.

Molly's activities show all the indicators that she is carrying on a business:

- Her share trading operation has the intention of making a profit, even though it had a loss.
- Her activities are regular and repetitive, and are organised in a business-like manner.
- She has turned over a high volume of shares and injected a large amount of capital into the operation.

Example 2: shareholding as an investor

George is an accountant. He has:

- bought 200,000 shares in 20 'blue chip' companies over several years
- a total portfolio of $1.5 million.

George bought the shares because of consistently high dividends. He would not consider selling his shares unless their price appreciated markedly. In the last income year, he sells 20,000 of his shares for a gain of $50,000.

Although George has made a large gain on the sale of shares, he is not carrying on a business of share trading. He has purchased his shares for the purpose of earning dividend income rather than making a profit from buying and selling shares.

Changing from investor to trader, or trader to investor

If you re-classify your activities, the way you treat your shareholdings will be affected.

We may ask you to provide evidence that:

- the nature of your activities has changed
- you have reported your income correctly in the past.

If we review your tax returns and find that you have incorrectly claimed losses, you may be subject to penalties.

Changing from investor to trader

If your activities change from investor to trader, your shares change from CGT assets to trading stock. When this happens, you can choose to start holding the shares as trading stock at either:

- their original cost
- their market value at the time of the change.

If you choose market value CGT event K4 occurs – CGT asset starts being trading stock. This means you make a capital gain or loss on the shares, which you must report in your tax return. You work out your capital gain or loss based on the market value of your shares at the time of the change.

Any unused capital losses from prior years (when you were an investor) remain as capital losses. You can't convert them into revenue losses. You should continue to carry forward any unused capital losses until you have a capital gain to offset them against.

Changing from trader to investor

If your activities change from trader to investor, your shares are no longer trading stock.

At the time of the change, you treat your shares as if:

1. just before they stopped being trading stock, you sold them to someone else (at arm's length and in the ordinary course of business) for their cost
2. you immediately bought the shares back for the same amount.

When you can claim losses on shares and units

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Shares-and-similar-investments/When-you-can-claim-losses-on-shares-and-units/
- Last modified: 01 Jul 2022
- QC 66048

Find out what triggers a claimable loss on shares and units, and how you claim it in your tax return.

On this page

Shares must be disposed of

You can only claim a loss for shares or units you have disposed of. You cannot claim a 'paper loss' on investments you continue to hold.

Share investor

If you made the loss holding the shares or units as an investor, it is a capital loss.

On your tax return, you can:

- offset the loss against any capital gains
- carry forward any unused losses to offset against future capital gains.

Your capital loss cannot be:

- offset against your income from other sources
- converted to revenue losses in future years. This is the case even if you have not been able to offset it against a capital gain.

Share trader

If you made the loss carrying on a business of share trading, it is a revenue loss.

On your tax return, you treat it the same way as any other losses from business. You can generally offset the loss against income from other sources.

Losses on worthless shares

You may be able to claim a capital loss on worthless shares before a company is dissolved. You can do this if a liquidator or administrator declares in writing that you will not receive any further distribution from the company.

Share buy-backs

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Shares-and-similar-investments/Share-buy-backs/
- Last modified: 01 Jul 2022
- QC 66049

How your tax is affected if you sell your shares back to the company.

On this page

Effect on capital gains tax

If you dispose of shares back to the company, it is a capital gains tax (CGT) event. This means you must:

- calculate your capital gain or loss by subtracting the cost of the shares from your capital proceeds
- report your capital gain or loss in your income tax return.

If it is an off-market buy-back arrangement, your capital proceeds may be based on the market value of the shares, rather than the amount you receive.

Time of capital gain or loss

The point at which you make a capital gain or loss depends on the conditions of the buy-back offer. For example, it may be the time you lodge your application to participate in the buy-back or, if it is a conditional offer of buy-back, the time you accept the offer.

You report your capital gain or loss in your tax return for the year in which the CGT event happens.

Capital proceeds from an off-market share buy-back

An off-market share buy-back is when a company offers to buy its shares back from you directly, rather than buying them through a stock exchange in the open market. Usually the company writes to you with the offer.

For CGT purposes, your capital proceeds cannot be less than what the market value of your shares would have been if the buy-back had not been proposed.

If the buy-back price is equal to or more than this market value, your capital proceeds are the amount paid, excluding any dividend paid as part of the buy-back.

If the buy-back price is less than this market value, your capital proceeds are:

- what the market value of your shares would have been if the buy-back had not been proposed
- less any dividend paid under the buy-back.

In this situation, the company may tell you the market value or obtain a class ruling from us.

Where a share buy-back affects a large number of people, we may publish guidance on events affecting shareholders.

Example: off-market buy-back

Ranjini bought 10,000 shares in a company at a cost of $6 per share, including brokerage.

A few years later, the company wrote to its shareholders offering to buy back 10% of their shares for $9.60 each. The buy-back price included a franked dividend of $1.40 per share, with each dividend to carry a franking credit of $0.60.

Ranjini applied to participate in the buy-back to sell 1,000 of her shares.

- The company approved the buy-back on the same terms as its earlier letter of offer.
- The market value of the company's shares at the time of the buy-back, assuming the buy-back had not been proposed, was $10.20.
- Ranjini received a cheque for $9,600 (1,000 shares × $9.60).

Ranjini must work out her capital gain using the market value of the shares because:

- it is an off-market share buy-back
- the buy-back price is less than what the market value of the shares would have been if the buy-back had not been proposed.

Ranjini works out her capital gain as follows:

1. Market value of shares: $10.20 × 1,000 = $10,200
2. Dividend: $1.40 × 1,000 = $1,400
3. Capital proceeds: $10,200 − $1,400 = $8,800
4. Cost base: $6.00 × 1,000 = $6,000
5. Capital gain (before applying any discount): $8,800 − $6,000 = $2,800

Ranjini must report her capital gain, dividend and franking credit in her tax return.

For detailed information about share buy-backs, see:

- TD 2004/22 *Income tax: for off-market share buy-backs of listed shares, whether the buy-back price is set by tender process or not, what is the market value of the share for the purposes of subsection 159GZZZQ(2) of the Income Tax Assessment Act 1936*
- PS LA 2007/9 *Share buy-backs*

Dividend reinvestment plans

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Shares-and-similar-investments/Dividend-reinvestment-plans/
- Last modified: 01 Jul 2022
- QC 66050

A company in which you hold shares may offer you the option of reinvesting your dividends to acquire more shares, instead of receiving cash payments.

If you reinvest your dividend, for tax purposes you treat the transaction as though you had received the cash dividend and then used it to buy more shares.

This means:

- you must declare the dividend as income in your tax return
- the additional shares are subject to capital gains tax (CGT)
- the acquisition cost of the additional shares is the amount of the dividends used to acquire them.

Example: dividend reinvestment plans

Natalie owns 1,440 shares in a company.

In November 2021, the company declared a dividend of 25 cents per share. Natalie was offered the choice of:

- taking the dividend as a cash payment of $360 (1,440 × 25 cents)
- reinvesting the dividend to acquire 45 more shares at $8 per share ($360 ÷ $8).

Natalie decided to participate in the dividend reinvestment plan and received 45 new shares on 20 December 2021.

Natalie must treat the transaction as though she received the dividend in cash and used it to buy more shares. This means:

- she must declare the $360 dividend as assessable dividend income in her 2021–22 income tax return
- for CGT purposes, she acquired the 45 new shares for $360 on 20 December 2021.

Demergers CGT rollover for shareholders and unit holders

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Shares-and-similar-investments/Demergers-CGT-rollover-for-shareholders-and-unit-holders/
- Last modified: 01 Jul 2022
- QC 66051

Find out if you should defer your gain or loss when a corporate group demerges.

On this page

How a demerger affects shareholders

When a corporate group demerges, you can choose to rollover (defer) the capital gain or loss you make as a shareholder.

A demerger involves the restructuring of a corporate or fixed trust group by splitting its operations into 2 or more entities or groups.

The shareholders or unit holders in the head entity of the group acquire a direct interest in an entity that was formerly part of the group (the demerged entity).

If you choose a rollover:

- you disregard any capital gain or loss made under the demerger
- your new interests in the demerged entity are acquired on the date of the demerger. However, if a proportion of your original interests was acquired before 20 September 1985 (pre-CGT), the same proportion of your new interests in the demerged entity is treated as pre-CGT assets.

If you do not choose a rollover:

- you can't disregard any capital gain or loss made under the demerger
- all your new interests in the demerged entity are acquired on the date of the

demerger.

Whether or not you choose a rollover, you must recalculate the cost base of your remaining original interests in the head entity and your new interests in the demerged entity.

A foreign resident can only choose a rollover if the new interest acquired under the demerger is taxable Australian property as soon as they acquire it.

A dividend paid under a demerger is generally not subject to tax if at least 50% of the CGT assets (by market value) owned by the demerged entity or its demerger subsidiaries are used by them in carrying on a business. This concession is automatic unless the head entity elects that it not apply.

What you should do

Usually the head company or trust of the group that is demerging will advise shareholders or unit holders if a CGT rollover is available.

Check the information you have received from the head entity to find out about your rollover options and what you should do.

When a corporate group restructures, we often publish a class ruling or fact sheet setting out the tax consequences for shareholders.

For certain large demergers, you can use the demergers calculator to:

- recalculate your cost base
- work out your capital gain or loss if you dispose of your shares.

Using the CGT discount after a demerger

If you sell your new interests in the demerged entity after the demerger, you must have owned the corresponding original interests in the head entity for at least 12 months to be eligible for the CGT discount.

Example: CGT discount eligibility for new interests

You received BHP Steel Ltd shares under the demerger on 22 July 2002. These related to shares you acquired in BHP Billiton Ltd on 15 August 2001.

You meet the 12-month ownership requirement for the CGT discount if you dispose of the shares after 15 August 2002 – that is, 12 months or more after the date you acquired the BHP Billiton shares.

However, you calculate the 12 months from the date of demerger if you either:

- did not choose the rollover and you received new interests in the demerged

entity that relate to pre-CGT interests in the head entity
- acquired your new interests without a CGT event happening to your original interests.

Example: CGT discount eligibility for pre-CGT shares

You received BHP Steel Ltd shares under the demerger on 22 July 2002.

The shares related to pre-CGT shares you owned in BHP Billiton Ltd and you did not choose a rollover.

You meet the 12-month ownership requirement for the CGT discount if you dispose of the shares after 22 July 2003 – that is, 12 months or more after the demerger.

CGT listed investment companies concession

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Shares-and-similar-investments/CGT-listed-investment-companies-concession/
- Last modified: 01 Jul 2022
- QC 52236

If a listed investment company (LIC) pays a dividend that includes a LIC capital gain amount, a shareholder who is an Australian resident at the time will be entitled to an income tax deduction.

A LIC paying a dividend will advise its shareholders how much of the dividend is attributable to a LIC capital gain (the attributable part).

On this page

Individual taxpayer

An individual can deduct 50% of the attributable part advised by the LIC.

Example: Resident individual

Ben, an Australian resident, is a shareholder in XYZ Ltd, a LIC. For the 2021–22 income year, Ben received a fully franked dividend from XYZ Ltd of $70, with an eligible capital gain amount (attributable part) of $50. Ben includes in his tax return the following amounts:

Franked dividend	$70
plus franking credit	$30
Assessable income	$100
less 50% deduction for LIC capital gain	$25
Taxable income	$75

Note: Ben may be entitled to a franking tax offset equal to his franking credit.

Complying superannuation entity or life insurance company

A complying superannuation entity or life insurance company can deduct 33 ⅓% of the attributable part advised by the LIC.

Trust or partnership

A trust or partnership can deduct 50% of the attributable part advised by the LIC.

Beneficiary of a trust or partner in partnership

If a shareholder in a LIC is a trust or partnership, a beneficiary of the trust or a partner in the partnership has no share of the attributable part.

To allow for this, the beneficiary or partner (other than an individual) includes an amount in their assessable income in the income year in which a LIC capital gain dividend is paid if the trust or partnership is allowed a deduction and their income is reduced by an amount because of that deduction.

The amount included in the beneficiary or partner's assessable income is equivalent to that part of the deduction that reflects their share of the net income of the trust or partnership (the reduction amount).

A beneficiary or partner that is a complying superannuation entity or life insurance company trust must include in their assessable income one-third of that part of a deduction allowed to the trust, company or partnership that is reflected in the beneficiary or partner's share of the net income.

Example: Beneficiary of a trust or partner in partnership

The Robbie Partnership received from a LIC a $210 fully franked dividend that included an attributable part of $180. The partnership has three equal partners – Joe Robbie, Robbie Limited, and the Robbie Superannuation Fund (a complying superannuation entity).

The partnership claimed a deduction of $90 in respect of the attributable part in working out its net income of $12,000 (including the $210 dividend). Each partner's share of the net income is $4,000 and their reduction amount is $30 (one-third of $90).

Each partner includes $4,000 in their assessable income. The partners must also include the following additional amounts in their assessable income:

- Joe Robbie, $0 (Joe is an individual partner in the partnership)
- Robbie Limited, $30 (the reduction amount)
- Robbie Superannuation Fund, $10 (one-third of the reduction amount).

Investments in a company in liquidation or administration

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Shares-and-similar-investments/Investments-in-a-company-in-liquidation-or-administration/
- Last modified: 01 Jul 2022
- QC 52234

You may be able to realise a capital loss on worthless shares before a company is dissolved if a liquidator or administrator declares in writing that there is no likelihood you will receive any further distribution in the course of winding up a company.

Financial instruments relating to a company can also be declared worthless by a liquidator or administrator.

On this page

Shareholders and investors

You may be able to claim a capital loss if you're:

- a shareholder, and a liquidator or an administrator of a company declares in writing that they have reasonable grounds to believe there is no likelihood that shareholders will receive any further distribution for their shares
- an investor who holds a financial instrument in a company, and the liquidator or administrator of the company makes a declaration in writing that the financial instrument has no value or negligible value. Such financial instruments may include
    - convertible notes
    - debentures
    - bonds
    - promissory notes
    - loans to the company
    - futures contracts
    - forward contracts and currency swap contracts relating to the company
    - rights or options to acquire any of these, including rights or options to acquire shares in a company.

Liquidator or administrator's role

The decision about whether or not to make a declaration, and the time at which to make it, rests solely with the liquidator or administrator. They can make written declarations in relation to shares and financial instruments in the same statement – for example, a declaration in relation to a share and an option to acquire a share.

You can't claim a capital loss for a financial instrument, such as a right or option to acquire a share, if a liquidator or an administrator declares they consider the shares are worthless but does not make a declaration that they consider the financial instrument is of no value or has only negligible value.

When you can't choose to make a capital loss

You can't choose to make a capital loss for:

- a financial instrument where any profit made on the disposal or redemption of it would be included in your assessable income or any loss would be deductible – such as a traditional security or qualifying security
- a unit in a unit trust or a financial instrument relating to a trust
- certain interests acquired under employee share schemes.

Employee share schemes

If your shares or rights were acquired under an employee share scheme (ESS), these CGT rules do not apply to:

- a right acquired before 1 July 2009

- a share acquired if
  - it is a qualifying share
  - you did not make a section 139E election in relation to the share under the employee share rules
  - the declaration by the liquidator or administrator was made no later than 30 days after the ‘cessation time’ for the share

- an ESS interest or an ESS interest that is a beneficial interest in a right that is forfeited and is taken to have been acquired.

This ensures the tax consequences for shares you acquire for less than their market value are dealt with under the ESS tax rules before any potential capital gains tax rules apply.

Conditions that must be satisfied

You may choose to make a capital loss if all the following conditions apply:

- You are an Australian resident for income tax purposes.
- You hold a share or financial instrument relating to a company that went into liquidation or administration.
- You acquired the share or financial instrument after 19 September 1985.
- A liquidator or administrator of the company made a written declaration that they believed the shares were worthless or the financial instruments had no value or negligible value.
- Any gain or loss you would make on the share or financial instrument is a capital gain or capital loss – that is, you hold the share or financial instrument as an investment asset and
  - not as trading stock (see Share trading as business)
  - not as part of carrying on a business
  - not to make a short-term or ‘one-off’ commercial gain.

Working out the capital loss

If you choose to make the capital loss when the declaration is made, your capital loss is equal to the reduced cost base of the shares (or financial instruments) at the time of the declaration by the liquidator or administrator. If you make the choice, the cost base and reduced cost base of the shares (or financial instruments) are reduced to nil just after the liquidator or administrator makes the declaration. This is relevant for working out if you make a capital gain from any later capital gains tax (CGT) event happening to the shares (or financial instruments).

You indicate that you have chosen to make the capital loss by the amounts you show at the capital gains tax question on your tax return for that year.

Receiving further payments after the declaration

You may receive a further payment in respect of your shares if, for example, court action was successful in recovering money for the company or its shareholders.

- Company dissolved more than 18 months after a payment: If you receive a payment after the date of the declaration and the payment is not assessable to you as a dividend, you may make a capital gain at the time you receive the payment.
- Company dissolved within 18 months of a payment: If the payment is made to you by a liquidator after the declaration and the company is dissolved within 18 months of a payment, the payment is included as capital proceeds on the cancellation of your shares (rather than you making a capital gain at the time of the payment). In preparing your tax return you may delay declaring any capital gain until your shares are cancelled, unless you are advised by the liquidator in writing that the company will not cease to exist within 18 months of you receiving the payment.

Example: Capital loss when company dissolves

On 31 March 2022, the administrators of Company Ltd made a written declaration that they had reasonable grounds to believe there was no likelihood that shareholders would receive any distribution for their shares.

At the time of the declaration, Dave owned 1,000 Company Ltd shares. Following the declaration by the administrators, he chose to claim a capital loss for his Company Ltd shares in his 2021–22 tax return.

Dave acquired his Company Ltd shares in March 2009 for $1.70 each, including brokerage costs. Therefore, the reduced cost base of Dave's Company Ltd shares and his capital loss in respect of those shares is $1,700 – that is, 1,000 multiplied by $1.70.

In working out his net capital gain or net capital loss for the 2021–22 year, Dave takes the capital loss of $1,700 from his Company Ltd shares into account.

Example: Company dissolved more than 18 months after a payment

The administrators of Company Ltd made a written declaration on 31 March 2020 that they had reasonable grounds to believe that there was no likelihood that the shareholders of Company Ltd would receive any distribution from their shares.

Dave purchased 1,000 shares in Company Ltd in March 2009 for $1.70, including brokerage costs. Following the administrators' declaration, Dave chose to make capital losses equal to the reduced cost bases of his shares as at 31 March 2020. Therefore, the reduced cost base of Dave's shares and his capital loss in respect of those shares is $1,700. Dave claimed the capital losses in his 2020 tax return.

On 1 March 2022, Court action was successful in recovering $0.10 per share for the shareholders.

As more than 18 months had passed since the administrator's declaration back in 2020, the recovery of $100 – that is, 1,000 × $0.10, is assessable as a capital gain in Dave's 2022 income tax return.

Where a company liquidation affects a large number of people, we may provide specific guidance on the tax implications (see Events affecting shareholders).

Trust non-assessable payments (CGT event E4)

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Shares-and-similar-investments/Trust-non-assessable-payments-(CGT-event-E4)/
- Last modified: 01 Jul 2022
- QC 52215

Trusts often make non-assessable payments to beneficiaries. If you receive a non-assessable payment from a trust, CGT event E4 may occur. If this occurs, you may need to make cost base adjustments to your units or trust interest. Those adjustments will affect the amount of any capital gain or loss you make on the unit or interest, for example, when you sell it.

If your unit or interest is in an attribution managed investment trust (AMIT), CGT event E4 doesn't apply, but CGT event E10 may apply.

On this page

Non-assessable payments

Non-assessable payments may be made over a number of years. In this case, you will make a capital gain in the year in which the cumulative total of the non-assessable payments over all years exceeds the cost base of your units or interests.

You can't make a capital loss from a non-assessable payment.

Non-assessable payments may be shown on your statement from the trustee as:

- tax-free amounts
- CGT-concession amounts
- tax-exempted amounts
- tax-deferred amounts.

You may need to adjust the cost base and reduced cost base of your units depending on the kind of non-assessable payment you received.

Your statement of distribution or advice should show amounts and other information relevant to your cost base or reduced cost base.

Types of amounts

Tax-free amounts relate to certain tax concessions received by the fund which enable it to pay greater distributions to its unit holders. If your statement shows any tax-free amounts, you adjust the reduced cost base (but not the cost base) of your units by these amounts. Payments of amounts associated with building allowances that were made before 1 July 2001 were treated as tax-free amounts.

CGT-concession amounts relate to the CGT discount component of any actual distribution. Such amounts don't affect your cost base and reduced cost base if they were received after 30 June 2001. A CGT-concession amount received before 1 July 2001 is taken off the cost base and reduced cost base.

Tax-exempted amounts are generally:

- exempt income of the fund
- amounts on which the fund has already paid tax
- income you had to repay to the fund.

Such amounts don't affect your cost base and reduced cost base.

Tax-deferred amounts are other non-assessable amounts, including indexation received by the fund on its capital gains and accounting differences in income. You adjust the cost base and reduced cost base of your units by these amounts. Payments associated with building allowances made on or after 1 July 2001 are treated as tax-deferred amounts.

If the tax-deferred amount is greater than the cost base of your units or trust interest, you include the excess as a capital gain. You can use the indexation method if you bought your units or trust interest before 11:45 am (by legal time in the ACT) on 21 September 1999. However, if you do so, you can't use the discount method to work out your capital gain when you later sell the units or trust interest.

Cost base adjustments

Generally, you make any adjustment to the cost base and reduced cost base of your unit or trust interest at the end of the income year. However, if some other CGT event happens to the unit or trust interest during the year (for example, you sell your units), you must adjust the cost base and reduced cost base just before the time of that CGT event. The amount of the adjustment is based on the amount of non-assessable payments to you up to the date of sale. You use the adjusted cost base and reduced cost base to work out your capital gain or loss.

Example: Mario has received a non-assessable amount

Mario owns units in OZ Investments Fund (a managed fund that is not an AMIT and has not elected to apply the 2011 changes to the rules relating to capital gains made by trusts), which distributed income to him for the 2021–22 income year. The fund gave him a statement showing his distribution meant that his share of the trust's net capital gain included:

- $100 calculated using the discount method (grossed-up amount $200)
- $75 calculated using the indexation method
- $28 calculated using the 'other' method.

These capital gains add up to $203.

The statement shows Mario's distribution did not include a tax-free amount, but it did include a $105 tax-deferred amount.

From his records, Mario knows that the cost base and reduced cost base of his units are $1,200 and $1,050 respectively.

Mario has no other capital gains or capital losses for the 2021–22 income year and no unapplied net capital losses from earlier years.

The following steps show how Mario works out the amounts to write on his tax return.

Step 1

As Mario has a share of a capital gain which the fund reduced using the CGT discount of 50% (so that his share was $100), he includes the grossed-up amount of his share ($200) in his total current year capital gains.

Step 2

Mario adds the grossed-up amount to his share of the trust's capital gains calculated using the indexation method and 'other' method to work out his total current year capital gains:

$200 + $75 + $28 = $303

Step 3

As Mario has no other capital gains or losses, and he must use the discount method for the capital gains calculated using the discount method from the trust, his net capital gain is equal to his share of the trust's net capital gain for tax purposes ($203).

Step 4

Mario completes item 18 in his tax return (supplementary section) as follows:

- label G (Did you have a capital gains tax event during the year?): indicate yes
- label M (Have you applied an exemption or rollover?): indicate no and leave the code blank
- label A (Net capital gain): enter 203
- label H (Total current year capital gains): enter 303
- label V (Net capital losses carried forward to later income years): leave blank
- label X (Credit for foreign resident capital gains withholding amounts): leave blank.

