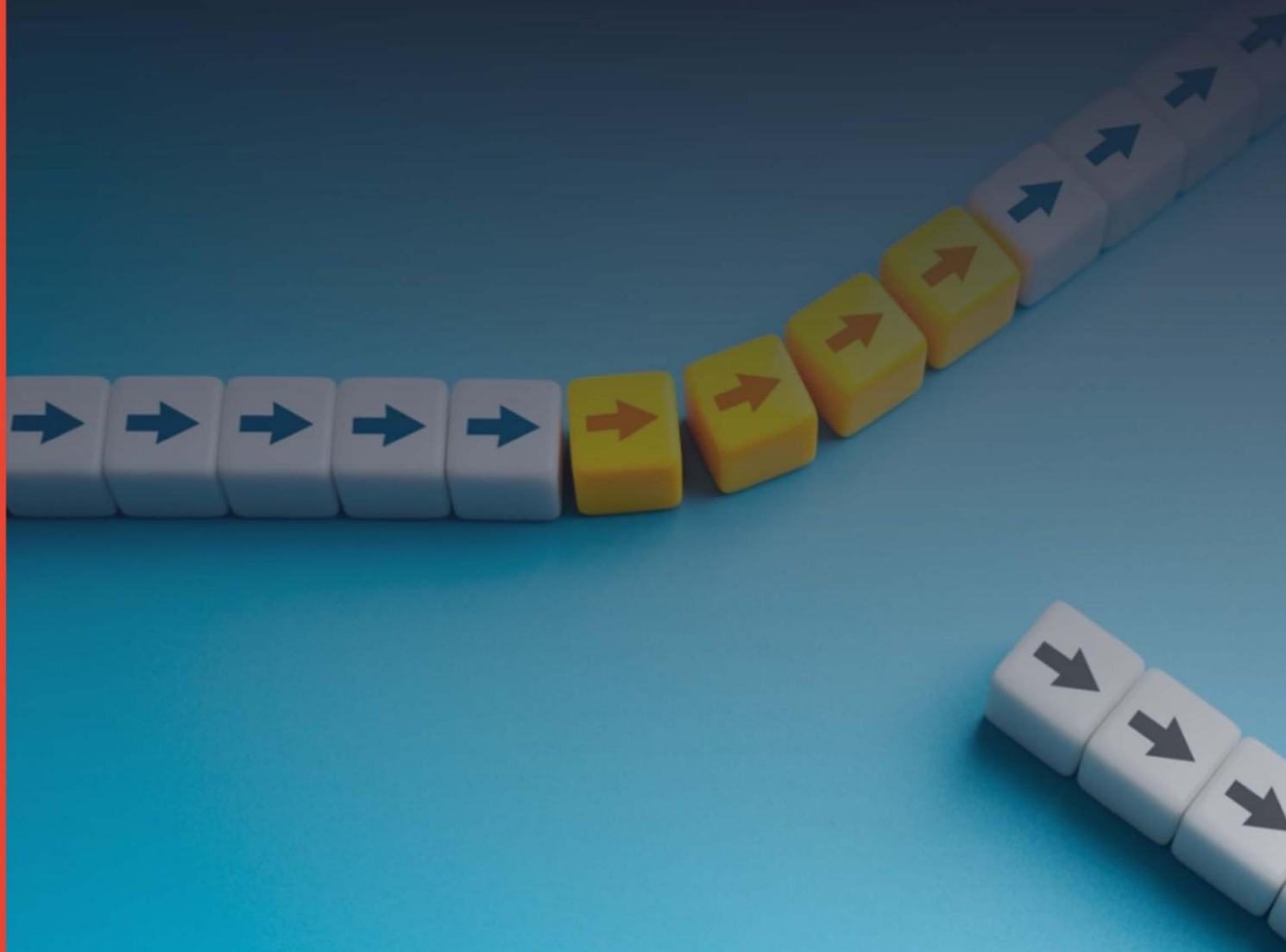
KNOWLEDGE shop

Applying the CGT Discount

Knowledge Shop CPD

June 2026



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June 2026

Notes Applying the CGT Discount

Introduction

The capital gains tax (CGT) discount was introduced in Australia on 21 September 1999 as part of a broader reform of the business tax system following the Review of Business Taxation (the Ralph Review). The reform replaced the former indexation method for calculating capital gains on assets held for at least 12 months with a simpler, more concessional approach designed to encourage long-term investment and reduce compliance complexity.

The Fundamentals

Division 115 allows an eligible taxpayer to reduce the amount of a capital gain from an eligible CGT event that is included in the taxpayer's assessable income.

Treatment of Capital Gain by Different Taxpayers

Individuals and Trustees

Individual taxpayers and trustees who hold a CGT asset for at least 12 months may choose to include in their assessable income either:

- 50 per cent of the difference between the disposal consideration and the unindexed cost base (**discount capital gain**); or
- if asset was acquired pre-21 September 1999, 100 per cent of the difference between the disposal consideration and the frozen indexed cost base (as at 30 September 1999), if chosen.

Important
A trustee is not entitled to apply the CGT discount to a capital gain if the trustee is assessed on the capital gain under s. 99A of the *ITAA 1936*.

Superannuation Funds

Superannuation fund trustees that hold a CGT asset for at least 12 months may choose to include in the fund's assessable income either:

- two-thirds of the difference between the disposal consideration and the unindexed cost base (**discount capital gain**); or
- if asset was acquired pre-21 September 1999, 100 per cent of the difference between disposal consideration and frozen indexed cost base (as at 30 September 1999), if available.

Non-Residents

The discount is not available for foreign or temporary residents for any capital gain that has accrued from 8 May 2012. This is achieved by adjusting the discount percentage available to a foreign or temporary resident.

What is a Discount Capital Gain?

A **discount capital gain** is defined to be a capital gain that meets the following requirements:

1. the capital gain is made by an individual, a complying superannuation entity or a trust (and not a company)
2. the capital gain arises from a CGT event which happened after 11.45 am (AEST) on 21 September 1999
3. the capital gain was worked out by reference to an unindexed cost base
4. the gain must have resulted from an event happening in relation to an asset that was acquired by the entity making the gain at least 12 months before the CGT event.

Section 115-5 also provides some special rules in relation to discount capital gains.

What is Not a Discount Capital Gain?

