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CGT event K6... when something old becomes something new

By Letty Tsoi

Australia's CGT regime, which became operative with effect from 20 September 1985, provides a general carve-out for capital gains or losses arising in respect of assets acquired before 20 September 1985 (ie. pre-CGT assets). This broadly applied concessional treatment of pre-CGT assets is often the basis for taxpayers assuming that when they sell their pre-CGT shares or units, the capital gain would be CGT-free because… these assets are pre-CGT assets. However, this is not always the case…seller beware!

This article examines the provisions governing CGT event K6 which applies to trigger a CGT liability on the sale of pre-CGT shares or units in certain instances.

All legislative references are to the *Income Tax Assessment Act 1997* (ITAA97) unless otherwise stated.

CGT event K6

CGT event K6 serves to counter the avoidance of CGT liabilities that would otherwise arise for a company or a trust if it disposed of a post-CGT asset. Instead of the entity selling the asset and crystallising the CGT liability, the owner of the pre-CGT shares or units in the company or trust sells those interests. Of course some of the value of those pre-CGT interests would be derived from the entity's post-CGT assets.

CGT event K6 (s104-230) happens to a taxpayer in relation to a pre-CGT share in a company or interest in a trust (eg. a unit in a unit trust) where the following conditions are satisfied:

- one of these CGT events (the 'other CGT event') happens to the share or interest – A1, C2, E1, E2, E3, E5, E6, E7, E8, J1 or K3
- no roll-over is available in respect of the other CGT event, and
- the '75% test' is satisfied.

The 75% test is satisfied if, just before the other CGT event happened, one of the following applies:

- the market value of property of the company or trust (other than its trading stock), which was acquired on or after 20 September 1985, was at least 75% of the net value of the company or trust (paragraph 104-230(2)(a)), or
- the market value of interests the company or trust owned through interposed companies or trusts in property (except trading stock), which was acquired on or after 20 September 1985, was at least 75% of the net value of the company or trust (paragraph 104-230(2)(b)).

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Briefly

Health insurance changes

The 2013 individual tax return disclosures for individuals in respect of their health insurance details have changed as follows:

- new question 'Your share of premiums paid in the financial year' (label J)
- new question 'Your share of Australian Government rebate received' (label K), and
- new question 'Benefit code' (label L).

Taxpayers and tax agents must ensure that they carefully fill out their health insurance policy details on the individual tax return for 2013.

The Tax Office has said in a recent circular that, for purposes of tax return disclosure, the actual details shown on private health insurance statements should be used.

Only dollar amounts shown on the private health insurance statement issued by an insurer should be entered at the following labels on the return:

- your share of premiums paid in the financial year (label J), and
- your share of Australian Government rebate received (label K).

Importantly, taxpayers should note that their share of premiums paid must appear in the income tax return if they are covered by the policy even if the premium was paid by somebody else such as a spouse or a partner. This means that a total premium payment of $3,000 in a year would be split between two people. Each person would record $1,500 in their individual tax return and receive their share of the government rebate.

The Tax Office stated that incorrect disclosure of amounts under this section of an individual tax return may require amendments of relevant income tax returns at a future time. Taxpayers can avoid the administrative burden of such an exercise by making correct disclosure in the first instance.

Taxpayers should ensure they put their health insurance statement in a safe place otherwise they may need to approach the health insurance provider for a replacement copy. ■

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Thanks Roger!

Taxpayers Australia's (TAI) board of directors and staff thank Roger Timms for his contribution as Head of Tax and Superannuation over the past four and a half years with the organisation.

His major achievements include reinvigorating the organisation's seminar program and work he did on the suite of publications produced by TAI.

The TAI technical team has benefited from his mentoring and many years of experience in tax training, tax practice and commerce. Team members are grateful for the assistance Roger has provided.

TAI members and representatives from other professional organisations have praised his detailed knowledge of tax and superannuation law when they have attended seminars, discussion groups or government consultative forums in recent years.

All at Taxpayers Australia wish Roger well in his future endeavours.

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FBT bombshell

The Australian Government has announced with effect from 1 July 2014 it will abolish the statutory formula as a methodology to calculate taxable value of a car benefit for FBT purposes.

The abolition of the statutory formula method for cars is likely to have a significant impact on businesses and employees.

In particular, all new car fringe benefit arrangements entered into on or after 16 July 2013 must adopt the operating cost method as the method to calculate the taxable value of car benefits from 1 April 2014.

Existing contracts that are not varied will continue to have access to the statutory formula rate for the duration of the arrangement. However where employee and employers materially vary or change existing contracts governing the provision of car benefits after 16 July 2013, it will also fall with the scope of the new measures.

It would seem that the new measures would apply equally to both purchased and leased vehicles.

The new measures may result in increased FBT liability for employers in instances where there is significant private use of cars by employees. In such cases FBT may be payable on almost 100% of the operating costs of the car, as opposed to a maximum of 20% of the cost of the car under the current statutory formula method.

Apart from any additional FBT cost, employers also face far more onerous and burdensome administrative requirements under the operating cost method. For instance, employers would now be required to keep a detailed log book for a minimum of 12 weeks and detailed records of the operating costs, which include lease costs, insurance, registration, petrol, oil, services and car washes, whereas no such obligation exists where FBT is calculated under the statutory formula method.

An easier option may have been to just increase the statutory percentage under the statutory formula to say 25%. Such a change would not be accompanied with the administrative burden that would now ensue out of the proposed measures.

It is speculated that more than 300,000 people with salary packaged cars will now have to keep detailed records of their vehicle use or lose the tax advantage that some are able to gain out of the tax treatment of car benefits. This number is significantly higher if you also include “company cars” that are valued using the statutory formula method.

Already the car industry is vociferously lobbying the Federal Government to reconsider its decision to remove this fringe benefit tax concession on vehicles to help pay for the ditching of the carbon tax.

As this is such a dramatic and far-reaching change it is highly unlikely that we have heard the last on this. We will continue to have a watching brief on this and update you on any further developments. ■

Peter Adams is this month’s guest commentator.

Peter works as Special Tax Counsel at Accountable Financial Group and is also director of TaxEd Legal. He is a sought-after tax trainer and provides tax education seminars thoughout Australia.

Note: Property that a foreign resident company acquired after 15 August 1989 from another company is treated as if it were acquired pre-CGT if:

- the other company acquired it pre-CGT
- the companies are members of the same wholly-owned group, and
- the property is not taxable Australian property (see s855-15).

CGT event K6 happens at the time of the other CGT event.

Under CGT event K6, a capital gain is equal to that part of the capital proceeds from the share or interest that is reasonably attributable to the amount by which the market value of the relevant post-CGT property exceeds the sum of the cost bases of that property.

A capital loss cannot arise under CGT event K6.

Taxation Ruling TR 2004/18 (the Ruling) sets out the views of the Commissioner in relation to the operation of CGT event K6.

MR GRU'S SITUATION

Mr Gru established Minion Pty Ltd (Minion) in 1983. Mr Gru has continuously owned all the shares in Minion since its incorporation. All of the shares are pre-CGT. The cost base of the shares is $100.

Minion purchased a commercial property in 1983 from which it carried on its service business. In 2001, Minion sold the pre-CGT property and purchased a bigger property in a nearby suburb to enable an expansion of the business.

The business has been consistently profitable and Minion has built up internal goodwill since the business started. Much of the increase in the market value of its shares is attributable to this goodwill. Minion has not acquired any other businesses. The business does not own many other tangible assets except for general consumables, office furniture, cash accounts and some income-producing investments.

Minion has a mortgage balance outstanding from its purchase of its currently owned commercial property. No part of this mortgage relates to the purchase of the previously owned pre-CGT building. Minion's other liabilities relate to trade debts, income tax and GST and some bank loans relating to its investments.

Mr Gru has been approached by a larger local business that wants to expand its service offerings in the local area by acquiring Mr Gru's shares in Minion or acquiring Minion's business. The current market value of the shares is $1.7 million. The potential buyer has offered to pay the market value as consideration for either the shares or the business.

Mr Gru has requested his tax agent, Agnes, investigate the tax outcomes of the two commercial alternatives – Mr Gru selling his shares or the company selling its business. As part of that process, Agnes must consider the following in relation to the potential application of CGT event K6 if Mr Gru sells the pre-CGT shares.

- Do any exceptions apply?
- What is the 'property' to be taken into consideration?
- What is the 'net value' of the identified property?
- Does Minion pass the 75% test?
- If the 75% test is failed, how should the capital gain be calculated?
- What else needs to be taken into consideration?

Minion's balance sheet

	Cost base		Current market value	
Pre-CGT property				
Goodwill	$0		$800,000	
Post-CGT property				
Commercial property	$500,000		$1,200,000	
Cash & investments	$260,000		$400,000	
Deferred tax assets*	$20,000	$780,000	$20,000	$2,420,000
Liabilities				
Mortgage on property	$100,000		$100,000	
Other liabilities	$620,000	$720,000	$620,000	$720,000
Net worth		$60,000		$1,700,000

**The pre-CGT goodwill would generally give rise to a deferred tax liability, which would have been netted off against all deferred tax assets to arrive at the net balance of $20,000. Deferred tax liabilities would also arise from the investments. This implication is ignored for the purposes of this illustration.*

What is property?