Records Mario needs to keep

The tax-deferred amount Mario received is not included in his income or his capital gains, but it affects the cost base and reduced cost base of his units in OZ Investments Fund for future income years.

Cost base	$1,200
less tax-deferred amount	$105
New cost base	$1,095
Reduced cost base	$1,050
less tax-deferred amount	$105
New reduced cost base	$945

Example: Ilena's capital loss is greater than her non-discounted capital gain

Ilena invested in XYZ Managed Fund (a managed fund that is not an AMIT and has not elected to apply the 2011 changes to the rules relating to capital gains made by trusts). The fund made a distribution to Ilena for the year ending 30 June 2022 and gave her a statement that shows her distribution meant that her share of the trust's net capital gain included:

- $65 discounted capital gain

- $90 non-discounted capital gain.

The statement shows Ilena's distribution also included:

- $30 tax-deferred amount
- $35 tax-free amount.

Ilena has no other capital gains, but made a capital loss of $100 on some shares she sold during the year. Ilena has no unapplied net capital losses from earlier years.

From her records, Ilena knows the cost base and reduced cost base of her units are $5,000 and $4,700 respectively.

Ilena has to treat the capital gain component of her share of the fund's net income for tax purposes as if she made the capital gain. To complete her tax return, Ilena must identify this capital gain component and work out her net capital gain.

The following steps show how Ilena works out the amount to write at H item 18 on her tax return (supplementary section).

Step 1

As Ilena has a share of a capital gain which the fund reduced by the CGT discount of 50% (her discounted share being $65), she must gross up her share of this capital gain. She does this by multiplying the amount of her share of the discounted capital gain by two:

$65 × 2 = $130

Step 2

Ilena adds her share of the trust's grossed-up and non-discounted capital gains to work out her total current year capital gains:

$130 + $90 = $220

She writes her total current year capital gains ($220) at H item 18 on her tax return (supplementary section).

Step 3

After Ilena has grossed-up her share of the fund's discounted capital gain, she subtracts her capital losses from her capital gains.

Ilena can choose which capital gains she first subtracts the capital losses from. In her case, she gets the better result if she:

- subtracts as much as possible of her capital losses (which were $100) from her non-discounted capital gains ($90):
  $90 − $90 = $0 (non-discounted capital gains)

- subtracts her remaining capital losses after step 1 ($10) from her discounted capital gains ($130):
  $130 − $10 = $120 (discounted capital gains)
- applies the CGT discount to her remaining discounted capital gains:
  ($120 × 50%) = $60 (discounted capital gains)

Step 4

Finally, Ilena adds up the capital gains remaining to arrive at her net capital gain:

$0 (non-discounted) + $60 (discounted) = $60 net capital gain.

Ilena completes item 18 on her tax return (supplementary section) as follows:

- label G (Did you have a capital gains tax event during the year?): indicate yes
- label M (Have you applied an exemption or rollover?): indicate no and leave the code blank. The trust applied the exemption or rollover and will need to report that on its trust return.
- label A (Net capital gain): enter 60
- label H (Total current year capital gains): enter 220
- label V (Net capital losses carried forward to later income years): leave blank
- label X (Credit for foreign resident capital gains withholding amounts): leave blank.

Records Ilena needs to keep

The tax-deferred and tax-free amounts Ilena received are not included in her income or her capital gain, but the tax-deferred amount affects the cost base and reduced cost base of her units in XYZ Managed Fund for future income years. The tax-free amount affects her reduced cost base.

Ilena reduces the cost base and reduced cost base of her units as follows:

Cost base	$5,000
less tax-deferred amount	$30
New cost base	$4,970
Reduced cost base	$4,700
less (tax-deferred amount + tax-free amount) ($30 + $35)	$65
New reduced cost base	$4,635

Inherited assets and capital gains tax

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Inherited-assets-and-capital-gains-tax/
- Last modified: 01 Jul 2022
- QC 66052

How and when CGT applies if you sell assets you inherited, including properties and shares.

How CGT applies to inherited assets
How CGT applies when you sell an inherited asset, or it passes to a foreign resident, charity or super fund.

Cost base of inherited assets
How to work out the cost of an inherited asset when you calculate CGT.

Inherited property and CGT
Find out if the inherited property is exempt from CGT, and what happens if there was more than one owner.

Cost base of inherited assets

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Inherited-assets-and-capital-gains-tax/Cost-base-of-inherited-assets/
- Last modified: 06 Sep 2022
- QC 66053

How to work out the cost of an inherited asset when you calculate CGT.

On this page

Asset acquired by deceased before 20 September 1985

If the deceased acquired the asset before 20 September 1985, it was a pre-CGT asset while they owned it. The first element of your cost base – the acquisition cost – is the market value of the asset on the day the deceased died.

If the deceased made a major improvement to the asset on or after 20 September 1985, the improvement is not treated as a separate asset. You are taken to have acquired a single asset.

The cost base of this single asset is the total of:

- the cost base of the major improvement on the day the person died
- the market value of the pre-CGT asset, excluding the improvement, on the day the deceased died.

Asset acquired by deceased from 20 September 1985

If the deceased acquired the asset on or after 20 September 1985, the first element of your cost base – the acquisition cost – is generally the deceased's cost base for the asset on the day they died.

However, the first element of your cost base is the market value of the asset on the day the deceased died if the asset:

- is a property that passed to you after 20 August 1996 (but not as a joint tenant), and just before the deceased died it was their main residence and was not being used to produce income
- passed to you as the trustee of a special disability trust.

Expenses the beneficiary includes in the cost base

As a beneficiary, you can include in your cost base (and reduced cost base) any expenditure a legal personal representative (LPR) would have included in their cost base if they had sold the asset instead of distributing it to you.

You include the expenditure on the date the LPR incurred it.

Example: transfer of an asset from executor to beneficiary

Maria died on 13 October 2021 leaving 2 assets:

- a parcel of 2,000 shares
- a vacant block of land.

The executor of the estate:

- disregarded any capital gain or loss on the transfer of the assets
- sold the shares to pay Maria's outstanding debts
- transferred the land to Maria's beneficiary, Antonio, and paid the

conveyancing fee of $5,000 upon payment of all debts and tax.

The shares were not transferred to a beneficiary. Therefore, the executor must include any capital gain or loss on this disposal in the tax return for Maria's deceased estate.

The land was transferred to a beneficiary. Any capital gain or loss on this transfer is disregarded.

The first element of Antonio's cost base is Maria's cost base on the date of her death. Antonio can include the $5,000 the executor spent on the conveyancing in his cost base.

Legal costs incurred by a legal personal representative

As the LPR, in some circumstances, legal costs you incur may form part of the cost base of the estate's assets.

For example, if a LPR incurs costs to confirm the validity of the deceased's will or defend a claim for control of the estate, these costs form part of the cost base of the estate's assets.

Example: legal costs incurred to prove the validity of a will

Annie is the executor (LPR) of a deceased estate.

The deceased had more than one will prepared prior to their death:

- The final will left the estate’s assets to Max.
- Prior wills had left the estate’s assets to family members.

The family members challenged the validity of the deceased’s will in Court. As a result, Annie incurred legal costs on behalf of the deceased estate to defend this action.

The Court held that the final will was valid and granted probate.

The legal costs that Annie incurred to confirm the validity of the will and obtain probate were incurred to preserve or defend the rights over the estate’s assets.

Annie can't claim a deduction for these costs in her capacity as LPR as they are capital in nature. She can, however, include these legal costs in the cost base of the estate’s assets.

However, not all costs incurred by a LPR having a connection to estate assets will form part of the cost base of the estate's assets.

Example: legal costs incurred prior to the deceased's death

Cassie is the executor (LPR) of a deceased estate.

Shortly prior to and in anticipation of the deceased's death, Cassie acted as the solicitor for the deceased.

Cassie prepared an agreement for the transfer of interests in an asset to the deceased.

These actions were undertaken by Cassie prior to the deceased's death and the commencing of Cassie's duties as the LPR of the estate.

Any charges for Cassie's solicitor services that are included in her charges as the LPR can't be included in the cost base of the estate's assets.

However, such costs could form part of the cost base of the assets of the deceased at the date of death.

Indexing the cost base of an inherited asset

If the deceased died before 21 September 1999, you have the option of indexing the cost base when you dispose of the asset. Alternatively, you can claim the CGT discount. Usually the discount will give you a better result.

With indexation, you calculate your capital gain by using the first element of the asset's cost base indexed for inflation up until 21 September 1999. You do not apply the discount.

If the deceased died on or after 21 September 1999, you cannot use indexation. If the deceased's cost base includes indexation, you must recalculate the first element of your cost base to exclude it.

Inherited property and CGT

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Inherited-assets-and-capital-gains-tax/Inherited-property-and-CGT/
- Last modified: 10 Oct 2022
- QC 66054

Find out if the inherited property is exempt from CGT, and what happens if there was more than one owner.

On this page

Work out if your inherited property is exempt

If you inherit a property and later sell or otherwise dispose of it, you may be exempt from capital gains tax (CGT).

The same exemption applies if you are the trustee of a deceased estate.

The inherited property must include a dwelling and you must sell them together. Generally, you cannot get a CGT exemption for land or a structure that you sell separately from the dwelling.

If you are a foreign resident, or the deceased was a foreign resident, you are generally not entitled to the main residence exemption when you sell the property.

Work through the following questions to find out if your inherited property is exempt from CGT.

1. Did the deceased die before CGT started on 20 September 1985?

Yes: property is fully exempt. However, any major property improvements or additions you make on or after 20 September 1985 may be subject to CGT.

No: go to question 2

2. Did the deceased acquire the property before 20 September 1985?

Yes: go to question 6

No: go to question 3

3. Did you inherit the property after 20 August 1996?

Yes: go to question 5

No: go to question 4

4. From the time the deceased acquired the property until their death, was the property their main residence and not used to produce income?

Yes: go to question 7

No: property is not fully exempt. You may qualify for a partial exemption

5. Just before the deceased died, was the property their main residence and not used to produce income?

Yes: go to question 6

No: property is not fully exempt. You may qualify for a partial exemption

6. Did you dispose of the property within 2 years?

See Disposal within 2 years

Yes: property is fully exempt

No: go to question 7

7. From the time the deceased died, was the property used only as the main residence of at least one of the following people:

- the spouse of the deceased immediately before their death (but not a spouse who was permanently separated from the deceased)
- a person who has a right to occupy the property under the deceased's will
- you, as a beneficiary, if you dispose of the property as a beneficiary?

See Main residence while you own property

Yes: property is fully exempt

No: property is not fully exempt. You may qualify for a partial exemption.

Disposal within 2 years

You meet this requirement if you dispose of the property under a contract that settles within 2 years of the deceased's death.

It does not matter whether you used the property as your main residence or to produce income during the 2-year period.

You can extend the 2-year period if disposal of the property is delayed by exceptional circumstances outside your control.

Example: disposal within 2 years

Rodrigo was the sole occupant of a flat he bought in April 1990. He did not live in or own another property.

Rodrigo died in January 2020 and left the flat to his son, Petro.

Petro rented out the flat and then sold it 15 months after his father died.

Petro is entitled to a full exemption from CGT as he acquired the flat after 20 August 1996 and disposed of it within 2 years of his father's death.

Main residence while you own property

You meet this requirement if, from the deceased's death until you dispose of the property, both of the following are true:

- the property is not used to produce income
- the property is the main residence of at least one of the following people
  - the person who was the spouse of the deceased immediately before the deceased's death (but not a spouse who was permanently separated from the deceased)
  - a person who has a right to occupy the property under the deceased's will
  - you, as a beneficiary, if you dispose of the property as a beneficiary.

The property can continue to be the main residence of one of the above people if they choose to treat it as their main residence (even if they have stopped living in it).

A property is considered to be your main residence from the time you acquire it if you move in as soon as practicable after that time.

Example: main residence while you own property

Peter bought a house prior to 20 September 1985. He died in February 1992 and the house passed to his beneficiary, Bob.

Under Peter's will, Patti had a right to occupy the house. However, Patti could not move in until probate and administration of the estate was granted. During this period the house was vacant.

Probate and administration of the estate was granted in September 1992 and Patti moved in immediately.

Patti used the house as her main residence until Bob disposed of it in 2022.

Patti did not own any other property from the date of Peter's death.

As Patti moved into the house when it was first practicable to do so, it is treated as Patti's main residence from the time of Peter's death until Bob sold it.

Bob is entitled to a full main residence exemption.

If your property is not fully exempt

If your property is not or only partially exempt from CGT, to work out your capital gain, you need to know its cost base.

If your property is partially exempt, you need to work out the proportion of your property that is exempt.

Foreign residents and inherited property

When you inherit Australian residential property:

- if the former owner of the property was a foreign resident for more than 6 years at the time of their death, you cannot claim the main residence exemption for the period they owned it
- if you have been a foreign resident for more than 6 years when you sell or dispose of the property, you cannot claim the main residence exemption for the period you owned it
- if you have been a foreign resident for 6 years or less when you sell or dispose of the property, to claim the main residence exemption you must satisfy the life events test.

If you are not entitled to the main residence exemption, CGT will apply when you sell or dispose of the property.

Example: inherit property from a foreign resident

Michael bought an Australian residential property in 2010 and lived in it as his main residence.

- On 1 July 2013, Michael moved to New York and rented out his Australian property.
- On 16 August 2021, Michael passed away.
- Anita, an Australian resident, inherited the property from Michael.
- Anita did not live in the property and sold it within 2 years.

At the time of his death, Michael had been a foreign resident for more than 6 years. This means Michael was not eligible for the main residence exemption at the time of his death, despite having lived in the property from 2010 to 2013.

Anita cannot claim the main residence exemption because Michael was not entitled to it. She must declare the capital gain in her tax return and pay CGT.

Right of survivorship

When the ownership of a property is shared and an owner dies, their share of the property is transferred based on their co-ownership arrangement.

Calculating a partial exemption for inherited property

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Inherited-assets-and-capital-gains-tax/Inherited-property-and-CGT/Calculating-a-partial-exemption-for-inherited-property/
- Last modified: 01 Jul 2022
- QC 66055

Calculate the exemption amount, work out main residence status, and what to do if the property was inherited previously.

On this page

How to calculate CGT with a partial exemption

If you do not qualify for a full exemption from capital gains tax (CGT) for an inherited property, you may be entitled to a partial exemption.

To work out the taxable portion of your capital gain or loss:

Step 1: Calculate your capital gain or loss from selling or disposing of the property.

Step 2: Multiply the amount at step 1 by the number of non-main residence days

Step 3: Divide the amount at step 2 by the total days

Non-main residence days

Generally, non-main residence days is the total of:

1. The number of days, from when the deceased died until settlement of the sale of the property, that it was not the main residence of one of the following:
   - you, as a beneficiary, if you disposed of the property as a beneficiary
   - a person who was the spouse of the deceased (except if they were permanently separated)
   - an individual who had a right to occupy the property under the deceased's will.
2. The number of days during the deceased's ownership of the property that it was not their main residence.

However, you do not include item 2 (the number of non-main residence days during the deceased's ownership) if either of the following happened:

- the deceased acquired the property before 20 September 1985

- the property passed to you after 20 August 1996, and just before the deceased died, the property:
  - was the deceased's main residence
  - was not being used to produce income.

A further adjustment may be required if the property was a main residence but part of it was rented out or used as a place of business.

You can use the days calculator to work out the number of days between dates.

Total days

If the deceased acquired the property:

- before 20 September 1985, 'total days' is the number of days from their death until you disposed of the property
- on or after 20 September 1985, 'total days' is the number of days from when the deceased acquired the property until you disposed of it.

If you dispose of the property within 2 years of the deceased's death, you can ignore the main residence days and total days during your period of ownership.

Example: calculating CGT with a partial exemption

Vicki bought a house under a contract that settled on 12 February 1995.

- Vicki used the house solely as a rental property.
- When Vicki died on 17 November 1998, the house was inherited by her beneficiary, Lesley.
- Lesley lived in the house as her main residence throughout the time she owned it.
- Lesley sold the property under a contract that settled on 27 November 2021. She made a capital gain of $400,000.

Lesley cannot claim a full exemption from CGT because Vicki did not use the property as her main residence. However, Lesley is entitled to an exemption for the time she used the house as her main residence.

- Vicki owned the house as a rental property for 1,375 days.
- Lesley lived in the house for 8,412 days.

This is a total of 9,786 days.

Lesley works out the taxable portion of her capital gain as follows:

> Capital gain × non-main residence days ÷ total days = capital gain or loss
>
> $400,000 × 1,375 ÷ 9,786 = $56,203

Lesley can use either the CGT discount or indexation to calculate her capital gain, because she:

- is taken to have acquired the property before 21 September 1999
- entered into the contract to sell it after 21 September 1999
- held the property for at least 12 months.

Continuing main residence status

If the deceased was not living in the property at the time of their death, they (or their trustee) may have chosen to continue treating it as their main residence.

You may need to contact the trustee or the deceased's tax adviser to find out if this choice was made.

If the choice was made, the property can be treated as the deceased's main residence from the time they stopped living in it:

- for an indefinite period, if the property was not used to produce income after the deceased stopped living in it
- until their death or up to 6 years after they stopped living in it (whichever happens first), if the property was used to produce income after they stopped living in it.

Example: continuing main residence status

Aldo bought a house in 1995 and lived in it. He:

- moved into a nursing home in 2017 and left the house vacant
- chose to treat the house as his main residence after he stopped living in it
- died in 2022.

The house passed to Aldo's beneficiary, Con, who used it as a rental property.

As the house was treated as Aldo's main residence immediately before his death and was not being used to produce income at that time, Con can obtain a full exemption from CGT for the period Aldo owned it.

- If Con sells it more than 2 years after Aldo's death, the capital gain for the period from Aldo's death until Con sells the house is taxable.
- If Con sells the house within 2 years of Aldo's death, he can ignore the non-main residence days and total days between Aldo's death and him selling it. This would give him a full exemption.
- If Aldo had rented out the house after he stopped living in it, the house would still be treated as his main residence until his death. This is because he would have rented it out for less than 6 years. Therefore, Con would still get an exemption for the period Aldo owned the house.

Inheriting a previously inherited property

The formula for calculating the partial main residence exemption is adjusted if the deceased also acquired the property on or after 20 September 1985 as a beneficiary (or trustee) of a deceased estate.

The main residence exemption is calculated according to the number of days the property was the main residence of you and the previous beneficiaries.

Example: inheriting a property that was previously inherited

Ahmed acquired a property after 20 September 1985 and owned if for 3,700 days.

- The property was his main residence throughout the time he owned it.
- Ahmed left the property to his son, Fayez.

Fayez owned the property for 2,600 days.

- It was not his main residence at any time during this period.
- When he died, Fayez left the property to Mardianah.

Mardianah owned the property for 750 days.

- It was not her main residence at any time during that period.
- Mardianah sold the property and made a capital gain of $400,000.

The taxable proportion of Mardianah's capital gain is:

- the number of days that the property was not a main residence
- divided by the total number of days from when Ahmed first acquired the dwelling until Mardianah sold it.

Mandianah works out her capital gain as follows:

$400,000 × ((2,600 + 750) ÷ (2,600 + 750 + 3,700)) = $190,071

Because the combined period that Ahmed, Fayez and Mardianah owned the property was more than 12 months, Mardianah can reduce her capital gain by the 50% discount (after deducting any capital losses).

Co-ownership and right of survivorship

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Inherited-assets-and-capital-gains-tax/Inherited-property-and-CGT/Co-ownership-and-right-of-survivorship/
- Last modified: 01 Jul 2022
- QC 66056

How ownership of a property is transferred if an owner dies, and they were tenants in common or joint tenants.

On this page

What is right of survivorship?

When property ownership is shared, and an owner dies, how their share of the property is transferred is based on the co-ownership arrangement. This is called the right of survivorship.

Tenants in common

Tenants in common are 2 or more people who separately own a percentage of a property. The percentages may be unequal.

Tenants in common can bequeath their share of the property to anyone.

When a tenant in common dies, their share in the property becomes an asset of their deceased estate. There is no right of survivorship.

Their interest in the property can be:

- transferred to a beneficiary of the estate
- sold (or otherwise disposed of) by the legal personal representative of the estate.

A tenant in common has the right to sell, mortgage or lease their share of the property. They can do this without the agreement of the other tenants.

Example: surviving tenant in common

Anita and Noor bought a property as tenants in common. Anita took an 80% share and Noor took a 20% share in the property.

Some years later, Anita died. Anita's 80% share in the property became an asset of her deceased estate.

In her will, Anita identified her son Isaac as beneficiary of her estate. Therefore, her 80% share in the property is transferred to Isaac.

Joint tenants

Joint tenants have an equal share in the ownership of an asset.

If a joint tenant dies, the other tenant (or tenants) has a right of survivorship. The deceased tenant's interest is not an asset of their estate.

However, for capital gains tax purposes, the deceased's interest is taken to pass in equal shares to the surviving joint tenants, as if the interest is an asset of the deceased estate and the surviving joint tenants are beneficiaries.

This means if the property was the deceased’s main residence, the surviving joint tenants may be entitled to the main residence exemption for the acquired interest.

Example: surviving joint tenant

Laura and Damien bought a 2-bedroom apartment as joint tenants.

Some years later, Damien died. Damien's 50% interest in the property passed to Laura as the surviving joint tenant.

Extensions to the 2-year ownership period

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Inherited-assets-and-capital-gains-tax/Inherited-property-and-CGT/Extensions-to-the-2-year-ownership-period/
- Last modified: 15 Dec 2022
- QC 66057

Check if you can extend the 2-year limit on the capital gains tax (CGT) main residence exemption for inherited property.

On this page

When the exemption applies

An inherited property is exempt from CGT if you dispose of it within 2 years of the deceased's death, and either:

- the deceased acquired the property after 20 September 1985, and at the time of death the property
  - was the deceased’s main residence
  - was not being used to produce income

- the deceased acquired the property before 20 September 1985 (regardless of whether the property was the deceased's main residence or being used to produce income before they died).

Extending the 2-year limit

The 2-year limit is extended if disposal of the property is delayed by exceptional circumstances outside your control.

You may be eligible for safe harbour under the provisions of PCG 2019/5 – *Capital gains tax and deceased estates – the Commissioner's discretion to extend the 2-year period to dispose of dwellings acquired from a deceased estate*

This may apply where due to exceptional circumstances outside your control you could not dispose of the inherited property within 2 years of the deceased’s death. Safe harbour in these circumstances provides for the 2-year limit to be extended for another 18 months.

You do not have to apply for the extension. It is automatically granted if you satisfy all of the following 5 conditions:

- during the first 2 years after the deceased's death, more than 12 months was spent addressing one or more of the following circumstances
  - the ownership of the property or the will is challenged
  - a life interest or other equitable interest given in the will delays the disposal of the property
  - the complexity of the deceased estate delays completion of its administration
  - settlement of the contract of sale of the property is delayed or falls through for reasons outside your control
  - restrictions on real estate activities imposed by a government authority in response to COVID-19

- the property was listed for sale as soon as practically possible after none of the circumstances above were an impediment, and the sale was actively managed to completion
- the sale was completed (settled) within 12 months of the property being listed for sale
- none of the following materially contributed to the delay in your sale
  - waiting for the property market to pick up before selling the property
  - delay due to refurbishment of the property to improve the sale price
  - inconvenience on the part of the trustee or beneficiary to organise the sale

    - unexplained periods of inactivity by the executor in attending to the administration of the estate

- the required extension is no more than 18 months.

You do not need an extension if either:

- the main residence exemption applies because an eligible person uses the property as their main residence from the date of death until the property is sold
- there is no CGT or there is a capital loss.

If you do not meet the conditions

If you do not dispose of the property within 2 years and do not satisfy all the conditions for an automatic extension, you can request an extension.

When you request your extension, make sure you include the following dwelling specific supporting information.

