



New Business Tax System (Capital Gains Tax) Act 1999

Act No. 165 of 1999 as amended

This compilation was prepared on 24 January 2001

[This Act was amended by Act No. 173 of 2000]
For transitional provisions *see* Table A.

Amendments from Act No. 173 of 2000

[Schedule 3 (item 16) amended Schedule 1 (item 61)
Schedule 3 (item 16) commenced on 21 December 2000

The text of any of those amendments not in force
on that date is appended in the Notes section

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An Act to implement the New Business Tax System by amending the law relating to capital gains tax, and for related purposes

1 Short title

This Act may be cited as the *New Business Tax System (Capital Gains Tax) Act 1999*.

2 Commencement

- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (2) If item 1 of Schedule 9 to the *New Business Tax System (Integrity and Other Measures) Act 1999* has not commenced before that day, Schedule 1 to this Act commences immediately after that item commences.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Amendment of assessments

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

Schedule 1—Small business relief

Part 1—Insertion of new Division

Income Tax Assessment Act 1997

1 Section 149-170 (link note)

Repeal the link note, substitute:

[The next Division is Division 152.]

Division 152—Small business relief

Guide to Division 152

152-1 What this Division is about

To help small business, if the basic conditions for relief are satisfied, capital gains can be reduced by the various concessions in this Division. Those basic conditions are in Subdivision 152-A. Some of the concessions have additional, specific conditions that must also be satisfied.

The 4 available small business concessions are:

- (a) the 15-year exemption (in Subdivision 152-B);
- (b) the 50% reduction (in Subdivision 152-C);
- (c) the retirement concession (in Subdivision 152-D);
- (d) the roll-over (in Subdivision 152-E).

A capital gain that qualifies for the 15-year exemption is disregarded entirely and is not taken into account under the method statement in subsection 102-5(1). By contrast, the other concessions are only activated by step 4 of that method statement. This means that you must apply all available capital losses against

your capital gains (under steps 1 and 2) before you can reduce them using those 3 concessions.

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Subdivision 152-A—Basic conditions for relief under this Division

Guide to Subdivision 152-A

152-5 What this Subdivision is about

This Subdivision sets out some basic conditions for relief. If the basic conditions are satisfied, then a small business entity may be able to reduce its capital gains using the small business concessions in this Division.

The 3 major basic conditions are:

- (a) a limit of \$5,000,000 on the net value of assets that the business and related entities own;
- (b) the CGT asset must be an active asset;
- (c) if the asset is a share or interest in a trust, there must be a controlling individual just before the CGT event and the entity claiming the concession must be a CGT concession stakeholder in the company or trust.

Some of the concessions have additional, specific conditions that also must be satisfied. For example, the 15-year exemption applies

only if you have held the CGT asset for at least 15 years and you retire.

The small business concessions (apart from small business roll-overs) are not available for CGT events J2 and J3.

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Basic conditions for relief

152-10 Basic conditions for relief

- (1) A * capital gain you make may be reduced or disregarded under this Division if the following basic conditions are satisfied for the gain:

- (a) a *CGT event happens in relation to a *CGT asset of yours in an income year;
 - (b) the event would (apart from this Division) have resulted in the gain;
 - (c) you satisfy the maximum net asset value test (see section 152-15);
 - (d) the CGT asset satisfies the active asset test (see section 152-35).
- (2) If the *CGT asset is a *share in a company or an interest in a trust, there are 2 additional basic conditions:
- (a) the company or trust satisfies the controlling individual test (see section 152-50);
 - (b) you are a *CGT concession stakeholder in the company or trust.
- Example: Ann and her spouse Brett carry on a business through a company in which Ann owns 40% of the shares and Brett 60%. Ann sells her shares and wants to claim the small business concessions. The condition in paragraph (a) is satisfied because Brett's 60% makes him a controlling individual of the company. The condition in paragraph (b) is satisfied because Ann is a CGT concession stakeholder in the company, in that Ann owned some shares just before the CGT event and was the spouse of a controlling individual (Brett) at that time.
- (3) In addition to the basic conditions in this section, some of the concessions in this Division have extra conditions that must be satisfied for the concession to be available. These extra conditions are set out in the relevant Subdivisions.
- (4) This Division, apart from Subdivision 152-E, does not apply to *CGT events J2 and J3.

Note: Those CGT events are about previous applications of the roll-over in Subdivision 152-E.

Maximum net asset value test

152-15 Maximum net asset value test

You satisfy the maximum net asset value test if, just before the *CGT event:

- (a) the sum of the following amounts does not exceed \$5,000,000:

- (i) the *net value of the CGT assets of yours;
- (ii) the net value of the CGT assets of any entities *connected with you;
- (iii) the net value of the CGT assets of any *small business CGT affiliates of yours or entities connected with your small business CGT affiliates; and

Note: Some assets aren't included in the definition of *net value of the CGT assets*: see subsections 152-20(2) and (3).

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

152-20 Meaning of net value of the CGT assets

- (1) The *net value of the CGT assets* of an entity is the amount (if any) by which the sum of the market values of those assets exceeds the sum of the liabilities of the entity that are related to the assets.
- (2) In working out the *net value of the CGT assets* of an entity:
 - (a) disregard *shares, units or other interests (except debt) in another entity that is *connected with the first-mentioned entity or with a *small business CGT affiliate of the first-mentioned entity; and
 - (b) if the entity is an individual, disregard:
 - (i) assets being used solely for the personal use and enjoyment of the entity, or the entity's *small business CGT affiliate; and
 - (ii) a *dwelling of the individual, or an *ownership interest in such a dwelling, if the individual uses the dwelling to produce assessable income to any extent but does not satisfy paragraph 118-190(1)(c) (about deductibility of interest); and
 - (iii) a right to, or to any part of, any allowance, annuity or capital amount payable out of a *superannuation fund or an *approved deposit fund; and
 - (iv) a right to, or to any part of, an asset of a superannuation fund or of an approved deposit fund; and
 - (v) a *life insurance policy.

- (3) In working out the *net value of the CGT assets* of an entity that is your *small business CGT affiliate, disregard assets of that entity that are not used, or held ready for use, in carrying on a *business that you, or an entity *connected with you, carry on (whether alone or jointly with others).

152-25 Meaning of small business CGT affiliate

- (1) A person is a *small business CGT affiliate* of yours if:
- (a) you are an individual and the person is your spouse or child under 18 years; or
 - (b) the person acts, or could reasonably be expected to act, in accordance with your directions or wishes, or in concert with you.
- (2) Another partner in a partnership in which you are a partner is not your *small business CGT affiliate* only because the partner acts, or could reasonably be expected to act, in concert with you in relation to the affairs of the partnership.

152-30 Meaning of connected with the entity

- (1) An entity is *connected with* another entity if:
- (a) either entity controls the other entity in the way described in this section; or
 - (b) both entities are controlled in that way by the same third entity.

Control of entity: 40% or more of rights

- (2) An entity (the *first entity*) controls another entity if the first entity, its *small business CGT affiliates or the first entity together with its small business CGT affiliates:
- (a) beneficially own, or have the right to acquire the beneficial ownership of, interests in the other entity that carry between them the right to receive at least 40% (the *control percentage*) of any distribution of income or capital by the other entity; or
 - (b) if the other entity is a company—beneficially own, or have the right to acquire beneficial ownership of, shares in the

company that carry between them the right to exercise, or control the exercise of, at least 40% (the **control percentage**) of the voting power in the company; or

- (c) if the other entity is a discretionary trust:
 - (i) are the trustee or trustees of the trust (other than the Public Trustee of a State or Territory); or
 - (ii) have the power to determine the manner in which the trustee or trustees of the trust exercise the power to make any payment of income or capital to or for the benefit of beneficiaries of the trust.
- (3) If the control percentage in subsection (2) is at least 40%, but less than 50%, then the Commissioner may determine that the first entity does not control the other entity if the Commissioner is satisfied, or thinks it reasonable to assume, that the other entity is controlled by an entity other than, or by entities that do not include, the first entity or any of its *small business CGT affiliates.

Exception for trusts

- (4) Paragraph (2)(c) does not apply if:
 - (a) a beneficiary of the trust mentioned in that paragraph controls the trust in the way described in this section; and
 - (b) that beneficiary is not a *small business CGT affiliate of any of the trustees of that trust or of a person who has the power of determination mentioned in subparagraph (2)(c)(ii).

Control of discretionary trust

- (5) If the trustee or trustees of a discretionary trust have the power to pay to, or apply for the benefit of, an entity any income or capital of the trust, this section applies to the entity as if the entity beneficially owned interests in any distribution of income or capital of the trust equal to the maximum percentage of the income or capital that the trustee is empowered to pay to, or apply for the benefit of, the entity.
- (6) Subsection (5) does not apply to the entity if the entity is one of these (a **public entity**):

- (a) a company *shares in which (except shares that carry the right to a fixed rate of *dividend) are listed for quotation in the official list of an *approved stock exchange;
- (b) a *publicly traded unit trust;
- (c) a *mutual insurance company;
- (d) a *mutual affiliate company;
- (e) a company (other than one covered by paragraph (a)) all the shares in which are beneficially owned by one or more of the following:
 - (i) a company covered by paragraph (a);
 - (ii) a publicly traded unit trust;
 - (iii) a mutual insurance company;
 - (iv) a mutual affiliate company;

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

Indirect control of entity

- (7) This section applies to an entity that directly controls a second entity as if it also controlled any other entity that is directly, or indirectly by any other application or applications of this section, controlled by the second entity.
- (8) However, if an entity (the *first entity*) controls a public entity, this section does not, merely because of subsection (7), apply to the first entity as if it controlled any other entity that is controlled by the public entity.