The 75% test is based on 'property' that was acquired on or after 20 September 1985.

The term 'property' is not statutorily defined for the purposes of CGT event K6, apart from the specific exclusion of trading stock. The Ruling clarifies that property has its ordinary legal meaning; specifically, it does NOT mean 'asset' or 'CGT asset'. The Ruling discusses the Commissioner's interpretation of the term.

The meaning of 'property'

The Ruling cites the *Macquarie Dictionary* (3rd revised edition) which defines 'property' to mean 'that which one owns; the possession or possessions of a particular owner'. In its legislative context, the term 'property' is property owned by either the test company or by lower tier companies.

According to the Ruling, property extends to any kind of property. It can include such things as land and buildings, shares in a company, units in a unit trust, options, debts owed to a company, interests in assets and goodwill. Motor vehicles, in relation to which capital gains or losses are disregarded for CGT purposes, are also property.

However, the ordinary meaning of 'property' excludes personal rights and other rights such as:

- a contractual right revocable at will by the other party (*Austell Pty Ltd v Commissioner of Taxation* (1989) 20 ATR 1139)
- possibly, non-assignable rights under an employment contract (*Hepples v Commissioner of Taxation* (1990) 22 FCR 1)
- mining, quarrying or prospecting information (*Pancontinental Mining Ltd v Commissioner of Stamp Duties* (1988) 19 ATR 948), and
- future income tax benefits for accounting purposes (these are now deferred tax assets).

▶TIP!

Taxation Ruling TR 1999/16 provides guidance on the tax treatment of goodwill, including the identification of different types of goodwill, the acquisition of goodwill and measurement and valuation issues. However, be cautious in applying TR 1999/16 as that ruling is based on goodwill as a CGT asset for the purposes of CGT events the subject of which is the goodwill. CGT event K6 accounts for goodwill that is 'property' and not in its capacity as a CGT asset.

Interaction with Subdivision 108-D – separate CGT assets

Subdivision 108-D treats a single asset as constituting two or more separate CGT assets in certain circumstances (see table below).

Per the Ruling, the Commissioner is of the view that an item of property that constitutes two or more CGT assets under Subdivision 108-D is treated as a single item of property for the purposes of CGT event K6. This is because 'property' does not mean 'CGT assets'.

On a practical level, this interpretation would have little consequence where the relevant property comprises separate post-CGT assets and was acquired on or after 20 September 1985.

Example

The taxpayer acquired an item of 'property' in 2006. This single item of property is treated as two separate 'CGT assets' for the purposes of Subdivision 108-D. The market values of the two CGT assets are $30,000 and $40,000 respectively; the market value of the single item of property is $70,000. Therefore, for the purposes of the 75% test, it does not matter that the property is treated as a single item rather than two assets as the net impact is $70,000.

However, notably the distinction is important if:

- the market value of the property as a single item is not the same as the combined market values of the item as two separate assets (eg. due to synergy) – in that case, it is important to market value the one item of property and not merely the two CGT assets, and
- the two separate CGT assets have different pre-/post-CGT statuses: correct identification of the acquisition date of the single item of property will impact the outcome of the 75% test. See Example 1 from the Ruling.

Example 1 from the Ruling

Patricia holds 100% of the pre-CGT shares in Y Pty Ltd. Y Pty Ltd owns a block of land which it acquired prior to 20 September 1985. It constructed a building on the land in 1995. The land and building are separate CGT assets under Subdivision 108-D. However the land and building are a single item of property acquired prior to 20 September 1985 for CGT event K6 purposes.

The table below sets out a summary of when what may constitute one piece of 'property' is treated as two separate CGT assets under Subdivision 108-D.

Where the property is a CGT asset with a deemed acquisition date

In certain instances, a provision of the ITAA97 or the *Income Tax Assessment Act 1936* (ITAA36) deems an acquisition date for a *CGT asset*. For example, a CGT asset may be taken to have been acquired before 20 September 1985 under a roll-over provision (even if the actual purchase of the asset was made after that date).

In the Commissioner's view, as expressed in the Ruling, an item of property which – in its capacity as a CGT asset – is subject to a deemed acquisition date is taken to have been acquired at that time for the purposes of CGT event K6. This is despite the fact that where an item of property is also a CGT asset, other deeming provisions in relation to the CGT asset (eg. the effects of Subdivision 108-D) are ignored.

Subdivision 108-D – separate CGT assets

This is a separate CGT asset…	…to this…	…in these circumstances
a post-CGT building or structure	the land on which it is situated	a balancing adjustment provision under the capital allowances or research and development regimes applies
a post-CGT building or structure	pre-CGT land on which the building or structure is constructed	n/a
a depreciating asset	a building or structure that the depreciating asset is part of	n/a
post-CGT land	adjacent pre-CGT land	the two are amalgamated into one title
a capital improvement to land	the land	a balancing adjustment provision under the capital allowances or research and development regimes applies
a capital improvement to a pre-CGT asset that is unrelated to any other improvement to the asset	the pre-CGT asset	the cost base of the improvement exceeds: • more than the improvement threshold^ for the income year, and • more than 5% of the capital proceeds from the CGT event
capital improvements to a pre-CGT asset that are related to each other	the pre-CGT asset	the total of the cost bases of the improvements exceeds: • more than the improvement threshold^ for the income year, and • more than 5% of the capital proceeds from the CGT event
capital improvement to a CGT asset that is: • a Crown lease • a prospecting entitlement or mining entitlement • a statutory licence, or • a depreciating asset to which Subdivision 124-K applies	the CGT asset	• a roll-over may be available • cost base(s) of improvement(s) as per 6 and 7

^ The improvement threshold for 2012-13 is $134,200 (TD 2012/14).

An exception applies where the CGT asset is treated as having been acquired post-CGT pursuant to Division 149. The asset retains its status as having been acquired before 20 September 1985 for CGT event K6 purposes.

The Ruling explains the rationale for this exception. As an anti-avoidance or transitional provision, the rule is designed to capture the accumulation of post-CGT acquired property in a company with pre-CGT shareholders. CGT event K6 is not targeted at the accumulation of property which is deemed post-CGT only by the operation of Division 149.

Note: Roll-over provisions generally operate by attributing the characteristics of the original asset (including acquisition date) to the replacement or new asset. Therefore, the Commissioner's approach – while appearing to be an anomaly – should generally work in the favour of taxpayers, as an asset that was acquired on or after 19 September 1985 and which was subject to a roll-over that ascribed to it a pre-CGT acquisition date would be treated as having been acquired at that pre-CGT date for the purposes of the 75% test.

Property taken into account for the 75% test

The first limb

Paragraph 104-230(2)(a), the first alternative limb of the 75% test, refers to property of the company or trust, other than its trading stock.

The Ruling confirms that the property can include post-CGT shares in, or loans to, lower tier companies.

The second limb

Paragraph 104-230(2)(b), the second alternative limb of the 75% test, refers to property of interposed companies or trusts, other than trading stock.

The Ruling clarifies that the property taken into account is post-CGT property that is owned by lower tier companies in which the company being tested has a direct or indirect interest.

If the company has a less than 100% interest in the lower tier company, only that percentage interest in the underlying post-CGT property is counted.

It is irrelevant whether the shares in the lower tier company were acquired before 20 September 1985 or on or after that date.

Interpretation issues

The 75% test provisions are open to interpretative uncertainty: in particular, this uncertainty is prevalent in respect of the interaction of the two limbs and the identification of the relevant property.

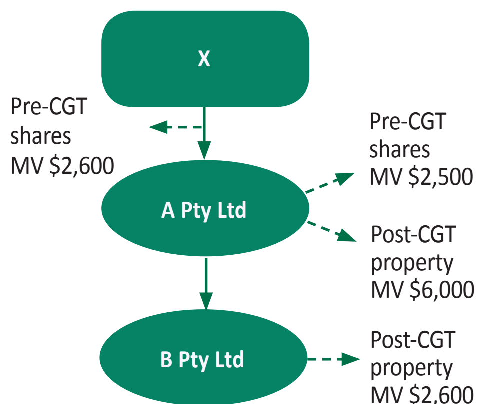
In the Ruling, the Tax Office has set out its preferred interpretation of these issues and examined the alternative views.

The Tax Office is of the view that the use of the word 'or' between paragraphs 104-230(2)(a) and (b) suggests that each of the requirements in those paragraphs must be tested independently.

The Tax Office acknowledges that this interpretation may result in the 75% test being avoided by the placement of post-CGT property in a lower tier company rather than in the company in which the shares are being held. However, the Tax Office holds that such a risk is countered by the operation of the general anti-avoidance provisions in Part IVA of the ITAA36 and the rule in subsection 104-230(8) that disregards the acquisition of an asset, or the discharge or release of a liability, that was done to ensure the 75% test was not satisfied.

Example 2 from the Ruling

X acquired all of the shares of A Pty Ltd (a private company manufacturer) before 20 September 1985. X sold those shares on 1 July 2001. Just before the time of disposal, A Pty Ltd owned pre-CGT property and post-CGT property, including pre-CGT issued shares in B Pty Ltd, another private company. The only property of B Pty Ltd is post-CGT property. The market value of the property of both A Pty Ltd and B Pty Ltd at the date of sale is shown diagrammatically below. All figures are shown in ($000).