A capital gain from the following CGT events is not a discount capital gain:

- CGT event D1
- CGT event D2
- CGT event D3
- CGT event E9
- CGT event F1
- CGT event F2
- CGT event F5
- CGT event H2
- CGT event J2
- CGT event J5
- CGT event J6
- CGT event K10.

> **Note**
> Capital gains from the CGT events D1, D2, D3, E9, F1 and F2 are not discount capital gains because the CGT asset involved in the CGT event comes into existence at the time of the event, so it is impossible to meet the requirement that the asset have been acquired at least 12 months before the event.

Integrity Provisions

Agreement Made Within 12 Months of Acquiring the Asset

Under s. 115-40 the discount concession is not available if the CGT event occurred under an agreement the taxpayer made within 12 months of acquiring the CGT asset.

Capital Gain Made from Interests in an Entity with Newly Acquired Assets

Section 115-45 contains a 'look through' rule that applies when a capital gain is made from the disposal of **shares in a company or units in a unit trust**.

The CGT discount is not available to a taxpayer who owns at least 10 per cent of the shares or units if the discount would not have been available had the entity's assets been owned directly by the taxpayer because the majority of the entity's CGT assets (by cost and by value) underlying the share or interest have been held by the entity for less than twelve months.

Section 115-45 specifically provides that a capital gain from a CGT event happening to a share in a company or a trust voting interest, unit or other fixed interest in a trust **cannot** be a discount capital gain

— even if the taxpayer has held the shares or units for at least 12 months — if **all** of the following three conditions are met:

1. before the CGT event, the taxpayer and their associates owned **at least 10 per cent** by value of the shares in the company or the interest in the trust
2. the total cost bases of CGT assets that the company or trust owned at the time of the CGT event and that were acquired by the company or trust less than 12 months before that time is more than half the total of the cost bases of all of the CGT assets the company or trust owned at the time of the event
3. the notional net capital gain which the company or trust would have made for the income year if, just before the CGT event, the company or trust had disposed of all of the CGT assets which it had acquired less than 12 months before the CGT event happened to the share or interest is more than half of the notional net capital gain it would have made had it sold all of its assets for their market value.

Note

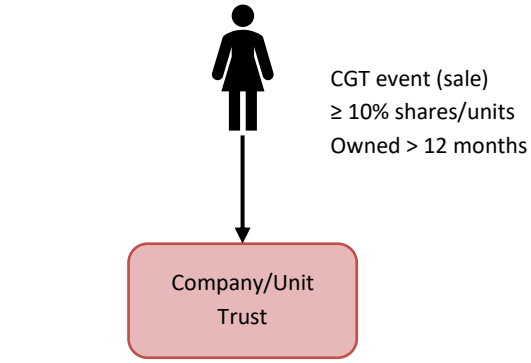
This rule does not apply where there are ≥300 members or beneficiaries of the company or trust and control of the entity is not concentrated.

These conditions may be summarised as follows:

Summary of conditions to access general CGT discount on sale of shares/interests	
Condition 1	The taxpayer must own at least 10 per cent by value of the shares in the company or the interests in the trust.
Condition 2	$\frac{\text{Cost base of assets acquired less than 12 months before the CGT event happened to the share/interest}}{\text{Total cost base of all assets owned by company/trust}} > 50\%$
Condition 3	$\frac{\text{Net capital gain that company/trust would have made had it disposed of assets acquired less than 12 months before the CGT event happened to the share/interest}}{\text{Net capital gain that company/trust would have made had it disposed of all of its assets for their market value}} > 50\%$

Example — s. 115-45

A shareholder sells their shares and wishes to apply the 50 per cent CGT discount to the capital gains. The circumstances of the shareholder and company are shown below:



AND

Cost base company / Trust ≤ 12 months CGT assets

Cost base of **total** company / trust CGT assets > 50%

AND

Net capital gain if company/trust < 12 months CGT assets sold

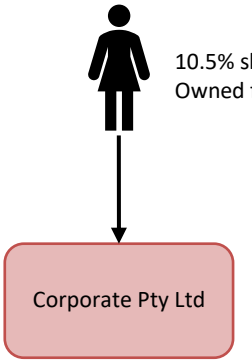
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Net capital gain if total company/trust CGT asset sold > 50%

Because the results of the two formulae above are both > 50%, the shareholder is not permitted to apply the CGT discount to the capital gain made on the sale of their shares, even though they have owned them for at least 12 months.

Example — CGT discount precluded by s. 115-45

Sally is a shareholder of Corporate Pty Ltd who sells her shares and wishes to apply the 50 per cent CGT discount to the capital gains. The circumstances of the shareholder and company are shown below:



Cost base of assets acquired < 12 months — $200,000
Notional net capital gain of assets held < 12 months — $50,000
Cost base of total assets — $300,000
Notional net capital gain of total assets— $90,000

Condition 1

Sally owns greater than 10 per cent shareholding in Corporate Pty Ltd.

Condition 2

$$\frac{\text{Cost base of assets acquired < 12 months: \$200,000}}{\text{Cost base of total assets: \$300,000}} = 67\%$$

The cost base of assets acquired in less than 12 months is over 50 per cent of the cost base of the total assets.

Condition 3

$$\frac{\text{Notional net capital gain of assets held < 12 months } \$50,000}{\text{Notional net capital gain of total assets: \$90,000}} = 56\%$$

Result

As Sally satisfies all three conditions under s. 115-45, she is not permitted to apply the CGT discount to the capital gain made on the sale of their shares, even though she has owned them for at least 12 months.

Partial or No CGT Discount Percentage for Foreign Residents

Background

Until 8 May 2012 non-resident individuals were entitled to treat gains on their TAP assets which they held for at least 12 months as discount capital gains.

Subdivision 115-B of the *ITAA 1997* was amended to adjust the CGT discount for non-residents for their capital gains that arise after 7.30 pm (at legal time in the ACT) on 8 May 2012. The intention of the amendment was to deny the CGT discount to non-residents to the extent that the capital gain accrued while they were a foreign resident or a temporary resident.

Taxpayers who were foreign residents or temporary residents on 8 May 2012 and who acquired CGT assets on or before 8 May 2012 and the market value of those assets exceeds the cost base of the assets at the end of that day may choose that the special rules in s. s. 115-115(4) apply.

The discount can still apply to the portion of the gains accrued to 8 May 2012. This apportionment is achieved by reducing the discount capital gain percentage.