Active asset test

152-35 Active asset test

A *CGT asset satisfies the active asset test if the asset was an *active asset of yours:

- (a) just before the earlier of:
 - (i) the *CGT event; and
 - (ii) if the relevant business ceased to be carried on in the last 12 months or any longer period that the

Commissioner allows—the cessation of the business;
and

- (b) during at least half of the period beginning at the later of:
 - (i) when you acquired the asset; and
 - (ii) if you have owned the asset for more than 15 years—15 years before the time that applies under paragraph (a); and ending at the time that applies under paragraph (a).

152-40 Meaning of active asset

- (1) A *CGT asset is an **active asset** at a given time if, at that time, you own it and:
 - (a) use it, or hold it ready for use, in the course of carrying on a *business; or
 - (b) it is an intangible asset that is inherently connected with a business that you carry on (for example, goodwill or the benefit of a restrictive covenant); or
 - (c) it is used, or held ready for use, in the course of carrying on a business by:
 - (i) your *small business CGT affiliate; or
 - (ii) another entity that is *connected with you.

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

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

- (3) A *CGT asset is also an **active asset** at a given time if, at that time, you own it and:
 - (a) it is either a *share in a company that is an Australian resident at that time or an interest in a trust that is a *resident trust for CGT purposes for the income year in which that time occurs; and
 - (b) the total of:
 - (i) the market values of the active assets of the company or trust; and

- (ii) any *capital proceeds that the company or trust received, during the 2 years before that time, from *CGT events happening to its active assets and that the company or trust holds in the form of cash or debt pending the acquisition of new active assets;
is 80% or more of the market value of all of the assets of the company or trust.

Example: Paragraph 152-35(b) requires a CGT asset to have been an active asset over a period of time. For a share in an Australian resident company to meet this requirement, the company would have to satisfy the 80% test in this subsection throughout that same period.

Exceptions

- (4) However, the following *CGT assets cannot be **active assets**:
 - (a) interests in an entity that is *connected with you, other than *shares and interests covered by subsection (3);
 - (b) shares in companies, other than shares covered by subsection (3);
 - (c) interests in trusts, other than interests covered by subsection (3);
 - (d) financial instruments (such as loans, debentures, bonds, promissory notes, futures contracts, forward contracts, currency swap contracts and a right or option in respect of a share, security, loan or contract);
 - (e) an asset whose main use in the course of carrying on the *business mentioned in subsection (1) is to derive interest, an annuity, rent, royalties or foreign exchange gains unless:
 - (i) the asset is an intangible asset and has been substantially developed, altered or improved by you so that its market value has been substantially enhanced; or
 - (ii) its main use for deriving rent was only temporary.

Example: A company uses a house purely as an investment property and rents it out. The house is not an **active asset** because the company is not using the house in the course of carrying on a business. If, on the other hand, the company ran the house as a guest house the house would be an **active asset** because the company would be using it to carry on a business and not to derive rent.

152-45 Continuing time periods for involuntary disposals

Compulsory acquisitions

- (1) If a *CGT asset is an asset (the *new asset*) you acquired to satisfy the requirement in subsection 124-70(2) or 124-75(2) for a roll-over under Subdivision 124-B, then the active asset test in section 152-35 applies as if:
- (a) you had acquired the new asset when you acquired the old asset; and
 - (b) the new asset had been your *active asset at all times when the original asset was your active asset; and
 - (c) the new asset had not been your active asset at all times when the original asset was not your active asset.

Note 1: Subdivision 124-B allows you to choose a roll-over if your CGT asset is compulsorily acquired, lost or destroyed.

Note 2: If this subsection applies to a CGT asset, then section 152-115 (which is about continuing time periods) will apply for the 15-year exemption.

Marriage breakdowns

- (2) If you were the transferee of a *CGT asset for which there has been a roll-over under Subdivision 126-A, then you may choose that the active asset test in section 152-35 applies as if:
- (a) you had acquired the asset when the transferor acquired the asset; and
 - (b) the asset had been an *active asset of yours at all times when the asset was an active asset of the transferor; and
 - (c) the asset had not been an active asset of yours at all times when the asset was not an active asset of the transferor.

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

Note 2: There is a roll-over under Subdivision 126-A if CGT assets are transferred because of a marriage breakdown.

Note 3: If you don't make the choice, the time of acquisition is simply the time of the transfer.

Note 4: Making the choice here has certain consequences for the 15-year exemption: see section 152-115.

Controlling individual test

152-50 Controlling individual test

An entity satisfies the controlling individual test if the entity had at least one *controlling individual just before the *CGT event.

152-55 Meaning of controlling individual

Companies

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

Trusts

- (2) An individual is a ***controlling individual*** of a trust (where entities have entitlements to all the income and capital of the trust) at a time if, at that time, the individual is beneficially entitled to at least 50% of the income and capital of the trust.
- (3) An individual is a ***controlling individual*** of a trust (where entities do not have entitlements to all the income and capital of the trust) at a time if, during the income year in which the time occurs:
 - (a) the trust made a distribution of income or capital, or both; and
 - (b) the individual was beneficially entitled to at least 50% of the total of the distributions of income made by the trust during the income year; and
 - (c) the individual was beneficially entitled to at least 50% of the total of the distributions of capital made by the trust during the income year.

CGT concession stakeholder

152-60 Meaning of CGT concession stakeholder

CGT concession stakeholder of a company or trust means:

- (a) a *controlling individual of the company or trust; or
- (b) in the case of a company—a spouse of a controlling individual of the company, if the spouse holds the legal and equitable interests in any amount of shares in the company; or
- (c) in the case of a trust mentioned in subsection 152-55(2)—a spouse of a controlling individual of the trust, if the spouse is beneficially entitled to any of the income or capital of the trust; or
- (d) in the case of a trust mentioned in subsection 152-55(3)—a spouse of a controlling individual of the trust, if, during the income year referred to in that subsection, the trust made a distribution of income or capital to which the spouse was beneficially entitled.

Subdivision 152-B—Small business 15-year exemption

Guide to Subdivision 152-B

152-100 What this Subdivision is about

A small business entity can disregard a capital gain arising from a CGT asset that it has owned for at least 15 years if certain conditions are met. Capital losses are not affected.

Also, any amount of income a company or trust derives from a CGT event covered by this Subdivision is neither assessable income nor exempt income. If the company or trust makes payments to its CGT concession stakeholders that are attributable to the exempt amount, the payments will not be taken into account in determining the taxable income of the company, trust or recipient.

The main conditions are that:

- the basic conditions for relief in Subdivision 152-A are satisfied;
- the entity continuously owned the asset for the 15-year period leading up to the CGT event;
- if the entity is an individual, the individual retires or is permanently incapacitated;
- if the entity is a company or trust, the entity had a controlling individual throughout the period of ownership and the individual who was the controlling individual just before the CGT event retires or is permanently incapacitated.

The Subdivision also allows time periods to continue to run if there has been a roll-over because of marriage breakdown or compulsory acquisition.

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152-105 15-year exemption for individuals

If you are an individual, you can disregard any *capital gain arising from a *CGT event if all of the following conditions are satisfied:

- (a) the basic conditions in Subdivision 152-A are satisfied for the gain;
- (b) you continuously owned the *CGT asset for the 15-year period ending just before the CGT event;

Note: Section 152-115 allows for continuation of the period if there is an involuntary disposal of the asset.

- (c) if the CGT asset is a *share in a company or an interest in a trust—at all times during the whole period for which you

owned the CGT asset, the company or trust had a *controlling individual (even if it was not the same controlling individual during the whole period);

Note: There is an exception for discretionary trusts that have tax losses in an income year: see section 152-120.

- (d) either:
- (i) you are 55 or over at the time of the CGT event and the event happens in connection with your retirement; or
 - (ii) you are permanently incapacitated at the time of the CGT event.

152-110 15-year exemption for companies and trusts

- (1) An entity that is a company or trust can disregard any *capital gain arising from a *CGT event if all of the following conditions are satisfied:

- (a) the basic conditions in Subdivision 152-A are satisfied for the gain;
- (b) the entity continuously owned the *CGT asset for the 15-year period ending just before the CGT event;

Note: Section 152-115 allows for continuation of the period if there is an involuntary disposal of the asset.

- (c) at all times during the whole period for which the entity owned the asset, the entity had a *controlling individual (even if it was not the same controlling individual during the whole period);

Note: There is an exception for discretionary trusts that have tax losses in an income year: see section 152-120.

- (d) an individual who was a controlling individual of the company or trust just before the CGT event either:
 - (i) was 55 or over at that time and the event happened in connection with the individual's retirement; or
 - (ii) was permanently incapacitated at that time.