The property referred to in paragraph 104-230(2)(a) does not satisfy the 75% test because the market value of post-CGT property in A Pty Ltd does not equal or exceed 75% of the net value of A Pty Ltd ($6,000/$11,100 = 54.05%). The property referred to in paragraph 104-230(2)(b) also does not satisfy the 75% test because the market value of the interest which A Pty Ltd owns in post-CGT property through B Pty Ltd does not equal or exceed 75% of the net value of A Pty Ltd ($2,600/$11,100 = 23.42%).

The 75% test would have been satisfied if the property referred to in paragraph 104-230(2)(a) was counted with the property referred to in paragraph 104-230(2)(b) - that is, 54.05% + 23.42% = 77.47%.

Had the post-CGT property held by B Pty Ltd instead been held by A Pty Ltd, the post-CGT property held by A Pty Ltd would have satisfied the 75% test.

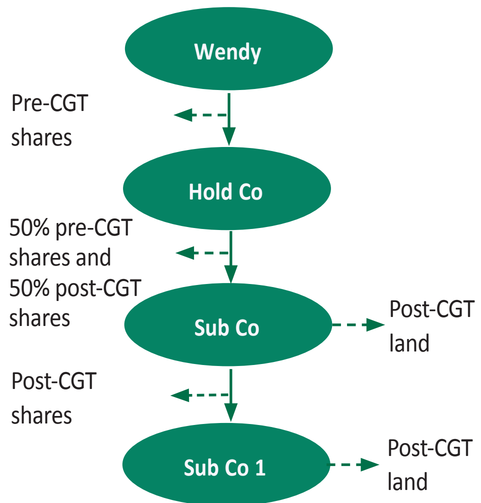
The Ruling also sets out the Tax Office view that the property to which paragraph 104-230(2)(b) refers is the post-CGT property in lower tier companies in which the company referred to in paragraph 104-230(2)(a) has a direct or indirect interest, other than post-CGT shares held by a lower tier company in another lower tier company. This is a 'look through' approach.

The Tax Office considers that the reference in paragraph 104-230(2)(b) to 'interests the company owned through interposed companies in property' directs attention to the proportionate interest which the company referred to in paragraph 104-230(2)(a) owns in the underlying post-CGT property of the lower tier companies.

Example 3 from the Ruling

Wendy owns all of the shares, being pre-CGT shares, in Hold Co. Hold Co owns all of the shares in Sub Co, with 50% of the shares being pre-CGT shares and the remaining 50% being post-CGT shares. Sub Co owns property consisting of post-CGT land and all of the shares in Sub Co 1, those shares also being post-CGT shares. Sub Co 1 in turn also owns property consisting of post-CGT land.

If Wendy were to sell her pre-CGT shares in Hold Co, the property that would be taken into account under paragraph 104-230(2)(b) would be the post-CGT land in Sub Co and the post-CGT land in Sub Co 1 (assuming the post-CGT land was not trading stock in the hands of Sub Co and Sub Co 1).



The post-CGT shares that Sub Co owns in Sub Co 1 would not be taken into account under paragraph 104-230(2)(b). This is because those shares are 'looked through' to the underlying post-CGT property owned by Sub Co 1

If Hold Co instead owned 70% of the shares in Sub Co, with 5/7 of those shares being post-CGT shares and the remaining 2/7 pre-CGT shares, the property taken into account under paragraph 104-230(2)(b) would be the proportionate interest that Hold Co has in the underlying property owned by Sub Co and Sub Co 1 – that is, 70% of the market value of both the post-CGT land in Sub Co and the post-CGT land in Sub Co 1 would be taken into account under paragraph 104-230(2)(b). The fact that 2/7 of the shares owned by Hold Co were pre-CGT shares is irrelevant.

The Ruling contains details of alternative views of the interpretation of subs104-230(2).

▶TIP!

In relation to the matter of what property is to be taken into account for the 75% test, the Ruling only discusses the property of companies and lower tier companies. Presumably, and in the absence of any guidance to the contrary, the views expressed in the Ruling will apply equally to unit trusts.

Paragraph 104-230(2)(b) specifically refers to property that the tested company or trust owns through 'interposed companies or trusts'. The Ruling does not contain further commentary on the nature of the interposed entity but the following outcomes appear to arise.

There is no stipulation that the interposed trust must be a unit trust. In theory, the 75% test may take into account property owned by an interposed discretionary trust or hybrid trust, so long as the tested company or unit trust has the requisite interest in the underlying property. Note that it is subject to doubt as to whether beneficiaries of a discretionary trust have an 'interest' in the trust's assets. Ultimately, the question of whether a particular beneficiary of a specific trust has the requisite interest is a matter of trust law.

A partnership is not an eligible interposed entity for the purposes of the 75% test. Therefore, if the tested company or unit trust is itself a partner in a partnership, the partnership's property will not be included in the test. However, where the partner (ie. the company or unit trust) has an interest in some property that is used in the partnership business, that interest would be taken into account under paragraph 104-230(2)(a).

The CGT event K6 provisions and the Ruling are silent as to the treatment of partnerships. However, some general Tax Office guidance is available in its online guide *Advanced guide to capital gains tax concessions for small business 2011-12* (the Guide). According to the Guide:

- an asset is a **partnership asset** if the partners own the asset in accordance with their respective interests as specified in the partnership agreement, and
- an asset is a **partner's asset** if it is an asset that the partner owns and that is not their interest in a partnership asset.

This distinction may be of assistance in determining whether an item of property that is connected with a partnership should be included in the calculations for the 75% test.

What is net value?

The 'net value' of the company or trust is defined in s995-1 as being equal to:

> *the amount by which the sum of the market values of the assets of the entity exceeds the sum of its liabilities*

▶TIP!

The Tax Office has an online guide 'Market valuation for tax purposes' which provides assistance on the processes to establish a market value for tax purposes for different types of assets.

In practice, a very highly geared entity may have a very small net value in comparison with the total value of the gross assets. The Ruling illustrates this practical outcome as follows:

> *…a company which is very highly geared may have a net value (say $10 million) which is very small compared to the value of its assets (say $200 million). As such, it may have post-CGT property (say $8 million) with a value in excess of 75% of the net value of the company, and so pre-CGT shares in that company may be subject to CGT event K6. This is so even though the post-CGT property represents only a small proportion (4%) of the company's total assets.*

Subsection 104-230(8) specifically instructs that the following are disregarded in the calculation of net value:

- the discharge or release of any liabilities, or
- the market value of any CGT assets acquired

if the discharge, release or acquisition (as relevant) was done for a purpose that included ensuring that the 75% test would not be satisfied in a particular situation. This is an integrity measure to counter tax avoidance by way of restructuring a business's financial profile for the purposes of enabling a shareholder taxpayer to avoid a tax liability under CGT event K6. This specific measure supplements the general anti-avoidance provisions in Part IVA of the ITAA36.

Example

Minnie owns all the shares in Pluto Pty Ltd (Pluto). The shares are pre-CGT. Minnie sold all of her shares to a third party. CGT event A1 arose upon the sale.

At the time of the CGT event A1, Pluto's financial position was at follows:

- total market value of all assets (no trading stock): $100,000
- total market value of all post-CGT assets (including cash at bank): $35,000
- total liabilities: $60,000
- net value: $40,000

The $35,000 market value of post-CGT assets exceeds 75% of net value, which is $30,000 (ie. $40,000 x 75%). Therefore, CGT event K6 arises to Minnie and could result in a CGT liability, even

though the capital gain under CGT event A1 is disregarded because the shares are pre-CGT.

Assume that Minnie and Pluto's tax agent had anticipated this outcome before Minnie sold her shares. The tax agent advised Pluto to repay $10,000 of debt (being a long-term loan from a related party) with $10,000 of cash.

Then the financial position would be as follows:

- total market value of all assets (no trading stock): $90,000
- total market value of all post-CGT assets: $25,000
- total liabilities: $50,000
- net value: $40,000

The $25,000 market value of post-CGT assets does not exceed 75% of net value, which is $30,000. Therefore the test is not satisfied. However, subs104-230(8) operates to disregard the repayment of the $10,000 loan for the purposes of the calculation. It is sufficient that ensuring that the subs(2) requirement is failed was part of the purpose of the loan repayment; it does not need to be the sole, dominant or a significant purpose. Once the repayment of the loan is disregarded, the market value of Pluto's post-CGT assets ($35,000) exceeds 75% of its net assets ($30,000). As a result, CGT event K6 arises.

The Ruling sets out the Commissioner's view of the meaning of 'assets' and 'liabilities' for the purposes of calculating the net value:

- the term 'assets' means the property and other economic resources owned by the company that can be turned to account, and
- the term 'liabilities' has its ordinary meaning. It extends to a legally enforceable debt which is due for payment and to a presently existing obligation to pay either a sum certain or an ascertainable sum. It does not extend to a contingent liability or to a future obligation or expectancy.

The terms 'assets' and 'liabilities' are not statutorily defined for the purposes of the CGT event K6 provisions. In the Ruling, each term has been taken at its ordinary meaning in the context in which it is used. The Commissioner specifically rejects the alternative view that the terms 'assets' and 'liabilities' have their accounting meaning under the Statement of Accounting Concepts 4 (SAC 4).