This apportionment is achieved by reducing the discount capital gain percentage. Broadly, the reduced CGT discount is calculated as follows:

- gains accrued before 9 May 2012 — the full 50 per cent discount is available for gains accrued up to this date
- gains accrued after 8 May 2012 — no CGT discount is available on gains accrued during the period of ownership after this date.

If the individual was an Australian resident during some part of the period after 8 May 2012 — the discount percentage is apportioned to ensure that the full 50 per cent discount applies to the periods when the individual was an Australian resident.

For a trustee who is taxed under s. 98 of the *ITAA 1936* on the beneficiary's share of the trust's net income, the discount percentage is worked out as if the gain were realised by the individual beneficiary.

Working out the Applicable Discount Percentage

For a capital gain that arises from a CGT event occurring after 8 May 2012 that is otherwise eligible to be treated as a discount capital gain, the discount percentage will be a percentage other than 50 per cent if:

1. the CGT asset is owned by an individual and the individual is a foreign resident or temporary resident during some or all of the ownership period — s. 115-105; or
2. a trust disposes of an asset and the discount capital gain is assessed to:
   (a) a beneficiary of a trust who is an individual — s. 115-110; or
   (b) the trustee under s. 98 of the *ITAA 1997* in respect of a beneficiary of a trust who is an individual — s. 115-120, and

3. the individual is a foreign resident or temporary resident during some or all of the relevant ***discount testing period***.

The Discount Testing Period

The **discount testing period** for individuals or trustees with trust gains is determined by the table in s. 115-110(2) as follows:

Type of trust and relevant trust gain	The discount testing period is	
The trust is a **fixed trust**	**Start**	Most recent day that the individual became a beneficiary of the trust
	End	The gain day
The trust is **not a fixed trust** and the relevant trust gain is either: • made because a CGT event happened in relation to a CGT asset acquired by the trustee; or • referable to a capital gain made by the trustee of another non-fixed trust because a CGT event happened in relation to a CGT asset acquired by that trustee.	**Start**	The day of that acquisition
	End	The gain day
The trust is **not a fixed trust** and the relevant trust gain is referable to a capital gain made by a fixed trust	**Start**	Most recent day that the trust became a beneficiary of the fixed trust
	End	The gain day

For CGT events that happen after 8 May 2012, the applicable CGT discount will depend on:

- whether the CGT asset was acquired before or after 8 May 2012
- whether or not the individual was a resident at that date
- whether the individual chooses to use the market value method for gains accrued before 8 May 2012
- the residency status of the individual after 8 May 2012.

The impact of these factors on the availability of the CGT discount is summarised below.

CGT asset acquired	Residence of individual	Applicable CGT discount
Post-8 May 2012	a foreign resident during some or all of the discount testing period	Calculation apportions the discount percentage to allow the CGT discount for the days the individual was a resident.

CGT asset acquired	Residence of individual	Applicable CGT discount
Pre-9 May 2012	an Australian resident on 8 May 2012	For those days during the discount testing period: • prior to 9 May 2012 — eligible for the full 50 per cent discount; and • after 8 May — calculation apportions the discount percentage to allow the CGT discount for the days they were a resident.
	a foreign or temporary resident on 8 May 2012 who chooses the market value approach to determine the discount capital gain that accrued on or prior to that date	If the CGT asset has an: • excess[1] ≥ discount capital gain — eligible for full 50 per cent discount; or • excess < discount capital gain — calculation apportions the discount percentage to allow: • a full 50 per cent discount for the excess; and • an apportionment of CGT discount for the shortfall[2] based on the days the individual was a resident after 8 May 2012.
	a foreign or temporary resident on 8 May 2012 who does not choose the market value approach to determine the discount capital gain that accrued prior to that date	For those days: • prior to 9 May 2012 — not eligible for discount; and • after 8 May 2012 — the calculation in s. 115-115(6) apportions the discount percentage to allow the CGT discount for the days the individual was a resident during this period.

1 *The excess is the net increase in value of the asset that accrued prior to 9 May 2012.*

2 *The shortfall is the net increase in value of the asset that accrued after 8 May 2012.*

The availability of the CGT discount can be depicted as follows:

Overview of availability of CGT discount for CGT events after 8 May 2012

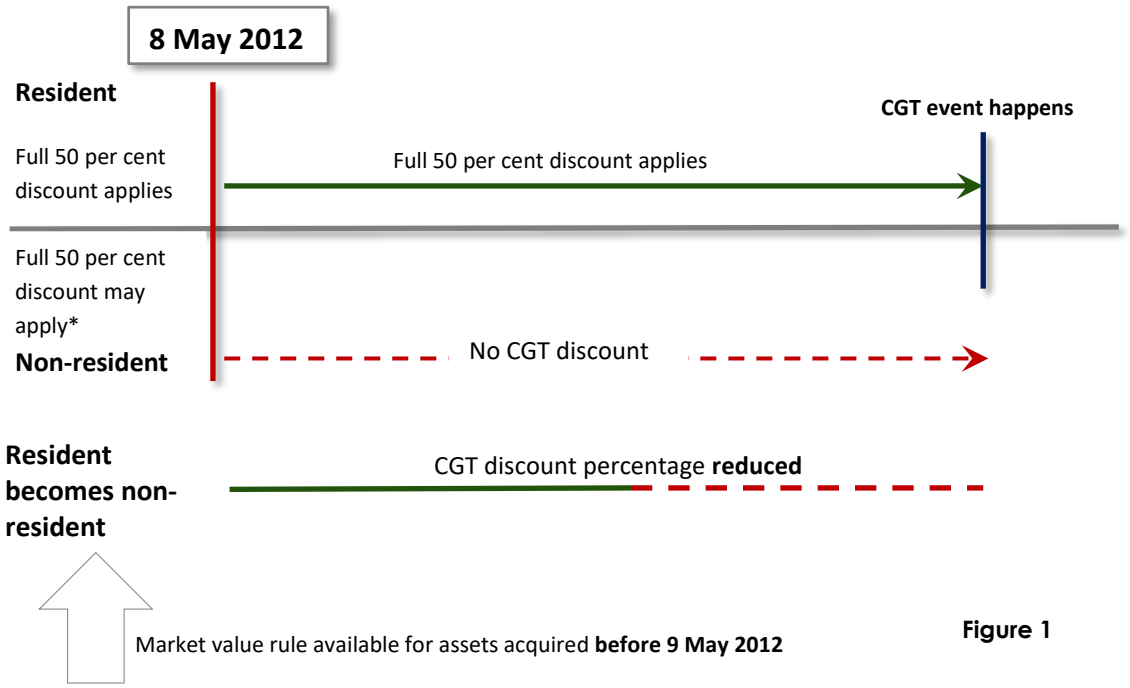


Figure 1

* If market value method chosen; otherwise no discount

Example 2 — Calculating the reduced discount percentage for post-8 May 2012 asset