You can apply to us for an extension if:

- the property has sold and settled (in rare circumstances we'll exercise our discretion prior to the property being sold, where clarity is needed to resolve a matter)
- you are uncertain whether you meet the requirements to obtain an exemption
- you do not satisfy all the conditions for an automatic extension but you believe an extension should be allowed.

We will only grant an extension if there are exceptional circumstances outside your control.

How CGT applies to inherited assets

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Inherited-assets-and-capital-gains-tax/How-CGT-applies-to-inherited-assets/
- Last modified: 01 Jul 2022
- QC 69713

How CGT applies when you sell an inherited asset, or it passes to a foreign resident, charity or super fund.

On this page

- Assets passing to charities and super funds

Disposing of inherited assets

Generally, capital gains tax (CGT) does not apply when you inherit an asset.

When you sell an asset you have inherited, and the asset is:

- not a property, the normal rules apply for calculating your CGT
- a property, such as a house, it may qualify for the main residence exemption from CGT
- a collectable or personal-use asset, the normal rules apply – that is, the asset is subject to CGT unless it was acquired for less than the thresholds for these types of assets .

Cost of the asset

Unless the asset you inherit is fully exempt, you will need to know its cost base to work out your CGT when you sell it. Depending on the circumstances, the cost base may be based on the value of the asset:

- when the deceased acquired it
- when they died.

Eligibility for CGT discount or indexation

Australian resident individuals, trusts and super funds can use the CGT discount to reduce their capital gain on assets they have owned for 12 months or more.

For the purposes of qualifying for the CGT discount, you can treat an inherited asset as though you have owned it since:

- the deceased acquired the asset, if they acquired it on or after 20 September 1985
- the deceased died, if they acquired the asset before 20 September 1985.

If the deceased died before 21 September 1999, you have the option of indexing the cost base instead of using the discount. This involves calculating your capital gain by using the asset's cost base indexed for inflation up until 21 September 1999. If you use indexation, you are taken to have acquired the asset when the deceased acquired it.

Winding up a deceased estate

In administering and winding up a deceased estate, the legal personal representative (typically the executor) may need to:

- dispose of some or all of the estate's assets
- acquire an asset to satisfy a specific legacy and dispose of the asset to a beneficiary.

In these situations, CGT applies when the legal personal representative disposes of the asset. Any capital gain or loss made by the legal personal representative is subject to the normal CGT rules.

Unapplied capital losses

If the deceased had any unapplied net capital losses when they died, these do not transfer to you as a beneficiary or legal personal representative.

This means you cannot use any such losses to offset your net capital gains.

Keeping records of inherited assets

When you inherit an asset, it is important to keep records of:

- when the asset was acquired by the deceased
- the asset's value or cost
- costs related to the asset that are incurred by you and the legal personal representative of the deceased estate.

These records will help you work out your CGT when you later sell an asset.

If the deceased acquired an asset before 20 September 1985, you will need to know the asset's market value at the date they died.

- If the legal personal representative has had the asset valued, ask for a copy of the valuation report.
- If not, get your own valuation

If the deceased acquired an asset on or after 20 September 1985, you will need records of the deceased's cost base for the asset.

Assets passing to foreign residents

When an asset passes to a foreign resident, CGT applies to the deceased's estate at the time of their death if:

- the asset was acquired by the deceased on or after the start of CGT (20 September 1985)
- the deceased was an Australian resident when they died
- the asset is not taxable Australian property in the hands of the foreign resident beneficiary.

The capital gain or loss on the asset is worked out using:

- the market value of the asset at the date of death
- the cost base of the asset at that date (for a capital gain) or reduced cost base (for a capital loss).

The capital gain or loss must be reported in the deceased's date of death tax return.

Assets passing to charities and super funds

If a CGT asset passes to a tax-advantaged entity, CGT applies to the deceased's estate at the time of their death.

A tax-advantaged entity is either:

- a tax-exempt entity such as a church or charity
- the trustee of a
  - complying super fund
  - complying approved deposit fund
  - pooled super trust.

The capital gain or loss on the asset is worked out using:

- the market value of the asset at the date of death
- the cost base of the asset at that date (for a capital gain) or reduced cost base (for a capital loss).

The capital gain or loss must be reported in the deceased's date of death tax return.

A capital gain or loss from a testamentary gift can be disregarded if:

- the gift is made to a deductible gift recipient, and
- the gift would have been income tax deductible if it had not been a testamentary gift.

Foreign residents and capital gains tax

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Foreign-residents-and-capital-gains-tax/
- Last modified: 28 Feb 2023
- QC 66058

How CGT affects your assets if you are a foreign or temporary resident, or change your residency.

Your residency status and CGT
Understand your residency for tax purposes and how it affects CGT on your assets.

How changing residency affects CGT
How the assets you are taxed on will change if you become or stop being a tax resident.

CGT discount for foreign residents
Check if you are eligible for the 50% CGT discount as a foreign resident.

Taxable Australian property
As a foreign resident, find out which of your assets are taxable in Australia.

[Main residence exemption for foreign residents](#)
Check if you meet the life events test as a foreign resident to exempt your home from CGT.

[Capital gains withholding: Impacts on foreign and Australian residents](#)
What to do when a foreign resident sells Australian real estate worth more than $750,000.

[Foreign resident capital gains withholding](#)
Find out about the foreign resident capital gains withholding (FRCGW), including who it applies to and when it applies.

Your residency status and CGT

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Foreign-residents-and-capital-gains-tax/Your-residency-status-and-CGT/
- Last modified: 01 Jul 2022
- QC 69714

Understand your residency for tax purposes and how it affects CGT on your assets.

On this page

Know your tax residency status

There are 3 categories of tax residency:

- Australian resident
- foreign resident
- temporary resident.

It is important to check your tax residency status because we do not use the same rules as the Department of Home Affairs.

For example, you:

- can be an Australian resident for tax purposes without being an Australian citizen or permanent resident
- may have a visa to enter Australia but are not an Australian resident for tax purposes.

How your residency affects CGT

Foreign and temporary residents are subject to CGT only on taxable Australian property, such as real estate in Australia and assets used to carry on a business in Australia.

The 50% CGT discount is generally not available to foreign and temporary residents for assets acquired after 8 May 2012.

Foreign residents are not entitled to the main residence exemption, unless they satisfy the requirements of the life events test.

If you become an Australian resident, or stop being one, the assets on which you pay CGT in Australia will change.

Assets you acquired before CGT started on 20 September 1985 are not subject to CGT.

For Norfolk Island residents:

- assets you acquired on Norfolk Island before 24 October 2015 are exempt from CGT
- all other assets are subject to the normal CGT rules.

Selling Australian real estate

If you are a foreign resident selling Australian real estate worth more than $750,000, the buyer of your property must withhold 12.5% of the purchase price and send it to us.

This is called foreign resident capital gains withholding. You can claim it back when you lodge your Australian tax return.

How changing residency affects CGT

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Foreign-residents-and-capital-gains-tax/How-changing-residency-affects-CGT/
- Last modified: 01 Jul 2022
- QC 66059

How the assets you are taxed on will change if you become or stop being a tax resident.

On this page

Becoming an Australian resident

When you become an Australian resident for tax purposes (other than a temporary resident), you are taken to have acquired your CGT assets at the same time, for their market value at that time. This is sometimes called 'deemed acquisition'.

This does not apply to assets:

- you acquired before CGT started on 20 September 1985
- that were taxable Australian property, such as real estate in Australia and assets used to carry on a business in Australia. The general cost base rules apply to taxable Australian property.

If you stop being an Australian resident

If you stop being an Australian resident for tax purposes, you are taken to have disposed of assets that are not taxable Australian property for their market value at the time you stopped being a resident. This is sometimes called 'deemed disposal'.

The same applies if you stop being a resident trust for CGT purposes.

If you have any indirect Australian real property interests, or options or rights to acquire such interests, you are taken to have immediately re-acquired these assets for their market value.

Exemption for temporary residents

If you are a temporary resident when you stop being an Australian resident, you are not taken to have disposed of any of your assets.

Anyone who is an Australian resident for tax purposes after 6 April 2006 but is not a temporary resident cannot later become a temporary resident, even if they later hold a temporary visa.

Choosing to disregard capital gains and losses

An individual can choose to disregard all capital gains and losses when they stop being an Australian resident for tax purposes.

If you do this, your assets are taken to be taxable Australian property until the earlier of:

- a CGT event happening to the assets (for example, their sale or disposal)
- you again becoming an Australian resident.

The effect of this choice is that the increase or decrease in the value of your assets after you stop being a resident is taken into account in working out your capital gains or losses on those assets. You do not need to tell us what you decide – the way you prepare your tax return is generally sufficient evidence of your choice.

If you stop being a temporary resident

If you stop being a temporary resident and remain an Australian resident, you are taken to have acquired your CGT assets that are not taxable Australian property for their market value at the time you stopped being a temporary resident.

This rule does not apply to employee shares and rights.

Example: becoming an Australian resident

Fred has lived most of his life in London. He is single. He owns several apartments in and around London that are leased to tenants. He also has a share portfolio that provides him with regular dividend income.

On 12 December 2016, Fred arrived in Brisbane to begin work with an Australian company. For the first 3 years Fred held a temporary visa and expected to eventually return to the United Kingdom. During this period he was a temporary resident as he held a temporary visa and met the other criteria for being a temporary resident.

On 15 March 2021 Fred applied for, and was granted, permanent residency in Australia.

The CGT implications for Fred are as follows.

For assets disposed of between 12 December 2016 and 14 March 2021

Fred was a temporary resident and was only subject to CGT in Australia on any assets that were taxable Australian property.

For assets disposed of on or after 15 March 2021

Fred is an Australian resident and is now subject to tax in Australia on his worldwide income and capital gains. Any capital gains or capital losses Fred makes on the assets held in the UK will be subject to CGT in Australia. The cost base for these assets will be set according to the market value of the assets on 15 March 2021. Fred will receive a foreign tax credit for any tax paid in the UK on these gains.

CGT discount for foreign residents

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Foreign-residents-and-capital-gains-tax/CGT-discount-for-foreign-residents/
- Last modified: 01 Jul 2022

- QC 66060

The 50% capital gains tax (CGT) discount is not available to foreign and temporary resident individuals for assets acquired after 8 May 2012.

This includes beneficiaries of trusts and partners in a partnership.

You can only apply the discount to part of your capital gain if either of the following happened:

- you acquired the asset on or before 8 May 2012
- you had a period of Australian residency after 8 May 2012.

If either of these applies to you, use the CGT discount worksheet (PDF, 222KB) to calculate your discount.

CGT events that occurred on or before 8 May 2012 are not affected.

Foreign and temporary residents are subject to CGT only on taxable Australian property.

Taxable Australian property

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Foreign-residents-and-capital-gains-tax/Taxable-Australian-property/
- Last modified: 01 Jul 2022
- QC 66061

As a foreign resident, find out which of your assets are taxable in Australia.

On this page:

- About taxable Australian property
- Indirect interests in Australian real property

About taxable Australian property

Foreign and temporary residents are subject to capital gains tax (CGT) only on taxable Australian property.

Taxable Australian property includes:

- Australian real property, such as a house, apartment, commercial building or land
- an indirect interest in Australian real property
- a mining, quarrying or prospecting right in Australia
- a CGT asset that you have used to carry on a business through a permanent

establishment in Australia
- an option or right over one of the above – for example, a contract to purchase property off the plan.

For CGT events happening on or after 20 May 2009, a leasehold interest in land in Australia is Australian real property.

If you stop being an Australian resident, you are taken to have disposed of each of your assets that are not taxable Australian property for their market value at the time you stopped being a resident.

You have the option of disregarding capital gains and losses at that time. If you do this, your assets will be taken to be taxable Australian property. For example, if you disregard the capital gain or loss on Australian shares you own, those shares would become taxable Australian property.

Indirect interests in Australian real property

If you are a foreign or temporary resident, any indirect interest you have in Australian real property is subject to CGT.

You have an indirect interest in Australian real property if both the following are true:

- you and your associates together own 10% or more of another entity, whether Australian or foreign – this is called the 'non-portfolio interest test'
- the market value of the assets of that entity is mainly attributable to Australian real property – this is called the 'principal asset test'.

Indirect interests acquired before 11 May 2005

If you acquired an indirect interest in Australian real property before 11 May 2005, you are taken to have acquired it at its market value on 10 May 2005 if:

- you are a foreign resident or the trustee of a trust that was not a resident trust for CGT purposes
- the interest did not have the necessary connection with Australia but is taxable Australian property.

Foreign currency

The entity through which you have an indirect Australian real property interest may keep its accounts mainly in a foreign currency.

If so, when you dispose of your interest you must apply functional currency rules to calculate your capital gain or loss.

This means if the entity uses the foreign currency to account for its transactions, you will convert your capital gain or loss into Australian currency.

Main residence exemption for foreign residents

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Foreign-residents-and-capital-gains-tax/Main-residence-exemption-for-foreign-residents/
- Last modified: 01 Jul 2022
- QC 66062

Check if you meet the life events test as a foreign resident to exempt your home from CGT.

On this page

How the exemption works for foreign residents

If you are a foreign resident, you are not entitled to the main residence exemption from capital gains tax (CGT) for property sold after 30 June 2020, unless you satisfy the requirements of the life events test.

If you are an Australian resident at the time you dispose of your property this does not affect you.

Life events test

When you dispose of your residential property, you satisfy the requirements of the life events test if both of the following are true:

- you were a foreign resident for tax purposes for a continuous period of 6 years or less
- during that period, one of the following occurred:
  - you, your spouse or your child under 18 had a terminal medical condition
  - your spouse or your child under 18 died
  - the CGT event happened because of a formal agreement following the breakdown of your marriage or relationship.

If you satisfy both these criteria and meet the general requirements for the exemption, you can:

- claim the main residence exemption
- use the exemption as a reason to vary the capital gains withholding that would otherwise apply to your property.

Disposal of property by 30 June 2020

You do not need to apply the life events test to a property that you:

- acquired before 7:30 pm (Canberra time) on 9 May 2017, and
- disposed of by 30 June 2020.

You can claim the main residence exemption if you meet both of these requirements in addition to the general requirements for the exemption.

If you were not an Australian resident for tax purposes while living in your property, you are unlikely to meet the requirements for the CGT main residence exemption.

If you dispose of your property under a contract, the disposal time is when you enter into the contract. If there is no contract, the disposal time is when you settle.

Effects on your deceased estate

If you are a foreign resident for tax purposes when you die, these rules also apply to:

- legal personal representatives, trustees and beneficiaries of your deceased estate
- surviving joint tenants
- special disability trusts.

Foreign resident capital gains withholding

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Foreign-residents-and-capital-gains-tax/Foreign-resident-capital-gains-withholding/
- Last modified: 28 Feb 2023
- QC 71566

Find out about the foreign resident capital gains withholding (FRCGW), including who it applies to and when it applies.

Capital gains withholding: Impacts on foreign and Australian residents
Find out when the foreign resident capital gains withholding (FRCGW) of 12.5% applies if disposing certain properties.

Capital gains withholding – a guide for conveyancers
If you are a conveyancer, find out about foreign resident capital gains withholding and what it means for vendors.

Capital gains withholding: Impacts on foreign

and Australian residents

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Foreign-residents-and-capital-gains-tax/Foreign-resident-capital-gains-withholding/Capital-gains-withholding---Impacts-on-foreign-and-Australian-residents/
- Last modified: 08 Dec 2022
- QC 48972

Foreign resident capital gains withholding (FRCGW) applies to vendors disposing of certain taxable property under contracts entered into from 1 July 2016.

The FRCGW tax rate is 12.5%.

It applies to real property disposals where the contract price is $750,000 or more.

For contracts that are entered into from 1 July 2016 and before 1 July 2017, even if they are not due to settle until after 1 July 2017, the FRCGW withholding tax rate is 10% and applies to real property disposals where the contract price is $2 million and above.

In this section

Background

This existing withholding legislation assists the collection of foreign residents' Australian tax liabilities.

It imposes an obligation on purchasers to withhold 12.5% of the purchase price and pay it to us, where a vendor enters into a contract on or after 1 July 2017 and disposes of certain asset types (or receives a lease premium for the grant of a lease over Australian real property).

The foreign resident vendor must lodge a tax return at the end of the financial year, declaring their Australian assessable income, including any capital gain (profit) from the disposal of the asset.

A tax file number (TFN) is required to lodge a tax return; they will need to apply for a TFN if they don't have one. The vendor may claim a credit for any withholding amount paid to us in their tax return.

Australian resident vendors can avoid the requirement of the purchaser to withhold the 12.5% by providing one of the following to the purchaser prior to settlement:

- for Australian real property, a clearance certificate obtained from us
    - Australian resident vendors selling real property will need to obtain a clearance certificate from us prior to settlement, to ensure they don't incur the 12.5% non-final withholding

- for other asset types, a vendor declaration
    - the vendor may provide the purchaser with a vendor’s declaration to specify withholding isn't required on the acquisition of the asset.

Foreign resident vendors may apply for a variation of the withholding rate or make a declaration that a membership interest is not an indirect Australian real property interest and therefore not subject to withholding.

Purchasers must pay the amount withheld at settlement to the Commissioner of Taxation.

When the rules apply

- An entity (the purchaser) becomes the owner of a capital gains tax (CGT) asset as a result of acquiring it from a vendor (or vendors) under one or more transactions.
- At least one of those vendors is a relevant foreign resident at the time at least one of the transactions is entered into.
- The CGT asset is a certain type of Australian property or an option or right to acquire such property.
- The purchaser acquires the CGT asset under a contract entered into on or after 1 July 2016.
- There are no exceptions

While the objective of the rules is to assist in the collection of foreign residents' CGT liabilities, the withholding tax will apply regardless of whether the vendor's gain on the sale of the asset is subject to tax under the CGT regime or as ordinary income.

The withholding obligation applies to both Australian resident and foreign resident purchasers.

In this section

- Online forms and instructions
- Asset types

- Vendor
- Clearance certificates
- Vendor declarations
- Variations
- Calculating the withholding
- Paying the withholding
- Foreign resident capital gains withholding and the income tax return
- Legislation and other supporting materials

Online forms and instructions

- Clearance certificate application for Australian residents
- Capital gains withholding clearance certificate application online form and instructions – for Australian residents
- Variation application for foreign residents and other parties
- Foreign resident capital gains withholding rate variation application online form and instructions
- Purchaser payment notification
- Foreign resident capital gains withholding purchaser payment notification online form and instructions

Asset types

The legislation applies to the following asset types:

- real property – taxable Australian real property with a market value of $750,000 or more
  - vacant land, buildings, residential and commercial property
  - mining, quarrying or prospecting rights where the material is situated in Australia
  - a lease over real property in Australia if a lease premium has been paid for the grant of the lease

- other assets
  - indirect Australian real property interests in Australian entities (that is, a membership interest of 10% or more in an entity whose underlying value is principally derived from Australian real property) – this includes shares in a company that owns land or a building erected on that land, where the ownership of the shares gives a right to occupy that land or building (that is, a company title interest in real property)
  - options or rights to acquire any of the above asset types.

Market value

In many cases, the market value of a property will be the purchase price. Where the purchase price has been negotiated between the vendor and the purchaser, acting at arm’s length, we will accept the purchase price as a proxy for market value.

However, there could be circumstances where the market value is different to the stated purchase price (for example, where the vendor and purchaser are related parties and did not deal with each other at arm's length). In such cases, we will not accept the purchase price as a proxy for market value and the purchaser will need to seek a separate expert evaluation.

Note: If the purchase price is used as a proxy for market value, the market value is the purchase price before adjustment for any disbursements at settlement (for example, council rates, water and sewer charges and strata levies). Therefore, the $750,000 threshold test is applied to the purchase price before adjustment for disbursements.

Excluded assets

Some assets are not subject to the withholding, including:

- taxable Australian real property with a market value of less than $750,000
- an indirect Australian real property interest providing a company title interest with a market value of less than $750,000
- transactions conducted through an approved stock exchange
- transactions conducted using a broker-operated crossing system, such as a 'dark pool', as described in the ASIC Market Integrity Rules (ASX Market) 2010
- transactions subject to another withholding obligation
- securities lending arrangements, as these don't trigger a CGT liability for the vendor and therefore no payment obligation is imposed
- transactions where the vendor is in external administration or transactions arising from the administration of a bankrupt estate, a composition or scheme of arrangement, a debt agreement, a personal insolvency agreement, or same or similar circumstances under a foreign law.

Exceptions

Foreign resident capital gains withholding doesn't apply when the vendor disposes of either:

- an Australian real property and provides the purchaser with a clearance certificate from us
- any other asset where the purchaser is given a vendor declaration

Vendor

The vendor is the entity that holds the legal title to the asset this withholding applies to.

Where the asset is held on behalf of another entity, the vendor is the legal owner of the asset, for example, the trustee or custodian who holds the legal title on behalf of beneficiaries.

When the vendor is treated as a foreign resident

A vendor is treated as a foreign resident if:

- the vendor doesn't provide the purchaser with either a valid
  - clearance certificate by settlement, if they are disposing of an asset that requires a clearance certificate to be provided to avoid the withholding being imposed
  - vendor declaration stating they are an Australian resident, or that the membership interest is not an indirect Australian real property interest, when asked to do so by the purchaser with respect to a transaction involving an asset for which a vendor declaration can be used to avoid the withholding being imposed

- the purchaser applies the 'knowledge condition'.

Knowledge condition

The knowledge condition is only relevant to purchases of indirect Australian real property interests (other than company title interests) and options and rights to acquire taxable Australian real property or indirect Australian real property interests.

The knowledge condition will be satisfied where the purchaser either:

- knows or has reasonable grounds to believe the vendor is a foreign resident
- does not reasonably believe the vendor is an Australian resident and either
  - has a record about the acquisition indicating the vendor has an address outside Australia
  - is authorised to provide a financial benefit (for example, make a payment) to a place outside Australia (whether to the vendor or to anybody else).

Evidence for the knowledge condition

A purchaser in applying the knowledge condition must rely upon that information that it is aware of or has access to in making the decision. In some circumstances this will only be the share registry of the target entity whose interests are being acquired by the purchaser.

It would be expected that the purchaser would rely upon the share registry no earlier than as at the date of the offer acceptance. Reliance from this date reduces the possibility that changes in the vendors circumstances would occur up to the date of the transaction so as to change the purchaser’s belief about the vendor had they known of it before taking ownership of the interest in the target.

Purchasers who are not comfortable determining whether the knowledge condition is satisfied, may seek a vendor declaration confirming the vendor is not a relevant foreign resident.

Failure by the vendor to provide the declaration in these circumstances can be taken by the purchaser as confirmation that the vendor is a relevant foreign resident.

Clearance certificates

A clearance certificate provides certainty to purchasers regarding their withholding obligations. It confirms the withholding tax is not applicable to the transaction.

The purchaser must withhold 12.5% of the purchase price in transactions involving taxable Australian real property, or an indirect Australian real property interest that provides company title interests, with a market value of $750,000 or more, unless the vendor shows the purchaser a clearance certificate from us.

We process applications in order of date of receipt. To avoid possible delays in your settlement, apply online for a clearance certificate at least 28 days before you require it.

It is the vendor's responsibility to obtain the clearance certificate and provide it to the purchaser at or before settlement. To avoid unanticipated delays, and to ensure the certificate is valid at the time it is given to the purchaser, vendors seeking a clearance certificate should apply through the online form as early as practical in the sale process.

Without being presented with a valid clearance certificate, the purchaser will be required to remit 12.5% of the purchase price to us if no other exclusions apply.

How to apply

The Australian resident entity (or their representative) will need to complete an online Clearance certificate application for Australian residents

Where there are multiple Australian resident vendors disposing of the asset, each vendor should apply for a separate clearance certificate in their name only.

Australian residents not required to lodge tax returns, such as aged pensioners, are still required to obtain a clearance certificate.

If you are a foreign resident there is no point in you lodging an application. However, if you may be entitled to a variation to the withholding rate, then you can lodge a variation request.