Calculation of the capital gain

Subsection 104-230(6) provides that a capital gain is equal to that part of the capital proceeds from the share or interest that is reasonably attributable to the amount by which the market value of the relevant post-CGT property exceeds the sum of the cost bases of that property.

What property is taken into account?

If the 75% test is satisfied under either paragraph 104-230(2)(a) or paragraph 104-230(2)(b), but not both, then the property taken into account in calculating the capital gain is the property referred to in the paragraph under which the 75% test is satisfied.

If the 75% test is satisfied under both paragraphs, the property in each paragraph is separately taken into account in calculating the capital gain. Two different capital gain amounts may arise. The Ruling sets out the Commissioner's view that in these circumstances, it is appropriate that the lesser capital gain be disregarded to avoid a double application of the provision. As a corollary, the Tax Office is of the view that it is the higher capital gain that is taxable.

Example 4 (excerpt from the Ruling)

Peter owns all of the shares, being pre-CGT shares, in C Pty Ltd. C Pty Ltd owns pre-CGT and post-CGT property, including post-CGT shares in the lower tier company E Pty Ltd. E Pty Ltd owns pre-CGT and post-CGT property, including post-CGT shares in the lower tier company G Pty Ltd. G Pty Ltd owns only post-CGT property.

If Peter were to sell his pre-CGT shares in C Pty Ltd, both the property referred to in paragraph 104-230(2)(a) [($4,000 + $12,000)/$14,000 = 114.29%] and the property referred to in paragraph 104-230(2)(b) [($4,000 + $7,000)/$14,000 = 78.57%] would each separately satisfy the 75% test. The post-CGT property in paragraph 104-230(2)(b) consists only of the underlying property in E Pty Ltd and G Pty Ltd. The post-CGT shares which E Pty Ltd owns in G Pty Ltd are not treated as property for the purposes of paragraph 104-230(2)(b).

Since the property referred to in each paragraph satisfies the 75% test, Peter must take into account the property in each paragraph separately under

subsection 104-230(6). As a result, Peter may make more than one capital gain under subsection 104-230(6) as a result of selling his pre-CGT shares. In these circumstances, it is appropriate to disregard the lesser capital gain to avoid a double application of the provision.

Detailed commentary on the actual method of calculating the two capital gains follows.

Reasonable attribution of capital proceeds

What constitutes a reasonable attribution of the capital proceeds will depend on the facts in each case. The Ruling contains a caveat that no formula or other methodology can supplant the statutory requirement which merely provides that the attribution must be reasonable.

The Ruling does however provide a suggested formula for taxpayers to use (discussed below). This formula uses a proportionate market valuation approach to apportionment.

The Tax Office has not issued specific guidance in relation to what other bases of apportionment may be appropriate in specific circumstances. Possible bases for apportionment may be: floor space (for tangible property); sales revenue or expenses; acquisition cost; or return on investment.

▶IMPORTANT!

The market value substitution rule in relation to capital proceeds (where actual consideration is an amount that is not equal to market value) applies to CGT event K6 (sections 116-25 and 116-30).

Single tier structure

In cases involving a single tier structure, the Tax Office considers that a reasonable attribution of the capital proceeds would generally be achieved by applying the two step approach outlined in paragraph 27 to 33 of the Ruling.

However, there could be an unusual case where the approach gives a manifestly and materially unreasonable outcome, in which case a capital gain calculated under the approach could not be accepted. For example, such an outcome could arise where the entity acquires a substantial asset fully funded by liabilities just prior to CGT event K6 being triggered with the intention of accessing a significantly reduced capital gain under the approach.

- **Step 1: determine how much of the capital proceeds actually relates to the post-CGT property**

  Step 1 requires assumptions to be made about:

  - the extent to which the post-CGT property and the remaining property of the company, such as its pre-CGT property and trading stock, is reflected in the capital proceeds, and
  - how the liabilities in existence relate to the post-CGT property and the remaining property of the company.

  The Tax Office will accept that:

  - the post-CGT property and the remaining property of the company is reflected in the capital proceeds on a proportional market value basis, and
  - the liabilities relate to the post-CGT property and the remaining property of the company on a proportional market value basis.

  In summary, the capital proceeds relating to the post-CGT property could be determined as:

  Step 1 amount = Capital proceeds x (Market value of post-CGT property / Market value of all property)

  where:

  - *Market value of post-CGT property* means the sum of the market value of the post-CGT property taken into account under paragraph 104-230(2)(a).
  - *Market value of all property* means the sum of the market value of all property (including pre-CGT acquired property and trading stock) owned by the company.

  According to the Ruling, it is open to taxpayers to do a more refined analysis of either the extent to which the company's property is reflected in the capital proceeds or how the liabilities relate to the property of the company for the purposes of step 1.

- **Step 2: determine how much of the step 1 amount relates to the amount by which the market value of the post-CGT property exceeds the cost bases of that property**

  The Tax Office considers that the capital proceeds relating to the post-CGT property should be allocated on a reasonable basis between the original investment in the property

and the overall unrealised gain on the property. It is considered that a reasonable allocation of the proceeds to the unrealised gain would be achieved by determining the proportion of gain on the post-CGT property to its market value, then applying that same proportion to the amount of proceeds attributable to the post-CGT property.

The amount of the capital gain is determined under step 2 as:

Step 1 amount x (Market value excess / Market value of post-CGT property)

where:

- *Market value excess* means the excess of the market value of property taken into account under subs104-230(6) over the sum of the cost bases of that property.

If a capital gain exceeds the market value excess, the capital gain would be limited to the market value excess.

▶TIP!

The Ruling contains a number of detailed numerical examples.

Multi-tier structure

The Tax Office does not prescribe a specific approach for determining what constitutes a reasonable attribution of the capital proceeds in the case of a multi-tier structure.

The Ruling indicates that the principles underlying the approach for single tier structures would be helpful in the case of multi-tier structures.

In a limited number of cases involving simple multi-tier structures, an unmodified application of that approach may result in a reasonable attribution. However, in the majority of cases, complicating factors would require adjustments to be made to the approach.

Other matters

- **Cost base of property**

  The Ruling contains several observations in relation to cost base.

  Indexation can be included in the cost base of property used in the capital gain calculation provided it was acquired:

  - at least 12 months before the time of CGT event K6 (s114-10), and
  - at or before 11.45am (by legal time in the Australian Capital Territory (ACT)) on 21 September 1999 (s114-1).

  Depreciating assets have cost bases for the purpose of calculating the capital gain.

  Subsection 110-45(2) can apply to reduce the cost bases of depreciating assets for decline in value amounts deducted. That provision broadly provides that for an asset acquired after 7.30pm (by legal time in the ACT) on 13 May 1997, expenditure does not form part of the cost base to the extent that it has been deducted or is deductible in any income year.

- **CGT discount**

  The 50% discount is potentially available to the shareholder under the usual rules in Div 115:

  - the shareholder is an individual, a complying superannuation entity, a trust or, in certain circumstances, a life insurance company (s115-10)
  - the CGT event K6 happened after 11.45am (by legal time in the ACT) on 21 September 1999 (s115-15)
  - the cost base of property was not indexed for the purposes of calculating the capital gain (s115-20), and
  - the share was acquired at least 12 months prior to the time of CGT event K6 (s115-25).

  An additional requirement is that the CGT discount would have been available in relation to the majority of CGT assets (by cost and by value) owned by the company had those assets been owned by the shareholder for the same time they were owned by the company and been disposed of at the time CGT event K6 happened (sections 115-45 and 115-50).

- **Small business CGT concessions**

  The small business CGT concessions in Division 152 may potentially apply to a CGT event K6 capital gain. There are no additional or special conditions that are specific to CGT event K6.

- **Disregarding the gain where notional scrip for scrip roll-over applies**

  Where a taxpayer disposes of post-CGT shares or trust interests and receives shares or interests in the purchaser or its parent entity as the whole or a part of the consideration,

the scrip for scrip roll-over under Subdivision 124-M may apply to disregard the capital gain made by the taxpayer.

Subsection 104-230(10) provides that a capital gain is disregarded for a share or an interest in a trust to the extent that, had it been acquired post-CGT, a scrip for scrip roll-over could have been chosen for the other CGT event.

Exceptions

There are specific exceptions to CGT event K6:

- CGT event K6 does not happen in relation to a listed company in certain circumstances
- CGT event K6 does not happen in relation to a listed unit trust, or a unit trust in relation to which some units were available to the public, in certain circumstances, and
- a capital gain is disregarded for a share in a company or an interest in a trust to the extent that, had it been acquired on or after 20 September 1985, a scrip for scrip roll-over (under Subdivision 124-M) for the other event would have been available.

MR GRU'S SITUATION: SOLUTION

Agnes has now considered each of the issues she posed earlier.

1. Exceptions

None of the exceptions apply. A CGT event K6 analysis must be conducted.

2. The property to be taken into consideration

The property to be taken into consideration for the CGT event K6 are the commercial property and the cash and other investments. Based on the Ruling, the deferred tax assets cannot be taken into account in CGT event K6 calculations.

3. The net value of the company

The net value of Minion is equal to the sum of the market value of its assets less the sum of its liabilities:

$2,420,000 less $720,000 = $1,700,000

4. The 75% test

	Current market value	
Pre-CGT property		
~~Goodwill~~		~~$800,000~~
Post-CGT property		
Commercial property	$1,200,000	
Cash and other investments	$400,000	$1,600,000
~~Deferred tax assets~~		~~$20,000~~
Market value of relevant post-CGT property		**$1,600,000**

Seventy five per cent of the net value of Minion = 75% x $1,700,000 = $1,275,000.