Facts

The Carnelian Family Trust, a fixed trust that was established on 1 July 2010, acquired an investment property in Heidelberg (Melbourne) on 1 July 2013 for $850,000. The two beneficiaries of the Carnelian Family Trust (CFT) — each holding a 50 per cent interest since the trust was first established — are:

- Saffron — an Australian resident; and
- Jasper — was a non-resident before he became a resident of Australia on 1 July 2014.

The CFT sold the property on 1 January 2017 for $1,750,000 making a capital gain of $900,000 which was eligible to be treated as a discount capital gain.[3]

Saffron and Jasper were each presently entitled to 50 per cent of the income of the CFT for the year ended 30 June 2017. The CFT's trust deed is an ordinary trust deed without any deeming clauses. The trustee did not stream capital gains because all income and all gains were required to be divided equally between Saffron and Jasper.

The Trustee applied the full 50 per cent discount against the capital gain with the result that the assessable amount referable to the capital gains distributed to each of Saffron and Jasper was $225,000.[4]

Tax implications

Both Saffron and Jasper must gross up their discount capital gain in accordance with the rules in Subdiv 115-C of the *ITAA 1997*. Each will have a discount capital gain of $450,000.

Saffron's discount testing period commences on 1 July 2010 when she became a beneficiary of the trust and ends on 30 June 2017. Since Saffron has been a resident of Australia during the entire discount testing period, she is entitled to the full 50 per cent discount in respect of her capital gain.

Jasper's discount testing period also commences on 1 July 2010 when he became a beneficiary of the trust and ends on 30 June 2017. However, since he has been a non-resident during the discount testing period, s. 115-110 applies to require him to reduce the discount percentage to be applied to his capital gain in accordance with the formula in s. 115-115(2), i.e.

$$\frac{\text{Number of apportionable days as Australian resident}}{2 \times \text{Number of days in discount testing period}} = ..\% \quad \frac{1{,}096}{2 \times 2{,}557} = \mathbf{21.43\%}$$

Jasper's discount percentage is 21.43 per cent instead of 50 percent.

---

3 In the interest of simplicity, acquisition costs such as stamp duty and other associated costs and the costs of disposal such as agents' commissions and other selling costs have been ignored. In real life, accounting for such costs would result in a much lower capital gain.

4 The income distributed to the beneficiaries is ignored for present purposes.

The facts considered in the following example are based on the figures in example 2 but Jasper's period of residency is changed to illustrate the operation of the provisions in relation to the trustee.

Example 3 — Trustee assessed under s. 98 with reduced discount percentage

Facts

The Carnelian Family Trust, a fixed trust that was established on 1 July 2010, acquired an investment property in Heidelberg (Melbourne) on 1 July 2013 for $850,000. The two beneficiaries of the Carnelian Family Trust (CFT) — each holding a 50 per cent interest since the trust was first established — are:

- Saffron — an Australian resident; and
- Jasper — ceased to be a resident of Australia on 1 July 2014.

The CFT sold the property on 1 January 2017 for $1,750,000 making a capital gain of $900,000 which was eligible to be treated as a discount capital gain.[5]

Saffron and Jasper were each presently entitled to 50 per cent of the income of the CFT for the year ended 30 June 2017. The CFT's trust deed is an ordinary trust deed without any deeming clauses. The trustee did not stream capital gains because all income and all gains were required to be divided equally between Saffron and Jasper.

The Trustee applied the full 50 per cent discount against the capital gain with the result that the assessable amount referable to the capital gains distributed to each of Saffron and Jasper was $225,000.[6]

Tax implications

Saffron must gross up her discount capital gain in accordance with the rules in Subdiv 115-C of the *ITAA 1997*. She will have a discount capital gain of $450,000. Since she has been a resident of Australia during all of the discount testing period, she is entitled to the full 50 per cent discount in respect of her capital gain.

Since Jasper was a non-resident at the end of the income year and he is assessable on a share of the net income of the trust which includes a discount capital gain, s. 98(2A) of the *ITAA 1936* requires that the trustee is assessed in accordance with s. 115-220 of the *ITAA 1997*.

The trustee's discount testing period commences on 1 July 2010 (when Jasper became a beneficiary of the trust) and ends on 30 June 2017. However, since Jasper has been a non-resident during the discount testing period, s. 115-110 applies to require him to reduce the discount percentage to be applied to his capital gain in accordance with the formula in s. 115-115(3), i.e.

[5] *In the interest of simplicity, acquisition costs such as stamp duty and other associated costs and the costs of disposal such as agents' commissions and other selling costs have been ignored. In real life, accounting for such costs would result in a much lower capital gain.*

[6] *The income distributed to the beneficiaries is ignored for present purposes.*

Example 3 — Trustee assessed under s. 98 with reduced discount percentage

$$\frac{\text{Number of days in discount testing period} - \text{Number of apportionable days as foreign resident or temporary resident}}{2 \times \text{Number of days in discount testing period}} = \ldots\%$$

$$\frac{2{,}557 - 1{,}096}{2 \times 2{,}557} = \mathbf{28.57\%}$$

The discount percentage that is applicable to the capital gain on which the Trustee is assessed on account of Jasper is 28.57 per cent instead of 50 percent.

Reference

The ATO has a CGT discount worksheet which can assist foreign resident taxpayers in working out the CGT discount percentage to apply to a capital gain. The CGT discount worksheet is available here:

www.ato.gov.au/api/public/content/bc3a3334-7dcf-40bb-9ede-393d8f0ea69_cgt_discount_worksheet_35657_pdf

Discounted Capital Gains Passing Through a Trust

Where a trust has a capital gain included in its net income and distributes this to a beneficiary, the tax law requires the capital gain to be grossed up by the beneficiary, and then, if eligible, the beneficiary can reapply the discount. This mechanism ensures that the CGT discount is applied only once, at the beneficiary level, and is only available where the beneficiary themselves would have been eligible for the discount. It also ensures that and capital losses are applied appropriately.