- (2) Any income the company or trust *derives from a *CGT event that would be covered by subsection (1) (assuming the event gave rise to a *capital gain, even if it didn't) is neither assessable income nor *exempt income.

152-115 Continuing time periods for involuntary disposals

Compulsory acquisitions

- (1) If a *CGT asset is an asset (the ***new asset***) you acquired to satisfy the requirement in subsection 124-70(2) or 124-75(2) for a roll-over under Subdivision 124-B, then paragraphs 152-105(b) and 152-110(1)(b) and (c) (the 15-year and controlling individual rules) apply as if you had acquired the new asset when you acquired the original asset.

Note: Subdivision 124-B allows you to choose a roll-over if your CGT asset is compulsorily acquired, lost or destroyed.

Marriage breakdowns

- (2) If you made the choice mentioned in subsection 152-45(2) for a *CGT asset, then paragraphs 152-105(b) and (c) and 152-110(1)(b) and (c) (the 15-year and controlling individual rules) apply as if you had acquired the asset when the transferor acquired it.

Note: There is a roll-over under Subdivision 126-A if CGT assets are transferred because of a marriage breakdown.

152-120 Discretionary trusts need not have a controlling individual in a loss year

Paragraphs 152-105(c) and 152-110(1)(c) do not apply for a trust of the kind mentioned in subsection 152-55(3) in relation to an income year during which the trust did not make a distribution of income or capital, if the trust had a *tax loss for that income year.

Note: This is because the trust might not have had the funds to make a distribution during that income year, which would prevent it from having a controlling individual in that year.

152-125 Payments to company's or trust's CGT concession stakeholders are exempt

- (1) This section applies if, under section 152-110, a *capital gain of a company or trust is disregarded or an amount of income is treated as neither assessable income nor *exempt income of the company or trust. In this section, that amount is called the ***exempt amount***.

- (2) Any payment the company or trust makes (whether directly or indirectly through one or more interposed entities) within 2 years after the *CGT event to an individual who was a *CGT concession stakeholder of the company or trust just before the event is not taken into account in determining the taxable income of the company or trust, the individual or any of the interposed entities.
- (3) However, subsection (2) applies only to the extent that the total of the payments made by the company or trust to a particular *CGT concession stakeholder for an exempt amount does not exceed the following limit:

$$\text{Stakeholder's control percentage} \times \text{Exempt amount}$$

where:

stakeholder's control percentage means:

- (a) in the case of a company—the percentage of the interests in *shares in the company of the kind mentioned in subsection 152-55(1) held by the CGT concession stakeholder just before the *CGT event; or
- (b) in the case of a trust mentioned in subsection 152-55(2)—the percentage of the income and capital of the trust to which the CGT concession stakeholder was beneficially entitled just before the CGT event; or
- (c) in the case of a trust mentioned in subsection 152-55(3) that had a single CGT concession stakeholder just before the CGT event—100%; or
- (d) in the case of a trust mentioned in subsection 152-55(3) that had 2 CGT concession stakeholders just before the CGT event—50% each.

Subdivision 152-C—Applying the small business concessions

Guide to Subdivision 152-C

152-200 What this Subdivision is about

This Subdivision tells you how to apply the small business CGT concessions mentioned in step 4 of the method statement in subsection 102-5(1).

A capital gain is reduced by 50% if the basic conditions in Subdivision 152-A are satisfied.

If the capital gain has already been reduced by the discount percentage, the 50% reduction under this Subdivision applies to that reduced gain.

The capital gain may be further reduced by the small business retirement exemption or a small business rollover, or both.

None of these rules apply if the 15-year exemption already applies to the capital gain, since such a gain is disregarded anyway.

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152-205 You get the small business 50% reduction

The amount of a *capital gain remaining after applying step 3 of the method statement in subsection 102-5(1) is reduced by 50%, if the basic conditions in Subdivision 152-A are satisfied for the gain.

Example: For an individual (other than one who opts to claim indexation instead of the discount), the discount percentage that applies under step 3 of

the method statement is 50%. Therefore, the combined effect of the discount percentage and this section would be to reduce the original capital gain by a total of 75%.

For an individual who opts to claim indexation, or a company, there is no discount percentage, so the individual or company would simply get the 50% reduction under this section.

152-210 You may also get the small business retirement exemption and small business roll-over relief

- (1) The *capital gain, as reduced under section 152-205, may also qualify for:
 - (a) the small business retirement exemption (see Subdivision 152-D); or
 - (b) a small business roll-over (see Subdivision 152-E);or both.
- (2) If it qualifies for both of those concessions, you may choose which order to apply them in.

152-215 15-year rule has priority

This Subdivision and Subdivisions 152-D and 152-E do not apply to a *capital gain to which Subdivision 152-B (15-year exemption) applies.

Note: Under that Subdivision, such a gain is entirely disregarded, so there is no need for any further concession to apply.

Subdivision 152-D—Small business retirement exemption

Guide to Subdivision 152-D

152-300 What this Subdivision is about

You can choose to disregard a capital gain from a CGT event happening to a CGT asset of your small business if the capital proceeds from the event are used in connection with your retirement.

There is a lifetime limit of \$500,000 for all choices that can be made in respect of an individual under this Subdivision.

The concession in section 152-205 (small business 50% reduction) applies before this one. For an additional concession, see also Subdivision 152-E (small business roll-over).

Table of sections

- 152-305 Choosing the exemption
- 152-310 Consequences of choice
- 152-315 Choosing the amount to disregard
- 152-320 Meaning of *CGT retirement exemption limit*
- 152-325 Company or trust conditions

[This is the end of the Guide.]

152-305 Choosing the exemption

Individual

- (1) If you are an individual, you can choose to disregard all or part of a *capital gain if:
 - (a) the basic conditions in Subdivision 152-A are satisfied for the gain; and
 - (b) if you were under 55 just before you received an amount of *capital proceeds from the *CGT event (disregarding section 103-10)—an amount equal to the *eligible termination payment mentioned in subsection 152-310(2) is rolled over (within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*) except by being paid as mentioned in paragraph 27A(12)(c) of that Act.

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

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

Company or trust

- (2) A company or a trust (except a public entity—see subsection (3)) can also choose to disregard such an amount if:
 - (a) the basic conditions in Subdivision 152-A are satisfied for the *capital gain; and

(b) the entity satisfies the controlling individual test (see section 152-50); and

(c) the company or trust conditions in section 152-325 are satisfied.

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

(3) Public entities (within the meaning of subsection 152-30(6)) cannot make the choice.

152-310 Consequences of choice

Consequences in all cases

(1) If the individual, company or trust makes the choice mentioned in section 152-305 for any part of the *capital gain from the *CGT asset, that part of the capital gain equal to its *CGT exempt amount is disregarded.

Additional consequence for an individual

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

(a) when you made the choice; and

(b) when you received the amount.

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

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

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

Additional consequences for a company or trust

(5) Any *eligible termination payment or part of one the company or trust makes to comply with section 152-325:

- (a) is, for the purposes of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*, a CGT exempt component; and
- (b) cannot be deducted from the company's or trust's assessable income.

152-315 Choosing the amount to disregard

- (1) You can choose to disregard all or part of each *capital gain to which this Subdivision applies.
 - Note 1: You make capital gains equal to any parts that you do not choose to disregard.
 - Note 2: Section 103-25 tells you when the choice must be made.
- (2) However, the choice must be made in a way that ensures that:
 - (a) for an individual—your *CGT retirement exemption limit is not exceeded; or
 - (b) for a company or trust—the CGT retirement exemption limit of each individual for whom the choice is made is not exceeded.
- (3) The amount chosen for the asset is its *CGT exempt amount*.
- (4) The *CGT exempt amount must be specified in writing.
- (5) If a company or trust is making the choice and it has 2 *CGT concession stakeholders, it must specify in writing the percentage of each *CGT asset's *CGT exempt amount that is attributable to each of those stakeholders. One of the percentages may be nil, but they must add up to 100%.

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

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

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

152-320 Meaning of CGT retirement exemption limit

- (1) An individual's *CGT retirement exemption limit* at a time is \$500,000 reduced by the *CGT exempt amounts of *CGT assets specified in choices previously made by or for the individual under this Subdivision.
- (2) If the individual was one of 2 *CGT concession stakeholders of a company or trust, and the company or trust made a choice for the individual, only the individual's percentage (see subsection 152-315(5)) of the assets' *CGT exempt amounts is taken into account under subsection (1) for that choice.

152-325 Company or trust conditions

- (1) Each time a company or trust receives an amount of *capital proceeds from a *CGT event for which it makes a choice under this Subdivision, the company or trust must make an *eligible termination payment in relation to each of its *CGT concession stakeholders.
- (2) If there are 2 such stakeholders, the amount of each such *eligible termination payment is to be worked out by reference to each individual's percentage (see subsection 152-315(5)) of the relevant *CGT exempt amount.
- (3) The payment must be made by the later of:
 - (a) 7 days after it makes the choice; and
 - (b) 7 days after it receives an amount of *capital proceeds from the *CGT event.
- (4) In working out those *capital proceeds, disregard:
 - (a) section 103-10 (which deals with proceeds that are applied for your benefit rather than being paid directly to you); and
 - (b) the market value substitution rule (see section 116-30).
- (5) The amount of the *eligible termination payment, or the sum of the amounts of the eligible termination payments, required to be made under subsection (1) must be equal to the lesser of:
 - (a) the amount of *capital proceeds received; and
 - (b) the relevant *CGT exempt amount.

