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Australian Government
Australian Taxation Office

Guide to capital gains tax 2006

To help you complete your tax return for 1 July 2005 – 30 June 2006

Covers:
- how to work out whether you are subject to capital gains tax
- how to calculate your capital gain or capital loss.

If you are a resident personal investor with a capital gain or capital loss only from shares, units or a managed fund, you can use the shorter *Personal investors guide to capital gains tax 2006* instead of this guide

For CGT tools and calculators, including for demergers, visit **www.ato.gov.au**

OUR COMMITMENT TO YOU

We are committed to providing you with advice and information you can rely on.

We make every effort to ensure that our advice and information is correct. If you follow advice in this publication and it turns out to be incorrect, or it is misleading and you make a mistake as a result, we must still apply the law correctly. If that means you owe us money, we must ask you to pay it. However, we will not charge you a penalty or interest if you acted reasonably and in good faith.

If you make an honest mistake when you try to follow our advice and you owe us money as a result, we will not charge you a penalty. However, we will ask you to pay the money, and we may also charge you interest.

If correcting the mistake means we owe you money, we will pay it to you. We will also pay you any interest you are entitled to.

If you feel this publication does not fully cover your circumstances, please seek help from the Tax Office or a professional adviser.

The information in this publication is current at May 2006. We regularly revise our publications to take account of any changes to the law, so make sure that you have the latest information. If you are unsure, you can check for a more recent version on our website at **www.ato.gov.au** or contact us.

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ABOUT THIS GUIDE

The *Guide to capital gains tax 2006* explains how **capital gains tax** works and will help you calculate your **net capital gain** or **net capital loss** for 2005–06 so you can meet your capital gains tax obligations. There are worksheets at the back of the guide to help you do this.

WHO SHOULD USE THIS GUIDE?

An individual, company, trust or superannuation fund can use this guide to work out their capital gains tax.

A company, trust or superannuation fund that is required to complete and lodge a *Capital gains tax (CGT) schedule 2006* should use the schedule included at the back of this guide. Part C explains when a schedule must be lodged.

If you have a small business, you should get the publication *Guide to capital gains tax concessions for small business* (NAT 8384–6.2006).

> Individuals may prefer to use the shorter, simpler *Personal investors guide to capital gains tax 2006* (NAT 4152–6.2006) if, during 2005–06, they only:
> - sold some shares
> - sold some units in a managed fund, and/or
> - received a distribution of a capital gain from a managed fund.

This guide does not deal fully with the capital gains tax position of:

- a company that is the head company of a consolidated group – the rules that apply to members of a consolidated group modify the application of the capital gains tax rules. For more information about the consolidation rules or if you have technical tax enquiries, visit our website or phone the Tax Reform Infoline on **13 24 78**
- an individual or entity whose gains or losses are included as part of its income under other provisions of the tax law – for example, from carrying on a business of share trading (see the fact sheet *Carrying on a business of share trading*, available on our website)
- an individual or entity that is not an Australian resident for tax purposes.

PUBLICATIONS AND SERVICES

To find out how to get a publication referred to in this guide and for information about our other services, see the inside back cover.

UNFAMILIAR TERMS

Some of the terms used in this guide may be new to you. Specific terms are shown in **red** when first used and are explained in **Definitions** on page 132.

INTRODUCTION

This guide will help you work out whether any of the assets you own (or may own in the future), and any events that happen to you are subject to capital gains tax (CGT). Where they are, it tells you how to work out your capital gain or capital loss. It also covers what records you need to keep.

NEW TERMS

We may use some terms that are new to you. These words are printed in **red** the first time they are used and explained in **Definitions** on page 132. Generally they are also explained in more detail in the section where they first appear.

While we have sometimes used the word 'bought' rather than 'acquired', you may have acquired an asset subject to capital gains tax (a **CGT asset**) without paying for it (for example, as a gift or through an inheritance). Similarly, we refer to 'selling' such an asset when you may have disposed of it in some other way (for example, by giving it away or transferring it to someone else). Whether by sale or by any other means, all of these disposals are **CGT events**.

YOUR TAX RETURN

Whether you are an individual or an entity (company, trust or fund), if you have a capital gain or capital loss for 2005–06, this guide will help you to complete the capital gains item on your tax return.

WORKSHEETS

You may wish to use the two CGT worksheets provided at the back of this guide to help you keep track of your records and make sure you pay no more CGT than necessary.

There is:

- a **Capital gain or capital loss worksheet** for working out your capital gain or capital loss for each CGT 'event', and
- a **CGT summary worksheet** to help you summarise your capital gains and capital losses and produce the final net amount you need to include on your tax return.