Subdiv 115-C is the provision that achieves this and treats those parts of the net income attributable to the trust's net capital gain as capital gains made by the beneficiary entitled to those parts.

Where the trust's capital gain was reduced by either the general 50% discount in step 3 of the method statement in s. 102-5(1) or by the small business 50% reduction in Subdiv 152-C (but not both), the gain is doubled. The beneficiary then applies 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 four. 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.

<table>
<tr><th>STEP</th><th colspan="2">Calculating the beneficiary's extra capital gains under Subdiv 115-C</th></tr>
<tr><td>STEP ONE</td><td colspan="2">Determine the beneficiary's share of a capital gain
This is the dollar amount comprising:
• any part of the capital gain to which they are specifically entitled
• a proportionate share of any part of the capital gain remaining after all specific entitlements to it have been determined – this is the beneficiary's adjusted Div 6 percentage of the gain.</td></tr>
<tr><td>STEP TWO</td><td colspan="2">Determine the share as a percentage of the capital gain
$\frac{\text{Step one amount}}{\text{Total amount of the capital gain}} \times \mathbf{100}$</td></tr>
<tr><td>STEP THREE</td><td colspan="2">Determine the beneficiary's attributable gain
Net income of the trust that relates to the capital gain × Percentage worked out at step two</td></tr>
<tr><td rowspan="5">STEP FOUR</td><td colspan="2">Gross up the attributable gain for any discounts applied by the trustee to the gain</td></tr>
<tr><td>Discount applied</td><td>Gross up required</td></tr>
<tr><td>None</td><td>None</td></tr>
<tr><td>Either (but not both) the general CGT discount or the small business 50% reduction</td><td>Double the amount</td></tr>
<tr><td>Both discounts were applied</td><td>Quadruple the amount</td></tr>
<tr><td colspan="2">The attributable gain (grossed up as appropriate) gives the beneficiary an extra capital gain.</td></tr>
</table>

Inherited Assets

As discussed above, the CGT discount is available only where the CGT asset has been owned for at least 12 months before the CGT event.

Special rule for discount purposes

For the purposes of the 12-month ownership requirement in order to access the **CGT discount**, the following special rules apply:

CGT asset (in the hands of the deceased) was …	Executor/beneficiary is deemed to acquire the asset …
Post-CGT	When the deceased acquired the asset
Pre-CGT	When the deceased died

Items 3-6 of the table in s. 115-30(1)

Proposed Changes: Treasury Laws Amendment (Tax Reform No. 1) Bill 2026

The *Treasury Laws Amendment (Tax Reform No. 1) Bill 2026 (the Bill) and the Income Tax Rates Amendment (Tax Reform No. 1) Bill 2026* were introduced into Parliament on 28 May 2026.

Amongst the proposed amendments were changes to implement the 2026–27 Federal Budget proposal to replace the 50% CGT discount with an indexation method, as well as a minimum 30% tax on capital gains.

> **Note**
>
> Schedule 1 is the first tranche of changes to establish the new CGT regime. It provides the core policy features of the new CGT regime which are likely to apply to most taxpayers. Further legislation dealing with more complex and specific policy issues will be released following consultation with experts and affected stakeholders.

Overview

Broadly, the 50% discount for individuals and trusts, will be repealed and replaced with a default 0%. This means that for capital gains arising on or after 1 July 2027, a CGT discount will not be available unless a taxpayer meets the requirements for a particular CGT discount in s. 115-100, including, for example:

- the new 50% discount that maintains support for new residential dwellings
- the discount of up to 60% available for investment in affordable housing
- the 33.3% discount for superannuation entities.

Going forward, cost base indexation will apply for all eligible assets for individuals and trusts.

A minimum 30% income tax on capital gains that are realised on or after 1 July 2027 will also apply – this is intended to reduce the benefit of taxpayers deferring realisation of capital gains to years when their marginal tax rates are low.

How Disposal of CGT Assets – including Pre-CGT Assets – will be Impacted

<table>
<tr><th colspan="2">CGT asset acquired by an Australian resident individual or trust …</th></tr>
<tr><td colspan="2">1. before 1 July 2027 and disposed of before 1 July 2027

The new law does not apply. Capital gains and losses are dealt with under the existing law.</td></tr>
<tr><td colspan="2">2. before 20 September 1985 i.e. a pre-CGT asset

Gains accrued before 1 July 2027 will continue to be exempt (but CGT event K6[7] may apply to tax these gains).

Gains made from CGT events that happen on or after 1 July 2027 are taxed on the portion of the gain that has accrued from 1 July 2027.[8]</td></tr>
<tr><td colspan="2">3. between 1985 and 1999[9] – i.e. existing indexation regime may apply

There is a choice to index the cost base or apply the CGT discount in relation to a CGT asset that applies until 1 July 2027.

From 1 July 2027, individuals (including partners in a partnership) and trusts[10] are only able to apply the 50% CGT discount on eligible CGT assets up until 1 July 2027.

New settings apply to gains accrued after 1 July 2027 for these assets.</td></tr>
<tr><td colspan="2">4. before 1 July 2027 and CGT event happens on or after 1 July 2027

The capital gain or loss consists of two components reflecting the pre- and post-1 July 2027 periods as follows:</td></tr>
<tr><td>Pre-1 July 2027

Calculate under existing law</td><td>Any deferred capital gain or loss for the period between acquisition and 1 July 2027 calculated under existing law, except that individuals and trusts will no longer be able to choose between indexing the cost base and will instead only be able to apply the 50% CGT discount and will have the choice to use an apportionment method to work out the amount of the gain.</td></tr>
<tr><td>Post 1 July 2027

Calculate under proposed law</td><td>Capital gain or loss for the period between 1 July 2027 and the realisation event, calculated using an indexed cost base, with the gain being subject to the minimum 30% tax rate rules).</td></tr>
<tr><td colspan="2">5. after 1 July 2027

The proposed law will apply: for resident individuals, the capital gains may be subject to cost base indexation and a minimum 30% tax.</td></tr>
</table>

The Detail

Indexation of the Cost Base

Capital losses will continue to be calculated using the existing methodology i.e. using the reduced cost base of the asset which excludes certain cost base elements and is not indexed. The existing indexation rules in s. 110-36(1) will continue to apply for assets acquired between 20 September 1985 and 21 September 1999.

