

Worksheet 5: Capital gains (continued)

A trust advises a beneficiary of their share of a net capital gain in the categories 1 to 6 because a beneficiary needs to gross-up the share of net capital gain to which the trustee applied by multiplying:

- the CGT discount by 2, before deducting any capital losses, then the CGT discount
- the small business 50% active asset reduction by 2, before deducting any capital losses, then the small business 50% active asset reduction
- the CGT discount and the small business 50% active asset reduction by 4, before deducting any capital losses, then the CGT discount and the small business 50% active asset reduction.

A beneficiary needs to decide which order of categories 1 to 6 to use to deduct losses that will give the best result.

For more information about these aspects of capital gains, see the *Guide to capital gains tax 2022*, at ato.gov.au/cgt

Example

The Little Trust generated \$100 net rent and a \$600 capital gain (which was a discount capital gain). The trust also had a capital loss of \$100.

The trust deed does not define 'income' and therefore capital gains do not form part of the trust income. As a result, the income of the trust estate is \$100 and the taxable income is \$350 ($\$100 + (\$600 - \$100)/2$)

The trustee resolves to distribute \$300 related to the capital gain (after absorbing the capital loss) to Catherine and the \$100 rent to Aaron.

Catherine is specifically entitled to 60% of the \$600 capital gain under subsection 115-228(1) because she can reasonably be expected to receive the economic benefit of 60% (\$300) of the \$500 capital gain remaining after accounting for the \$100 capital loss. Under section 115-227, Catherine's share of the capital gain is \$360 (60% of the \$600 capital gain).

Aaron's share of the capital gain is \$240 under section 115-227 because he has an adjusted Division 6 percentage of 100% (since none of the capital gain is treated as trust income) and there is \$240 of the \$600 capital gain to which no one is specifically entitled.

Catherine divides her share of the capital gain (\$360) by the total capital gain (\$600) and therefore has 60% of the capital gain under paragraph 115-225(1)(b).

Aaron divides his share of the capital gain (\$240) by the total capital gain (\$600) and therefore has 40% of the capital gain under paragraph 115-225(1)(b).

The taxable income relating to the capital gain calculated under paragraph 115-225(1)(a) is \$250.

Catherine's attributable gain calculated under subsection 115-225(1) is \$150 ($\$250 \times 60\%$).

Aaron's attributable gain calculated under subsection 115-225(1) is \$100 ($\$250 \times 40\%$).

(Source: Examples 2.8, 2.9, 2.10 of the Explanatory Memorandum to the Tax Law Amendment (2011 Measures No 5) Bill 2011)