- (6) If this section requires the company or trust to make 2 or more *eligible termination payments to a single stakeholder (whether or not by the same time), the company or trust may meet that requirement by making one payment or by making separate payments.
- (7) If a stakeholder is under 55 just before receiving an *eligible termination payment under subsection (1) (disregarding section 103-10), an amount equal to that payment must be rolled over (within the meaning of Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936*) except by being paid as mentioned in paragraph 27A(12)(c) of that Act.

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

Subdivision 152-E—Small business roll-over

Guide to Subdivision 152-E

152-400 What this Subdivision is about

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

The concession in section 152-205 (small business 50% reduction) applies before this one. For an additional exemption, see also Subdivision 152-D (small business retirement exemption).

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| 152-410 | When you can obtain the roll-over |
| 152-415 | What the roll-over consists of |
| 152-420 | Replacement asset conditions |
| 152-425 | Rules where an individual who has obtained a roll-over dies |

152-405 Basic principles for the small business roll-over

- (1) You can choose to obtain a roll-over if the basic conditions in Subdivision 152-A are satisfied for the capital gain.
- (2) You must acquire a replacement asset within the period from one year before to 2 years after the happening of the last CGT event in the income year for which you obtain the small business roll-over.
- (3) The form of the roll-over is that the capital gain is disregarded to the extent that it does not exceed the cost base of the replacement asset.
- (4) You will make a separate capital gain if a CGT event subsequently happens to the replacement asset or if its status changes in particular ways.

[This is the end of the Guide.]

152-410 When you can obtain the roll-over

You can choose to obtain a roll-over under this Subdivision for a *capital gain if:

- (a) the basic conditions in Subdivision 152-A are satisfied for the gain; and
- (b) within the period starting one year before, and ending 2 years after, the last *CGT event during the year for which you choose a small business roll-over, you choose one or more *CGT assets as replacements (the **replacement asset**); and
- (c) the replacement asset satisfies the conditions set out in section 152-420.

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

152-415 What the roll-over consists of

If you choose the roll-over, so much of the *capital gain that would have remained apart from the roll-over as does not exceed the total of the first and second elements of the *cost base of the replacement asset is disregarded.

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

Example: The original capital gain was \$100. You have reduced it to \$25 under other concessions (apart from the roll-over). If the total of the first and second elements of the cost base of the replacement asset is \$20, you can disregard \$20 under this section, leaving a final capital gain of \$5.

152-420 Replacement asset conditions

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

Extension of time if all reasonable steps taken

- (2) This time limit does not apply to the extent that your *capital proceeds for the *CGT event are increased under subsection 116-45(2) after that time is up. Instead, you have until 12 months after you receive those additional proceeds to *acquire a replacement asset the first and second elements of the *cost base of which are at least equal to the value of those additional proceeds.

Note 1: If you do not acquire a replacement asset with a sufficiently large cost base within the new time limit, your roll-over will be reduced accordingly under section 152-415.

Note 2: Section 116-45 applies if you do not receive your capital proceeds despite having taken all reasonable steps to get them.

- (3) The Commissioner may extend the time limits under subsections (1) and (2).

Type of replacement asset allowed

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

Note: If a replacement asset is an active asset and its status subsequently changes, you may make a capital gain: see section 104-185 (CGT event J2). Special rules apply if you die: see section 152-425.

- (5) If a replacement asset is a *share in a company or an interest in a trust, you, or an entity *connected with you, must be a *controlling

individual of the company or trust just after you *acquire the share or interest.

Example: Joseph owns 50% of the shares in Company A and Company B. He is therefore a controlling individual of the companies (see section 152-55). The companies are connected with Joseph (see section 152-30) because he controls both of them.

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

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

Note: If a replacement asset is a share in a company and the status of the company changes, or you or an entity connected with you ceases to be its controlling individual, you may make a capital gain: see section 104-190 (CGT event J3). Special rules apply if you die: see section 152-425.

152-425 Rules where an individual who has obtained a roll-over dies

- (1) If a replacement asset that formed part of the estate of an individual who has died has devolved to the deceased's *legal personal representative and:
 - (a) the status of the replacement asset did not change in any of the ways covered by subsection 104-185(1) while the deceased owned it; or
 - (b) if the replacement asset is a *share in a company or an interest in a trust, the circumstances of the company or trust did not change in any of the ways covered by subsection 104-190(1) while the share or interest was in the hands of the deceased;then, for the purposes of this Subdivision, anything done or not done by the deceased in relation to the asset is treated as though it had been done or not done by the legal personal representative.
- (2) If the replacement asset has passed to a beneficiary of the deceased individual and:
 - (a) the status of the replacement asset did not change in any of the ways covered by subsection 104-185(1) while the deceased owned it; or
 - (b) if the replacement asset is a *share in a company or an interest in a trust, the circumstances of the company or trust did not change in any of the ways covered by subsection

Part 2—Consequential amendments

Income Tax Assessment Act 1997

2 Subsection 100-30(2)

Omit “4 categories”, substitute “5 categories”.

3 At the end of subsection 100-30(2) (before the note)

Add:

5. small business relief.

4 Subsection 100-30(2) (at the end of the note)

Add “The small business relief provisions are in Division 152.”.

5 Section 100-50 (after the note to step 3)

Insert:

4. If you carry on a small business, apply the small business concessions in further reduction of your capital gains (whether or not the gains are discount capital gains).

For the small business concessions:
see Division 152.

6 Section 100-50 (step 4)

Omit “4. Add up:”, substitute “5. Add up:”.

7 Subsection 102-5(1) (method statement)

Repeal the method statement, substitute:

Working out your net capital gain

Step 1. Reduce the *capital gains you made during the income year by the *capital losses (if any) you made during the income year.

Note 1: You choose the order in which you reduce your capital gains. You have a net capital loss for the income year if your capital losses exceed your capital gains: see section 102-10.

Note 2: Some provisions of this Act (such as Divisions 104 and 118) permit or require you to disregard certain capital gains or losses when working out your net capital gain. Subdivision 152-B permits you, in some circumstances, to disregard a capital gain on an asset you held for at least 15 years.

Step 2. Apply any previously unapplied *net capital losses from earlier income years to reduce the amounts (if any) remaining after the reduction of *capital gains under step 1 (including any capital gains not reduced under that step because the *capital losses were less than the total of your capital gains).

Note 1: Section 102-15 explains how to apply net capital losses.

Note 2: You choose the order in which you reduce the amounts.

Step 3. Reduce by the *discount percentage each amount of a *discount capital gain remaining after step 2 (if any).

Note: Only some entities can have discount capital gains, and only if they have capital gains from CGT assets acquired at least a year before making the gains. See Division 115.

Step 4. If any of your *capital gains (whether or not they are *discount capital gains) qualify for any of the small business concessions in Subdivisions 152-C, 152-D and 152-E, apply those concessions to each capital gain as provided for in those Subdivisions.

Note 1: The basic conditions for getting these concessions are in Subdivision 152-A.

Note 2: The small business concessions (other than small business roll-overs) are not available for CGT events J2 and J3.

Step 5. Add up the amounts of *capital gains (if any) remaining after step 4. The sum is your **net capital gain** for the income year.

Note: For exceptions and modifications to these rules: see section 102-30.

8 Subsection 102-25(2A) (example)

Omit “Division 123”, substitute “Subdivision 152-E”.

9 Section 102-30 (table items 2A and 2B)

Repeal the items.

10 Section 102-30 (table item 2AA)

Repeal the item, substitute:

| | | | |
|-----|---|--|-------------------|
| 2AA | Beneficiary of trust whose net income includes a net capital gain | The beneficiary is treated as having: (a) an extra capital gain equal to each amount of the beneficiary's share of the net income that is attributable to the trust's capital gains that are <i>not</i> reduced under step 3 of the method statement in subsection 102-5(1) <i>or</i> Subdivision 152-C; and (b) an extra capital gain of double each amount of the beneficiary's share of the net income that is attributable to the trust's capital gains that are reduced under <i>either</i> step 3 of the method statement <i>or</i> Subdivision 152-C but not both; and (c) an extra capital gain of 4 times each amount of the beneficiary's share of the net income that is attributable to the trust's capital gains that are reduced under <i>both</i> step 3 of the method statement <i>and</i> Subdivision 152-C. | Subdivision 115-C |
|-----|---|--|-------------------|

11 Subsection 103-25(3)

Repeal the subsection, substitute:

- (3) However, there are some exceptions:
- (a) subsections 124-380(5) and 124-465(5) (relating to replacement asset roll-overs) require a company to make the choice at the earlier time specified in those subsections; and
 - (b) subsections 152-315(4) and (5) (relating to the small business retirement exemption) require a choice to be made in writing; and

(c) paragraph 152-410(b) (relating to the small business roll-over) requires a choice of replacement assets within the longer period specified in that paragraph.