The market value of relevant post-CGT property is $1,600,000.

The market value of the post-CGT property ($1,600,000) exceeds 75% of the net value ($1,275,000).

Therefore, Minion fails the 75% test. A capital gain must be calculated under CGT event K6.

5. Calculating the capital gain

As this case involves a single tier structure, Agnes decides to apply the two step approach outlined in paragraph 27 to 33 of the Ruling.

Continued ➔

MR GRU'S SITUATION: SOLUTION (continued)

Step 1 – determine how much of the capital proceeds actually relates to the post-CGT property

Step 1 amount = Capital proceeds x (Market value of post-CGT property / Market value of all property)

- *Capital proceeds* = $1,700,000
- *Market value of post-CGT property* = $1,600,000
- *Market value of all property^* = $1,600,000 + $800,000 = $2,400,000

^ The deferred tax assets are not property.

Step 1 amount = $1,700,000 x ($1,600,000 / $2,400,000)

Step 1 amount = $1,133,333

Step 2 – determine how much of the step 1 amount relates to the amount by which the market value of the post-CGT property exceeds the cost bases of that property

Capital gain = Step 1 amount x (Market value excess / Market value of post-CGT property)

	Cost base	Current market value	Excess
Post-CGT property			
Commercial property^	$500,000	$1,200,000	$700,000
Cash and other investments	$260,000	$400,000	$140,000
	$760,000	$1,600,000	$840,000

^ The cost base of the commercial property cannot be indexed as the property was purchased in 2001.

Market value excess = market value of property less the sum of the cost bases of property = $840,000

Capital gain = $1,133,333 x ($840,000 / $1,600,000)

Capital gain = $595,000

6. Other matters for consideration

Other income tax matters that Agnes needs to consider include the following:

- Mr Gru should be eligible for the general 50% discount on the capital gain.
- Whether Mr Gru is eligible for any of the small business CGT concessions.
- The cost base of the shares cannot be indexed. Indexation is not available for assets acquired before the September 1985 quarter.
- Agnes needs to calculate the tax consequences of Minion selling its business and compare them to the capital gain that arises if Mr Gru sells the shares instead.

▶TIP!

When it becomes apparent that a CGT liability may arise from CGT event K6 if the shareholder sells pre-CGT shares, a practical alternative is for the business entity to sell its assets. This approach may appear particularly attractive where the entity has pre-CGT assets of significant market value – such as Minion's pre-CGT goodwill with a market value of $800,000. This is because, prima facie, the gain on such assets would be CGT-free to the vendor. However, **Division 149** may apply to convert the pre-CGT assets to post-CGT assets (and thereby give rise to a CGT liability upon the asset sale) if there has previously been a change in majority underlying ownership (eg. if Mr Gru had previously sold 60% of his pre-CGT shares to his son). Division 149 will be discussed in a future edition of *The Taxpayer.* ■

Lodgment dates, rates and thresholds

We include the due dates for the 2013-14 Tax Office lodgment program. Key rates, thresholds and offsets you need to know, begin on page 50.

Important: Where a due date for lodgment of an approved form or payment of a tax debt falls on a day that is not a business day, lodgment or payment may be made on the next business day. 'Business day' means a day other than a Saturday, a Sunday or a day which is a public holiday.

2013-14 Tax Office lodgment program for Tax Agents *(unless otherwise stated)*

Income tax returns		
Due date	**Individuals and Trusts**	**Companies and Superannuation Funds**
31 October 2013	• Individuals – no Tax Agent • Tax return for all individuals and trusts where one or more prior year tax returns were outstanding as at 30 June 2013.* • Tax return for clients prosecuted for non-lodgment of prior year tax returns and advised of a lodgment due date of 31 October 2013. **Note:** Some prosecuted clients may have a different due date.	• Entities with one or more prior year returns outstanding as at 30 June 2013.* • Tax return for clients prosecuted for non-lodgement of prior year tax returns and advised of a lodgement due date of 31 October 2013. • Entities that may be required to lodge early.
1 December 2013	Not applicable	Companies that are not full self-assessment taxpayers. **NOTE:** Companies not subject to full self-assessment include agents for non-resident insurers and re-insurers, and overseas shipping companies.
15 January 2014	Large/medium business trusts (annual total income more than $10 million in latest year lodged) where the trust was taxable in latest year lodged.	Large/medium business entities whose 2011–12 return was taxable (unless required earlier).
28 February 2014	• Large/medium business trusts (annual total income more than $10 million in latest year lodged) where the trust was non-taxable in latest year lodged. • New registrant large/medium business trust taxpayers.	• Subsidiary member of a consolidated group that has exited the consolidated group in the financial year. • Large/medium business entities whose 2011–12 return were non-taxable. This includes entities whose 2011–12 return was made not necessary by 30 June 2013. • Large/medium business entities whose business started between 1 July 2011 and 30 June 2012 and the 2011–12 return is not necessary and the Tax Office is advised. • New registrant Self-Managed Superannuation Fund. • New registrant large/medium business entities. • Head companies of consolidated groups that are new registrants.
31 March 2014	Tax return for individuals and trusts which were tax level 6 as per latest year lodged (excluding large/medium business trusts).	Entities with total income in the 2011–12 year of more than $2 million (unless required earlier).

*If all overdue prior year returns are lodged by 31 October 2013, the 2012–13 tax return will be due as per the tax agent's normal lodgment program.

Income tax returns		
Due date	**Individuals and Trusts**	**Companies and Superannuation Funds**
15 May 2014	Tax returns for all remaining individuals and trusts not required earlier and not eligible for the 5 June 2014 concession (including new registrations). See below.	• Entities that may not have an obligation to lodge. • Entities who are subsidiary members of a consolidated group that has been consolidated for a full year. • Non-profit organisations that assess that they have a requirement to lodge and have not been allocated an earlier lodgment due date. • New registrants, excluding large/medium business entities, head companies of consolidated groups and SMSF. • All remaining entities that are tax agent clients.
5 June 2014	▶**IMPORTANT:** Tax agents may obtain an automatic extension up to 5 June 2014 for returns due on 15 May 2014. Specifically: • Tax return for entities who were non–taxable or received a refund in the latest year lodged, and are actually non–taxable or receiving a refund in the current year (unless due earlier) – all entities with a lodgment end date of 15 May 2014 except large/medium business taxpayers or head companies of consolidated groups. • Tax return for individuals, partnerships and trusts with a lodgment end date of 15 May 2014 (see above), provided payment is also made by this date. **Note:** This is not a lodgment end date, but a concessional arrangement where penalties will be waived if lodgment and payment are made by this date.	

Partnerships

Partnership returns should be completed and lodged progressively. These returns should be lodged in sufficient time to allow lodgment of the partners' returns by their lodgment due date.

Note: Partnerships that operate on approved Substituted Accounting Periods must lodge their 2012–13 tax returns by the last day of the fourth month after the close of the accounting period adopted.

▶**TIP!** Do not lodge a partnership tax return where the taxpayer was not in a partnership carrying on a business and the only income derived jointly (or in common) with another person (eg. rent from jointly owned property). In such instances, the share of income and expenses should be shown in each person's own tax return.

Activity statements		
Quarterly lodgment obligation	**Original due date**	**Electronic lodgment and payment concession date**
Quarter 4, 2012–13	28 July 2013	25 August 2013
Quarter 1, 2013–14	28 October 2013	25 November 2013
Quarter 2, 2013–14	28 February 2014	Not applicable
Quarter 3, 2013–14	28 April 2014	26 May 2014
Quarter 4, 2013–14	28 July 2014	25 August 2014
		To be confirmed by *Lodgment program 2014–15.*
Annual PAYG Instalment notice	21 October 2013*	

* Final date for payment and, if using the rate method or varying the instalment amount, final date for lodgment

PAYG withholding	
Lodgment due date	**Description**
14 August 2013	Reports for either: • large withholders (annual withholding more than $1 million), or • payers who do not have tax agent or BAS agent involvement in preparing the report.
30 September 2013	Reports for payers who have agent (tax agent or BAS agent) involvement in preparing the report and have either: • one or more arm's length payees, or • only closely held payees but did not meet the compliance test.
Due date of payer's tax return	Reports for payers, including personal services income entities, who have tax agent involvement in preparing the report and: • have only closely held payees • meet the compliance test and notify the Tax Office of any additional eligible clients by 15 September 2013.

Fringe benefits tax (FBT) return		
FBT annual return	**Tax agents with less than 25 clients as at 28 May 2014**	**Eligible tax agents with 25 or more FBT clients as at 28 May 2014**
Tax agent client lodgment due date	28 May 2014	25 June 2014
Tax agent client payment due date	28 May 2014	28 May 2014

Note: The **original** due date for lodgment and payment is 21 May 2014, the above table shows the **concessional** due dates for tax agents. The lodgment deferral to 25 June 2014 will only be applied where a tax agent:

- has 25 or more FBT clients attached to their agent number as at 21 May 2014, and
- is appointed by 28 May 2014 as the tax agent for their client's FBT role.