You can tear out these forms and complete them as you work through the guide.

CAPITAL GAINS TAX SCHEDULE

If you are a company, trust or fund with total capital gains or capital losses of more than $10,000 this **income year**, you must complete a *Capital gains tax (CGT) schedule 2006 (CGT schedule)*. Partnerships and individual paper tax preparers are not required to lodge a schedule.

The CGT schedule is explained in detail in **part C** and a copy is provided at the back of this guide.

WHAT'S NEW

The Tax Office provides easy-to-use online tools to take some of the complexity out of capital gains tax.

The *Capital gains tax checklist* gives you an easy way to determine possible CGT consequences now and in the future.

Use the checklist's question and answer format to determine:

- whether you are likely to have a capital gain or capital loss in the current income year
- whether you are likely to have a CGT event in the future, and
- what sort of records you need to keep.

To get the checklist, visit our website and select 'For Tax Professionals', then click on 'Tax Professionals homepage'. From the menu on the left, under 'Tax topics explained', select 'Capital gains tax (CGT)', select 'CGT for tax professionals' and click on 'Capital gains tax checklist'.

Capital gains tax updates, available through the above link, give you information on the latest CGT developments including:

- changes and proposed changes to the law
- new Tax Office rulings and determinations
- new ATO interpretative decisions (ATO IDs), and
- new online CGT resources.

The guide *Basic capital gains tax issues for legal professionals* provides detailed information on the CGT consequences of some common legal transactions. Topics covered include conveyancing, wills and the administration of deceased estates, family law, litigation and compensation issues and record keeping.

To get *Basic capital gains tax issues for legal professionals*, visit our website and select 'For Tax Professionals', then click on 'Tax Professionals homepage'. From the menu on the left, under 'Your tax practice', select 'Industries and business types', then click on 'Legal practitioner's essentials'. From this page, click on 'Capital gains tax information'.

Compliance activity

The Tax Office continues to build on its capital gains tax data-matching capability. We gather a large amount of information from state and territory revenue agencies and land titles offices to check that capital gains on properties, including rental properties, vacant land and holiday homes, have been declared. We also gather data to check capital gains on shares and managed fund investments.

Some common errors we've identified include:

- people claiming the main residence exemption when they have never lived in the property
- poor record keeping, and
- people using the date of settlement as the disposal date of a property, instead of the date they entered into the sale contract.

Changes and proposed changes to the law

There are a number of recent and proposed CGT changes to bear in mind when calculating your capital gain or capital loss.

To see if the proposed changes below are now law, visit our website and select 'For Tax Professionals', then click on 'Tax Professionals homepage'. From the menu on the left, under 'Rulings, legislation & law', select 'New legislation', then select 'New legislation' and click on 'Capital gains tax'.

Rollover for transition to superannuation safety arrangements

The law has been changed to provide automatic CGT rollover relief for transfers of all CGT assets by a registrable superannuation entity to one or more registrable superannuation entities to comply with licensing requirements under the superannuation safety reforms. CGT rollover only applies to CGT events that happen to CGT assets during the superannuation safety reform transitional period – that is, from 1 July 2004 to 30 June 2006 (inclusive).

For more information, see our fact sheet *CGT rollover relief for superannuation entities*, available on our website.

Capital gains tax treatment of options

A Bill has been introduced into Parliament to make changes to the CGT treatment of options. The new law will ensure that the provisions concerning options and capital proceeds will now apply to options for the creating, granting or issuing of assets, and their renewal or extension, in the same way that they apply to options for the disposal of assets or the issuing of shares. The amount paid for such an option plus any amount paid to exercise it will now be included in the CGT cost base of the newly acquired asset.

The Government intends the changes apply to options exercised on or after 27 May 2005. Transitional amendments will ensure a similar treatment for pre-CGT options except where such options were last renewed or extended on or after 20 September 1985.

Blackhole expenditure

The law has been changed to allow a deduction over five years for certain capital expenditure, known as 'blackhole' expenditure, incurred in relation to businesses that are, were, or are proposed to be carried on for a taxable purpose. The non-commercial loss rules have been modified to prevent individual taxpayers from deducting expenses in relation to non-commercial business activities. In some circumstances, taxpayers who fund and originate the commencement of a business that will be or is proposed to be carried on by another entity will be able to claim the deduction.

The new provisions apply as a last resort if the expenditure does not have tax treatment or is denied a deduction.

The range of expenditure that forms the cost base of an asset for CGT purposes has also been expanded – in particular, the second, third and fourth elements. See **Elements of the cost base** on page 12 for more details. Expenditure on entertainment and penalties have been added to exclusions from the cost base and reduced cost base. The CGT changes apply to expenditure incurred in relation to CGT events that happen on or after 1 July 2005.