12 Section 104-5 (table item dealing with CGT event J2)

Omit “Division 123” (first occurring), substitute “Subdivision 152-E”.

13 Section 104-5 (table item dealing with CGT event J2)

Omit “notional capital gain that you applied to the asset under Division 123”, substitute “capital gain that you disregarded under Subdivision 152-E”.

14 Section 104-5 (table item dealing with CGT event J3)

Omit “a unit in a unit trust”, substitute “an interest in a trust”.

15 Section 104-5 (table item dealing with CGT event J3)

Omit “Division 123” (first occurring), substitute “Subdivision 152-E”.

16 Section 104-5 (table item dealing with CGT event J3)

Omit “notional capital gain that you applied to the share or unit under Division 123”, substitute “capital gain that you disregarded under Subdivision 152-E”.

17 Subsection 104-70(7A) (table items 1 and 2)

Omit “step 4”, substitute “step 3”.

18 Subsection 104-70(7A) (note 1)

Omit “Step 4”, substitute “Step 3”.

19 Section 104-185 (heading)

Omit “**Division 123**”, substitute “**Subdivision 152-E**”.

20 Subsection 104-185(1)

Omit “Division 123”, substitute “Subdivision 152-E”.

21 Paragraphs 104-185(1)(a) and (b)

Omit “a unit in a unit trust”, substitute “an interest in a trust”.

22 Subsection 104-185(3)

Omit “notional”.

23 Subsection 104-185(3)

Omit “Division 123”, substitute “Subdivision 152-E”.

24 Subsection 104-185(3) (example)

Omit “notional” (wherever occurring).

25 Subsection 104-185(3) (example)

Omit “Division 123”, substitute “Subdivision 152-E”.

26 Section 104-190 (heading)

Omit “**unit**”, substitute “**interest**”.

27 Section 104-190 (heading)

Omit “**Division 123**”, substitute “**Subdivision 152-E**”.

28 Subsection 104-190(1)

Omit “a unit in a unit trust”, substitute “an interest in a trust”.

29 Subsection 104-190(1)

Omit “Division 123”, substitute “Subdivision 152-E”.

30 Paragraph 104-190(1)(a)

Omit “requirements in section 123-75”, substitute “conditions in section 152-420”.

31 Paragraph 104-190(1)(b)

Omit “requirements”, substitute “conditions”.

32 Paragraphs 104-190(1)(c) and (d)

Repeal the paragraphs, substitute:

(c) the *share or interest ceases to be an *active asset;

33 Subsection 104-190(1)

Omit “share or unit”, substitute “share or interest”.

34 Subsection 104-190(3)

Omit “notional”.

35 Subsection 104-190(3)

Omit “unit”, substitute “interest”.

36 Subsection 104-190(3)

Omit “Division 123”, substitute “Subdivision 152-E”.

37 Subsection 104-190(4)

Omit “requirements in section 123-75”, substitute “conditions in section 152-420”.

38 Subsection 104-190(5)

Omit “total market values of the *active assets fell below the specified level”, substitute “share or interest ceased to be an *active asset”.

39 Subsection 104-190(5)

Omit “unit”, substitute “interest”.

40 Section 112-115 (table item 3)

Omit “Division 123”, substitute “Subdivision 152-E”.

41 After paragraph 115-25(3)(h)

Insert:

(ha) *CGT event J2;

(hb) *CGT event J3;

42 Subdivision 115-C

Repeal the Subdivision, substitute:

Subdivision 115-C—Rules about trusts with net capital gains

Guide to Subdivision 115-C

115-200 What this Division is about

This Subdivision sets out rules for dealing with the net income of a trust that has a net capital gain. The rules treat parts of the net income attributable to the trust's net capital gain as capital gains made by the beneficiary entitled to those parts. This lets the beneficiary reduce those parts by any capital losses and unapplied net capital losses it has.

If the trust's capital gain was reduced by either the general 50% discount in step 3 of the method statement in subsection 102-5(1) or by the small business 50% reduction in Subdivision 152-C (but not both), then the gain is doubled. The beneficiary can then apply its capital losses to the gain before applying the appropriate discount percentage (if any) or the small business 50% reduction.

If the trust's capital gain was reduced by both the general 50% discount and the small business 50% reduction, then the gain is multiplied by 4. The beneficiary can then apply its capital losses to the gain before applying the appropriate discount percentage (if any) and the small business 50% reduction.

The rules also give the beneficiary a deduction if necessary to prevent it from being taxed twice on the same parts of the trust's net income.

Table of sections

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- 115-210 When this Subdivision applies
- 115-215 Assessing presently entitled beneficiaries
- 115-220 Special rule for assessing trustee under subsection 98(3) of the *Income Tax Assessment Act 1936*
- 115-225 Special rule for assessing trustee under section 99A of the *Income Tax Assessment Act 1936*

[This is the end of the Guide. The next section is section 115-210.]

Operative provisions

115-210 When this Subdivision applies

- (1) This Subdivision applies if a trust estate has a *net capital gain for an income year that is taken into account in working out the trust estate's net income (as defined in section 95 of the *Income Tax Assessment Act 1936*) for the income year.
- (2) If the trust estate has a beneficiary that is a *complying superannuation entity that is a trust, this Subdivision applies in relation to the complying superannuation entity as a beneficiary but not as a trust estate. This Subdivision does not apply otherwise to a *complying superannuation entity that is a trust.

115-215 Assessing presently entitled beneficiaries

Purpose

- (1) The purpose of this section is to ensure that appropriate amounts of the trust estate's net income attributable to the trust estate's *capital gains are treated as a beneficiary's capital gains when assessing the beneficiary, so:
 - (a) the beneficiary can apply *capital losses against gains; and
 - (b) the beneficiary can apply the appropriate *discount percentage (if any) to gains.

Application

- (2) This section treats you as having certain extra *capital gains, and gives you a deduction, if:
 - (a) you are the beneficiary of the trust estate; and
 - (b) your assessable income for the income year includes an amount (the *trust amount*):
 - (i) under paragraph 97(1)(a) of the *Income Tax Assessment Act 1936*; or
 - (ii) under subsection 98A(1) of that Act because you are a beneficiary described in subsection 98(4) of that Act; or

(iii) under subsection 100(1) of that Act.

Extra capital gains

- (3) For each *capital gain (the *trust gain*) of the trust estate, Division 102 applies to you as if you had:
- (a) if the trust gain was not reduced under *either* step 3 of the method statement in subsection 102-5(1) (*discount capital gains) *or* Subdivision 152-C (small business 50% reduction)—a capital gain equal to the part (if any) of the trust amount that is attributable to the trust gain; and
 - (b) if the trust gain was reduced under *either* step 3 of the method statement *or* Subdivision 152-C but not both (even if it was further reduced by the other small business concessions)—a capital gain equal to twice the part (if any) of the trust amount that is attributable to the trust gain; and
 - (c) if the trust gain was reduced under *both* step 3 of the method statement *and* Subdivision 152-C (even if it was further reduced by the other small business concessions)—a capital gain equal to 4 times the part (if any) of the trust amount that is attributable to the trust gain.
- (4) For each *capital gain of yours mentioned in paragraph (3)(b) or (c):
- (a) if the relevant trust gain was reduced under step 3 of the method statement in subsection 102-5(1)—Division 102 also applies to you as if your capital gain were a *discount capital gain, if you are the kind of entity that can have a discount capital gain; and
 - (b) if the relevant trust gain was reduced under Subdivision 152-C—the capital gain remaining after you apply step 3 of the method statement is reduced by 50%.

Note: This ensures that your share of the trust estate's net capital gain is taxed as if it were a capital gain you made (assuming you made the same choices about cost bases including indexation as the trustee).

Section 118-20 does not reduce extra capital gains

- (5) To avoid doubt, section 118-20 does not reduce a *capital gain that subsection (3) treats you as having for the purpose of applying Division 102.
-

Deduction

- (6) You can deduct for the income year the part (if any) of the trust amount that is attributable to the trust estate's *net capital gain mentioned in subsection 102-5(1).

Note: This deduction ensures you are not taxed twice on the part of the trust amount that is attributable to the trust estate's net capital gain.

115-220 Special rule for assessing trustee under subsection 98(3) of the Income Tax Assessment Act 1936

Purpose

- (1) The purpose of this section is to ensure a trustee assessed under subsection 98(3) of the *Income Tax Assessment Act 1936* (in respect of the share of the net income to which a beneficiary that is a company is entitled) does not get the benefit in that assessment of the *discount percentage that the company would not have got if it had been assessed in respect of the share.

Modification of subsection 98(3)

- (2) The trustee is to be assessed (and pay tax) under subsection 98(3) of the *Income Tax Assessment Act 1936* as if the part of the share that is attributable to a *capital gain of the trust estate that was reduced under step 3 of the method statement in subsection 102-5(1) were double the amount that it actually is.

