

# ***TD 49 - Capital Gains: Is a net capital loss from the previous year of income taken into account in calculating separate net income?***

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! This document has changed over time. This is a consolidated version of the ruling which was published on *29 November 2006*

CGT Cell Determinations do not have the force of law, but can be relied upon as being the considered view of the ATO. Unless otherwise stated, the view expressed may be applied to transactions entered into both before and after the date of issue of the Determination.

## CGT Determination Number 49

**Capital Gains: Is a net capital loss from the previous year of income taken into account in calculating separate net income?**

### Determination

1. Separate net income in relation to a dependant includes any amount included in the assessable income of the dependant by Part IIIA (subsection 159J(6)).
2. The amount included in assessable income of the dependant is the net capital gain accrued. The net capital gain is arrived at by subtracting from any gain or gains made in the year of income, capital losses incurred during the year of income and/or net capital losses in respect of the previous year of income. (subsection 160ZC(2)).
3. Accordingly, a net capital loss from the previous year of income is indirectly taken into account in calculating separate net income, but only to the extent of any gain or gains made in the year of income.

**Note:** Section 79E and section 80 losses are not taken into account in calculating separate net income.

*Example:*

*A taxpayer's spouse derived bank interest of \$1,000 and incurred a net capital loss of \$3,000 in the 1989/90 year of income. Therefore, the separate net income of the spouse for 1989/90 is \$1,000.*

*In the 1990/91 year of income, the spouse derived bank interest of \$1,000 and made a capital gain of \$4,000. The spouse's net capital gain is \$1,000 ( \$4,000 less \$3,000 net capital loss from the 1989/90 year of income). Accordingly, the separate net income of the spouse for 1990/91 is \$2,000.*

COMMISSIONER OF TAXATION

26 March 1992

FOI INDEX DETAIL: Reference No. CGT 49

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