If you can't access the webpage phone us on:

- 13 28 66 (Fast Key Code 4 2) within Australia
- +61 2 6216 1111 outside Australia to obtain details of what you need to provide.

Where a valid clearance certificate is provided, the purchaser is not required to withhold an amount from the purchase price for the vendor listed in the clearance certificate.

If an Australian tax resident vendor has had withholding taken from their sale proceeds, for example because they didn't provide the purchaser with a clearance certificate, they will be able to claim a credit for that amount when they lodge their tax return. This credit may be refunded if they don't have to pay capital gains tax on the sale of the property (for example, because it was their main residence).

Only an Australian resident entity* can obtain a clearance certificate. Solicitors, tax agents or other representatives of the vendor can apply on the vendor's behalf.

Conveyancers, real estate agents and others charging a fee for services (but who are not legal practitioners or registered tax agents) should obtain a completed paper PDF version of the clearance certificate form from the vendor. They can then use the details on the paper form to complete the online form, ensuring faster processing, as part of the settlement process.

Next step

- Use the form Capital gains withholding clearance certificate application paper form instructions – for Australian residents

If you need help to work out your residency, see Work out your residency status for tax purposes.

*An Australian resident entity is one that is an Australian resident for tax purposes. This isn't the same as the definition of residency for immigration purposes, or for the Foreign Investment Review Board (FIRB) applications to buy Australian property.

A clearance certificate only applies to the entity specified on the certificate. If an asset has multiple vendors, each vendor will need to show the purchaser a clearance certificate to ensure amounts are not withheld.

It's valid for 12 months from the date issued, so the vendor may be able to use it for multiple disposals of real property that occur within the 12 month period. The vendor doesn't have to reapply to us each time they dispose of a property.

It may be provided to the purchaser at any time during the transaction, but must be provided to the purchaser by settlement.

When to obtain a clearance certificate

An entity may apply for a clearance certificate at any time they are considering the disposal of taxable Australian real property. This can be before the property is listed for sale.

You should apply for a clearance certificate online at least 28 days before you require it.

How long it takes

We issue clearance certificates within 28 days of receiving the application.

Higher risk and unusual cases may also require greater manual intervention, which could take longer.

If you lodge your application close to the settlement date, we cannot guarantee we can process it by the settlement date as we will not disadvantage those other applicants who applied earlier by delaying their application to process yours.

Where we send the certificate

Clearance certificates will be sent by email if an email address is provided in the application. Care should be taken to ensure that the email address supplied is current and correct to ensure a quick response. Otherwise clearance certificates will be mailed to the vendor and the vendor's contact using the addresses provided in the application.

To avoid unanticipated delays, vendors seeking a clearance certificate should apply through the online system as early as practical in the sale process.

Valid clearance certificate

A clearance certificate is valid for 12 months from the date of issue. It's only valid for the listed vendor and clearance certificate period on the certificate.

As long as the clearance certificate is provided by the vendor to the purchaser during the time specified on it, and that this is before settlement occurs, then it does not matter how long into the future the settlement may be. The purchaser does not have to withhold.

All parties on the Certificate of Title will require a clearance certificate. For example, joint tenants / tenants in common will need to fill out a form each. It is the vendor's responsibility to provide the purchaser with the clearance certificate and ensure it's valid.

What name should be on the clearance certificate

Vendors must ensure the details on their clearance certificate application are accurate, so the clearance certificate issues in the correct name as that shown on the Certificate of Title of the property.

For the purchaser to rely on the clearance certificate, we require the following three conditions be met:

- The name of the vendor on the certificate must match the name on the certificate of title – see Trusts and superannuation funds for further clarification
- the date the certificate is given to the purchaser must be a date that falls within the time period shown on the clearance certificate
- the clearance certificate must be provided to the purchaser before settlement.

We will issue a clearance certificate in the name that is in our system. This may mean the name of the vendor on the clearance certificate doesn't match the name of the vendor on the certificate of title. In these cases:

- we accept the purchaser has fulfilled their obligation if the vendor supplies the purchaser clearance certificate and proof of a name change (for example, a marriage certificate issued from an Australian state or territory registry)
- we accept that purchasers have fulfilled their obligation if they have sighted a certificate where the First Name and Last Name are consistent with the name

on the title
- an honorific match is not required
- a correct address on a certificate is not required to fulfil the purchaser's obligations
- it is not necessary to have the instrument number to a title deed on the clearance certificate – for example 'Trustee under instrument ###'
- it is not necessary to have the details of the trust on the clearance certificate – for example 'as Trustee for the XYZ Trust'. See Trusts and superannuation funds for further clarification
- it is not necessary to have 'as executor for' or 'as legal representative for' on a clearance certificate to fulfil the purchasers obligations (where purchasing from a deceased estate). See Deceased estates for further clarification.

Note: We will not reissue certificates in the above instances.

When a purchaser receives a clearance certificate from a vendor that is valid, they can rely on it and not withhold. There is no need for the purchaser to question the residency of the vendor.

If the clearance certificate doesn't meet the above conditions, the purchaser is required to withhold 12.5% of the purchase price.

Although it's not necessary for the purchaser to check the validity of clearance certificates with us before deciding to withhold the 12.5% amount from the purchase price, they could decide to do so.

You can phone us on 13 28 66 (Fast Key Code 4 2) to check if the clearance certificate is valid. You'll need to provide the following information:

- the number from the Our reference field at the top of the certificate
- the vendor’s name as it appears on the clearance certificate.

The call centre operative will then inform you whether the clearance certificate is valid.

Trusts and superannuation funds

The instructions for the capital gains withholding clearance certificate application provide specific details about how the form should be completed.

For trusts and superannuation funds, it is the entity that has legal title to the asset that applies for the clearance certificate. In most cases this is the trustee. It is the trustee – in their own capacity as either a company or an individual – that should apply for the clearance certificate.

The trustee needs to use their own tax file number (TFN) and/or Australian business number (ABN) as the identifier (if they have one). It is recommended to include the Australian Company Number (ACN) as an attachment if they have one.

Note: If a corporate trustee does not have a TFN, include an attachment in the application which provides the details of the relevant trust.

The certificate will be issued in the name as it appears on our system. We accept the purchaser has fulfilled their obligation if the vendor can show that the entity on the clearance certificate is the trustee of the trust (for example, copy of the trust deed).

This may be needed where our system contains 'The trustee for ABC Trust' whereas the title contains 'XYZ as the trustee for ABC Trust', or it has the trustee name only on the clearance certificate.

Consolidated groups and multiple entry groups

Withholding and intra-group transactions

A member of a consolidated group or multiple entry groups that purchases from another member of the group an asset to which the withholding applies is still required to comply with the withholding obligation.

Entity obtaining the clearance certificate

We'll issue a clearance certificate to the head company or provisional head company of the group which includes the members of the group as an attachment.

We rely upon the group membership information as recorded on our systems. If group membership has changed, it's up to the head company to notify us of these changes before making a clearance certificate request.

Alternatively, subsidiary entities can, in their own right, apply for a clearance certificate and have one issued in their own name.

The contract is for longer than 12 months

There may be instances where the settlement date is after the expiry date on the vendor’s clearance certificate. For example, where an off-the-plan apartment is acquired and the contract period is greater than 12 months.

The purchaser may rely on the clearance certificate being valid as long as the date it's made available to the purchaser, is within the clearance certificate period stated on the certificate.

Do the rules apply if the market value of the asset acquired is exactly $750,000?

Yes, the transaction will only be excluded from the rules if the market value of the taxable Australian real property or company title interest acquired is less than $750,000.

Estimated market value $750,000 or above

If the vendor is uncertain whether the $750,000 threshold will be reached (for example, because the property is going to auction or a sales contract is yet to be signed) the vendor may wish to be conservative and apply for a clearance certificate. If the property is then sold for less than $750,000, the vendor doesn't need to provide the purchaser with the clearance certificate.

Selling property with multiple titles

Where each parcel of real property sold is subject to a separate title, each is considered a separate CGT asset.

Example – separate CGT assets

Bob owns a small farm which consists of three separately titled blocks, each valued at $700,000 by an independent valuer, but they are not able to be sold separately under the farm's land planning permit. As a separate asset, all three titles would come within the exclusion of subsection 14-215(1) of the *Income Tax Assessment Act 1997* as each has a market value less than $750,000. This is the case regardless of whether there are one or multiple contracts involved for the sale of the three titles.

Any restrictions imposed by planning permits on the titles do not change the fact that each parcel of real property is on a separate title, hence recognised as a separate asset.

When we withdraw a clearance certificate once it has been issued

We may withdraw a clearance certificate at any time if we obtain further information indicating that the vendor is a foreign resident.

This is to ensure that the vendor is not able to use the clearance certificate where we determine they have no entitlement to it.

We would expect that the withdrawal of a clearance certificate, once issued, would only occur in very rare situations given the checks and processes that have been put in place when issuing them.

Where a purchaser has, in good faith, not withheld from the purchase price on the basis of being provided with a clearance certificate prior to settlement, the purchaser will have met their obligations under the withholding rules.

Any subsequent decision by us to withdraw the clearance certificate from the vendor doesn't alter the fact that the purchaser had correctly complied with the withholding provisions at the time of settlement.

The purchaser will not be subject to any interest or penalty for failure to withhold in these circumstances, as at no stage was the purchaser required to withhold, given the vendor had produced a clearance certificate prior to settlement.

When the vendor provides a fraudulent clearance certificate

If a purchaser receives a document that appears to be a genuine and valid clearance certificate, and in good faith relies on that document to not withhold, we will not pursue the purchaser for the withholding.

If the document is subsequently found to be fraudulent, we will hold the vendor liable for making a false and misleading statement and may prosecute them.

Deceased estates

We have set out in a legislative instrument that no withholding (and hence no clearance certificate) is required in the following circumstances:

- a beneficiary acquires ownership of the relevant asset under the deceased individual's will, by operation of an intestacy law etc. For example, the name on the title deed is Joe Smith who is executor for Mary Smith estate
- a beneficiary acquires ownership of the relevant asset from the legal personal representative (executor/trustee) of the deceased individual in a manner not described above
- the property devolves to the legal personal representative (executor/trustee) following the death of the individual
- a surviving joint tenant acquires the deceased joint tenant's interest in a CGT asset. Where the title deed is under the surviving joint tenant's name only, a clearance certificate is required.

The operation of the Instrument extends to circumstances where assets pass to beneficiaries of a testamentary trust. For more information, see PAYG Withholding variation for foreign resident capital gains withholding payments – deceased estates and legal personal representatives.

Any other transfer or disposal of the relevant asset by the legal personal representative will create a withholding obligation. For example, the legal personal representative (executor/trustee) may decide to transfer or dispose of the relevant assets to a third party.

Situations involving mortgagors and mortgagees

This concerns situations where a mortgagor (borrower) has borrowed funds from a mortgagee (creditor, for example a bank), that mortgagor is unable to repay the loan and the mortgagee requires them to sell the secured asset which is subject to withholding (referred to as property in this section).

There are three situations where this commonly applies:

- Situation 1 – the mortgagor retains title to the sale as the mortgagee has not repossessed the title to the property but has ordered its sale.
- Situation 2 – where the mortgagee does take possession of the property and sells in that capacity, but there is no transfer of title from mortgagor to mortgagee.
- Situation 3 – the mortgagee has repossessed and taken title to the property from the mortgagor. This is commonly known as a foreclosure. In this situation there are two transactions where foreign resident capital gains withholding may apply
    - the transaction concerning the transfer of title from the mortgagor to the

mortgagee (generally deemed to be a sale of the property at market value)
    - the transaction concerning the transfer of title from the mortgagee to the ultimate purchaser.

Applying for the clearance certificate or vendor variation

The entity with the title to the property is required to obtain the clearance certificate so foreign resident capital gains withholding won't apply.

In situation 1, the mortgagor remains the legal owner of the property. Therefore it is the mortgagor who has to obtain the clearance certificate and ensure it is provided to the ultimate purchaser for foreign resident capital gains withholding not to apply.

In the event the mortgagor doesn't cooperate with the mortgagee, then the mortgagee, as a creditor, can apply for a foreign resident capital gains variation to have the withholding reduced to the extent that the amount it is owed would not be covered by the sale proceeds if an amount was withheld.

In situation 2, the mortgagee cannot obtain a clearance certificate as they are not the legal owner of the property. However, the mortgagee can apply for a foreign resident capital gains variation to have the withholding reduced to the extent that the amount it is owed would not be covered by the sale proceeds if an amount was withheld.

There is no specific requirement as to who physically provides the clearance certificate to the purchaser. Therefore, with both situation 1 and 2, if the mortgagor, as vendor, obtains the clearance certificate, then provides it to the mortgagee, and the mortgagee provides it to the purchaser the ultimate purchaser can verify that the clearance certificate issued to the vendor is valid so long as it matches the name on the certificate of title.

In situation 3, for foreign resident capital gains withholding not to apply, clearance certificates are required to be provided to the purchasers for both transactions, that is:

- repossession by the mortgagee from the mortgagor. The mortgagor, as the vendor, is the party that has title of the property and therefore would obtain the clearance certificate. As in situation 1, if the mortgagor doesn't co-operate in this regard, the mortgagee, as a creditor, can apply for a foreign resident capital gains variation
- sale of the property by the mortgagee to the ultimate purchaser. As the mortgagee has title to the property it is mortgagee that would obtain the clearance certificate.

For more information, see PAYG Withholding variation for foreign resident capital gains withholding payments - no residue after a mortgagee exercises a power of sale 2020.

When the purchaser should withhold

For the purpose of this part it is assumed that the entity taken to be the vendor is not entitled to a clearance certificate and therefore foreign resident capital gains withholding applies.

In situation 1, the mortgagor remains the legal owner of the property. Therefore, if the mortgagor doesn't have a clearance certificate, the mortgagee is required to withhold. If either the mortgagor, as vendor, or the mortgagee, as creditor, have applied and been granted a foreign resident capital gains withholding variation, the reduced rate of withholding specified in the variation notice applies.

In situation 2, the purchaser of the property would need to withhold at the 12.5% rate unless the mortgagee has obtained a foreign resident capital gains variation to have the withholding reduced to the extent that the amount it is owed would not be covered by the sale proceeds if an amount was withheld. Where a variation has been obtained by the mortgagee, the purchaser withholds at the rate specified in the variation notice provided by us to the mortgagee.

For situation 3, both transactions have to be considered:

- repossession by the mortgagee from the mortgagor – foreign resident capital gains withholding applies to this transaction with the mortgagee (creditor) having to withhold the 12.5% foreign resident capital gains withholding unless either the mortgagor, as vendor, or the mortgagee, as creditor, have applied and been granted a foreign resident capital gains withholding variation.
- sale of the property by the mortgagee to the ultimate purchaser – foreign resident capital gains withholding would apply. Therefore, unless the mortgagee has obtained a foreign resident capital gains withholding variation, the ultimate purchaser is required to withhold at a rate of 12.5%.

Exceptions

There may be a situation where the mortgagee’s name is not on the title as registered proprietor (although the mortgage will be listed as an interest on that title). This is because the mortgagee has not repossessed the property. However, the contract of sale will show the vendor as a mortgagee in possession exercising a power of sale under the mortgage.

With respect to paying the foreign resident capital gain's withholding, the name of the vendor on the purchaser payment notification form must be the mortgagor (borrower) as the mortgagee (creditor) has never taken title to the asset. This ensures that the foreign resident capital gains withholding credit that arises correctly goes to the borrower which is also the entity that is required to declare the capital gain.

The company is insolvent or under external administration

If the entity from which the asset is acquired is a company that satisfies any of the conditions in paragraph 161A(1)(a) of the *Corporations Act 2001* the transaction is excluded. The purchaser will not have a withholding obligation. This exclusion applies broadly; it is not limited to transactions involving assets for which there is a receiver.

Although there is no need to provide a clearance certificate to the purchaser in this instance, the purchaser may want to see evidence from the company or mortgagee that the exclusion applies to support their decision not to withhold.

On sale of property with no immediate transfer of title

A vendor may dispose of a property subject to the withholding regime before they have taken ownership of it. This is also known as an 'on-sale'.

Company A signs a contract to sell a property for more than $750,000 to company B. At this time company B has not taken ownership of the property from company A. The legal ownership of the property remains with company A. Company B's name is not recorded against the property at the Land Titles Office. Prior to the settlement with company A, company B enters a contract with company C for disposal of the property. As a result of this contract company C agrees to acquire the property and undertake the settlement with company A.

The clearance certificate is required from company A to company C.

Relationship breakdown

There is no need for a clearance certificate in these circumstances as long as:

- the transfer happens under the Family Law Act 1975 or under a State law, Territory law or foreign law relating to breakdowns of relationships between spouses
- the transferee possesses a copy of the relevant documentation specified in subsection 126-5(1) of the *Income Tax Assessment Act 1997* (ITAA 1997) by the time of the finalisation of the transfer, showing that the asset was acquired in accordance with subparagraph 3(i).

For more information, see PAYG Withholding variation for foreign resident capital gains withholding payments – marriage or relationship breakdowns

Income tax exempt entities

There is no need for the entity to provide a clearance certificate where the entity provides the purchaser with evidence that they are an income tax exempt entity. This should either be:

- a private binding ruling confirming its income tax exemption valid for the year in which the transaction is occurring
- documentation showing that the entity is endorsed for income tax exemption as a registered charity under item 1.1 of section 50-5 of the *ITAA 1997*.

For more information, see PAYG Withholding variation for foreign resident capital gains withholding payments – income tax exempt entities

Government authorities and not-for-profit organisations

The withholding applies to all transfers of property unless they are specifically exempted.

Government authorities and not-for-profit organisations are not specifically exempted from the withholding and must obtain a clearance certificate or apply for a variation otherwise the foreign resident capital gains withholding will apply.

Vendor declarations

For all other asset types subject to foreign resident capital gains withholding, the vendor may provide the purchaser with a vendor's declaration to specify withholding isn't required on the acquisition of the asset. There are two types of vendor declarations:

- residency declaration
- not an indirect Australian real property interest declaration.

Trusts and superannuation funds

The trustee of a trust or superannuation fund completes the vendor application in their own capacity as either a company or an individual if the following apply:

- they are the entity that has legal title to the asset
- there is no mention of the trust or fund or 'in holding the property on trust'.

Residency declaration for transactions that are not real property

Where the purchaser believes the vendor is a foreign resident, they can request the vendor make a declaration confirming their Australian tax residency.

Purchasers may believe the vendor is a foreign resident if either:

- they know the vendor has an address outside of Australia
- sale proceeds are to be paid to a place outside of Australia.

When a vendor makes a declaration stating they are an Australian tax resident, the purchaser will not treat them as a foreign resident.

Alternatively, the vendor may voluntarily provide a declaration to the purchaser without being asked to supply it.

Purchaser can rely on the declaration

The purchaser may rely on a residency declaration supplied by the vendor, where the purchaser is acquiring assets that are not Australian real property. When a purchaser receives a vendor declaration, they will not withhold any amounts unless they know the declaration is false.

Not an indirect Australian real property interest declaration

A vendor may provide the purchaser with a declaration confirming either:

- that the membership interests they are disposing of are not indirect Australian real property interests
- where an option is granted, that the membership interests subject to the option

are not indirect Australian real property interests.

This is allowed, as the vendor would be in the best position to determine if the membership interest being disposed of, or subject to an option, is an indirect Australian real property interest.

Purchaser can rely on the declaration

A 'Not an indirect Australian real property interest' declaration supplied by the vendor may be relied on by the purchaser where the purchaser is acquiring the membership interests in an Australian entity or an option over the membership interests specified in the declaration.

Where a valid declaration is provided there will be no obligation on the purchaser of the membership interest, or grantee of the option transaction, to withhold. A declaration may be relied on unless the recipient knows the declaration is false.

Interests on the stock market

Where a vendor is disposing of the interest in the Australian entity on an approved stock exchange (such as the ASX or Chi-X), there is no need for the declaration to be provided. This is because interests disposed of on an approved stock exchange are an 'excluded asset' for the purposes of this withholding.

This also applies to transactions that occur on a crossing system – for example, disposal of shares in dark pools.

When the vendor doesn't supply a declaration when requested

If the vendor doesn't supply a declaration when requested, the purchaser should withhold 12.5% from the purchase price at settlement.

Valid declaration from a vendor

A vendor's declaration is valid for six months from the date it's signed by the vendor. It's only valid for the listed vendor and specified period on the declaration. The specified period may start retrospectively but cannot exceed six months from the date the declaration is signed by the vendor.

It's the vendor's responsibility to provide the purchaser with a declaration and ensure the date that it was provided to the purchaser is within the six-month validity period of the declaration.

For the purchaser to rely on the declaration, the:

- name of the vendor on the declaration must match the name of the owner of the asset (unless proof of name change is provided)
- date the vendor provides the declaration to the purchaser must be a date that falls within the specified period on the declaration.

If the declaration doesn't meet the above conditions, the purchaser is required to withhold 12.5% of the purchase price.

How to declare

There is no approved form that can be completed by the vendor for a declaration. But we have a template that can be used for this purpose.

Next step

- Download [Foreign resident capital gains withholding – vendor declaration (PDF, 222KB)]

Multiple vendors

A declaration is only valid for the vendor specified in the declaration. If an asset is acquired from multiple vendors, each vendor would need to provide the purchaser with their own declaration, to ensure the withholding obligation does not apply to each of them.

Declarations and the disposal of real property

A vendor can't use a declaration to avoid having the purchaser withhold the 12.5% withholding in relation to the disposal of real property.

False vendor declarations

A purchaser can rely upon the declaration unless they know it to be false.

A purchaser will be treated as knowing a vendor declaration is false where they have specific knowledge of this fact. A purchaser will have such knowledge when they are a party to the fraud committed by the vendor, or when they have other information that indicates the declaration is implausible. The fact the purchaser may have reasonable grounds to doubt the accuracy of the declaration does not, of itself, and without further information, mean the purchaser can't rely on it.

Penalties

A vendor that makes a false or misleading declaration must pay a penalty to the Commissioner. The amount of the penalty varies depending on the severity of the offence.

The penalty is:

- 120 penalty units where the vendor has knowingly made a false or misleading declaration
- 80 penalty units where they have recklessly made a false or misleading declaration
- 40 penalty units where the declaration is false or misleading as a result of the vendor failing to take reasonable care.

Variations

Vendors can apply for a variation where:

- they're not entitled to a clearance certificate
- a vendor’s declaration is not appropriate
- 12.5% withholding is too high compared to the actual Australian tax liability on

the sale of the asset.

Reasons for a variation include:

- the vendor will not make a capital gain on the transaction (for example, because they will make a capital loss or a CGT roll-over applies)
- the vendor will not have an income tax liability (for example, because of carried-forward capital losses or tax losses)
- a creditor of the vendor has a mortgage or other security interest over the property, and the proceeds of sale available at settlement are insufficient to cover both the amount to be withheld and to discharge the debt the property secures
- a creditor acquires legal title to the property (that is, becomes the purchaser) as a result of an order for foreclosure, and its security would be further diminished as a result of having to comply with the withholding obligation.

Foreign residents claiming the main residence exemption as a reason for the variation

A law change on 12 December 2019 means foreign residents can no longer claim the CGT main residence exemption as the reason for their variation unless, at the time of the CGT event, they were a foreign resident continuously for six years or less and during that time one of the following occurred:

- either the foreign resident, their spouse, or their child under 18, had a terminal medical condition
- their spouse, or their child who was under 18 years of age, dies
- the CGT event happened because of a formal agreement following your divorce or relationship breakdown.

If the foreign resident dies, the change also applies to:

- legal representatives, trustees and beneficiaries of deceased estates
- surviving joint tenants
- special disability trusts

When the change applies

The change applies to foreign resident vendors for properties acquired at or after 7:30 pm (AEST) 9 May 2017. The CGT main residence exemption no longer applies to disposals from that date unless any of the life events (listed above) occur within six continuous years of that individual becoming a foreign resident for tax purposes.