115-225 Special rule for assessing trustee under section 99A of the Income Tax Assessment Act 1936

Purpose

- (1) The purpose of this section is to reverse the benefit of applying the *discount percentage or the small business 50% reduction under Subdivision 152-C in working out the trust estate's net income when the trustee is assessed under section 99A of the *Income Tax Assessment Act 1936* on an amount of the net income.

Modification of section 99A

- (2) The trustee is to be assessed (and pay tax) under section 99A of the *Income Tax Assessment Act 1936* as if:
- (a) if a *capital gain of the trust was reduced under *either* step 3 of the method statement in subsection 102-5(1) (discount capital gains) *or* Subdivision 152-C (small business 50% reduction) but not both (even if it was further reduced by the other small business concessions in Subdivisions 152-D and 152-E)—the part of the amount that is attributable to the trust estate’s capital gain were double the amount that it actually is; and
 - (b) if a capital gain was reduced under *both* step 3 of the method statement *and* Subdivision 152-C (even if it was further reduced by the other small business concessions)—the part of the amount that is attributable to the trust estate’s gain were 4 times the amount that it actually is.

43 Subsection 116-30(1) (note)

Omit all the words after “see”, substitute “section 138-30 and subsections 152-310(3) and 152-325(4)”.

44 Section 118-1

After “Division 104 (exceptions from CGT events)”, insert “, Division 152 (small business relief)”.

45 Subdivisions 118-C and 118-F

Repeal the Subdivisions.

46 Division 123

Repeal the Division, substitute:

[The next Division is Division 124.]

47 At the end of subsection 124-5(1)

Add:

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

48 Section 136-10 (table item dealing with CGT event J2)

Omit “Division 123”, substitute “Subdivision 152-E”.

49 Section 136-10 (table item dealing with CGT event J3)

Omit “a unit in a unit trust”, substitute “an interest in a trust”.

50 Section 136-10 (table item dealing with CGT event J3)

Omit “Division 123”, substitute “Subdivision 152-E”.

51 At the end of paragraph 138-435(2)(c)

Add “(up to the end of 30 September 1999)”.

52 Section 960-265 (table item 4)

Repeal the item.

53 Subsection 960-275(1) (example)

Repeal the example.

Income Tax Assessment Act 1936

54 Subsection 27A(1) (paragraph (c) of the definition of CGT exempt component)

Omit “subsection 118-415(4) or (5)”, substitute “subsection 152-310(4) or (5)”.

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

Omit “subsection 118-415(2)”, substitute “subsection 152-310(2)”.

56 Section 140C (paragraph (b) of the definition of payer)

Omit “subsection 118-415(2)”, substitute “subsection 152-310(2)”.

57 Subsection 140M(6)

Omit “subsection 118-415(2)”, substitute “subsection 152-310(2)”.

58 Subsection 140N(4)

Omit “subsection 118-415(2)”, substitute “subsection 152-310(2)”.

59 Subsection 140P(3)

Omit “subsection 118-415(2)”, substitute “subsection 152-310(2)”.

60 Section 140ZJA

Omit “subsection 118-415(2)”, substitute “subsection 152-310(2)”.

Part 3—Application and transitional

61 Application of amendments

The amendments made by this Schedule apply to assessments for the income year including 21 September 1999 and all later income years, but only for CGT events that happen after 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999.

Note: The 15-year exemption in Subdivision 152-B of the *Income Tax Assessment Act 1997*, as inserted by this Division, will effectively only apply to CGT events that happen on or after 20 September 2000, since the 15-year exemption is only relevant to CGT assets acquired on or after 20 September 1985.

62 Transitional—old CGT retirement exemption limit carries over

If an individual's CGT retirement exemption limit was reduced by one or more amounts under:

- (a) section 118-435 of the *Income Tax Assessment Act 1997*; or
- (b) section 160ZZPZN of the *Income Tax Assessment Act 1936*;

or both, then the individual's CGT retirement exemption limit under Subdivision 152-D of that Act (as inserted by this Schedule) is taken to have been reduced by the total of all those amounts at 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999.

Note: This could result in the individual's new limit being reduced to nil at that time, if he or she has already used it up under those old provisions.

Schedule 2—Scrip for scrip roll-over

Income Tax Assessment Act 1997

1 Section 112-115 (after table item 14)

Insert:

14A Scrip for scrip

Subdivision 124-M

2 Subsection 124-5(1)

Omit “124-L”, substitute “124-M”.

3 After subsection 124-5(2)

Insert:

Note: The consequences of a scrip for scrip roll-over are set out in Subdivision 124-M.

4 After Subdivision 124-L

Insert:

Subdivision 124-M—Scrip for scrip roll-over

Guide to Subdivision 124-M

124-775 What this Subdivision is about

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

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

Table of sections

Operative provisions

- 124-780 Replacement of shares or trust interest
- 124-785 What is the roll-over
- 124-790 Partial roll-over
- 124-795 Exceptions
- 124-800 Cost base of interest received for pre-CGT interest
- 124-805 Meaning of *trust voting interest*
- 124-810 Certain companies and trusts not regarded as having 300 members or beneficiaries

[This is the end of the Guide.]

Operative provisions**124-780 Replacement of shares or trust interest**

- (1) You can choose to obtain a roll-over if:
 - (a) you own:
 - (i) a *share that you *acquired on or after 20 September 1985 or an interest in such a share (your ***original interest***) in a company (the ***original entity***); or
 - (ii) a unit or other interest that you acquired on or after that day or an interest in such a unit or interest (also your ***original interest***) in a trust (also the ***original entity***); and
 - (b) an entity (the ***acquiring entity***) makes an offer to all of the holders of interests in the original entity to *acquire:
 - (i) if the original entity is a company—*voting shares; and
 - (ii) if the original entity is a trust—*trust voting interests in the trust or, if there are none, units or other fixed interests in the trust; and
 - (c) you exchange your original interest as mentioned in subsection (2); and
 - (d) in consequence of the offer, the acquiring entity has:
 - (i) if the original entity is a company—at least 80% of the voting shares in the original entity; or
 - (ii) if the original entity is a trust—at least 80% of the trust voting interests in the original entity or, if there are

- none, interests in the trust carrying entitlements to at least 80% of the income and capital of the trust; and
- (e) apart from the roll-over, you would make a *capital gain from the exchange.

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

Note 2: If you also exchange a CGT asset that you acquired before 20 September 1985, the cost base of any interest received in exchange for it is worked out under section 124-800.

- (2) You must exchange your original interest in consequence of the offer for:
- (a) if your original interest was a *share or interest in a share in a company:
- (i) a share or interest in a share (your ***replacement interest***) in another company that is the acquiring entity; or
 - (ii) a share or interest in a share in the acquiring entity (also your ***replacement interest***) and something else; or
- (b) if your original interest was a unit or other interest in a trust or an interest in such a unit or interest:
- (i) a unit or other interest, or an interest in it (your ***replacement interest***) in another trust that is the acquiring entity; or
 - (ii) a unit or interest of that kind in the acquiring entity (also your ***replacement interest***) and something else.

Note: If you receive something else, you can obtain only a partial roll-over: see section 124-790.

Rolling-over options, rights etc.

- (3) Subsections (1) and (2) also allow you to choose to obtain a roll-over if you exchange an option, right or similar interest issued by the original entity that enables you to *acquire another interest in that entity for the same kind of option, right or similar interest issued by the acquiring entity.

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

Other requirements in certain cases

- (4) The conditions specified in subsection (5) must exist if you and the acquiring entity did not deal with each other at arm's length and:
- (a) neither the original entity nor the acquiring entity has at least 300 members (for a company) or 300 beneficiaries (for a trust) just before you stop owning your original interest; or
 - (b) you, the original entity and the acquiring entity are all members of the same *linked group just before that time.

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

- (5) The conditions are:
- (a) the market value of your *capital proceeds for the exchange must be substantially the same as the market value of your original interest; and
 - (b) each of the interests you acquire in the acquiring entity must carry the same rights and obligations as those attached to interests of that kind you had in the original entity.

124-785 What is the roll-over?

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

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

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

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

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

124-790 Partial roll-over

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

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

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

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

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

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

- (3) The *reduced cost base of the ineligible part is worked out similarly.

124-795 Exceptions

- (1) You cannot obtain the roll-over if, just before you stop owning your original interest, you are not an Australian resident unless, just after you *acquire your replacement interest, the acquiring entity is an Australian resident or a *resident trust for CGT purposes.

Note: If you are not an Australian resident and the acquiring entity is, the replacement interest has the *necessary connection with Australia*: see Division 136.

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

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

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

- (3) You cannot obtain the roll-over if:
- (a) the original entity or the acquiring entity is a trust; and
 - (b) entities do not have *fixed entitlements to all of the income and capital of the trust.

124-800 Cost base of interest received for pre-CGT interest

If, as part of the exchange for which you obtain the roll-over, an interest that you acquired before 20 September 1985 is *acquired by the acquiring entity, the first element of the *cost base of any *CGT asset you acquire that is attributable to that interest is its market value just after you acquired it.

124-805 Meaning of trust voting interest

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

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

- (1) For the purposes of paragraph 124-780(4)(a), a company is treated as if it did not have at least 300 *members if subsection (3) or (5) applies to it.
- (2) For the purposes of paragraph 124-780(4)(a), a trust is treated as if it did not have at least 300 beneficiaries if subsection (4) or (5) applies to it.