Marriage breakdown rollover

On 10 May 2005, as part of the 2005 Budget, the Government announced proposed changes that will extend the scope of the marriage breakdown CGT rollover. The rollover will also apply to:

- assets transferred to a spouse or former spouse under a binding financial agreement or arbitral award under the *Family Law Act 1975* or a similar agreement or award under a corresponding foreign law, and
- assets transferred under a written agreement under a state, territory or foreign law relating to de facto marriage breakdowns where the agreement is similar to a binding financial agreement.

Amendments will also be made to ensure that the **main residence exemption** interacts more appropriately with the marriage breakdown rollover relief to ensure that marriage breakdown cash settlements do not give rise to CGT liabilities.

The Government's intention is that the changes will apply to CGT events that happen after the date of Royal Assent of the amending legislation.

International tax reform

Non-residents

On 10 May 2005, as part of the 2005 Budget, the Government announced that it proposes to amend the CGT rules as they apply to non-residents by narrowing the range of assets on which a non-resident is subject to Australian CGT to real property and the business assets of Australian branches of a non-resident.

The integrity of the measure will be protected by applying CGT to non-portfolio interests in interposed entities, where the value of such an interest is wholly or principally attributable to Australian real property.

The Government's intention is for the changes to apply to CGT events happening after the date of Royal Assent of the amending legislation.

Temporary residents

The law has been changed to provide a foreign income exemption for temporary residents. It will ensure that capital gains and capital losses made by temporary residents:

- are disregarded except if a foreign resident would have been taxed on them, and
- in the case of capital gains and capital losses on employee shares and rights, are disregarded to the extent that the relevant employment is not in Australia.

The changes will apply to CGT events that happen on or after 1 July 2006.

Illegal activities

The law has been changed to deny deductions for expenditure relating to illegal activities for which a taxpayer has been convicted of an indictable offence. Also, such expenditure does not form part of the cost base or reduced cost base of a CGT asset. This ensures no capital loss or reduced capital gain can arise from such expenditure.

This change applies to expenditure incurred after 29 April 2005.

Extending rollover for assets that are compulsorily acquired

A Bill has been introduced into Parliament to extend rollover on the disposal of CGT assets (and depreciating assets) compulsorily acquired by a private acquirer under a statutory power. Under the existing law, rollover only applies to such acquisitions by Australian government agencies.

Under the changes, rollover will also apply where a landowner whose land is compulsorily subject to a mining lease sells the land to the lessee and acquires a replacement asset. Rollover will only apply if the lease would significantly affect the landowner's use of the land.

Rollover will not apply to compulsory acquisitions of minority interests under the Corporations Law – such as shares compulsorily acquired under a takeover.

The changes are expected to apply to disposals made on or after 11 November 1999. For more information, see our website.

2006 BUDGET ANNOUNCEMENTS

On 9 May 2006, as part of the Budget, the Government announced the following changes.

Small business CGT concessions

Amendments will be made to simplify and improve access to the concessions. These amendments are:

- changes to the maximum net asset value test, the active asset test, the 15-year exemption, the small business rollover and how the concessions apply to partnerships
- replacing the current 50% controlling individual test with a more generous 20% significant individual test, which can be satisfied either directly or through one or more interposed entities.

The Government's intention is that these changes will apply to CGT events that happen from the 2006–07 income year.

Two other amendments which will:

- increase the net asset threshold for the small business concessions from $5 million to $6 million, and
- allow STS taxpayers access to the concessions without having to satisfy the net asset threshold

are intended to apply for CGT events that happen from the 2007–08 income year.

Employee share schemes – stapled securities

Currently the employee share scheme and CGT rules only apply to ordinary shares or rights to acquire ordinary shares. This measure will extend the rules to include stapled securities where an ordinary share in an ASX listed company and another security, such as a unit in a unit trust, are contractually bound together so that they cannot be sold separately.

The Government's intention is that the changes will apply from the 2006–07 income year.

Venture capital

A new type of investment vehicle called an early stage venture capital limited partnership (ESVCLP) will be introduced and tax concessions will apply to it, including flow-through tax treatment and tax exemption for revenue and capital income received by its domestic and foreign partners.

The introduction of the ESVCLP will progressively replace the existing pooled development fund program which will be closed to new registration after 31 December 2006.

Donating shares

A tax deduction will be allowed for the donation of small parcels of publicly listed shares held for at least 12 months and valued at $5,000 or less (there is no change to the CGT treatment: a capital gain or capital loss will continue to arise on donated shares).

The Government's intention is that the changes will apply from the first income year after the date of Royal Assent of the amending legislation.