The change only applies if the person is not an Australian resident for tax purposes at the time of the disposal, that is, when the person signs the contract to sell the property. Their residency status in earlier income years will not be relevant. There will be no partial CGT main residence exemption available in these circumstances.

If a person has always been a foreign resident for tax purposes, it is unlikely they have ever resided in the property as their main residence and are unlikely to meet the requirements for the CGT main residence exemption.

Legislative Instruments

We have issued class variations for:

- deceased estates and legal personal representatives
- income tax exempt entities
- marriage or relationship breakdowns
- no residue after a mortgagee exercises a power of sale

If any of these class variations apply, the withholding rate is varied to nil and it is not necessary to apply for a variation.

How to apply

To apply for a variation, the vendor, the vendor's representative or vendor's creditor needs to complete the online Variation application for foreign residents and other parties .

An application for a variation should be completed well in advance of the settlement date to ensure there is enough time to provide the information required to finalise the application.

Conveyancers, real estate agents and others charging a fee for services (but who are not legal practitioners or registered tax agents) should obtain a completed paper PDF version of the form from the vendor. They can then use the details on the paper form to complete the online form, ensuring faster processing, as part of the settlement process.

Next step

- Complete the Foreign resident capital gains withholding rate variation paper application

For more information, see LCR 2016/5 *Foreign resident capital gains withholding regime: the Commissioner's variation power*

In the majority of cases (where we have all the required information), the variation notice will be issued within 28 days.

Variation notices will be sent by email if an email address is provided in the application. Otherwise, notices will be mailed to the vendor and the applicant using the addresses provided in the application. The variation notice should be shown to the purchaser before settlement to ensure the reduced withholding rate applies.

Calculating the reduced rate of withholding

Vendors need to calculate their reduced rate of withholding. This could be a rate between nil and 12.49%.

The varied rate we approve will depend on the information provided by the vendor in their application.

Unit price fluctuations

If the indirect interest in taxable Australian real property is in a wholesale trust that has unit values that fluctuate daily, then there is a risk that the variation would become invalid as the unit selling price exceeds the unit price specified in the conditions of the variation notice we issued.

As a solution to this potential problem, the variation condition we provide on the variation notice can provide a number of alternative prices, with a differing variation rate applying to each. If you are in this situation you should provide information in relation to possible price differences and what you believe would be an appropriate variation rate within that price range – this information can be supplied in the attachment to the variation application.

Multiple vendors

A variation notice applies to the specified vendor and applicable asset on the notice. If an asset is acquired from multiple vendors, each vendor will need to supply the purchasers with separate variation notices if a reduced rate of withholding is to apply.

For more information, see PAYG Withholding variation for foreign resident capital gains withholding payments – acquisitions from multiple entities

Valid variation notice

A variation notice is valid up to and including the expiry date on the notice for the listed vendor and applicable asset on the notice.

It is the vendor’s responsibility to provide the purchaser with the variation notice and ensure it's valid at the time of settlement.

For the purchaser to rely on the variation notice, the:

- name of the vendor and applicable asset details on the notice must match those on the certificate of title or other asset ownership documentation (proof of name change should have been provided to us at the time of applying as all variations are manually processed)
- the settlement date must be on or before the expiry date on the variation notice.

When a purchaser receives a valid variation notice from a vendor, they can rely on it and withhold amounts from payments at the reduced rate and pay by completing the Foreign Resident Capital Gains Withholding Purchaser Payment Notification form.

If the variation notice doesn't meet the above conditions, the purchaser is required to withhold 12.5% of the purchase price.

A purchaser can check the validity of a variation notice with us by phoning 13 28 66 (Fast Key Code 4 2) prior to deciding whether to withhold the 12.5% amount from the purchase price. To confirm the validity, the purchaser must provide the:

- BET number from the ‘Our reference’ field at the top of the notice
- vendor’s name, varied rate and applicable asset details as they appear on the notice.

Calculating the withholding

Purchase price vs market value

With taxable Australian real property, the market value determines whether this withholding measure needs to be considered.

In most cases, the market value of a property should be the same as the purchase price. Where the purchase price has been negotiated between the vendor and the purchaser, acting at arm’s length, we will accept the purchase price as a proxy for market value.

However, there could be circumstances where the market value is different to the stated purchase price (for example, where the vendor and purchaser are related parties and did not deal with each other at arm’s length). In such cases, we won't accept the purchase price as a proxy for market value and the purchaser will need to seek a separate expert evaluation.

Purchase price vs first element of the cost base

The legislation provides that the purchaser applies the 12.5% withholding rate to the first element of the cost base of the asset the vendor is disposing of.

The first element of the cost base is a tax technical term, which is the money paid, or required to be paid, to acquire the asset and the market value of any property given, or required to be given, in respect of acquiring the asset.

In most cases, the first element of the cost base should be equivalent to the purchase price. Where the purchase price has been negotiated between the vendor and the purchaser, acting at arm’s length, we will accept the purchase price as a proxy for the first element of the cost base.

Where a sales contract contains assets both subject to this withholding measure and not subject to this withholding measure, the purchaser and vendor can decide to come to an agreement as to what are the respective market values of each asset, in determining whether withholding should be imposed upon that share of the purchase price for each asset. Where the parties to the contract are not dealing at arm's length an independent valuer may need to be included in the valuation process.

Multiple properties in one transaction

A vendor may be disposing of multiple properties in one transaction, the combined value of which exceeds $750,000. The withholding is based on the market value of a property being disposed of not a combination of all the properties being disposed of, therefore each property needs to be assessed separately for withholding

No additional payment on top of the agreed purchase price

The obligation for the purchaser to withhold an amount and pay it to us isn't an additional payment on top of the agreed purchase price.

The withholding amount is taken from the purchase price the purchaser has agreed to pay the vendor.

How withholding applies to deposits or instalments

Withholding is not required from deposits paid on signing of the contract.

If payments are to be made in multiple instalments across the contract period, withholding should only occur when the final payment is made at settlement. The withholding amount is still calculated using the full purchase price of the asset.

When the contract doesn’t settle

If for some reason the contract is not completed (settled), there is no obligation on the purchaser to withhold. This is because the vendor has not received the agreed purchase price for the asset.

Multiple purchasers (the ATO online form will help in this calculation)

Where there are multiple purchasers, each purchaser doesn't look at their percentage interest in isolation to the other purchasers in determining whether they should withhold.

Each purchaser must withhold in proportion to their percentage of the total purchase price.

Where the asset being disposed of is taxable Australian real property, the market value of all purchasers' interests must be aggregated in examining whether the $750,000 market value threshold has been reached.

If the aggregated purchase price is $750,000 or more, each purchaser must withhold in proportion to their percentage of the total purchase price.

Example – Multiple purchasers

You are purchasing a commercial property jointly with another entity. Your share of the acquisition is 40%, for which you are paying $400,000. This means the total property purchase price would be $1 million. Even though your purchaser’s interest is below the $750,000 threshold, the property as a whole exceeds the $750,000 threshold so you will need to withhold.

Each purchaser will receive a different payment reference number, and a specified amount / rate to be paid via the online form. You may provide one cheque together with the details on how to apportion this amount.

Multiple vendors (the ATO online form will help in this calculation)

If there are multiple vendors disposing of the asset, it's the total market value of the asset that determines whether withholding is required by the purchaser.

If the purchaser hasn't been provided with a clearance certificate, vendor declaration or a variation from any of the vendors, the purchaser must withhold 12.5% of the purchase price. The amount of withholding will be in proportion to each vendor’s interest in the asset.

Where there are multiple Australian vendors disposing of the asset, each vendor should provide the purchaser with a separate clearance certificate which is to be in their name only.

Where one (but not all) of the vendors provides a clearance certificate or vendor declaration to the purchaser, the withholding obligation still applies, as there is still a foreign resident vendor to the transaction. The amount of withholding is still on the entire first element of the cost base of the asset, not just the portion attributable to the relevant foreign resident vendor’s interest in the asset.

We recognise in this situation, any vendors subject to the withholding would apply for a variation to ensure the withholding amount better reflected the foreign resident vendor’s tax liability. They would receive a reduction in the withholding rate accordingly.

To reduce the need for vendors to apply for variations in these situations, the purchaser may withhold in accordance with each vendor’s proportional interest in the purchase price, subject to any clearance certificate, vendor declaration or vendor variation being provided prior to settlement.

For more information, see PAYG Withholding variation for foreign resident capital gains withholding payments – acquisitions from multiple entities

The following examples are from the perspective of a purchaser determining their obligation to withhold. In all instances, it's assumed the purchase price is $750,000 or more.

Example – Joint owners, but only one vendor is an Australian resident

The purchaser has to withhold as there is a foreign resident. The withholding is based on the full purchase price of the property. The purchaser would need to see the clearance certificate from the Australian resident vendor. Otherwise, they would have to withhold on their interest within the property they are disposing of.

If a clearance certificate is provided before settlement, then the purchaser doesn't have to withhold. The withholding would be on the full purchase price of the property – but we allow the withholding to be calculated only on the foreign resident's interest in the property.

Example – Foreign resident vendor provides a variation

The circumstances are identical, but now the foreign resident vendor shows a variation notice and the Australian vendor provides a clearance certificate. There is no withholding on the Australian resident's interest in the property. There is withholding on the foreign resident's interest in the purchase price of the property – but the rate of withholding is the withholding rate as specified on the variation notice issued by us to the foreign resident vendor, not 12.5%.

Example – Multiple foreign resident vendors

As the property is being sold by foreign residents, the purchaser knows they must withhold. They have not received a clearance certificate, so must assume all the vendors are foreign residents.

With respect to each foreign resident vendor, the amount of withholding is based on their specific interest in the property – their share of the purchase price.

The purchaser must consider if any of these vendors has supplied a variation notice. If no variation notice is received, the withholding is 12.5% of the contract purchase price, with each vendor being subject to an amount reflective of their interest in the property being sold.

If variation notices are provided by some or all of the foreign resident vendors, the purchaser must calculate the specific withholding rate applicable to each vendor.

For vendors that don't supply a variation notice, the withholding is 12.5% of their share of the contract purchase price, reflective of their interest in the property being sold.

For vendors that supply a variation notice, the rate of withholding applicable to their specific interest in the purchase price of the property will be the withholding rate as specified on the variation notice issued by us to that particular foreign resident vendor. It may be the purchaser has to withhold 8% from one vendor, and 3% from another vendor.

When the purchaser fails to withhold

If the purchaser fails to withhold when they should, a penalty may be imposed by the Commissioner, equal to the amount that was required to be withheld and paid. General interest charges will also be applied.

Goods and services tax

For some transactions, it may be necessary to determine if the purchase price needs to be adjusted for GST in determining the price on which the withholding is applied.

Where a purchaser isn't registered for GST or the supply of the asset isn't a taxable supply (for example because the vendor isn't registered for GST or the supply is input taxed), or the purchaser isn't entitled to any input tax credit, the GST inclusive purchase price payable by the purchaser may be used in determining how much withholding is required.

Where the purchaser is registered for GST and the transaction is a taxable supply*, and the purchaser is entitled to an input tax credit, the GST inclusive purchase price less the input tax credit may be used by the purchaser in determining how much withholding is required.

The purchase price can't be used as a proxy for market value if the purchaser has paid a premium, or the parties have not dealt with each other at arm's length.

* The sale of existing residential premises (but not commercial residential premises or new residential premises) is input taxed and therefore not a taxable supply. Where the asset is shares (for example company title interests), the supply of shares is input taxed and therefore not a taxable supply.

An exception – the margin scheme

If the margin scheme is used, a purchaser cannot claim input tax credits on that acquisition, even if they are registered for GST and intend to use the purchased property for a creditable purpose.

In these instances, a GST registered purchaser should calculate the 12.5% withholding by using the GST inclusive price, the same as non-registered purchasers.

Leases

Acquisition of a lease

The acquisition of a lease with a market value of $750,000 or more from a foreign resident lessor would be subject to the 12.5% withholding.

Withhold amount if paying a premium for the lease

Withholding is only required if the market value of the lease is $750,000 or more. If a lessee has paid a premium for a lease, that premium is part of the first element of the cost base of the leased asset upon which the 12.5% withholding applies.

Rent and outgoings

Rent and outgoings are not included in determining the $750,000 market value and do not form part of the first element of the cost base, of a lease.

Options

The acquisition of an option to acquire an asset subject to this withholding measure from a foreign resident would be subject to the 12.5% withholding unless the vendor provides the purchaser with a valid declaration or another exception or exclusion applies. However, where the market value of the option being acquired is less than $8 no withholding applies and no Purchaser payment notification form is required to be submitted by the purchaser.

Where the option involved is a put option, the grantee is not required to withhold an amount because the grantee of a put option has acquired a right to sell, not an option to acquire, the underlying asset.

Where a purchaser acquires the asset as a result of exercising an option, the amount to which the 12.5% withholding applies is the amount paid for the asset and the market value of any property they gave for the option (or to renew or extend the option), but excluding what the purchaser already paid for the option.

When an option contract is entered before 1 July 2016 but exercised after that date

When the option was granted has no bearing on the foreign resident capital gains withholding implications. It is the time of exercise of the option that is the relevant point at which the grantee must consider whether the foreign resident capital gains withholding provisions apply to the amount they are paying the grantor.

Where the option is exercised on or after 1 July 2016 and the asset being acquired is a CGT asset subject to the withholding rules, then the withholding provisions do apply to the first element of the cost base of that relevant asset (we accept this is the purchase price of the asset where there is an arm’s length transaction). This is the case even when the option was granted prior to 1 July 2016 or where the option contract doesn't consider foreign resident capital gains withholding.

The withholding is avoided if the vendor provides the purchaser with a valid clearance certificate or declaration, or another exception or exclusion applies.

A purchaser that withheld in accordance with their federal income tax obligations would be protected by sub-section 16-20(2) of Schedule 1 to the *Taxation*

Administration Act 1953. This provides that a purchaser's liability to pay the purchase price is reduced by the withholding amount paid to the Commissioner.

Earnouts

How the rules apply will depend on whether the earnout right is one of the following.

Look-through standard earnout rights

The purchaser is required to withhold and pay to the Commissioner 12.5% of the first element of the CGT asset’s cost base just after the acquisition. The first element of the CGT asset’s cost base doesn't include any financial benefit the purchaser provides under a look-through standard earnout right relating to the CGT asset.

The purchaser is also required to withhold and pay to the Commissioner 12.5% of the market value of the financial benefits provided by the purchaser under the earnout right, unless the entity receiving the financial benefit is not a relevant foreign resident at the time the financial benefit is provided.

Non-look-through standard earnout right

The purchaser is required to withhold and pay to the Commissioner 12.5% of the first element of the CGT asset’s cost base. The non-look-through earnout right is property given by the purchaser in respect of acquiring the CGT asset. Therefore, the first element of the CGT asset’s cost base includes the market value of the earnout right. The purchaser must ascertain the market value of the earnout right at the time of acquisition and include that value in calculating the 12.5% withholding.

The purchaser is not required to withhold 12.5% of the market value of any financial benefits provided by the purchaser under the non-look-through earnout right.

Look-through reverse earnout right

The purchaser is required to withhold and pay to the Commissioner 12.5% of the first element of the CGT asset’s cost base just after the acquisition. The first element of the CGT asset’s cost base is not reduced by the amount of any financial benefit that you receive under a look-through earnout right relating to the CGT asset.

Non-look-through reverse earnout right

The purchaser is required to withhold and pay to the Commissioner 12.5% of the first element of the CGT asset’s cost base. However, the purchaser has acquired more than one asset. The non-look-through earnout right is a separate CGT asset acquired by the purchaser and not subject to the withholding. Therefore, the first element of the cost base of the CGT asset that is subject to withholding is the amount of the purchase price that is reasonably attributable to that CGT asset.

Earnout rights do not affect the market value of the underlying asset

An earnout arrangement may be entered into at the time of sale of an asset where the vendor and purchaser do not agree on a fixed purchase price. However, the market value of an asset is not affected by the existence of an earnout right that is created at the time of the asset's sale.

The purchaser cannot use the upfront payment as a proxy for market value

Purchasers will need to ascertain the market value of the asset on a different basis, such as seeking an independent expert valuation.

Share issues / IPOs

The withholding obligation doesn't apply if the purchaser acquires shares as a result of being issued or allotted those shares through an Initial Public Offer (IPO) because the shares will not be indirect Australian real property interests.

An indirect Australian real property interest is a membership interest (for example, a share) held by one entity in another entity if certain additional conditions are met.

At the time the share issue transaction is entered into, the shares are not membership interests that the issuing company holds in another entity (they are membership interests in the issuing company itself), and therefore cannot be indirect Australian real property interests.

An option to acquire shares

The acquisition of an option to be issued new shares in a company would not be an option that is subject to the withholding on the basis that any shares that could be acquired via the exercise of the option would not be an indirect Australian real property interest.

Paying the withholding

A purchaser must pay us the withholding equal to 12.5% of the first element of the CGT asset's cost base (the cost base is generally equal to the purchase price). Where no money is paid or required to be paid, or the agreed amount is under market value, then the 12.5% withholding is on the market value of the CGT asset.

Note: The first element of cost base doesn't include any disbursements at settlement (for example, for council rates, water and sewer charges and strata levies). Therefore, the withholding amount is 12.5% of the purchase price before adjustment for disbursements.

The purchaser is liable to withhold and pay this amount. If this does not occur when it should, we will hold the purchaser liable.

When the payment is required

To pay the withholding to us, the purchaser must complete an online Foreign resident capital gains withholding Purchaser Payment Notification form

Where there are multiple purchasers one form can be used if there are 10 or fewer purchasers, or purchasers can lodge a form individually.

Once a payment notification form is processed, a payment reference number (PRN) will be issued, along with a PDF icon that can be clicked on to obtain a downloadable payment slip and barcode to use at Australia Post.

Only one PRN is issued per purchaser payment notification form, even if multiple purchasers are supplied on the form.

The purchaser (or purchasers) must pay the withholding to us on or before the day they become the owner of the asset, and they require the PRN, payment slip and barcode to do this. Without these, the purchaser will not be able to make the payment at Australia Post.

We encourage purchasers to submit the payment notification form to us as early as possible, to ensure they have the payment reference number at settlement.

If the purchaser fails to obtain a PRN and pay the withholding when they become the owner of the asset, general interest charges will be imposed.

There is a short grace period from, and including the day of settlement, for the withholding to be paid in full. General interest charges will accrue from the date of settlement if we don't receive the withholding within the grace period.

All parties should view the Purchaser payment notification form before settlement proceeds and should contact us if there are changes to the settlement date on the form.

Purchaser payment notification form

Purchasers are not required to notify us of a transaction if:

- the purchase price of the real property is less than $750,000
- all vendors have supplied clearance certificates
- all vendors have supplied vendor declarations
- all vendors provide a notice to vary withholding set at 0%.

When an amount is required to be withheld, a foreign resident capital gains withholding purchaser payment notification form must be completed by all the purchasers involved in the sale. The purchaser will need to provide the details of the vendors and the asset in the application.

Once a payment notification form is processed, a PRN will be issued and a PDF icon they can click to obtain a downloadable barcode to use at Australia Post will be generated. It is recommended that the downloadable barcode always be printed to avoid keying errors.

Only one PRN is issued per purchaser payment notification form, even if multiple purchasers are supplied on the form.

The full payment can be made using the PRN or payment slip provided. Where two or more purchasers are included in the transaction, they can choose to make separate payments and use the same PRN or payment slip.

How to pay

There are three methods the purchaser can use to pay us.

1. Transfer the amount via electronic funds transfer (or BPAY®)
    - Bank: Reserve Bank of Australia
      BSB: 093 003
      Account number: 316 385
      Account name: ATO direct credit account
      Reference: Your payment reference number

2. In person at Australia Post
    - the purchaser will need the barcode supplied to them after lodgment of the Foreign resident capital gains withholding purchaser payment notification. The post office accepts cheques up to $100 million.

3. Mail a cheque to us with the PRN (Note: Large withholders may pay the subdivision 14-D withholding amount by non-electronic means)
    - Australian Taxation Office
      Locked Bag 1936
      ALBURY NSW 1936
      Australia

After payment has been made

A receipt from either Australia Post or the ATO is proof the purchaser has made the payment and fulfilled their obligations.

A payment confirmation email or letter will be sent to the nominated contact on the purchaser payment notification form.

Confirmation will be sent by email if an email address is provided in the foreign resident capital gains withholding purchaser payment notification, otherwise it will be mailed to the address of the contact.

Vendors will need a copy of the payment confirmation and use this information to complete their tax return.

How to pay when travelling

We have an online version of the form, which provides an automatic PRN.

Only use this PDF form if you anticipate not having internet access:

- Foreign resident capital gains withholding purchaser payment notification paper form instructions

Compulsory acquisitions by government authorities

Certain Australian government authorities can exercise powers under State and Territory legislation for the compulsory acquisition of real property. Generally the property is acquired, and ownership of the property passes, on the date that the acquisition is published in the relevant government gazette.

In the context of a compulsory acquisition certain practical difficulties arise in connection with determining whether or not there is an obligation to withhold and working out the withholding amount to be paid on or before the day the acquisition is published in the gazette. For example, the market value of the property being acquired may be the subject of a dispute at the time the acquisition is published.

Payment of withholding tax

Under section 14-200 of Schedule 1 to the *Tax Administration Act 1953*, the Australian government authority is required to pay the foreign resident capital gains withholding tax on or before the date that the authority became the property's owner.

Deferral of payment

Subsection 255-10(2A) of Schedule 1 of the *Taxation Administration Act 1953* allows the Commissioner to defer the time for payment of tax-related liabilities (including withholding tax) due and payable by a class of taxpayers. The Commissioner defers the payment by publishing a notice on our website. The Commissioner can defer the time for payment whether or not the liability has already arisen.

Notice

Until further notice, the Commissioner of Taxation has deferred the time for which the foreign resident capital gains withholding tax liabilities of an Australian government authority are due and payable where:

The exercise of the compulsory acquisition power is authorised under one or more of the following Acts:

- *Acquisition of Land Act 1967* (Queensland)
- *Land Acquisition (Just Terms Compensation) Act 1991* (New South Wales)
- *Land Acquisition Act 1969* (South Australia)
- *The Land Acquisition and Compensation Act* 1986 (Victoria)
- *Land Acquisition Act 1993* (Tasmania)
- *Land Administration Act 1997* (Western Australia)
- *Land Acquisition Act 1994* (Australian Capital Territory)
- *Land Acquisition Act 1978* (Northern Territory)
- *Land Acquisition Act 1989* (Commonwealth of Australia).

For an Australian government authority that is exercising its compulsory acquisition powers under one or more of the above Acts in relation to a compulsory acquisition, the due date for payment of the foreign resident capital gains withholding tax is deferred to the earlier of:

- 14 days after agreement or final determination of the compensation payable

- 14 days after agreement to pay an advance amount of compensation.

As a consequence of this we will accept the government authority as meeting its obligation for the purposes of the withholding if it receives a valid clearance certificate from the vendor by the earlier of:

- 14 days after agreement or final determination of the compensation payable
- 14 days after agreement to pay an advance amount of compensation.

In terms of the amount of withholding it will be based upon the compensation amount paid that is equivalent to the first element of the CGT asset cost base (being that of the taxable Australian real property subject to the gazettal).

As a compensation amount could include a value for disturbance and professional expenses or other assets other than the property, the government authority would need to establish a market value break-up of the payment related to the property, and only withholding on that amount.

Penalties

A purchaser that fails to withhold as required and pay it to us may be subject to a penalty equal to:

- $1,800 for contracts entered into on or after 1 July 2016 but before 1 July 2017
- $2,100 for contracts entered into on or after 1 July 2017
- the amount they failed to withhold.