▶**IMPORTANT:** Tax agents must lodge at least 85% of their client's FBT returns from their total client list by the deferred due date to receive the deferral each year.

Franking account return	
31 July 2013	• Applies where there is an amount payable • Franking account returns are due for lodgment on the last day of the month following the end of the income year; the franking deficit tax is also payable on this date.
31 October 2013	• Franking account return where return is a disclosure-only return (no amount payable), and • Where the taxpayer is a June balancer.

Tax file number (TFN) withholding for closely-held trusts	
31 July 2013	***Quarter 4 (April-June 2013):*** TFN report for closely held trusts for TFNs quoted to a trustee by beneficiaries – final date for lodgment
30 September 2013	***2013 Annual TFN Withholding report***: For closely held trusts where a trustee has been required to withhold amounts from payments to beneficiaries during 2012-13 – final date for lodgment.
28 October 2013	***Annual activity statement 2012-13***: TFN withholding for closely held trusts where a trustee withheld amounts from payments to beneficiaries - final date for lodgment and payment.
31 October 2013	***Quarter 1 (July-September 2013)***: TFN report for closely held trusts for TFNs quoted to a trustee by beneficiaries – final date for lodgment.
31 January 2014	***Quarter 2 (October-December 2013)***: TFN report for closely held trusts for TFNs quoted to a trustee by beneficiaries – final date for lodgment.
30 April 2014	***Quarter 3 (January-March 2014):*** TFN report for closely held trusts for TFNs quoted to a trustee by beneficiaries – final date for lodgment

Note: Annual trustee report lodged with *Trust Tax Return 2012-13.*

Income tax rates and thresholds for individuals

Note: Medicare levy is not included in rates and does not apply to non-residents.

General individual income tax rates for residents: 2012-13 and 2013-14		
Taxable income	**Rate (%)**	**Calculate as**
$0 – $18,200	0	Nil tax payable
$18,201 – $37,000	19	19c for each $1 over $18,200
$37,001 – $80,000	32.5	$3,572 plus 32.5c for each $1 over $37,000
$80,001 – $180,000	37	$17,547 plus 37c for each $1 over $80,000
$180,001 and above	45	$54,547 plus 45c for each $1 over $180,000

Resident minors' tax rate on eligible income 2012-13 and 2013-14	
Taxable income	**Calculate as**
Up to $416	Nil
$417 – $1,307	66% for the part over $416
$1,308 and above	45% on the entire amount

Note: From the 2011-12 year minors cannot access the Low Income Tax Offset in respect of 'unearned income'. The 'unearned income' of minors who are orphans or disabled, as well as compensation payments and inheritance received by minors will not be affected by this measure.

General individual income tax rates for non-residents 2012-13 and 2013-14		
Taxable income	**Rate (%)**	**Calculate as**
$0 – $80,000	32.5	32.5c for each $1
$80,001 – $180,000	37	$26,000 plus 37c for each $1 over $80,000
$180,001 and above	45	$63,000 plus 45c for each $1 over $180,000

Non-resident minors' tax rate on eligible income 2012-13 and 2013-14	
Taxable income	**Calculate as**
Up to $416	32.5% on the entire amount
$417 to $663	$135.20 + 66% on the part over $416
$664 and above	45% on the entire amount

Medicare levy and Medicare levy surcharge

The Medicare levy applies to individuals with a taxable income of more than $20,542, although this is adjusted for certain families and individuals eligible for the Senior Australian and Pensioner Tax Offset (SAPTO). The rate of Medicare is set to increase from 1 July 2014 from 1.5% to 2%.

Note: Individual taxpayers and couples with 'Income for Medicare Levy Surcharge Purposes' (MLS) that are above the relevant thresholds and who do not have private health insurance may be required to pay the Medicare Levy Surcharge (MLS). 'Income for MLS purposes' is the sum of taxable income, reportable fringe benefits, total net investment losses, reportable superannuation contributions, exempt foreign employment income and any net amount subject to family trust distribution tax.

Medicare levy for individuals 2012-13	
Taxable income	**Medicare levy payable**
$0 – $20,542	Nil
$20,543 – $24,167	10% of excess over $20,542
$24,168 and above	1.5% of entire taxable income

Medicare levy for families with dependants 2012-13			
Number of dependents	Family taxable income		
	Nil levy payable	Reduced levy shade-in range (10% of excess over nil band)	Normal 1.5% payable
0	To $33,693	$33,694 – $39,638	$39,639 and above
1	To $36,787	$36,788 – $43,278	$43,279 and above
2	To $39,881	$39,882 – $46,918	$46,919 and above
3	To $42,975	$42,976 – $50,558	$50,559 and above
4	To $46,069	$46,070 – $54,198	$54,199 and above
5	To $49,163	$49,164 – $57,838	$57,839 and above
6	To $52,257	$52,258 – $61,478	$61,479 and above
Extra child	Add $3,094 per child		Add amount per child*

*Add appropriate statutory amount for each child, see subsection 8(5) of the *Medicare Levy Act 1986*.

Medicare levy for individuals eligible for Senior Australian and pensioner tax offset: 2012-13	
Taxable income	**Medicare levy payable**
$0 – $32,279	Nil
$32,280 – $37,975	10% of excess over $32,279
$37,976 and above	1.5% of taxable income

Medicare levy surcharge 2012-13 – Income for MLS purposes and rates				
Singles	<$84,000	$84,001 – 97,000	$97,001 – 130,000	>$130,001
Families	<$168,000	$168,001 – 194,000	$194,001 – 260,000	>$260,001
All ages	0%	1.0% of taxable income	1.25% of taxable income	1.5% of taxable income

Medicare levy surcharge 2013-14 – Income for MLS purposes and rates				
Singles	<$88,000	$88,001 – 102,000	$102,001 – 136,000	>$136,001
Families	<$176,000	$176,001 – 204,000	$204,001 – 272,000	>$272,001
All ages	0%	1.0% of taxable income	1.25% of taxable income	1.5% of taxable income

Note: Single parents and couples (including de facto couples) are subject to the family tiers. For families with children, the thresholds are increased by $1,500 for each child after the first.

Rebates and offsets

Various rebates and tax offsets apply to reduce an individual's income tax. This table summarises the 2012-13 tax offsets for senior Australians and pensioners, mature age workers, net medical expenses and private health insurance. Tax offsets for low income earners for 2012-13 through to 2014-15 are also outlined.

Mature age worker tax offset 2012-13	
Net income from working	**Entitlement to mature age worker tax offset**
Less than $10,000	5% x net income from working
$10,000 – $53,000	$500
$53,001 – $62,999	$500 – [5% x (net income from working – $53,000)]
$63,000 and over	Nil

Note: In order to claim the offset, the taxpayer must be born before 1 July 1957.

Low income tax offset			
2012-13 and 2013-14		**2014-15**	
$0 – $37,000	$445	$0 – $37,000	$300
$37,001 – $66,666	$445 – (1.5% of excess over $37,000)	$37,001 – $66,999	$300 – (1% of excess over $37,000)
$66,667 and above	Nil	$67,000 and above	Nil

Senior Australian and pensioner tax offset 2012-13

Family status (pensioner)	Maximum tax offset	Shade-out income threshold	Cut-out income threshold
Single	$2,230	$32,279	$50,119
Married or de facto (each)	$1,602	$57,948*	$83,580*
Separated due to illness (each)	$2,040	$62,558*	$95,198*

*Combined partner income

Note: The above tax offsets entitlements reduce by 12.5c for each dollar of rebate income in excess of the shade out threshold. No entitlement when taxable income exceeds the cut-out threshold. Senior Australian and Pensioner Tax Offset replaces both the Pensioner Tax Offset and Senior Australian Tax Offset from the 2012-13 income year.

Dependant tax offsets 2012-13

Maximum tax offset assumes dependant status for full income year	Basic full-year tax offset	Tax offset cuts out at ATI[2,3]
Dependant (Invalid and Carer) Offset[1]	$2,423	$9,974
Spouse[4]	$2,423	$9,974

1: From 2012-13, the Dependant (Invalid and Carer) Tax Offset replaces the other dependant tax offsets (except in limited circumstances).

2: ATI = Adjusted Taxable Income. ATI includes: taxable income, reportable superannuation contributions, deductible personal superannuation contributions, adjusted fringe benefits, certain tax-free government pensions or benefits, target foreign income, net financial investment loss, net rental property loss and any child support payments provided to another person.

3: For the 2011-12 year the full offset is available where ATI is less than $286. Where ATI is $286 or more deduct $282 from the ATI and divide the reduced amount by four.

4: Only available to taxpayers born before 1 July 1952. The rate and cut out threshold are estimates as no official amount has been published.

Net Medical Expenses Tax Offset

Year	Offset
2012-13	Singles earning up to $84,000 and couples earning up to $168,000 in adjusted taxable income* receive an offset of 20% for eligible medical expenses over $2,120.
	Singles earning above $84,000 and couples earning above $168,000 in adjusted taxable income* receive an offset of 10% for eligible medical expenses over $5,000.
2013-14	Singles earning up to the income limit and couples earning up to the income limit in adjusted taxable income* receive an offset of 20% for eligible medical expenses over the CPI adjusted threshold.
	Singles earning above the income limit and couples earning above the income limit in adjusted taxable income* receive an offset of 10% for eligible medical expenses over $5,000.