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7 *Pre-CGT shares or trust interests.*

8 *Note, this applies broadly to all entities, including companies.*

9 *Indexation was available on such assets until 21 September 1999 – see s. 110-36 of the ITAA 1997.*

10 *Other entities, including companies, may retain the current treatment.*

Proposed s. 110-36(1A) will provide a separate regime – contained in Div 114 – for calculating capital gains of Australian resident individuals and trusts for CGT events happening on or after 1 July 2027. Section 110-36 will distinguish between the capital gains which are covered by the new arrangements and capital gains that fall under the existing indexation regime for assets acquired between 1985 and 1999 (which continues to operate in generally the same way for most entities).

The formula for working out the indexation factor is contained in proposed s. 960-275(1A).

The Indexation Rules

Division 114 of the *ITAA 1997* provides when and how cost base indexation is relevant or not relevant to expenditure in each element of the cost base, and other rules that affect how cost base indexation works.

Proposed replacement s. 114-1 provides that cost base indexation applies to expenditure incurred in each element of the cost base except the third element under s. 110-25. This means the expenses incurred to acquire the asset, incidental costs, and expenses to increase or preserve its value and to defend the title or right to the asset; but indexation is not available for the costs of owning the asset, consistent with s. 960-275(4).

Other existing rules continue to apply in calculating indexation of the cost base.

Preconditions for Indexation

12-month rule	Subject to some exceptions – the CGT asset must have been owned for at least 12 months.
Australian residency requirement Cost base indexation is not available to foreign residents or temporary residents	The individual who held the CGT asset at the time of the CGT event must have been an Australian resident between 1 July 2027 or the day the CGT asset was acquired (whichever is later) and the day of the CGT event (the testing period). The individual cannot have been a temporary or foreign resident at any time during that testing period.

Calculating the Net Capital Gain

A new method statement will replace the current method statement in Div 102 which sets out how to work out whether there is a net capital gain to be included in assessable income. The proposed replacement method statement will address the changes to the CGT treatment of individuals and trusts from 1 July 2027, including the re-introduction of indexation and the removal of the 50% discount.

Classify your capital gains	CLASSIFY your capital gains made during the income year as: (a) deferred non- residential capital gains (b) deferred residential capital gains (c) non-residential capital gains (d) residential capital gains

		Total each category.
Adjust the total capital gain for each category	**STEP 1**	REDUCE each total (but not below nil), in the order of the categories above, by: ■ any capital loss made during the income year, then
	STEP 2	■ any previously unapplied net capital losses from earlier income years; then
	STEPS 3 & 4	■ for residential gains, the sum of any quarantined amount for the income year: first – to deferred residential capital gains, then – to residential capital gains; then
	STEP 5	■ the discount percentage for each remaining discount capital gain as applicable; then
	STEP 6	■ apply any small business concession from Subdivs 152-C, 152-D and 152-E to gains that qualify for the concessions.
Find your net capital gain	**STEP 7**	The sum of any totals remaining is your **net capital gain** for the income year

Categories of Capital Gains

Residential capital gains – s. 102-6(2) These capital gains relate only to gains that accrued after 1 July 2027 Excludes gains arising from deemed sale of a CGT asset on 30 June 2027	Includes the gains arising from a CGT event happening in relation to the CGT asset that is a residential dwelling to the extent it has been used or held to provide residential accommodation. The residential capital gain is calculated determining the percentage of the total ownership period of the asset on or after 1 July 2027 in which the dwelling was used for residential accommodation, with the residential capital gain being that percentage of the total capital gain.
Non-residential capital gains – s.102-6(1) Excludes gains arising from deemed sale of a CGT asset on 30 June 2027	Includes any gains that do not fall within the above meaning of 'residential capital gains' This covers capital gains arising from asset classes including commercial property, company shares or interests in a trust, provided the gains arise from assets held on or after 1 July 2027.
Deferred residential capital gain – s.102-6(4)	The capital gain arising from a residential dwelling over the time the dwelling was used to provide residential accommodation before 1 July 2027.

	This category of capital gains arises because there has been a realisation event relating to the CGT asset for which an initial notional gain was disregarded
Deferred non-residential capital gain – s.102-6(3)	This covers capital gains arising from asset classes including commercial property, company shares or interests in a trust where the gains arise from assets that were deemed to have been sold on 30 June 2027 and reacquired on 1 July 2027.

Modifications to the Cost Base

The cost base rules will be modified by operation of proposed Subdiv 112-E which will deem CGT assets acquired before 1 July 2027 to be disposed of just before, and reacquired on, 1 July 2027.

Proposed s. 112-175 contains a similar deemed disposal and reacquisition rule for pre-CGT acquired assets that are still on hand at 1 July 2027.

Deemed Sale Just Before, and Reacquisition on 1 July 2027 – Proposed Subdiv 112-E

The new CGT regime distinguishes capital gains that accrue before and after 1 July 2027. It does this by deeming a CGT asset which was acquired before 1 July 2027 to be disposed of just before 1 July 2027 and reacquired on 1 July 2027. The gain or loss on this deemed disposal is deferred until a later realisation event.

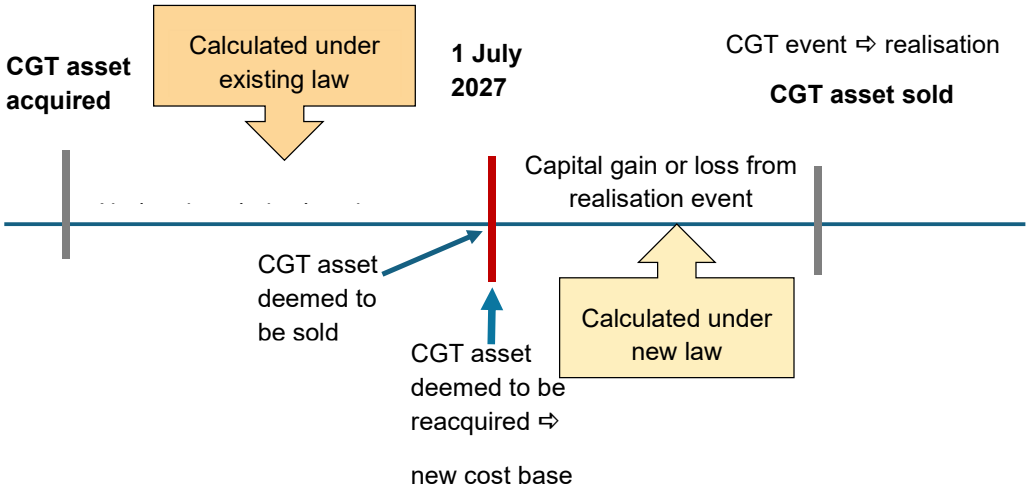
On disposal of the asset, the taxpayer is treated as making a capital gain or loss equal to:

1. the amount of the initial notional gain or loss (calculated under the law as it applied before the amendments[11]) **and**
2. the gain or loss made on disposal.