We are obliged to give written notice to the purchaser of their liability to pay the penalty and the reasons for imposing the penalty.

The purchaser will also be subject to the general interest charge on any amounts not paid to us by the required date.

Foreign resident capital gains withholding and the tax return

The foreign resident vendor must lodge a tax return at the end of the financial year declaring:

- their Australian assessable income, including any capital gain from the disposal of the asset
- whether the vendor will claim a credit for any withholding amount taken from their sale proceeds (for example, because they didn't provide the purchaser with a clearance certificate).

A credit may be refunded in the relevant tax return if they don't have to pay capital gains tax on the sale of the property (for example, because it was their main residence).

A foreign resident will need to apply for a TFN before they lodge an Australian tax return to ensure they can claim a credit for the amount withheld and paid to the ATO by the purchaser.

In certain circumstances, an early tax return may be submitted. If a foreign resident vendor is not eligible to submit an early tax return, they must wait until the end of the financial year to submit it and receive a tax credit for the withholding paid by the purchaser.

Applying the credit

We will only apply the credit to the vendor when the:

- purchaser has paid the withholding to us
- vendor has lodged an Australian income tax return claiming the credit.

We'll give vendors confirmation that a withholding payment has been paid on their behalf.

In situations where the contract is signed in one financial year but the purchaser pays the withholding in the next financial year, we will apply the Commissioner's Remedial Power to allow the vendor to claim the credit in the same tax return in which they need to declare the capital gain.

For more information, see Taxation Administration (Remedial Power – Foreign Resident Capital Gains Withholding) Determination 2017

When the purchaser withholds but doesn't pay it to us

The vendor cannot claim a credit for the withholding until the purchaser pays the withholding to us.

We will promptly take action to collect from the purchaser any withholding amount not paid by the due date.

If the vendor is concerned the purchaser may not pay the withholding, the vendor should seek legal advice.

Amendments

A vendor may provide the purchaser with a clearance certificate or variation after the purchaser has submitted the purchaser payment notification.

Phone us on 13 28 66 (fast codes 4 2) for referral to the relevant area who will try to help you resolve this situation.

More information

Law companion rulings

The following rulings describe how we apply the law:

- Foreign resident capital gains withholding regime: the Commissioner's variation power
- Foreign resident capital gains withholding regime: amount payable to the Commissioner

- Foreign resident capital gains withholding regime: options

Legislation and supporting materials

On 22 June 2017 Treasury Laws Amendment (Foreign Resident Capital Gains Withholding Payments) Act 2017 (Act No. 57 of 2017) received royal assent.

On 25 February 2016 the Tax and Superannuation Laws Amendment (2015 Measures No. 6) Act 2016 received royal assent.

The following information is available to help you meet your obligations:

- Clearance certificate application for Australian residents
- Capital gains withholding clearance certificate application online form and instructions – for Australian residents
- Variation application for foreign residents and other parties
- Foreign resident capital gains withholding rate variation application online form and instructions
- Purchaser Payment Notification – Foreign resident capital gains withholding
- Foreign resident capital gains withholding purchaser payment notification online form and instructions
- Foreign resident capital gains withholding payments (webinar recording)
- Capital gains withholding – for real estate agent
- Capital gains tax withholding – a guide for conveyancers
- Foreign resident capital gains withholding – simplified Chinese
- GST at settlement

Legislative instruments

- Acquisitions from multiple entities – Federal Register of Legislation page PAYG Withholding variation for foreign resident capital gains withholding payments – acquisitions from multiple entities
- Deceased estates and legal personal representatives – Federal Register of Legislation page PAYG Withholding variation for foreign resident capital gains withholding payments – deceased estates and legal personal representatives
- Marriage or relationship breakdowns – Federal Register of Legislation page PAYG Withholding variation for foreign resident capital gains withholding payments – marriage or relationship breakdowns
- Exempt entities – Federal Register of Legislation page PAYG Withholding variation for foreign resident capital gains withholding payments – income tax exempt entities
- No residue after a mortgagee exercises a power of sale – Federal Register of Legislation page PAYG Withholding variation for foreign resident capital gains withholding payments - no residue after a mortgagee exercises a power of sale 2020

Capital gains withholding – a guide for conveyancers

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Foreign-residents-and-capital-gains-tax/Foreign-resident-capital-gains-withholding/Capital-gains-withholding---a-guide-for-conveyancers/
- Last modified: 01 Jul 2022
- QC 52808

This information explains the capital gains withholding impacts and what conveyancers need to consider.

Foreign resident capital gains withholding (FRCGW) applies to vendors disposing of certain taxable property under contracts entered into from 1 July 2016.

The FRCGW tax rate is 12.5%.

It applies to real property disposals where the contract price is $750,000 or more.

For contracts that are entered into from 1 July 2016 and before 1 July 2017, even if they are not due to settle until after 1 July 2017, the FRCGW withholding tax rate is 10% and applies to real property disposals where the contract price is $2 million and above.

On this page

Background

Purchasers must withhold 12.5% of the purchase price and pay it to us if a vendor enters into a contract on or after 1 July 2017 and disposes of the following asset types:

- real property – taxable Australian real property with a market value of $750,000
    - vacant land, buildings, residential and commercial property
    - mining, quarrying or prospecting rights where the material is situated in Australia
    - the grant of a lease over real property in Australia.

- other assets
    - indirect Australian real property interests in Australian entities whose majority of assets consist of the above-mentioned asset types
    - options or rights to acquire any of the above asset types.

Where any vendor disposes of Australian real property with a market value of $750,000 or more, the purchaser will be required to withhold 12.5% of the purchase price and pay it to us – unless the vendor provides the purchaser with an ATO-issued clearance certificate to ensure the amounts are not withheld from their sale proceeds.

All property transactions with a market value of $750,000 or more will need the vendor and purchaser to consider if they need a clearance certificate.

Purchase price

In most cases, the market value of a property will be the purchase price. Where the purchase price has been negotiated between the vendor and the purchaser, acting at arm's length, we will accept the purchase price as a proxy for market value.

When purchasers must withhold

The purchaser has an obligation to withhold when:

- any vendor of the asset is a relevant foreign resident
- the asset that the purchaser has acquired is a relevant asset
- the acquisition is not an excluded transaction
- the vendor does not provide a clearance certificate or make a relevant declaration.

Vendors

The obligation to withhold only arises if the vendor is a relevant foreign resident for the purposes of this measure.

The vendor is the entity that holds the legal title to the asset to which this withholding measure applies.

Where the asset is held on behalf of another entity, the vendor is the legal owner of the asset, for example, the trustee or custodian who holds the legal title on behalf of beneficiaries.

Unless an exception applies, the vendor is a relevant foreign resident if any of the following apply:

- The purchaser knows the vendor is a foreign resident.
- The purchaser reasonably believes the vendor is a foreign resident.
- The purchaser does not reasonably believe the vendor is an Australian resident, and either
  - has a record about the acquisition indicating that the vendor has an address outside Australia
  - is authorised by the vendor to provide a related financial benefit (for example, make a payment) to a place outside Australia (whether to the vendor or to anyone else).

- The vendor has a connection outside Australia of a kind specified in the regulations.
- The capital gains tax (CGT) asset to which the transaction relates is
  - taxable Australian real property
  - an indirect Australian real property interest, the holding of which causes a company title interest to arise.

Exceptions

A vendor is not a relevant foreign resident if they provide the purchaser with:

- a valid clearance certificate in transactions involving taxable Australian real property or indirect Australian real property company title interests (even if the vendor is actually an Australian resident for other income tax purposes)
- a valid vendor declaration in transactions involving other assets covered by the foreign resident capital gains withholding law.

Taxable Australian real property or indirect Australian real property company title interests

Where the capital gains tax (CGT) asset to which the transaction relates is taxable Australian real property or an indirect Australian real property company title interest, the entity is treated as a relevant foreign resident unless a clearance certificate is obtained from us certifying that the entity is not a relevant foreign resident for the purposes of this law.

This rule applies even if the vendor is actually an Australian resident for other income tax purposes.

Clearance certificates

We may issue a certificate (known as a clearance certificate) stating that the vendor of taxable Australian real property or an indirect Australian real property company title interest is not a relevant foreign resident. The clearance certificate will specify that withholding is not required on the acquisition of the property.

A clearance certificate is valid for 12 months from the date issued, so the vendor may be able to use it for multiple disposals of real property or indirect Australian real property company title interests that occur within that period. The vendor does not have to reapply for a clearance certificate each time they dispose of a property, as long as the clearance certificate is valid.

The clearance certificate may be provided to the purchaser at any time during the transaction, but must be provided to the purchaser by settlement.

The purchaser can rely on the clearance certificate as proof that they are not required to withhold. Once the purchaser has received a copy of the clearance certificate they have met their obligation, even if the vendor's circumstances change during the settlement period.

To obtain a clearance certificate, a vendor who is an Australian resident (or their representative) must complete an online *Foreign resident capital gains withholding clearance certificate application* form (NAT 74883). To access the form, visit ato.gov.au/FRCGW.

Conveyancers who are not legal practitioners or registered tax agents cannot complete the form on behalf of the vendor. They can either provide the PDF version of the clearance certificate form (or URL hyperlink) to the vendor for them to complete. Conveyancers may either submit the completed PDF form to us via mail or enter the data into the online form (retaining a copy of the vendor-signed PDF form and keeping a printout of data entered into the online form).

Example: Resident entity treated as a foreign resident vendor

Louis purchases real estate in Melbourne from Lucas for $3 million. This is taxable Australian real property. Louis believes that Lucas is an Australian resident.

Despite Louis's belief, unless Lucas provides Louis with a clearance certificate from us, Lucas is treated as a relevant foreign resident.

Louis must make a withholding payment to us.

Example: Clearance certificate process

Jennifer is acquiring an apartment in Sydney for $2.6 million from a vendor whose legal representatives are based in Singapore. The vendor's Australian conveyancer has provided a clearance certificate obtained from us (for the vendor) to Jennifer.

The contract instructions advise that the funds should be transferred to a bank account overseas.

Jennifer and her representatives are certain they are acquiring the apartment from a foreign resident. Irrespective of this, the vendor has provided a valid clearance certificate to Jennifer. Jennifer is able to rely on this clearance certificate and does not have to withhold and pay any foreign resident capital gains withholding from the payment of $2.6 million.

How long it will take to get a clearance certificate

We issue clearance certificates within 28 days of receiving the application.

Where the application requires further information from the applicant or has factors that may be considered higher risk or unusual, this will increase the time it takes to process. If the application is lodged close to the settlement date, we cannot guarantee we can process it by the settlement date as we will not disadvantage those other applicants who applied earlier by delaying their application to process yours.

Clearance certificates will be sent by email if an email address is provided in the application. Otherwise clearance certificates will be mailed to the vendor and the vendor's contact using the addresses provided in the application.

To avoid unanticipated delays, vendors seeking a clearance certificate should apply through the online system as early as practical in the sale process. This could be before offering the property for sale.

Clearance certificate validity

A clearance certificate is valid for 12 months from the date of issue. It is only valid for the listed vendor and the period noted on it.

Vendors must ensure that the details on their clearance certificate application are accurate, so the clearance certificate issues in the correct name.

It is the vendor's responsibility to provide the purchaser with the clearance certificate and ensure it is valid.

For the purchaser to rely on the clearance certificate, the:

- name of the vendor on the certificate must match the name on the certificate of title (unless proof of name change is provided)
- date the certificate is given to the purchaser must be a date that falls within the clearance certificate period and must be provided before settlement.

When a purchaser receives a clearance certificate from a vendor and sees that it is valid, they can rely on it and not withhold. There is no need for the purchaser to question the residency of the vendor.

However, if the clearance certificate does not meet these conditions, the purchaser is required to withhold 12.5% of the purchase price.

Although not a requirement, purchasers may check the validity of clearance certificates with us prior to deciding whether to withhold the 12.5% amount from the purchase price. Phone us on 13 28 66 (fast key codes 4 2) to confirm the validity of the clearance certificate by providing:

- the number from the 'Our reference' field at the top of the certificate
- the vendor's name as it appears on the clearance certificate.

Where there are multiple vendors

A clearance certificate only applies to the entity specified on the certificate. If an asset has multiple vendors, each vendor will need to supply the purchaser with a clearance certificate to ensure amounts are not withheld.

The rules apply if the market value of the asset acquired is exactly $750,000

The transaction will only be excluded from the rules if the market value of the taxable Australian real property or company title interest acquired is less than $750,000.

If the market value is unknown

If the vendor is uncertain whether the $750,000 threshold will be reached, for example because the property is going to auction or a sales contract is yet to be signed, they can be conservative and apply for a clearance certificate. If the property is then sold for less than $750,000, the vendor does not need to provide the purchaser with the clearance certificate.

Disbursements and other costs as part of the market value of the asset

We recognise that disposals of real property may involve the payment of disbursements as part of the contract.

If the adjustment changes the consideration paid for the asset, then the calculation of the amount to be withheld should be based on the final adjusted purchase price.

Where the purchase price is used as a proxy for market value, the market value is the purchase price before adjustment for any disbursements at settlement (for example, for council rates, water and sewer charges and strata levies). Therefore, the $750,000 threshold test is applied to the purchase price before adjustment for disbursements.

Other assets

For other assets, the purchaser's decision about whether the vendor is a relevant foreign resident depends on whether the purchaser either:

- has received one of two declarations which they do not know to be false, either

    - a residency declaration
    - a declaration that the membership interest is not an indirect Australian real property interest

- knows, or has reasonable grounds to believe, the vendor is a foreign resident (referred to as the knowledge condition).

A vendor may make a standing declaration which remains valid for six months after the day the declaration is made.

The purchaser can rely on the declaration unless they know it to be false.

Residency declarations

The vendor will not be a relevant foreign resident where they have provided a declaration to the purchaser that they are an Australian resident (unless the purchaser knows it to be false).

A declaration is only effective in relation to the specific vendor. If an asset is acquired from multiple vendors, a purchaser requires a declaration from each vendor or they must withhold.

A declaration as to residency can be relied upon for:

- indirect Australian real property interests (other than company title interests)
- options and rights to acquire taxable Australian real property or indirect Australian real property interests.

A purchaser can rely on a declaration, even if a purchaser has reasonable grounds to doubt its accuracy.

However, if the purchaser knows the declaration is false, the declaration has no effect on the obligation to withhold. A purchaser will only know a declaration to be false if they have specific knowledge of the fact. That is, the purchaser must be a party to the fraud committed by the vendor or must have knowledge that the declaration is completely implausible.

In all other circumstances, the declaration can be relied on.

Declarations that the membership interest is not an indirect Australian real property interest

A vendor can make a declaration that the CGT asset is a membership interest, but not an indirect Australian real property interest, because the membership interest does not satisfy either the:

- non-portfolio interest test
- principal asset test.

Membership interests that are not indirect Australian real property interests are not within the scope of the law.

The vendor is likely to be in a better position than the purchaser to determine whether the membership interests satisfy the tests for an indirect Australian real property interest.

To support this, the obligation to withhold does not apply where the purchaser relies on a declaration by the vendor that the interests are not indirect Australian real property interests. A purchaser may rely on the declaration even though the declaration may be inaccurate, unless the purchaser has specific knowledge that the declaration is false.

If the vendor does not supply a declaration when requested

If the vendor does not supply a declaration when requested, the purchaser should withhold 12.5% from the purchase price at settlement.

When a declaration from a vendor is valid

A vendor's declaration is valid for six months from the date it is signed by the vendor. It is only valid for the listed vendor and specified period on the declaration.

It is the vendor's responsibility to provide the purchaser with a declaration and ensure it is valid at the time it's provided.

The purchaser can rely on the declaration if the:

- name of the vendor on the declaration matches the name of the owner of the asset
- date the vendor provides the declaration to the purchaser is a date that falls within the specified period on the declaration and is provided before settlement.

When a purchaser receives a valid declaration from a vendor they can rely on it and not withhold.

If the declaration does not meet these conditions, the purchaser must withhold 12.5% of the purchase price.

There is no declaration form

However a template that can be used is available for download from our website at ato.gov.au/FRCGW.

If there are multiple vendors

A declaration is only valid for the vendor specified in the declaration. If an asset is acquired from multiple vendors, each vendor would need to provide the purchaser with their own declaration to ensure that the withholding obligation does not apply to each of them.

Declarations and the disposal of real property

A vendor cannot use a declaration to avoid having the purchaser withhold the

12.5% withholding in relation to the disposal of real property.

Penalties for false declarations

A vendor who makes a declaration that is false or misleading will have a penalty imposed upon them by us. The amount of the penalty varies depending on the severity of the offence.

The knowledge condition

The purchaser only has to consider the knowledge condition if the vendor has not supplied a vendor declaration.

The knowledge condition is satisfied where the purchaser:

- has specific knowledge that the vendor is a foreign resident – for example, the purchaser will have specific knowledge if the vendor discloses that they are a foreign resident for income tax purposes
- reasonably believes that the vendor is a foreign resident – for example, the purchaser may have a reasonable belief if they learn the vendor is likely to be living overseas
- has no reasonable grounds to believe the vendor is an Australian resident, and the amount is to be paid outside Australia, or the vendor has a foreign address.

Where there are reasonable grounds to believe the vendor is an Australian resident, withholding will not be required, even if an amount is paid outside Australia, or the vendor has an address outside Australia.

Reasonable grounds to believe the vendor is (or is not) an Australian resident must be considered on an objective basis. The question is whether a reasonable person in the position of the purchaser would have thought there were reasonable grounds to support this belief.

If the purchaser does not know or have reason to believe the vendor is a foreign resident, the knowledge condition ensures that the obligation to pay an amount to us does not arise. This provides certainty to purchasers.

Purchasers who are not comfortable applying the knowledge condition can ask the vendor to supply a vendor declaration. If the vendor does not supply a valid vendor declaration then the purchaser can assume the vendor is a relevant foreign resident and that they must withhold.

Example: Declaration used to determine residency

Andrew enters into an off-market transaction to acquire all the shares in a company. The majority of the company's investments are in real property holdings throughout Australia. The shares, therefore, constitute indirect Australian real property interests.

Andrew does not know the vendor of the shares. Under the terms of the sale contract, Andrew is to transfer the purchase price of the shares to an overseas bank account in the name of an associate of the vendor.

At this stage, the knowledge condition is satisfied. Andrew notifies the vendor that he intends to withhold a portion of the purchase price unless the vendor can provide Andrew with a declaration.

The vendor provides Andrew with a declaration stating the vendor is an Australian resident for income tax purposes, which Andrew does not know to be false. The knowledge condition is no longer relevant because Andrew has a declaration that the vendor is an Australian resident, that he is entitled to rely on.

Even if Andrew could not verify the declaration to the extent necessary for him to have a reasonable belief in its accuracy, he could rely on it and no withholding and payment obligation would arise.

Example: Vendor declaration that they are a resident

Zack and Belinda enter into an off-market transaction to acquire all of the shares in a company from a friend of their family. The majority of the company's investments are in real property holdings throughout Australia. The shares, therefore, constitute indirect Australian real property interests.

The friend has not provided a declaration to Zack or Belinda stating that the shares are not an indirect Australian real property interest, or that the friend is an Australian resident.

In deciding if they need to withhold from the payment, Zack and Belinda consider their relationship with the vendor. They have known the family friend for many years, and have no reason to think the family friend has an address outside Australia. They also take into account the fact that the funds were to be paid into an Australian bank account.

Consequently, Zack and Belinda are satisfied they have met the knowledge condition, as they reasonably believe the family friend to be a resident. Hence, they do not withhold.

Assets

The law applies to the following assets:

- taxable Australian real property
- an indirect Australian real property interest

- an option or right to acquire such property or such an interest.

The law only applies to these assets. Transactions involving other assets that are taxable Australian property are not subject to withholding, for example, an asset used in running a business through an Australian permanent establishment is excluded.

Example: Relevant assets

Foreign resident Hank owns a range of assets in Australia which he has decided to dispose of to fund an investment in the USA. The assets are:

- a residential block of apartments in Melbourne
- a portfolio of shares in an ASX200 listed index fund
- the inventory from a manufacturing business in Sydney
- a mining tenement allowing exploration within North Queensland
- a lease on agricultural land in the Murray River Basin
- an option to acquire shares in a carpet cleaning business.

The residential block of apartments is a relevant asset. It is taxable Australian real property, being land or buildings situated within Australia.

The portfolio of shares in an ASX listed fund is not a relevant asset. The law excludes transactions made on an approved stock exchange.

The inventory is not a relevant asset. Inventory is not taxable Australian real property and not an indirect Australian real property interest.

The mining tenement is a relevant asset. It is taxable Australian real property, the definition of which includes ‘a mining, quarrying or prospecting right’.

The lease on agricultural land is a relevant asset. A lease of land is specifically included within the definition of taxable Australian real property.

The option is not a relevant asset. The asset that the option relates to is not taxable Australian real property or an indirect Australian real property interest.

Taxable Australian real property

A CGT asset will be taxable Australian real property if it is:

- real property situated in Australia (including a lease of land, if the land is in Australia)
- a mining, quarrying or prospecting right (to the extent that the right is not real property) if the minerals, petroleum or quarrying materials are in Australia.

For the purposes of this measure, real property includes vacant land, buildings, residential and commercial property, and indirect Australian real property interests, the holding of which causes a company title interest to arise.

Indirect Australian real property interest

For a membership interest in an entity to be an indirect Australian real property interest at a particular time, the membership interest must satisfy two tests, being both:

- the non-portfolio interest test
- the principal asset test.

Membership interest includes shares in a company.

The non-portfolio interest test

An interest held by an entity (the holding entity) in another entity (the test entity) is a non-portfolio interest if the sum of the membership interests held by the holding entity (and their associates) in the test entity is 10% or more.

The test is satisfied if the membership interest is a non-portfolio interest at the time of the transaction, or through a 12-month period in the last 24 months leading up to the transaction.

The principal asset test

The principal asset test is used to determine if an entity's underlying value is principally derived from Australian real property.

A membership interest in an entity passes the principal asset test if the sum of the market value of the entity's assets that are taxable Australian real property exceed the sum of the market value of the assets that are not.

Example: Applying the non-portfolio interest and principal asset tests

Foreign resident Kimiko has held a 15% interest in an Australian mining company from an initial purchase offer in 2011. With the downturn in commodity prices she has sold 8% of that interest.

Will this sale be subject to the withholding regime? A valuation of the mining company's assets was undertaken at the time of the sale. It provides that the market values of the assets are:

- mining rights $1.7 million
- plant and equipment $4.1 million
- mining information $2.8 million
- land $5 million.

Non-portfolio interest test

At the time Kimiko disposed of her interest in the mining company, she held a 15% interest. This satisfies the requirement that the interest be 10% or above.

That she has only disposed of 8% of its interest in the mining company has no bearing on the non-portfolio test. It is the interest held at the time of the disposal that is the key factor. As long as that is at least 10%, any disposal of that interest can be subject to the withholding.

Principal asset test

The assets of the mining company that are taxable Australian real property are the land and the mining rights. The mining information and plant and equipment (assumed for this example) do not come within the scope of taxable Australian real property.

This means the market values of the taxable Australian real property of the mining company is $6.7 million and of the other assets $6.9 million.

As the sum of the market values of the non- taxable Australian real property assets exceeds that of the taxable Australian real property, then the principal asset test is not satisfied.

Consequently, the 8% interest that Kimiko has disposed of is not an indirect Australian real property interest, so no foreign resident capital gains withholding would apply to the disposal by the foreign resident.

Options and rights to acquire certain assets

An option or right to acquire property is a CGT asset of the holder of the right. Where an option or a right is granted by a foreign resident over taxable Australian real property or an indirect Australian real property interest, the granting of the option or right will be subject to withholding.