*See *Dependant tax offsets* above for definition of 'adjusted taxable income'.

Note: This offset is to be phased out entirely by 1 July 2019 (subject to the passage of legislation). In order to claim this offset in the 2013-14 income year, a taxpayer must have claimed the offset in the 2012-13 income year. This additional requirement does not however apply to disability aids, attendant care or aged care expenses. Family income threshold is increased by $1,500 for each dependent child after the first.

Private health insurance rebate				
Income for MLS purposes and rebate percentage: 2012-13				
Singles	<$84,000	$84,001 – 97,000	$97,001 – 130,000	>$130,001
Families	<$168,000	$168,001 – 194,000	$194,001 – 260,000	>$260,001
<Age 65	30%	20%	10%	0%
Age 65-69	35%	25%	15%	0%
Age 70+	40%	30%	20%	0%
Income for MLS purposes and rebate percentage: 2013-14				
Singles	<$88,000	$88,001 – 102,000	$102,001 – 136,000	>$136,001
Families	<$176,000	$176,001 – 204,000	$204,001 – 272,000	>$272,001
<Age 65	30%	20%	10%	0%
Age 65-69	35%	25%	15%	0%
Age 70+	40%	30%	20%	0%

Note: Single parents and couples (including de facto couples) are subject to the family tiers.
For families with children, the thresholds are increased by $1,500 for each child after the first.

Companies

There is no change to the corporate tax rate of 30%. Note that some trusts are also subject to the company tax rate.

Corporate entity	Rate
Private companies	30%
Public companies	30%
Life Insurance companies	
Ordinary class	30%
Complying superannuation class	15%
Non-profit companies	
First $416 taxable income	Nil
Shade-in range (taxable income $417 – $915)	55% on excess over $416
Taxable income $916 and above	30% on entire amount

Division 7A – benchmark interest rate		
2011-12: 7.80%	**2012-13:** 7.05%	**2013-14:** 6.20%

Company loss carry-back		
Loss incurred	**Number of years loss can be carried back**	**Maximum amount of offset***
2011-12	N/A	-
2012-13	1 year	$300,000
2013-14 onwards	2 years	$300,000

Note: From 1 July 2012, companies experiencing tax losses can carry back those losses against tax previously paid and receive a refund by claiming a tax offset. Transitional rules apply.

*The maximum offset is limited to the lower of the closing franking account balance in the current financial year and previous financial year(s) liability.

Trusts

Trustees are typically assessed and liable to tax where there is no presently entitled beneficiary to trust income, the beneficiary is under a legal disability (such as a minor) or the beneficiary is a non-resident. The following table contains the rates applicable to trust income. A trustee assessed under s98, s99 or s99A of the *Income Tax Assessment Act 1936* will be subject to the Medicare levy except where the trust is a deceased estate.

Beneficiary presently entitled, under legal disability (ss98(1) and 98(2) ITAA36): residents (other than eligible part*)		
2012-13 tax threshold from 1 July 2012		
Taxable income	**Rate (%)**	**Calculate as**
$0 – $18,200	0	Nil tax payable
$18,201 – $37,000	19	19c for each $1 over $18,200
$37,001 – $80,000	32.5	$3,572 plus 32.5c for each $1 over $37,000
$80,001 – $180,000	37	$17,547 plus 37c for each $1 over $80,000
$180,001 and above	45	$54,547 plus 45c for each $1 over $180,000
Beneficiary presently entitled, under legal disability (ss98(1) and 98(2) ITAA36): non-residents (other than eligible part*)		
2012-13 tax threshold from 1 July 2012		
Taxable income	**Rate (%)**	**Calculate as**
$0 – $80,000	32.5	32.5c for each $1
$80,001 – $180,000	37	$26,000 plus 37c for each $1 over $80,000
$180,001 and above	45	$63,000 plus 45c for each $1 over $180,000

*The 'eligible part' of income is discussed in Schedule 12 to the *Income Tax Rates Act 1986*. Where the income is not an eligible part, the tax rate will be 45%.

No beneficiary presently entitled, trustee assessed (s99 ITAA36) other than the estate of a person who died less than three years prior to year end: 2012-13 tax threshold from 1 July 2012		
Taxable income	**Rate (%)**	**Calculate as**
$0 – $416	0	Nil
$417 – $670	50	50% of excess over $416
$671 – $37,000	19	$127 plus 19% on the excess over $670
$37,001 – $80,000	32.5	$7,029.70 plus 32.5c for each $1 over $37,000
$80,001 – $180,000	37	$21,004.70 plus 37c for each $1 over $80,000
$180,001 and above	45	$58,004.70 plus 45c for each $1 over $180,000
No beneficiary presently entitled, trustee assessed (s99A ITAA36): 2012-13 tax threshold from 1 July 2012		
Taxable income	**Rate (%)**	**Calculate as**
$1 and above	45	45% of taxable income

CGT improvement thresholds

Capital gains tax applies to CGT improvements that exceed the thresholds. The improvement threshold amount is indexed annually.

CGT improvement threshold		
2011-12	**2012-13**	**2013-14**
$130,418	$134,200	Not released at time of writing

Simplified depreciation for small business entities

Taxpayers who satisfy the definition of a Small Business Entity (SBE) pursuant to Division 328 ITAA97 may choose to adopt the simplified depreciation rules. For SBEs, these rules allow for the allocation of depreciating assets to a pool for write off at an accelerated rate and immediate deductions for assets below a certain cost. From 1 July 2012, changes apply such that SBEs are only required to maintain a single general pool and can claim immediate deductions for motor vehicles and other depreciating assets at a higher cost. The tables below outline the pre- and post-1 July rates.

SBE depreciation rates and thresholds		
	Pre-1 July 2012	**Post-1 July 2012**
Small business general business pool^ Rate: First year asset allocated Rate: Subsequent years	 15% 30%	 15% 30%
Long life asset pool (effective life of 25 years or more)^ Rate: First year asset allocated Rate: Subsequent years	 2.5% 5%	 N/A
Immediate deduction – low-cost asset threshold	$1,000	$6,500
Immediate deduction for motor vehicles	N/A	First $5,000 (balance for first year @15% then allocated to general pool)

^From 1 July 2012, SBEs are only required to maintain a single general business pool. Assets in the long life pool are consolidated with the general pool.

*Where a motor vehicle costs less than $6,500, an immediate deduction can be claimed as a low cost asset.

HELP and SFSS compulsory repayment thresholds

HELP compulsory repayments 2012-13	
HELP repayment income (HRI*)	**Rate (of HRI)**
Below $49,096	Nil
$49,096 – $54,688	4%
$54,689 – $60,279	4.5%
$60,280 – $63,448	5%
$63,449 – $68,202	5.5%
$68,203 – $73,864	6%
$73,865 – $77,751	6.5%
$77,752 – $85,564	7%
$85,565 – $91,177	7.5%
$91,178 and above	8%
SFSS compulsory repayments 2012-13	
Repayment income (RI*)	**Rate (of RI)**
Below $49,096	Nil
$49,096 – $60,279	2%
$60,280 – $85,564	3%
$85,565 and above	4%

*HRI or RI = Taxable income plus any total net investment loss (which includes net rental losses), total reportable fringe benefits amounts, reportable super contributions and exempt foreign employment income.

Travel accommodation and meals

The following table lists the 2012-13 travel accommodation and meal allowance rates (refer to TD 2012/17).

▶**IMPORTANT:** For the 2013-14 rates, refer to TD 2013/16.

2012-13 Salary levels $104,870 or below						
Location	**Accommodation**	**Breakfast**	**Lunch**	**Dinner**	**Incidentals**	**TOTAL**
Adelaide	$157	$24.35	$27.35	$46.70	$17.85	$273.25
Brisbane	$201	$24.35	$27.35	$46.70	$17.85	$317.25
Canberra	$165	$24.35	$27.35	$46.70	$17.85	$281.25
Darwin	$189	$24.35	$27.35	$46.70	$17.85	$305.25
Hobart	$132	$24.35	$27.35	$46.70	$17.85	$248.25
Melbourne	$173	$24.35	$27.35	$46.70	$17.85	$289.25
Perth	$233	$24.35	$27.35	$46.70	$17.85	$349.25
Sydney	$183	$24.35	$27.35	$46.70	$17.85	$299.25
High cost country	Variable[1]	$24.35	$27.35	$46.70	$17.85	Variable[1]
TIER 2 country centres	$127	$21.80	$24.90	$42.90	$17.85	$234.45
Other country centres	$106	$21.80	$24.90	$42.90	$17.85	$213.45
2012-13 Salary range $104,871 to $186,520						
Location	**Accommodation**	**Breakfast**	**Lunch**	**Dinner**	**Incidentals**	**TOTAL**
Adelaide	$186	$26.50	$37.50	$52.55	$25.50	$328.05
Brisbane	$233	$26.50	$37.50	$52.55	$25.50	$375.05
Canberra	$220	$26.50	$37.50	$52.55	$25.50	$362.05
Darwin	$264	$26.50	$37.50	$52.55	$25.50	$406.05
Hobart	$176	$26.50	$37.50	$52.55	$25.50	$318.05
Melbourne	$228	$26.50	$37.50	$52.55	$25.50	$370.05
Perth	$239	$26.50	$37.50	$52.55	$25.50	$381.05
Sydney	$229	$26.50	$37.50	$52.55	$25.50	$371.05
High cost country	Variable[1]	$26.50	$37.50	$52.55	$25.50	Variable[1]
TIER 2 country centres	$152	$24.35	$24.90	$48.50	$25.50	$275.25
Other country centres	$127	$24.35	$24.90	$48.50	$25.50	$250.25
2012-13 Salary $186,521 and above						
Location	**Accommodation**	**Breakfast**	**Lunch**	**Dinner**	**Incidentals**	**TOTAL**
Adelaide	$209	$31.30	$44.25	$62.00	$25.50	$372.05
Brisbane	$236	$31.30	$44.25	$62.00	$25.50	$399.05
Canberra	$232	$31.30	$44.25	$62.00	$25.50	$395.05
Darwin	$284	$31.30	$44.25	$62.00	$25.50	$447.05
Hobart	$195	$31.30	$44.25	$62.00	$25.50	$358.05
Melbourne	$265	$31.30	$44.25	$62.00	$25.50	$428.05
Perth	$309	$31.30	$44.25	$62.00	$25.50	$472.05
Sydney	$265	$31.30	$44.25	$62.00	$25.50	$428.05
Country centres	$190[2]	$31.30	$44.25	$62.00	$25.50	Variable[3]