The capital proceeds for the first component will generally be taken to have been equal to the market value of the asset as at 1 July 2027. However, it is proposed that taxpayers may instead be able to choose to use an apportioning method which will be determined by the Minister by legislative instrument.

[11] *This means that the notional gain may be a discounted gain.*

Deemed sale just before and reacquisition on 1 July 2027



Example – Modifying the cost base by a trust

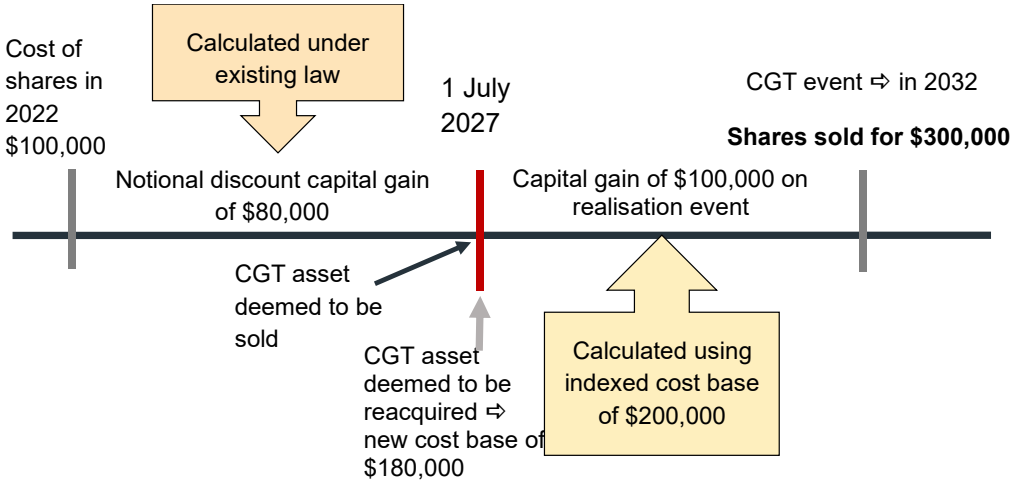
The Trustee of the XYZ trust acquires shares in ABC Ltd for $100,000 in 2022, and sells them for $300,000 in 2032. All of the beneficiaries of the XYZ trust are Australian resident individuals or companies.

The shares are deemed to be sold just before 1 July 2027 and repurchased immediately. Later, following the realisation event in 2032, the Trustee works out (using the apportioning method) capital proceeds of $180,000 at the time of the deemed sale.

At the time of the realisation event, the Trustee recognises two capital gains:

1. The initial notional gain of $80,000 (which is a discount capital gain that the trust can apply its discount percentage to in working out its net capital gain) that has been deferred until the time of the realisation event (now the 'trust's deferred gain').

2. The separate capital gain from the realisation event. Assuming indexation on an initial cost base of $180,000, the cost base at the time of the realisation event is $200,000, and this separate indexed capital gain is $100,000.



Example – Modifying the cost base by a trust

Before year end, the Trustee resolves to make VP Pty Ltd (a private company) and Ishaan (a resident individual) each specifically entitled to 50% of those capital gains.

The beneficiaries work out their capital gains tax liabilities as follows:

Ishaan

Ishaan first works out his attributable gains under s. 115-225 as:

- $80,000 × 50% (discount applied by the trustee) × 50% (his share, expressed as a percentage) = $20,000; and
- $100,000 × 50% (his share, expressed as a percentage) = $50,000.

He does not re index the cost base for the separate capital gain from the realisation event, as indexation has already been applied at the trust level.

Ishaan then includes those capital gains in working out if he has made a net capital gain for the income year.

VP Pty Ltd

VP Pty Ltd is not entitled to indexation or the CGT discount. Under s.115-225(4)-(5), it must recalculate its attributable gain for the separate capital gain, as if it had been calculated without indexation.

VP Pty Ltd first works out its attributable gains under s. 115-225 as:

- $80,000 × 50% (discount applied by the trustee) × 50% (its share, expressed as a percentage) = $20,000; and
- $120,000 (being $300,000 – $180,000) × 50% (its share, expressed as a percentage) = $60,000.

Division 102 applies to Ishaan and VP Pty Ltd as follows:

	Ishaan	VP Pty Ltd
Capital gain under para. 115-215(3)(b) – attributable capital gain is doubled to remove CGT discount applied at trust level	$40,000	$40,000
Capital gain to which no discount percentage reduction can be applied	$50,000	$60,000
		Company is not eligible for CGT discount

Ishaan may be able to apply the 50% CGT discount to this amount at step 5 of the method statement

The Trustee must provide VP Pty Ltd and irements of proposed s. 115-235, which will set out the amount of the gains each beneficiary is treated as having, and in this case, which capital gains are discount capital gains.

Adapted from Example 1.12 of the Explanatory Memorandum

Discount Capital Gains – Div 115

Schedule 1 proposes to remove the 50% discount for capital gains for individuals and trusts in relation to CGT events happening on or after 1 July 2027.

- A CGT discount of 50% remains available for CGT events happening on or after 1 July 2027 relating to new residential dwellings, and any other CGT assets determined by the Minister by legislative instrument.

- A CGT discount of up to 60% remains available for CGT events happening on or after 1 July 2027 in relation to investment in affordable housing.

Proposed s. 115-102 and the amended s. 115-125 will specify when capital gains relate to new residential dwellings and affordable housing, for the purpose of access to CGT discounts and the choice not to be subject to cost base indexation or the minimum 30% tax on capital gains.