Where the purchaser subsequently acquires the asset from the foreign resident as a result of exercising the option, the amount to which the 12.5% withholding applies is the amount paid for the asset, disregarding any amount the purchaser paid for the option, including the market value of any property they gave for the option (or to renew or extend the option).

Example: Exercise of an option

Australian company Oz Co acquires an option from a foreign resident entity, giving it the right to purchase a commercial property for $62 million within 18 months of taking the option.

Oz Co then pays $4 million, withholds $500,000 and pays this to us.

14 months after the option purchase date, commercial property prices

increase to such an extent that Oz Co decides to exercise the option and acquire the property for $62 million.

All the conditions are met for the foreign resident capital gains withholding to occur. The law ensures that Oz Co only withholds from $58 million, being the $62 million contract price less the $4 million paid for the option. Oz Co withholds and pays $7.25 million to us.

Excluded transactions

The law excludes certain transactions from the obligation to withhold. The vendor will need to determine their income tax or capital gains tax obligations when completing their income tax return.

Taxable Australian real property valued at under $750,000

The law excludes transactions involving taxable Australian real property with a market value of less than $750,000. The exclusion applies for all taxable Australian real property, including:

- residential premises
- commercial property
- vacant land
- leasehold
- easements
- covenants
- mortgages
- stratum title schemes.

In most cases, the market value of a property will be the purchase price. Where the purchase price has been negotiated between the vendor and the purchaser, acting at arm’s length, we will accept the purchase price as a proxy for market value.

Example: The $750,000 threshold

Foreign resident Juan sells his bayside mansion. The contract is signed on 2 July 2017 for a sale price of $690,000. Juan and the purchaser were unknown to each other, and the transaction occurred through their legal and conveyancing representatives.

In many cases a purchase price negotiated between a purchaser and vendor, acting at arm’s length, would be the same as the market value and it would not be necessary for the purchaser to seek a separate expert valuation. In these cases the purchase price may be used as a proxy for market value.

As a result, no withholding is required in this instance.

Example: How the $750,000 threshold applies with multiple purchasers

Four residents purchase a small apartment complex for $2.8 million from a foreign resident with whom they have no existing relationship. The respective purchaser interests are 45%, 25%, 18% and 12%.

Is withholding to be imposed?

If the withholding obligation is considered for each purchaser in isolation to the others, it would be shown that purchaser one is paying $1.26 million for their share of the apartment complex. Each of the other three purchasers is paying less than $750,000 for their respective interests.

The measure requires the market value of all purchasers to be aggregated in examining whether the $750,000 market value threshold has been reached.

As the aggregated purchase price (market value) from all the purchasers is $2.8 million, each purchaser must withhold an amount in proportion to their percentage of the total purchase price.

In total $350,000 must be withheld and paid to us.

Company title interests valued at under $750,000

The law excludes transactions involving membership interests that cause a company title interest to arise where those membership interests have a market value of less than $750,000.

This aligns the treatment for entities that own property through company title with the treatment for those that own property through strata title.

Other indirect real property interests do not fall within this exclusion.

Transactions on an approved stock exchange

The law excludes transactions made on an approved stock exchange.

The nature of these transactions makes it impossible for a purchaser to determine the identity and residency status of the vendor.

Example: Sales on an approved stock exchange

Foreign resident Xing Xi owns shares in two Australian entities. His interests meet the requirements to be indirect Australian real property interests. One interest is listed on Chi-X Australia and the other is listed on the Australian Securities Exchange (ASX).

Chi-X Australia and the ASX are approved stock exchanges. Therefore the transactions are not considered for the purposes of this withholding measure.

Transactions on a crossing system

The law excludes from withholding any transactions conducted using a crossing system.

A crossing system (also known as a 'dark pool') is a system that enables trading off-market, although the trades are typically reported to the market immediately after they take place.

As with transactions that occur on an approved stock exchange, it may not be possible for a purchaser to determine the identity and residency status of the vendor.

Securities lending arrangements

A 'securities lending arrangement' is an arrangement where a holder of securities agrees to provide its securities to a borrower for a specified period of time, with an associated agreement by the borrower to return equivalent securities at the end of the agreed period. These arrangements are typically entered into for purposes such as short-selling or hedging.

The law excludes such transactions.

External administration and bankruptcy

The law excludes transactions where the vendor is in external administration or transactions arising from the administration of a bankrupt estate, a composition or scheme of arrangement, a debt agreement, a personal insolvency agreement, or same or similar circumstances under a foreign law.

Varying the amount to be withheld

The amount to be withheld can be varied by us or at the initiative of a party with an interest in a transaction, including a creditor. This supports the principle whereby we must take a creditor's rights into account.

Vendors can apply for a variation where the following apply:

- they are not entitled to a clearance certificate
- a vendor's declaration is not appropriate

- 12.5% withholding is too high compared to the actual Australian tax liability on the sale of the asset.

Reasons for a variation could include instances where:

- the foreign resident will not make a capital gain on the transaction (for example, because they will make a capital loss or a CGT rollover applies)
- the foreign resident will otherwise not have an income tax liability (for example, because of carried-forward capital losses or tax losses)
- there are multiple vendors, only one of whom is a foreign resident
- a creditor of the vendor has a mortgage or other security interest over the property and the proceeds of sale available at settlement are insufficient to cover both the amount to be withheld and to discharge the debt the property secures.

Foreign residents for tax purposes who held property on 9 May 2017 were able to claim the CGT main residence exemption where the CGT event (disposal) of the property occurred on or before 30 June 2020.

Example: Vendor applies for variation

Foreign resident Victor is selling a commercial property located in Australia with a cost base of $3 million.

Victor does not expect to be able to sell the property for $3 million or more (that is, he expects to make a capital loss on the sale).

Victor applies to us for a variation.

We issue a variation notice to Victor under which the amount to be withheld is reduced to nil.

The variation is subject to the condition that the purchase price for the property does not exceed $3 million.

Paul then agrees to purchase the property from Victor for $2.9 million. Victor provides a copy of the variation notice to Paul. The variation takes effect and Paul does not withhold any amount.

Example: Variation to meet a secured creditor obligation

Foreign resident Daniel owns a commercial property located in Australia. He owes $2.9 million to a bank, secured by a mortgage over the property. Daniel and the bank are not related parties. Daniel has met all his loan obligations and there is nothing to suggest he will not continue to do this.

Daniel enters into a contract to sell the property for $3 million. The purchaser knows Daniel is a foreign resident, and that they would normally be required to withhold $375,000 and pay that amount to us.

If they do so, Daniel won't have sufficient sale proceeds to discharge the mortgage. Daniel is entitled to apply for a variation. We would work with Daniel and the bank to achieve a sensible outcome.

Example: Creditor applying for a variation

Foreign resident Chris owns a commercial property located in Australia. He owes $3 million to a bank, secured by a mortgage over the property.

Chris's business has been performing poorly and he has missed a number of loan repayments. The bank decides to take possession of the property and exercise its power of sale.

The property is sold for $2.9 million net of costs. The proceeds are insufficient to withhold the 12.5% to be paid to us and to discharge Chris's mortgage.

Chris prefers us to be paid rather than the bank, because he would be entitled to a credit for this amount withheld. Therefore, he does not apply for a variation (even though one may be available if he made a capital loss).

The bank is entitled to apply for a variation and does so.

We consider the circumstances and conclude that requiring an amount to be withheld and paid to us would prevent the bank from recovering the debt from its secured interest.

We issue a notice to the bank varying the amount to be withheld to nil.

The bank provides a copy of the notice to the purchaser. The purchaser is relieved of any obligation to withhold and pay an amount to us.

How to apply for a variation

To apply for a variation, the vendor or vendor's creditor needs to complete the online Foreign resident capital gains withholding rate variation application form. To access the form, visit ato.gov.au/FRCGW.

If the vendor hasn't lodged a variation certificate online, conveyancers (who are not legal practitioners or registered tax agents) cannot complete the form on behalf of the vendor. They can provide either the PDF version of the variation form (or hyperlink) to the vendor for completion. Conveyancers may submit the completed PDF form to us via mail or fax, or enter the data into the online form (retaining a copy of the vendor-signed PDF form and keeping a printout of data entered into the online form).

Time it takes to obtain a variation notice

In the majority of cases (where we have received all the required information) a variation notice will be issued within 28 days.

Variation notices will be sent by email if an email address is provided in the application. Otherwise notices will be mailed to the vendor and the applicant using the addresses provided in the application. The variation notice should be shown to the purchaser before settlement to ensure the reduced withholding rate applies.

Calculating the reduced rate of withholding

Vendors need to calculate their reduced rate of withholding. This could be a rate between nil and 12.49%, for example, if you made no capital gain put in 0%.

Any varied rate approved by us will depend on the information provided by the vendor in their application.

Variation notices and multiple vendors

A variation notice applies to the specified vendor and applicable asset on the notice. If an asset is acquired from multiple vendors, each vendor will need to supply the purchasers with separate variation notices if a reduced rate of withholding is to apply to each vendor.

Variation notice validity

A variation notice is valid for 12 months from the date of issue for the listed vendor and applicable asset on the notice.

Vendors must ensure the details on their application are accurate so the variation notice issues with the correct vendor and applicable asset details.

It is the vendor's responsibility to provide the purchaser with the variation notice and ensure it is valid at the time of settlement.

For the purchaser to rely on the variation notice the:

- name of the vendor and applicable asset details on the notice must match those on the certificate of title or other asset ownership documentation
- settlement date must be on or before the expiry date on the variation notice.

When a purchaser receives a valid variation notice from a vendor they can rely on it and not withhold.

If the variation notice does not meet the above-mentioned conditions, the purchaser is required to withhold 12.5% of the purchase price.

A purchaser can check the validity of a variation notice with us prior to deciding whether to withhold the 12.5% amount from the purchase price. Phone us on 13 28 66 (fast key codes 4 2) to confirm the validity of the variation notice, by providing the:

- number from the 'Our reference' field at the top of the notice
- vendor's name, varied rate and applicable asset details as they appear on the notice.

Calculating the amount to withhold

Where a purchaser has determined they have an obligation to withhold, they must withhold 12.5% (or a varied rate as per a valid variation certificate) from the 'first element of the cost base' of the asset.

The first element of the cost base is an existing tax concept which is the amount of money paid (or required to be paid) or the market value of any property given (or required to be given) to acquire the asset.

However, as purchase price is understood by vendors and purchasers, and in many instances will be equal to the first element of the cost base, where the transaction is at arms-length, the purchase price may be used in determining how much withholding is required.

We recognise that some assets subject to this withholding measure may involve the payment of disbursements as part of the contract. Where the purchase price is used as a proxy for market value, the market value is the purchase price before adjustment for any disbursements at settlement (for example, for council rates, water and sewer charges and strata levies). Therefore, the $750,000 threshold test for taxable Australian real property is applied to the purchase price before adjustment for disbursements.

Example: How much to withhold and pay

Claudia is buying a house where the contract price is $3.3 million. She has been advised by the vendor's representative that the vendor is a foreign resident.

Depending upon the particulars of the contract, the $3.3 million may be comprised of the purchase price for the property, plus a number of other costs associated with the property that Claudia has agreed with the vendor to pay for.

In this case Claudia advises that they are withholding based upon the contracted purchase price of the property. Therefore the first element of the cost base is assumed to be the same as the purchase price; this means the purchase price is used to determine the amount to be withheld.

Claudia therefore withholds $412,500 (12.5% of $3.3 million).

Multiple purchasers

Where there are multiple purchasers, each purchaser does not look at their percentage interest in isolation to the other purchasers in determining whether they should withhold. Each purchaser must withhold in proportion to their percentage of the total purchase price.

Where the asset being disposed of is taxable Australian real property, the market value of all purchasers' interests must be aggregated in examining whether the $750,000 market value threshold has been reached. If the aggregated purchase price is $750,000 or more, each purchaser must withhold in proportion to their percentage of the total purchase price.

Example: Multiple purchasers

You are purchasing a commercial property jointly with another entity. Your share of the acquisition is 40%, for which you are paying $675,000. This means the total property purchase price would be $1.5 million.

Even though your purchaser's interest is below the $750,000 threshold, the property as a whole exceeds the $750,000 threshold – so you will need to withhold $84,375.

Multiple vendors

If multiple vendors are disposing of an asset, the total market value of the asset determines whether withholding is required by the purchaser.

If the purchaser has not been provided with a clearance certificate, vendor declaration or a variation from any of the vendors, the purchaser must withhold 12.5% of the purchase price. The amount of withholding will be in proportion to each vendor's interest in the asset.

Where one (but not all) of the vendors provides a clearance certificate or vendor declaration to the purchaser, the withholding obligation still applies as there is still a foreign resident vendor to the transaction. The amount of withholding is still on the entire first element of the cost base of the asset, not just the portion that is attributable to the relevant foreign resident vendor's interest in the asset.

We recognise that in this situation, any vendors that are subject to the withholding would apply for a variation to ensure that the withholding amount better reflected the foreign resident vendor's tax liability. They would receive a reduction in the withholding rate accordingly.

To reduce the need for vendors to apply for variations in these situations, our approach is that where there are multiple vendors, the purchaser may withhold in accordance with each vendor's proportional interest in the purchase price, subject to any clearance certificate, vendor declaration or vendor variation being provided prior to settlement.

The following situations are from the perspective of a purchaser who is deciding what to do in terms of withholding. In all instances it is assumed the purchase price is $750,000 or more.

Example: Joint owners but only one vendor is an Australian resident

The purchaser has to withhold as a vendor is deemed to be a foreign resident. The purchaser would need to see a clearance certificate from the Australian resident vendor. If the clearance certificate is not provided by settlement then the purchaser has to withhold an amount form both vendors.

However, if a clearance certificate is provided before settlement by the Australian resident, the purchaser only has to withhold from the foreign resident vendor. The withholding would normally be on the full purchase price of the property – but we are allowing the withholding amount to be calculated on the foreign resident's interest in the purchase price only.

Example: Foreign resident vendor provides a variation

The circumstances are identical but now the foreign resident vendor provides the purchaser with a variation notice and the Australian vendor provides a clearance certificate. The purchaser does not have to withhold an amount from the Australian resident. The purchaser has to withhold from the foreign vendor, but the rate of withholding is not 12.5% but the withholding rate is as specified on the variation notice issued by us to the foreign resident vendor.

Example: Multiple foreign resident vendors

As the property is being sold by foreign residents the purchaser knows they must withhold. The purchaser has not received a clearance certificate, and therefore must assume all the vendors are foreign residents.

Absent any variation notices, the purchaser must withhold from each foreign resident vendor an amount based on their proportionate interest in the property – that is, 12.5% of their share of the purchase price. The sum of the withholding amounts should equal 12.5% of the full purchase price.

However, if some or all of the foreign resident vendors provide the purchaser with a variation notice, the purchaser must apply the specified withholding rate to that vendor's share of the purchase price. For example, it may be that the purchaser has to withhold 8% from one vendor, and 3% from another vendor.

The purchaser will need to ensure that the correct amount is withheld from each vendor.

Multiple properties in one transaction

A vendor may be disposing of multiple properties in one transaction, the combined value of which exceeds $750,000. The withholding is based on the market value of a property being disposed of – not a combination of all the properties being disposed of.

The withholding is not an additional payment on top of the agreed purchaser price

The obligation for the purchaser to withhold an amount and pay it to us is not an additional payment on top of the agreed purchase price. The withholding amount is taken from the amount of purchase price that the purchaser has agreed to pay the vendor.

A purchaser that withholds in accordance with their Australian income tax obligations is protected by sub-section 16-20(2) of Schedule 1 of the *Taxation Administration Act 1953*. This discharges the purchaser from their liability to pay this part of the total purchase price directly to the vendor.

When withholding is required

Withholding is not required from deposits paid on signing of the contract. No payment is required when the purchaser signs the contract and pays the deposit. The purchaser is not required to pay the Commissioner until the day the purchaser becomes the owner of the asset, that is, on settlement.

If payments are to be made in multiple instalments across the contract period, withholding should only occur when the final payment is made at settlement. The withholding amount is still calculated using the full purchase price of the asset.

If the contract doesn't settle

If for some reason the contract is not completed (settled), there is no obligation on the purchaser to withhold. This is because the purchaser has not become the owner of the asset, and therefore there is no obligation to pay an amount to us.

If the purchaser fails to withhold

If the purchaser fails to withhold when they should, a penalty may be imposed by the Commissioner which is equal to the amount that was required to be withheld and paid. General interest charges will also be applied.

Goods and services tax

Market value

The $750,000 threshold for real property is based upon the ‘market value’ of that property. Market value can be affected by the income tax law which provides that the market value of an asset at a particular time (in this case just after the transaction) is reduced by the amount of any input tax credit the purchaser is entitled to, assuming that both:

- the asset had been acquired at the relevant time
- the acquisition had been solely for a creditable purpose.

Consequently, on the basis that the parties are acting at arm’s length:

- Where a purchaser is not registered for goods and services tax (GST), or the supply of the asset is not a taxable supply, or the purchaser is not able to claim an input tax credit on the purchase, the GST-inclusive purchase price payable by the purchaser may be used as a proxy for the market value of the asset.
- Where the purchaser is registered for GST and the transaction is a taxable supply, and the purchaser is able to claim an input tax credit on the purchase, the GST-inclusive purchase price less the input tax credit may be used as a proxy for the market value of the asset.

The sale of existing residential premises (but not commercial residential premises or new residential premises) is input taxed and therefore not a taxable supply. Where the asset is shares (for example company title interests), the supply of shares is input taxed and therefore not a taxable supply.

If the margin scheme is used, a purchaser cannot claim input tax credits on that acquisition, even if they are registered for GST and intend to use the purchased property for a creditable purpose. In these instances, a GST-registered purchaser should calculate the 12.5% withholding by using the GST-inclusive price.

Example: Determining market value when GST is involved

Edwina is a successful entrepreneur in the manufacturing industry. She acquires a vacant Sydney commercial property for $5.3 million to expand her business. She knows the vendor is a foreign resident, because she had not received a clearance certificate at settlement.

What is the market value for determining the withholding amount?

Edwina is registered for GST as her manufacturing business generates turnover that requires this.

GST has been included in the contract to buy the commercial property, and equals 1/11th of the total purchase price of $5.3 million that Edwina paid. She holds a valid tax invoice for the purchase.

The commercial property is to be used for expanding Edwina's manufacturing business, so it will be used for a creditable purpose. That is, used by Edwina in her enterprise of making taxable supplies of manufactured goods.

Consequently, the market value upon which Edwina will withhold is $5.3 million minus the GST that has formed part of the purchase price.

For a fully taxable supply, GST = 1/11th of the purchase price, so the market value will equal 10/11ths of $5.3 million – or approximately $4.82 million.

GST and the first element of the cost base

The 12.5% withholding rate is to be applied against the 'first element of the cost base' of the asset that the purchaser is acquiring.

However, as purchase price is understood by vendors and purchasers, and in many instances will be equal to the first element of the cost base, where the transaction is at arm's length the purchase price may be used to determine how much to withhold.

The actual purchase price may depend upon whether or not a purchaser is registered (or is required to be registered) for GST. The following should be taken into account:

- Where the purchaser is registered for GST and the transaction is a taxable supply, and the purchaser is able to claim an input tax credit on the purchase, the first element of the cost base can be reduced by the amount of any GST net input tax credits (that is, GST the purchaser can claim back) included in the cost.
- Where a purchaser is not registered for GST or the supply of the asset is not a taxable supply, or the purchaser is not able to claim an input tax credit on the purchase, the purchaser does not make any adjustment; the GST is included in the first element of the cost base.

The sale of existing residential premises (but not commercial residential premises or new residential premises) is input taxed and therefore not a taxable supply. Where the asset is shares (for example, company title interests), the supply of shares is input taxed and therefore not a taxable supply.

- If the margin scheme is used, you cannot claim input tax credits on that acquisition, even if you are registered for GST and intend to use the purchased property for a creditable purpose. GST-registered purchasers should calculate the 12.5% withholding by using the GST-inclusive price in the first element of the cost base.

Example: Determining the cost base when GST is involved

Xavier is registered for GST and is acquiring a retail building that is already tenanted. The vendor did not agree in writing to supply the building as a GST-free going concern, so the supply is fully taxable. The GST- inclusive price as per the contract is $3.7 million.

Xavier knows from paying for financial advice from a reputable accounting firm that he will be entitled to claim back input tax credits from this transaction as long as he holds a valid tax invoice for the purchase.

At settlement no clearance certificate has been provided by the vendor.

Xavier knows he has to withhold but is concerned as to what amount it should be based on, as the financial advice he received is quiet on this matter.

Xavier has confirmation he can claim input tax credits reflecting the GST he has paid as part of the contract to acquire the building.

Given the vendor has failed to present a clearance certificate, Xavier knows he must potentially withhold, depending upon what the 'first element of the cost base' of the retail building is.

There is nothing to suggest this transaction is not an arm's length arrangement, so the purchase price can be used as a proxy for the 'first element of the cost base'.

Xavier is registered for GST and at settlement obtained a valid tax invoice for the transaction showing the purchase price and the GST amount included in that price.

To work out the market value, Xavier deducts the GST he is entitled to claim back as an input tax credit. The tax invoice indicates the input tax credits total $336,363 (that is, 1/11th of $3.7 million).

Consequently, the 12.5% withholding is to be applied to $3.7 million less $336,363 = $3,363,637.

Paying the ATO

The purchaser must pay the required amount to us on or before the day they become the owner of the property.

No withholding and payment obligation arises if the contract falls through and change in ownership does not occur.

In recognition of the practicalities of making payment at settlement, we will allow a short period after settlement to receive payment before imposing general interest charges and initiating recovery action.

> Example: When to pay
>
> Ben acquired a residential property for $3 million. If the vendor does not provide Ben with a clearance certificate by settlement, Ben knows the vendor of the property will be classed as a foreign resident and that he has a withholding obligation.
>
> Ben entered into the contract for the purchase of the property on 1 July 2017 and paid a $150,000 deposit.
>
> The contract was settled on 1 October 2017 when Ben was required to pay the balance of $2.85 million to the vendor in return for receiving legal title to the property. Ben will withhold $375,000 from the settlement amount (paying $2.475 million to the vendor).
>
> Ben is required to pay the $375,000 to us on or before the day he receives legal title to the property – 1 October 2017.

How to pay

The purchaser can pay using any of the following methods:

- Electronic funds transfer – transfer the amount via EFT to
  - Bank: Reserve Bank of Australia
    BSB: 093 003
    Account number: 316 385
    Account name: ATO direct credit account
    Reference: Your payment reference number.

- In person at any Australia Post outlet
  - The purchaser will need the payment slip and barcode supplied to them after lodging the *Foreign resident capital gains withholding purchaser payment notification*. Australia Post accepts cheques up to $100 million.

- Mail a cheque with your payment reference number (the payment slip is helpful but not compulsory) to us at
  - Australian Taxation Office
    Locked Bag 1936
    ALBURY NSW 1936
    AUSTRALIA.

Notifying us about payment

When an amount is withheld, all purchasers involved in the sale must complete a Foreign resident capital gains withholding purchaser payment notification form (NAT 74884). Where there are multiple purchasers one form can be used if there are 10 or fewer purchasers or purchasers can lodge a form individually. The purchaser (or purchasers) needs to provide the details of the vendors and the asset in their application.

To access the form and instructions, visit ato.gov.au/FRCGW.

Once a payment notification form is processed, a payment reference number (PRN) will be issued, along with a PDF icon that can be clicked on to obtain a downloadable payment slip and barcode to use at Australia Post.

Only one PRN is issued per purchaser payment notification form, even if multiple purchasers are supplied on the form.

The full payment can be made using the PRN or payment slip provided. Where two or more purchasers are included in the transaction, they can choose to make separate payments and use the same PRN or payment slip.

The payment notification form may allow the purchaser to quote the vendor's tax file number (TFN) if the vendor has provided one. Under the law, purchasers may collect TFNs from foreign residents (where they have them) and provide them to us. This will assist us with matching withholding payments to specific foreign residents.