Concentrated ownership

- (3) This subsection applies to a company if an individual owns, or up to 20 individuals own between them, directly or indirectly (through one or more interposed entities) and for their own benefit, *shares in the company:
 - (a) carrying fixed entitlements to:

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

Possible variation of rights etc.

- (5) This subsection applies to a company or trust if, because of:
- (a) any provision in the entity's constituent document, or in any contract, agreement or instrument:
 - (i) authorising the variation or abrogation of rights attaching to any of the *shares, units or other fixed interests in the entity; or
 - (ii) relating to the conversion, cancellation, extinguishment or redemption of any of those interests; or
 - (b) any contract, *arrangement, option or instrument under which a person has power to acquire any of those interests; or
 - (c) any power, authority or discretion in a person in relation to the rights attaching to any of those shares, units or interests;
- it is reasonable to conclude that the rights attaching to any of those interests are capable of being varied or abrogated in such a way (even if they are not in fact varied or abrogated in that way) that, directly or indirectly, subsection (3) or (4) would apply to the entity.

Single individual

- (6) For the purposes of subsections (3) and (4), all of the following are taken to be a single individual:
-

- (a) an individual, whether or not the individual holds *shares, units or other interests in the entity concerned;
- (b) the individual's *associates;
- (c) for any shares, units or interests in respect of which other individuals are nominees of the individual or of the individual's associates—those other individuals.

5 Section 136-25

Omit “8 categories”, substitute “9 categories”.

6 Section 136-25 (at the end of the table)

Add:

- 9 A *share in a company or a unit or interest in a trust you *acquire where:
- (a) you choose a scrip for scrip roll-over under Subdivision 124-M for your acquisition of the share, unit or interest; and
 - (b) your original interest had the necessary connection with Australia; and
 - (c) you are not an Australian resident at the time you acquire it; and
 - (d) the company is an Australian resident, or the trust is a *resident trust for CGT purposes, at that time

7 Application of amendments

The amendments made by this Schedule apply to CGT events happening on or after the day on which this Act receives the Royal Assent.

Schedule 3—Venture capital exemption

Income Tax Assessment Act 1997

1 Section 11-15 (before the table item headed “life assurance”)

Insert:

foreign investment

gain or profit from realisation of venture capital equity 51-55

2 At the end of Division 26

Add:

26-70 Loss from disposal of venture capital equity

You cannot deduct under this Act a loss made from the disposal or other realisation of *venture capital equity in a *resident investment vehicle if:

- (a) it is made by a *venture capital entity or a *limited partnership referred to in subsection 118-515(2); and
- (b) if that disposal or other realisation were a *disposal of a *CGT asset, any *capital gain or *capital loss would be disregarded under Subdivision 118-G.

3 At the end of Division 51

Add:

51-55 Gain or profit from disposal of venture capital equity

Any gain or profit made from the disposal or other realisation of *venture capital equity in a *resident investment vehicle is exempt from income tax if:

- (a) it is made by a *venture capital entity or a *limited partnership referred to in subsection 118-515(2); and
- (b) if that disposal or other realisation were a *disposal of a *CGT asset, any *capital gain or *capital loss would be disregarded under Subdivision 118-G.

4 At the end of Division 118

Add:

Subdivision 118-G—Venture capital

Guide to Subdivision 118-G

118-500 What this Subdivision is about

A non-resident tax exempt pension fund that invests in venture capital equity in an Australian company or fixed trust (a resident investment vehicle) can disregard a capital gain or capital loss it makes from a CGT event that happens to that equity if:

- (a) the entity is registered under the *Pooled Development Funds Act 1992*; and
- (b) the entity owned the equity for at least 12 months.

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| 118-520 | Meaning of <i>foreign superannuation fund</i> |
| 118-525 | Meaning of <i>venture capital equity</i> |

[This is the end of the Guide.]

118-505 Exemption for certain foreign venture capital

- (1) A *capital gain or *capital loss is disregarded if it is made from a *CGT event happening in relation to a *CGT asset that is *venture capital equity where the asset:
 - (a) was *acquired by a *venture capital entity; and
 - (b) at the time of the CGT event:
 - (i) was owned by that entity; and
 - (ii) had been owned by that entity for at least 12 months.

- (2) The *venture capital entity must be registered under Part 7A of the *Pooled Development Funds Act 1992* at the time of the *CGT event.

118-510 Meaning of resident investment vehicle

- (1) A *resident investment vehicle* is a company that is an Australian resident, or a trust that is a *resident trust for CGT purposes, if:
- (a) the sum of:
 - (i) the total value of the assets of the company or trust, and
 - (ii) the total value of the assets of any company or trust *connected with the first company or trust; and
 - (iii) the amount of the investment proposed to be made in venture capital equity in the company or trust by the relevant *venture capital entity;is not more than \$50,000,000 just before the time (the *acquisition time*) when the relevant venture capital entity acquires venture capital equity in the company or trust; and
 - (b) the primary activity of the company or trust is not, at any time, property development or land ownership.
- (2) However, a trust is not a *resident investment vehicle* unless entities have *fixed entitlements to all of the income and capital of the trust.
- (3) The total value of the assets of a company or trust is the total value of its assets (both current and non-current) as shown in:
- (a) the last audited accounts prepared for the company or trust for the purposes of the Corporations Law that relates to a period ending less than 18 months before the acquisition time; or
 - (b) if there are no such audited accounts—a statement audited by the company's or trust's auditor showing that value as at a time no longer than 12 months before the acquisition time.

118-515 Meaning of venture capital entity

- (1) An entity (except a partner in a partnership) is a *venture capital entity* if:
- (a) it is not an Australian resident; and
-

- (b) it is a *foreign superannuation fund; and
 - (c) it is not a *prescribed dual resident; and
 - (d) it is a resident of:
 - (i) Canada; or
 - (ii) France; or
 - (iii) Germany; or
 - (iv) Japan; or
 - (v) the United Kingdom; or
 - (vi) the United States of America; or
 - (vii) some other foreign country prescribed by the regulations; and
 - (e) its income is exempt, or effectively exempt, from taxation in its country of residence.
- (2) A partner in a partnership is a *venture capital entity* if:
- (a) all of the partners in it are entities that are *venture capital entities under subsection (1); or
 - (b) the partnership is a *limited partnership and:
 - (i) all of the partners in it (except its general partner or managing partner) are venture capital entities under subsection (1); and
 - (ii) its general partner or managing partner has interests in less than 10% of the total value of the assets of the partnership.

118-520 Meaning of foreign superannuation fund

- (1) A fund is a *foreign superannuation fund* at a time if:
- (a) at that time, it is:
 - (i) an indefinitely continuing fund; and
 - (ii) a provident, benefit, superannuation or retirement fund; and
 - (b) it was established in a foreign country; and
 - (c) it was established, and is maintained at that time, only to provide benefits for individuals who are not Australian residents or residents of a Territory; and

- (d) at that time, its central management and control is carried on outside Australia by entities none of whom is an Australian resident or a resident of a Territory.
- (2) However, a fund is not a *foreign superannuation fund* if:
 - (a) an amount paid to the fund or set aside for the fund has been or can be deducted under this Act; or
 - (b) a *tax offset has been allowed or is allowable for such an amount.

118-525 Meaning of venture capital equity

- (1) A *CGT asset is *venture capital equity* for a *venture capital entity if it is a *share in a company or an interest in a trust where:
 - (a) the company or trust is a *resident investment vehicle; and
 - (b) the share or interest was issued or allotted to the entity by the company or trust; and
 - (c) the entity was at risk in owning the share or interest in that it had no *arrangement (either before or after the share or interest was issued or allotted) as to:
 - (i) the maintenance of the value of the share or interest; or
 - (ii) any earnings or other return that might be made from owning it; or
 - (iii) protection from commercial loss because of owning it.

Example: A company borrows money to purchase some shares. The terms of the loan include a term that, if the value of the shares falls below the amount of the loan, the company can repay the loan by transferring the shares to the lender.

The company's ownership of the shares is not at risk, because there is no possibility that it can lose money under the transaction.

- (2) However, *shares or interests in the *resident investment vehicle issued or allotted to a *venture capital entity are not *venture capital equity* for the entity if:
 - (a) one or more of these events happens:
 - (i) a share or interest in the resident investment vehicle that was *acquired by some other entity before that issue or allotment is cancelled or redeemed; or

- (ii) there is a return of some of the capital of the resident investment vehicle that was acquired before that issue or allotment; or
 - (iii) value is shifted out of a share or interest in that vehicle that was acquired before that issue or allotment; and
- (b) it is reasonable to conclude that the happening of the event referred to in paragraph (a) is connected to that issue or allotment, or to some *arrangement between the entities concerned.

Example: The capital of an Australian company is 100,000 shares, with a market value of \$1 per share. The shares have full voting and dividend rights.

The Australian company issues another 100,000 shares to a foreign company. The new shares are issued at one cent each, but have very limited voting and dividend rights.

The Australian company then changes the rights attaching to its shares so that the new shares have full voting and dividend rights, and the original shares have none.