Subdiv 115-C Amendments for Trusts with Net Capital Gains

Broadly, the existing Subdiv 115-C provides that amounts of the trust's net income that are attributable to capital gains are treated as a beneficiary's capital gain when the beneficiary is assessed. This allows the beneficiary to apply the beneficiary's capital losses and their own discount percentage against the capital gain they receive through the trust estate.

Under the current law, the attributable gain calculation under s. 115-225(1) takes into account any discount or indexation available to the trust in determining the benefits to which beneficiaries may be made presently entitled.

Proposed new subsections 115-225(4) to (6) will modify the general rule in s. 115-225(1) where a capital gain has been worked out under the new CGT law (i.e. indexation of the cost base of CGT assets for CGT events occurring on or after 1 July 2027) for the following cases:

- for the deemed attribution of capital gains of a trust estate to a beneficiary where the beneficiary is not entitled to indexation in relation to the cost base (i.e. because they are a company or a foreign resident beneficiary); or
- for the deemed attribution of capital gains of a trust estate to a beneficiary where the trustee has a choice to choose between applying the CGT discount or indexation because the capital gains arise from new residential dwellings or affordable housing; or
- a calculation is being done to determine a trustee's taxation amount.

In working out the trust's capital gains in these situations, the amendments apply to reverse out the cost base indexation amounts for the relevant capital gain. This is because the beneficiary or trustee who is subject to tax on the capital gain is not entitled to indexation.

Example –Trust capital gains attributable to corporate beneficiary who is not entitled to indexation
The JTS Trust is a discretionary trust. During the 2030–31 income year, its only activity is the disposal of shares acquired on 1 July 2027 for $100,000. After applying CPI indexation, the trust calculates an indexed cost base of $110,000. The shares are sold for $200,000, giving rise to a capital gain of $90,000. As this is the trust's only income, the trust's net income is also $90,000, calculated on the basis that the trust is a resident individual and therefore entitled to apply indexation. Before year end, the trustee resolves to make XYZ Pty Ltd (a private company) and Catherine (a resident individual) each specifically entitled to 50% of the capital gain. This means the indexed gain is split evenly, so each beneficiary is attributed a $45,000 share. In effect, the indexation adjustment is shared 50–50 between them.

Example –Trust capital gains attributable to corporate beneficiary who is not entitled to indexation
Catherine includes her $45,000 share of the capital gain in working out her net capital gain. She does not re-index the cost base, as indexation has already been applied at the trust level. XYZ Pty Ltd, however, is not entitled to indexation. It must recalculate its attributable gain as if the capital gain had been calculated without indexation. On that basis, its attributable gain is equal to its 50% share (expressed as a fraction) of the capital gain, being $200,000 capital proceeds less the unindexed cost base ($100,000), giving a capital gain of $50,000. *Example 1.15 of the Explanatory Memorandum*

Minimum Tax on Capital Gains

Proposed Div 119 will introduce a minimum 30% tax on capital gains that are realised on or after 1 July 2027. This means that some individual taxpayers may have to pay extra income tax in relation to capital gains realised during the income year to ensure a rate of tax of 30% on those gains (before applying offsets).

Recipients of certain payments of a kind prescribed in a legislative instrument by the Minister (e.g. the Age pension or JobSeeker) will not be liable for the minimum tax, if they receive a payment at any time in the income year.

The minimum tax applies to all CGT assets.

The minimum tax will not apply in relation to new residential dwellings or affordable housing unless the relevant entity with these asset classes chooses indexation and the minimum tax over applying the CGT discount.

An individual who is an Australian resident at any time during the income year who has a 'minimum tax gap amount' for the income year will be liable for extra tax. Proposed s. 12AA of the *Income Tax Rates Act 1986* (the Rates Act) prescribes a formula to calculate the rate of extra income tax payable under proposed s. 119-10(1) on every dollar of a taxpayer's minimum tax capital gain for a year of income.

Working out Whether an Individual has a Tax Gap Amount for the Income Year

The minimum tax gap amount is designed to equate to the extra income tax that a taxpayer must pay, to ensure that a minimum 30% tax applies to the capital gain.

The steps to work out the minimum tax gap amount and the extra tax are illustrated in the following example.

Example – Calculating minimum capital gains tax

Genevieve makes a net capital gain from the sale of listed shares in the 2029 income year. She does not have any other capital gains for that year. After applying the relevant steps in s. 102-5(1), her minimum tax capital gain is $50,000.

Excluding that capital gain, Genevieve's 2029 taxable income is $40,000.

As a single homeowner with more than $750,000 in assets, Genevieve does not qualify for any government payments, which means that she cannot be exempt from the minimum capital gains tax. Genevieve works out her minimum tax gap amount for the 2029 income year using the method statement in proposed s. 119-10(2) as follows:

Step 1	Multiply her $50,000 minimum tax capital gain by 30% to give a result of $15,000.
Step 2	**Basic tax liability disregarding Div 119** Genevieve's basic 2029 income tax liability on her taxable income of $90,000 under step 2 of the method statement in s. 4-10(3) is $18,000.
Step 3	**Step 2 amount if taxable income were reduced by the minimum tax capital gain** If her $50,000 minimum tax capital gain was excluded from her $90,000 taxable income (but not reducing it below nil) her basic 2029 income tax liability on the remaining taxable income of $40,000 would be $3,500.
Step 4	**Subtracting step 3 amount from step 2 amount** Subtracting the amount at step 3 ($3,500) from the amount at step 2 ($18,000) gives Genevieve a result of $14,500.
Step 5	**Subtracting step 4 amount from step 1 amount** Subtracting the amount at step 4 ($14,500) from the amount at step 1 ($15,000) gives Genevieve a result of $500.
Step 6	**Rounding down to nearest dollar** The step 5 result is a whole dollar amount, so rounding it down to the nearest whole dollar is not relevant.
Step 7	**Result = the minimum tax gap** The $500 result, being more than nil, means Genevieve has a $500 minimum tax gap amount for the 2029 income year.

Section 12AA of the *Rates Act* provides that an additional rate of income tax applies to Genevieve's $50,000 minimum tax capital gain, which results in extra income tax equal to her $500 minimum tax gap amount. That rate is worked out using the formula:

$$\frac{\text{minimum tax gap amount}}{\text{minimum tax capital gain}} = \frac{\$500}{\$50,000} = 1\%$$

Extra tax is $500

Adapted from Example 1.17 of the Explanatory Memorandum