We encourage you to submit your payment notification form to us as early as possible to ensure you have your PRN at settlement.

What happens after payment has been made

A receipt from either Australia Post or us is proof that the purchaser has made the payment and fulfilled their obligations.

A payment confirmation email or letter will be sent to the nominated contact on the purchaser payment notification form. Confirmation will be sent by email if an email address is provided in the Foreign resident capital gains withholding purchaser payment notification form. Otherwise it will be mailed to the address of the contact.

Vendors will need a copy of the payment confirmation and use this information to claim a credit for the withholding amount when completing their income tax return.

Leases

A lease is a CGT asset that is taxable Australian real property. Therefore, the acquisition of a lease from a foreign resident vendor with a market value of $750,000 or more would be subject to the 12.5% withholding, unless the lessor provided the lessee with a clearance certificate.

However, the withholding obligation only arises with respect to any lease premium paid by the lessee to acquire the lease, as they form part of the first element of the cost base of the lease.

A lease that does not include the payment of a premium will not result in a withholding liability.

Rent payable under the term of the lease does not form part of the first element of the cost base.

Example: Granting a lease

Foreign resident Richard owns a commercial property that he leases to Leigh. As a foreign resident, Richard is not entitled to a clearance certificate.

Under the terms of the lease, Leigh agrees to pay Richard $3 million as a premium for granting the lease and to pay periodic rent of $4,000 a month.

The first element of the cost base of Leigh's lease asset is $3 million. Leigh must withhold and pay 12.5% of this amount ($375,000) to us.

The rent payable under the lease does not form part of the first element of cost base.

Withholding tax credits and refunds

Withholding tax credits

A foreign resident vendor must lodge a tax return at the end of the financial year, declaring their Australian assessable income and including any capital gain from the disposal of their asset. The vendor will claim a credit for any withholding amount paid to us by the purchaser in their tax return.

The availability of a credit to a foreign resident is contingent on the purchaser paying the amount to us. A credit does not arise merely because an amount has been withheld.

A foreign resident vendor disposing of Australian property to which these withholding tax rules apply should apply for a tax file number (TFN) before they lodge an Australian tax return. This will ensure they can claim a credit for the amount withheld and paid to us by the purchaser.

In certain circumstances, an early income tax return may be submitted. If a foreign resident vendor is not eligible to submit an early income tax return, they must wait until the end of the financial year to do so. However they will receive a tax credit for the withholding paid by the purchaser.

Refunds

We may refund an amount incorrectly withheld and paid by the purchaser. The vendor cannot claim a refund from the purchaser.

Penalties for non-compliance

Under this measure, the purchaser must both withhold and pay that withholding to us, even if they use representatives to assist them in the process.

Administrative penalties apply for failure to adhere to the foreign resident capital gains withholding legislation.

The offence provision for failing to withhold also applies.

A general interest charge is imposed for amounts not paid to us by the required date.

It is an offence to falsely claim a credit.

The law imposes penalties of up to 120 penalty units for declarations or purported declarations that are false or misleading.

Glossary

Indirect Australian real property interest

Where two tests are satisfied: the non-portfolio interest test, and the principal asset test. Indirect Australian real property interest includes shares in a company or units in a trust.

Knowledge condition

Where the purchaser knows, or has reason to believe, that the vendor is a relevant foreign resident.

Non-final withholding tax

A non-final withholding tax is collected as an estimate of the recipient’s final income tax liability. The recipient is still required to lodge an income tax return and pay any outstanding debit. They claim a credit for the amount of tax withheld in the income tax return at this time.

Non-portfolio interest test

An interest held by an entity (the holding entity) in another entity (the test entity) is a non-portfolio interest if the sum of the membership interests held by the holding entity (and their associates) in the test entity is 10% or more.

The test is satisfied if the membership interest is a non-portfolio interest at the time of the transaction, or through a 12-month period in the last 24 months leading up to the transaction.

Relevant asset (also referred to 'assets that the law applies to' in this guide)

This is taxable Australian real property, an indirect Australian real property interest, or an option or right to acquire such property or such an interest.

Relevant foreign resident vendors (also referred to as 'vendors that the law applies to' in this guide)

The vendor is a relevant foreign resident if one or more of these scenarios apply:

- The purchaser knows the vendor is a foreign resident.
- The purchaser reasonably believes the vendor is a foreign resident.
- The purchaser does not reasonably believe the vendor is an Australian resident, and either
  - the vendor has an address outside Australia (according to any record that is in the purchaser's possession, or is kept or maintained on their behalf, about the transaction)
  - the vendor authorises provision of a related financial benefit to a place outside Australia (whether to the vendor or to anyone else).
- The vendor has a connection outside Australia of a kind specified in the regulations.

Principal asset test

This is used to determine if an entity's underlying value is principally derived from Australian real property.

A membership interest in an entity passes the principal asset test if the sum of the market values of the entity's assets that are taxable Australian real property exceeds the sum of the market values of the assets that are not.

Taxable Australian real property

This is real property situated in Australia (including a lease of land situated in Australia), or a mining, quarrying or prospecting right (to the extent that the right is not real property), if the minerals, petroleum or quarry materials are situated in Australia.

More information

For more information and forms, visit ato.gov.au/FRCGW.

Legislation and supporting materials

- Treasury Laws Amendment (Foreign Resident Capital Gains Withholding Payments) Act 2017 (Act No. 57 of 2017) – received royal assent on 22 June 2017
- Tax and Superannuation Laws Amendment (2015 Measures No. 6) Act 2016 – received royal assent on 25 February 2016

Law companion rulings

The following rulings describe how we apply the law:

- Foreign resident capital gains withholding regime: the Commissioner's variation power
- Foreign resident capital gains withholding regime: amount payable to the Commissioner
- Foreign resident capital gains withholding regime: options

Relationship breakdown and capital gains tax

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Relationship-breakdown-and-capital-gains-tax/
- Last modified: 01 Jul 2022
- QC 66063

Find out if you can defer, or 'roll over', CGT on assets that transfer to you in a divorce.

When the relationship breakdown rollover applies
Check that you have a court order or formal agreement that qualifies for the relationship breakdown CGT rollover.

Calculating CGT on a rollover asset
Find out when CGT applies to an asset after a relationship breakdown, and how to work out the asset's cost.

Main residence exemption in relationship breakdown
If a property was the home of you or your spouse, check if it is exempt from CGT.

When the relationship breakdown rollover applies

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Relationship-breakdown-and-capital-gains-tax/When-the-relationship-breakdown-rollover-applies/
- Last modified: 01 Jul 2022
- QC 66064

Check that you have a court order or formal agreement that qualifies for the relationship breakdown CGT rollover.

On this page

Relationship breakdown rollover

When 2 people separate or divorce, assets transferred between them usually qualify for the relationship breakdown rollover.

This means capital gains tax (CGT), which normally applies when ownership of an asset changes, is deferred. CGT will apply to the person who received the asset when they later dispose of it.

The relationship breakdown rollover of CGT only applies if assets are transferred under a court order or other formal agreement.

If the rollover applies to an asset, you must use it.

Qualifying agreements

The rollover applies to the transfer of assets (or other CGT events) that result from one of the following:

- a court order under the *Family Law Act 1975*, or a state, territory or foreign law relating to relationship breakdowns
- a court order made by consent under the Family Law Act, or a similar foreign law
- an award made in an arbitration under the Family Law Act (section 13H), or a similar award under a state, territory or foreign law
- a financial agreement that:
  - is binding under the Family Law Act (sections 90G and 90UJ) or a corresponding foreign law
  - meets the conditions for binding agreements
- a written agreement that is binding because of a state, territory or foreign law relating to relationship breakdowns, where the law prevents a court from making an order in relation to the agreement. The agreement must also meet the conditions for binding agreements. These agreements, known as 'binding agreements used by separating couples', are defined in each state and territory:
  - New South Wales: a domestic relationship agreement or termination agreement that complies with subsection 47(1) of the *Property (Relationships) Act 1984*
  - Victoria: a relationship agreement that complies with subsections 59(1) and (2) of the *Relationships Act 2008*
  - South Australia: a certified domestic partnership agreement within the

meaning of the *Domestic Partners Property Act 1996*
  - Queensland: a recognised agreement within the meaning of the *Property Law Act 1974*
  - Western Australia: a financial agreement that complies with subsection 205ZS(1) of the *Family Court Act 1997*
  - Tasmania: a personal relationship agreement or separation agreement that complies with subsection 62(1) of the *Relationships Act 2003*
  - Australian Capital Territory: a domestic relationship agreement or termination agreement that complies with subsection 33(1) of the *Domestic Relationships Act 1994*
  - Northern Territory: a cohabitation agreement or separation agreement that complies with subsection 45(2) of the *De Facto Relationships Act.*

From 1 July 2009, the marriage or relationship breakdown rollover is available to same-sex couples.

Conditions for binding agreements

For transfers that happen because of a binding financial agreement or a binding agreement used by a separating couple, the rollover only applies if, at the time of the transfer:

- the spouses are separated
- there is no reasonable likelihood of cohabitation resuming
- the transfer is for reasons directly connected with the breakdown of the marriage or relationship. This condition is not met if either:
  - the spouses had a pre-existing agreement that the asset was to be transferred between them for reasons other than the relationship breakdown
  - the agreement provided for the transfer of non-specific property, which did not occur for a considerable time after the agreement (for example, more than 12 months) and was not clearly connected to the relationship breakdown.

Private or informal agreements

The rollover does not apply if you and your spouse divide assets under a private or informal agreement.

In this case:

- if you transfer an asset, you must report any capital gain or loss you make when completing your tax return for that year
- if an asset is transferred to you, it is treated as if you acquired it at the time of transfer.

The transaction is treated as if it was made at market value if both the following apply:

- the amount paid for the asset is greater or less than its market value
- the 2 former spouses are not dealing at arm's length.

CGT events the rollover applies to

The rollover applies to CGT events in which the transferor:

- transfers ownership of an asset to the transferee spouse (CGT event A1)
- enters into an agreement under which the right to use a CGT asset passes to the transferee spouse, and title in the asset passes to the transferee spouse at the end of the agreement (CGT event B1). There is no rollover if title in the asset does not pass when the agreement ends
- creates a contractual or other right in favour of the transferee spouse (CGT event D1)
- grants an option to the transferee spouse, or renews or extends an option granted to them (CGT event D2)
- owns a prospecting or mining entitlement and grants the transferee spouse a right to receive income from operations carried on by the entitlement (CGT event D3)
- is a lessor and grants, renews or extends a lease to the transferee spouse (CGT event F1).

There is no rollover for the transfer of trading stock.

Timing of the CGT event

If an asset is transferred under a contract, the CGT event happens when the contract is entered into.

If there is no contract, the CGT event happens when the change of ownership of the asset occurs.

- A binding financial agreement may be a contract. A separation declaration must be made under section 90DA of the Family Law Act before the agreement can take effect.
- A binding agreement used by a separating couple may be a contract.

Transfers made because of a court order or arbitral award are not made under a contract. Therefore, the CGT event does not happen until the asset is transferred.

If CGT event B1 applies, the event happens when use of the asset passes to the transferee spouse.

Calculating CGT on a rollover asset

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Relationship-breakdown-and-capital-gains-tax/Calculating-CGT-on-a-rollover-asset/
- Last modified: 01 Jul 2022

- QC 66065

Find out when CGT applies to an asset after a relationship breakdown, and how to work out the asset's cost.

On this page

How to calculate CGT on a rollover asset

If an asset is transferred to you under a relationship breakdown rollover, you do not pay capital gains tax (CGT) until you later dispose of it.

When you dispose of a rollover asset, you calculate your CGT as though you had owned it since your former spouse acquired it.

To calculate your capital gain or loss on the asset, take its capital proceeds (usually the amount you sold it for) and subtract:

- the asset's cost base at the time of the transfer. This is the first element of your cost base (the acquisition cost)
- any costs incurred in transferring the asset to you
  - this may include conveyancing costs and stamp duty
  - this does not include general legal costs relating to the relationship breakdown or property settlement
- any capital costs (that are not deductible against income) you incurred on the asset while you owned it.

If the asset was acquired by your spouse before 20 September 1985, it is not subject to CGT. Any subsequent major capital improvements to the asset are subject to CGT.

CGT discount on a rollover asset

To be eligible for the 50% CGT discount on an asset, you must have owned it for 12 months or more.

When working out how long you owned the asset, you include the period your former spouse owned it.

Superannuation assets

A CGT asset of a small super fund (one with no more than 6 members) can be transferred to another complying super fund under the relationship breakdown rollover. The consequences of the rollover are the same as for other transfers between spouses.

This allows spouses in a small super fund to separate their super arrangements on the breakdown of their relationship without any CGT liability.

Assets transferred by a company or trust

If a company or trust transfers a CGT asset to a spouse, the cost base and reduced cost base of interests in the company or trust need to be adjusted They are reduced in value by an amount that reflects the fall in their market value from the transfer of the CGT asset.

In some circumstances, the transfer of an asset from a company to a spouse who is a shareholder or an associate of a shareholder may be a dividend under Division 7A. In this case CGT does not apply.

If the transferor is a controlled foreign corporation or a foreign trust, there are special rules for working out the capital gain or loss for a subsequent CGT event.

Newly created assets

Your spouse (or a company or trustee) may create an asset in your favour.

Calculating the first element (acquisition cost) of your cost base or reduced cost base

CGT event	First element (acquisition cost) of cost base and reduced cost base
Creating contractual or other rights (D1)	Incidental costs incurred by the transferor to create the right
Granting an option (D2)	Expenditure incurred by the transferor to grant the option
Granting a right to income from mining (D3)	Expenditure incurred by the transferor to grant the right
Granting a lease (F1)	Expenditure incurred by the transferor on the grant renewal or extension of the lease

For CGT purposes you acquire the asset at the time specified by the CGT event. For example, for CGT event D1, you acquire the asset at the time you enter into the contract or, if there is no contract, the time the right is created.

Main residence exemption in relationship

breakdown

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Relationship-breakdown-and-capital-gains-tax/Main-residence-exemption-in-relationship-breakdown/
- Last modified: 01 Jul 2022
- QC 66066

If a property was the home of you or your spouse, check if it is exempt from CGT.

On this page

Relationship breakdown rollover and main residence exemption

When you sell a property that transferred to you under the relationship breakdown rollover, you may be eligible for the main residence exemption from capital gains tax (CGT).

You need to consider how you and your former spouse used the property during your combined period of ownership

Eligibility

Under the relationship breakdown rollover, there was no capital gain or loss for CGT purposes when your former spouse's share of the property transferred to you.

CGT was deferred, or 'rolled over', until you dispose of the property.

If the property was the main residence of you or your former spouse, you can generally claim a full or partial exemption from CGT when you dispose of it.

You are entitled to the full main residence exemption if the property is on less than 2 hectares of land and:

- for property that transferred after 12 December 2006
  - before the transfer, your spouse used the property as their main residence
  - while you owned part or all of the property, you used it as your main residence
  - the property was not used for rent or business
- for property that transferred on or before 12 December 2006
  - after the transfer, it was your main residence and was not used for rent or

business.

If you do not meet these conditions, you may still be entitled to a partial main residence exemption.

Calculating a partial exemption

Follow these steps to calculate the proportion of your share of the property that is subject to CGT.

Step 1: Work out the number of days after the transfer that the property was not your main residence.

Step 2: If the property was transferred to you

- after 12 December 2006, work out the number of days before the transfer that the property was not the main residence of your former spouse
- on or before 12 December 2006, the amount at this step is zero.

Step 3: Add the amounts from steps 1 and 2. This is the non-main residence days.

Step 4: Work out the total number of days that either you or your former spouse owned the share of the property. This is the total ownership days.

Step 5: Divide the amount at step 3 (non-main residence days) by the amount at step 4 (total ownership days).

The result is the proportion of the transferred share that is subject to CGT.

If you had joint ownership of the property before the relationship breakdown, the share you owned did not roll over. You simply continued to own it.

To calculate the proportion of your original share that is subject to CGT:

- work out the number of days during your ownership of part or all of the property that it was not your main residence
- divide this number by the total number of days that you owned part or all of the property.

Example: calculating CGT on a property transferred under the relationship breakdown rollover

George and Natalie jointly bought a holiday house.

- The sale settled on 13 March 2017.
- On 13 March 2019, George transferred his half share to Natalie under a relationship breakdown rollover.
- Natalie used the dwelling as her main residence for 3 years, from the date of the transfer until she sold it.
- Settlement of the sale was on 12 March 2022, at a price of $600,000.
- The cost base of the house was $400,000.

- Natalie's capital gain was $600,000 − $400,000 = $200,000.

Natalie is entitled to a partial main residence exemption because the property was used as a main residence for part of the combined ownership period.

Transferred share

The relationship breakdown rollover applies only to the half share transferred from George to Natalie.

The capital gain on this share is $200,000 x 50% = $100,000.

Using the steps above, Natalie calculates the assessable portion of her capital gain:

1. Days after the transfer that the property was not Natalie's main residence:
   0
2. Days before the transfer that the property was not George's main residence:
   730
3. Add amounts from steps 1 and 2:
   0 + 730 = 730
4. Days in combined ownership period:
   1,825
5. Total non-main residence days ÷ total ownership days
   730 ÷ 1,825 = 0.4

Natalie's assessable capital gain on the transferred share is:
$100,000 × 0.4 = $40,000

Natalie's original half share

The capital gain on Natalie's original half share is $200,000 × 50% = $100,000.

The property was Natalie's main residence for 3 years out of the 5 years she owned her original half share. She works out the assessable portion of her capital gain as follows:

> capital gain × (non-main residence days ÷ total ownership days) = assessable capital gain
>
> $100,000 × (730 ÷ 1825) = $40,000

Capital gain to report

Natalie's total assessable capital gain for her original share and the transferred share is $40,000 + $40,000 = $80,000.

Natalie's ownership period is more than 12 months and she has no capital

losses. Therefore, she can apply the 50% CGT discount to her assessable gain. The capital gain she reports in her tax return is:
$80,000 × 50% = $40,000.

Applying the 'home first used to produce income' rule

The home first used to produce income rule may apply if a property was:

- used as a main residence from the time it was acquired
- later used to produce income (such as renting it out).

Under this rule, the property is treated as if it was acquired for its market value at the time it was first used to produce income.

This rule applies to you if the property (or a share of it):

- transferred to you after 12 December 2006 under the relationship breakdown rollover
- was originally the main residence of you or your former spouse
- was first used to produce income (such as renting it out) after 20 August 1996. The first income-producing use may be during your or your spouse's ownership period.

Example: main residence later used to produce income

Harry buys an apartment for $200,000 in 1999. He lives in it as his main residence.

A few years later, Harry and Anita marry. They move into Anita's townhouse and Harry rents out his apartment. Its value is now $365,000.

In 2016, Harry and Anita's relationship breaks down. Harry transfers the apartment to Anita under a binding agreement and the CGT rollover applies.

Later, Anita sells the apartment. When working out the cost base, she uses the market value of the apartment when it was first used to produce income ($365,000), rather than its original purchase price ($200,000).

Nominating a main residence

In certain circumstances, spouses can choose how the main residence exemption applies to their property or properties.

For example:

- a spouse may be able to treat a dwelling as their main residence for a period

even though they no longer live in it
- if there was a period before the separation when the spouses had different main residences, they must choose to either
  - treat one of the properties as the main residence of both of them for the period
  - nominate the different properties as their main residences and apply a part exemption to both.

Usually, such choices do not need to be made until lodging a tax return for the year in which a property is disposed of.

However, for the purpose of negotiating a property settlement, former spouses would generally nominate their choices before the transfer of property.

The transferor spouse could provide a signed statement to the transferee spouse at the time of the property settlement as evidence of making a choice.

The transferee spouse could use this statement to support their calculation of CGT in the future.

Once a choice is made, it cannot be changed.

Example: nominating a property as a main residence

Denise buys a townhouse and lives in it before starting a relationship with Calvin. She then moves into a rented apartment with him and rents out her townhouse.

Two years later, the couple buy a house and live in it together. Denise continues to rent out her townhouse.

Years later their relationship breaks down. Under a binding financial agreement, they agree that:

- Calvin will transfer his half share in the house to Denise, who will continue to live there
- Denise will transfer her townhouse to Calvin, who will live in it.

Because the townhouse had been Denise's main residence, she can choose to continue treating it as her main residence for up to 6 years after she moved out.

In negotiating their binding financial agreement, Denise provides Calvin with a signed statement that she chooses to treat the townhouse as her main residence for the 2 years between when she moved out and when they bought the house together.

Because the home first used to produce income rule applies, Calvin treats the townhouse as if he acquired it for its market value at the time Denise first rented it out. The period prior to this, when the townhouse was Denise's main residence, is ignored. This period is not included in their combined period of ownership.

When Calvin later sells the townhouse:

- as a result of Denise's choice, the townhouse is exempt from CGT for the 2 years from when she moved out of it until she and Calvin bought the house together
- the townhouse is exempt from CGT for the period he lived in it after the relationship broke down.

Foreign residents

You can claim the main residence exemption when you sell or dispose of a property as a foreign resident, provided:

- you have been a foreign resident for tax purposes for a continuous period of 6 years or less
- you experience a relationship breakdown or certain other life events

Property transferred from a company or trust

You cannot claim the full main residence exemption on a property, or a share of a property, that transferred to you under a relationship breakdown rollover from a company or trust.

The main residence exemption only applies for the period you lived in the property after the transfer.

To calculate the proportion of your capital gain or loss that is exempt from CGT:

1. work out the number of days the property was your main residence after the transfer
2. divide this by the combined number of days it was owned by you or the company or trust.

Market valuation of assets

- https://www.ato.gov.au/Individuals/Capital-gains-tax/Market-valuation-of-assets/
- Last modified: 24 Oct 2022
- QC 66067

You must obtain market valuation of an asset when required by tax law. The valuation must be objective and supportable.

On this page

About market value

Market value is the estimated monetary worth of an asset on the open market at a particular time. It is based on:

- the most valuable use of the asset (which may be different to how it is currently used)
- the amount that a willing buyer and seller would agree to in an arm's length transaction.

The market value definition for tax purposes may vary for particular provisions of tax law and types of asset.

When you need a market valuation

Taxpayers may need a market valuation for many purposes, including:

- individual taxpayers transferring property or shares between related parties, such as family members
- employees receiving shares or options under an employee share scheme
- small businesses meeting the asset threshold tests for capital gains tax concessions
- property developers applying the GST margin scheme
- businesses that consolidate for income tax purposes.

How to obtain a market valuation

A valuation must be objective and supported with appropriate evidence.

Valuations undertaken by professional valuers are more credible than those provided by someone who is not a professional valuer.

When you engage a valuer, you must provide them with clear instructions and accurate information.

You should be able to demonstrate that you have:

- set out the scope and purpose of the valuation
- acknowledged the valuer's independence to draw conclusions and write their report
- recognised that the valuer can refuse to provide an opinion or report if you do not provide the information and explanations they need
- granted the necessary access to your premises and records

- provided all necessary help to complete the report
- stated that any fee is not dependent on the report's outcome.

Instructions to valuers are usually documented in a written request or letter of engagement.

Generally, if you engage and properly instruct a professional valuer, you will not be liable for penalties if we find that professional valuation is deficient.

Keeping your market valuation report

You need to keep a market valuation report or other records that:

- show the valuation is objective, accurate and supported by evidence
- include all the required information we expect a valuation report to cover.

If we later review your tax affairs, you will need these records to support the valuation.

Market valuation guide

The Market valuation for tax purposes guide is available on our legal database for taxpayers and their advisers (including valuers) who need to value an asset for tax purposes. It explains:

- the principles and processes for establishing a market value for tax purposes
- our expectations
- the most common valuations for tax purposes.