Value has been shifted out of the original shares, effectively converting "old equity" to "new equity".

- (3) In deciding whether it is reasonable to reach the conclusion referred to in paragraph (2)(b), these matters are relevant:
- (a) whether the amount of the decrease in the *net value of the *resident investment vehicle because of the happening of the event referred to in paragraph (2)(a) is the same as, or is calculated by reference to, the value of the issue or allotment of *shares or interests to the *venture capital entity; and
 - (b) the time lapse between the happening of that event and that issue or allotment.

Pooled Development Funds Act 1992

5 Subsection 4(1) (at the end of the definition of reviewable decision)

Add:

- ; or (i) under section 52A to refuse to register an entity under Part 7A; or
- (j) under section 52D to revoke such a registration.

6 Subsection 4(1)

Insert:

resident investment vehicle has the same meaning as in the *Income Tax Assessment Act 1997*.

7 Subsection 4(1)

Insert:

venture capital entity has the same meaning as in the *Income Tax Assessment Act 1997*.

8 Subsection 4(1)

Insert:

venture capital equity has the same meaning as in the *Income Tax Assessment Act 1997*.

9 At the end of section 6

Add:

- (2) The Board also has the function of registering venture capital entities under Part 7A.

10 After subsection 43(1)

Insert:

- (1A) The Board may, for the purposes of this Act, require a resident investment vehicle, a venture capital entity or a present or former officer or investment manager of a resident investment vehicle or a venture capital entity:
 - (a) to provide the Board with information relating to the resident investment vehicle or the venture capital entity; or
 - (b) to produce to the Board documents that so relate.

11 Subsection 52(1)

After “registration application”, insert “or an application for registration under Part 7A”.

12 Subsection 52(2)

After “section 41”, insert “or 52C”.

13 After Part 7

Insert:

Part 7A—Investments by venture capital entities

52A Registration of venture capital entities

- (1) A venture capital entity may apply to the Board for registration under this Part.
- (2) An application must be given to the Board within 30 days after the venture capital entity makes its first investment in venture capital equity.
- (3) An application must be in writing, and must include the following information:
 - (a) the entity's current residency status;
 - (b) details of the entity's tax exempt status in its country of residence;
 - (c) details of the facts that qualify the entity as a foreign superannuation fund;
 - (d) the address of the entity's registered office;
 - (e) the name and address of the first resident investment vehicle in which it has invested or proposes to invest and the industry in which it operates;
 - (f) the amount of the investment and the date on which it was or is to be made;
 - (g) the total value of the assets of the resident investment vehicle (worked out as mentioned in subsection 118-510(3) of the *Income Tax Assessment Act 1997*) before the investment;
 - (h) details of other investments that do not constitute venture capital equity the entity holds in the resident investment vehicle;
 - (i) if the entity is the general partner or managing partner of a limited partnership referred to in subparagraph 118-515(2)(b)(ii) of the *Income Tax Assessment Act 1997*—details of the partner's interests in the assets of the partnership.

- (4) The Board must decide to register the entity under this Part if the Board is satisfied that the information has been provided.
- (5) If the Board registers an applicant under this Part, the Board must notify the applicant within 45 days of the application being made.

52B Period within which application must be decided

- (1) Subject to this section, the Board must decide an application for registration under this Part within 45 days after receiving it.
- (2) If the Board thinks that it will take longer to decide the application, the Board may extend, by up to 45 days, the period for deciding it.
- (3) An extension must be made by written notice given to the applicant within 45 days after the Board receives the application.
- (4) If the Board makes an extension, the Board must decide the application within the extended period.

52C Annual return by venture capital entities

- (1) A registered venture capital entity must, within 3 months after the end of each financial year (30 June), give the Board a written return that includes the following information:
 - (a) the entity's current residency status;
 - (b) details of the entity's tax exempt status in its country of residence;
 - (c) details of the facts that qualify it as a foreign superannuation fund;
 - (d) details of:
 - (i) investments the entity made during that year in resident investment vehicles; and
 - (ii) investments in resident investment vehicles that the entity disposed of during that year; and
 - (iii) investments the entity holds at the end of that year in resident investment vehicles;
 - (e) the industries in which those vehicles operate;
 - (f) if the entity is the general partner or managing partner of a limited partnership referred to in subparagraph
-

118-515(2)(b)(ii) of the *Income Tax Assessment Act 1997*—
details of the partner's interests in the assets of the
partnership.

- (2) Information about a matter that a return must include because of paragraph (1)(a) or (b) is information about that matter as at the time when the return is given to the Board.

52D Revocation at discretion of Board

- (1) Subject to this section, the Board may revoke an entity's registration under this Part if the Board is satisfied that the entity has failed to comply with section 52C.
- (2) As soon as practicable after revoking an entity's registration under this Part, the Board must give the entity a notice that advises of the revocation and sets out the Board's reasons for deciding to revoke.
- (3) The Board must not revoke a registration unless the Board:
 - (a) by notice in writing given to the entity, allows the entity at least 14 days after the notice is given in which to make written submissions to the Board about the matters specified in the notice that, in the opinion of the Board, may constitute grounds for the revocation; and
 - (b) considers any such submissions.

14 Subsection 72(1)

Repeal the subsection, substitute:

- (1) The Board may, by resolution, delegate to a member all or any of the Board's functions and powers under this Act, other than:
 - (a) for PDFs—the Board's powers to make and revoke registration declarations; and
 - (b) the Board's powers to register entities or revoke registration under Part 7A.

15 Subsection 73(1)

Repeal the subsection, substitute:

- (1) The Board may, by resolution, delegate to a committee of 2 or more of its members all or any of the Board's functions and powers under this Act, other than:
 - (a) for PDFs—the Board's powers to make and revoke registration declarations; and
 - (b) the Board's powers to register entities or revoke registration under Part 7A.

16 Subsection 74(2)

Repeal the subsection, substitute:

- (2) Subsection (1) does not apply to:
 - (a) for PDFs—making or revoking a registration declaration; or
 - (b) registering an entity or revoking registration under Part 7A.

17 After subsection 75(2)

Insert:

- (2A) The Board must also include in the report:
 - (a) a list of the entities registered under Part 7A as at the end of the financial year; and
 - (b) a list of the entities that became registered under that Part during the financial year; and
 - (c) a list of the entities whose registration under that Part was revoked during the financial year.

18 Application of amendments

The amendments made by this Schedule apply to the issue or allotment of venture capital equity in a resident investment vehicle on or after the day on which this Act receives the Royal Assent.

Schedule 4—Dictionary amendments

Income Tax Assessment Act 1997

1 Subsection 995-1(1) (definition of active asset)

Omit “section 123-80”, substitute “section 152-40”.

2 Subsection 995-1(1) (definition of business exemption threshold)

Repeal the definition.

3 Subsection 995-1(1)

Insert:

CGT concession stakeholder has the meaning given by subsection 152-60.

4 Subsection 995-1(1) (definition of CGT exempt amount)

Omit “section 118-425”, substitute “section 152-315”.

5 Subsection 995-1(1) (definition of CGT retirement exemption limit)

Omit “section 118-435”, substitute “section 152-320”.

6 Subsection 995-1(1) (definition of connected with)

Omit “section 123-60”, substitute “section 152-30”.

7 Subsection 995-1(1) (definition of controlling individual)

Repeal the definition, substitute:

controlling individual has the meaning given by section 152-55.

8 Subsection 995-1(1)

Insert:

fixed entitlement: a beneficiary of a trust has a *fixed entitlement* to a share of the income or capital of the trust in the circumstances

set out in section 272-5 of Schedule 2F to the *Income Tax Assessment Act 1936*.

9 Subsection 995-1(1)

Insert:

foreign superannuation fund has the meaning given by section 118-520.

10 Subsection 995-1(1)

Insert:

limited partnership has the meaning given by section 94B of the *Income Tax Assessment Act 1936*.

11 Subsection 995-1(1) (definition of net value)

Repeal the definition, substitute:

net value of an entity means the amount by which the sum of the market values of the assets of the entity exceeds the sum of its liabilities.

12 Subsection 995-1(1) (definition of net value of the CGT assets)

Omit “section 123-50”, substitute “section 152-20”.

13 Subsection 995-1(1) (definition of related business)

Repeal the definition.

14 Subsection 995-1(1)

Insert:

resident investment vehicle has the meaning given by section 118-510.

15 Subsection 995-1(1) (definition of small business CGT affiliate)

Omit “section 123-55”, substitute “section 152-25”.

16 Subsection 995-1(1)

Insert:

trust voting interest has the meaning given by section 124-805.

17 Subsection 995-1(1)

Insert:

venture capital entity has the meaning given by section 118-515.

18 Subsection 995-1(1)

Insert:

venture capital equity has the meaning given by section 118-525.

Table A

Table A

Application, saving or transitional provisions

Taxation Laws Amendment Act (No. 7) 2000 (No. 173, 2000)

Schedule 3

17 Application of amendments

The amendments made by this Schedule apply to assessments for the income year including 21 September 1999 and all later income years, but only for CGT events that happen after 11.45 am, by legal time in the Australian Capital Territory, on 21 September 1999.