1: See High cost country centres table

2: Or the relevant amount in High cost country centres table if higher

3: See High cost country centres table if applicable

High cost country centres – accommodation

High cost country centres – accommodation expenses			
Alice Springs (NT) $150	Dampier (WA) $175	Horn Island (QLD) $169	Norfolk Island $190
Bourke (NSW) $165	Derby (WA) $182	Jabiru (NT) $192	Port Hedland (WA) $259
Bright (VIC) $136	Echuca (VIC) $123	Kalgoorlie (WA) $159	Port Pirie (SA) $140
Broome (WA) $210	Emerald (QLD) $141	Karratha (WA) $347	Thursday Island (QLD) $180
Bunbury (WA) $155	Exmouth (WA) $255	Katherine (NT) $134	Wagga Wagga (NSW) $134
Burnie (TAS) $135	Geelong (VIC) $136	Kununurra (WA) $202	Weipa (QLD) $138
Cairns (QLD) $140	Geraldton (WA) $135	Mackay (QLD) $141	Wilpena-Pound (SA) $167
Carnarvon (WA) $151	Gladstone (QLD) $187	Mount Isa (QLD) $160	Wollongong (NSW) $136
Castlemaine (VIC) $133	Gold Coast (QLD) $149	Newcastle (NSW) $143	Whyalla (SA) $145
Chinchilla (QLD) $133	Halls Creek (WA) $165	Newman (WA) $195	Yulara (NT) $244
Christmas Is (WA) $150			
Tier 2 country centres			
Albany (WA)	Coffs Harbour (NSW)	Kingaroy (QLD)	Queanbeyan (NSW)
Ararat (VIC)	Cooma (NSW)	Launceston (TAS)	Renmark (SA)
Armidale (NSW)	Dalby (QLD)	Maitland (NSW)	Rockhampton (QLD)
Bairnsdale (VIC)	Devonport (TAS)	Mildura (VIC)	Roma (QLD)
Ballarat (VIC)	Dubbo (NSW)	Mount Gambier (SA)	Seymour (VIC)
Bathurst (NSW)	Esperance (WA)	Mudgee (NSW)	Swan Hill (VIC)
Bendigo (VIC)	Gosford (NSW)	Muswellbrook (NSW)	Tamworth (NSW)
Bordertown (SA)	Goulburn (NSW)	Naracoorte (SA)	Tennant Creek (NT)
Broken Hill (NSW)	Hamilton (VIC)	Orange (NSW)	Toowoomba (QLD)
Bundaberg (QLD)	Hervey Bay (QLD)	Port Augusta (SA)	Townsville (QLD)
Castlemaine (VIC)	Horsham (VIC)	Port Lincoln (SA)	Tumut (NSW)
Ceduna (SA)	Innisfail (QLD)	Port Macquarie (NSW)	Warrnambool (VIC)
Cocos (Keeling) Is	Kadina (SA)	Portland (VIC)	Wonthaggi (VIC)

Long distance truck drivers

Separate reasonable meal allowance rates apply for employee truck drivers who are required to sleep away from home. The following table shows the rates for the 2012-13 and 2013-14 years.

Acceptable daily rates					
Year	**Salary range**	**Breakfast**	**Lunch**	**Dinner**	**Total**
2012-13	$104,870 and below	$21.80	$24.90	$42.90	$89.60
	$104,871 and above	$24.35	$24.90	$48.50	$97.75
2013-14	$108,810 and below	$22.30	$25.45	$43.85	$91.60
	$108,811 and above	$24.90	$25.45	$49.60	$99.95

Overtime meal allowances

Overtime meal expenses do not need to be substantiated, if the allowance is a bona fide meal allowance.

Overtime meal allowances	
2012-13: $27.10	**2013-14:** $27.70

Superannuation rates and thresholds

Superannuation lump sum and employment termination payment rates and thresholds		
	2012-13	**2013-14**
SLS* low rate cap amount (indexed)[1 2]	$175,000	$180,000
SLS* untaxed plan cap amount (indexed)[1 2]	$1,255,000	$1,315,000
Life benefit ETP cap (indexed)[1 2]**	$175,000	$180,000
Death benefit ETP cap (indexed)[1 2]**	$175,000	$180,000
Transitional termination payment		
Low cap amount (indexed)	N/A	N/A
Upper cap amount (non-indexed)	N/A	N/A
Directed termination payment cap (non-indexed)	N/A	N/A
Tax-free part of a genuine redundancy payment or early retirement scheme payment (indexed)[1]	$8,806	$9,246
For each completed year of service add[1]	$4,404	$4,624
Government co-contribution		
Lower income threshold[1 6]	$31,920	$33,516
Higher income threshold	$46,920	$48,516
Maximum payable	$500	$500
Matching rate	50%	50%
Low income superannuation contribution		
Maximum adjusted taxable income	$37,000	$37,000
Maximum payable	$500	$500
Contribution caps		
Concessional (indexed)[1 2 3]	$25,000	$25,000
Concessional over 60 (non-indexed)	N/A	$35,000
Non-concessional[4]	$150,000	$150,000
CGT cap (indexed)[1 2]	$1,255,000	$1,315,000
Non-concessional with bring forward option (non-indexed)[5]	$450,000	$450,000
Superannuation Guarantee (SG)		
Prescribed minimum employer contribution rate	9%	9.25%
Maximum contribution base (per SG quarter)	$45,750	$48,040
Employee age limit obligation (abolished from 2013-14 onward)	70	N/A
Minimum account based pension withdrawal		
Less than 65 years	3%	4%
65 to less than 75 years	3.75%	5%
75 to less than 80 years	4.5%	6%
80 to less than 85 years	5.25%	7%
85 to less than 90 years	6.75%	9%
90 to less than 95 years	8.25%	11%
95 years and over	10.5%	14%
Maximum account based pension withdrawal		
Transition to retirement	10%	10%
Non-transition to retirement (account based pension)	100%	100%
Preservation age table		
Date of birth:		
Before 1 July 1960	55	55
1 July 1960 – 30 June 1961	56	56
1 July 1961 – 30 June 1962	57	57
1 July 1962 – 30 June 1963	58	58
1 July 1963 – 30 June 1964	59	59
1 July 1964 or later	60	60

*Superannuation Lump Sum (SLS) **Employment Termination Payment (ETP)

1: Indexed to AWOTE. 2: Rounded down to nearest $5,000. 3: The government has paused the indexation of this cap for one year in 2013-14. 4: Equal to six times the concessional cap. 5: Available to eligible persons to bring forward two years' non-concessional contributions (note: once triggered the cap will not be indexed). 6: The indexation of the lower income threshold is frozen until 30 June 2013. 7: Available to eligible persons over the age of 50 up to 30 June 2012.

Motor vehicles

Luxury cars	2012-13	2013-14
Luxury car tax limit	$59,133	$60,316
Fuel efficient luxury car tax limit	$75,375	$75,375
Car depreciation limit	$57,466	$57,466

Cents per kilometre car rates 2012-13			
Type	Engine capacity non-rotary engine	Engine capacity with rotary engine	Rate per km
Small car	< 1601cc	< 801cc	63c
Medium car	1601cc to 2600cc	801cc to 1300cc	74c
Large car	> 2600cc	> 1300cc	75c

FBT rates and thresholds

FBT is applied to the grossed-up taxable value of the fringe benefit. If the employer is entitled to the GST the FBT gross-up factor is **2.0647**, otherwise the rate will be **1.8692** for the 2013-14 FBT year. From 1 July 2014 the rate of FBT and therefore the gross-up factors will change due to the Medicare levy being increased.

FBT rate and gross-up factors			
FBT year	FBT rate	Type 1* gross-up	Type 2^ gross-up
1 April 2013 to 31 March 2014	46.5%	2.0647	1.8692
1 April 2014 to 31 March 2015	47%	2.0802	1.8868

*Type 1 higher gross-up factor effectively recovers GST credits obtained by the employer in providing the fringe benefit.
^Type 2 lower gross-up factor applies where GST credits are not available to the employer in providing the fringe benefit.

Taxable value of a fringe benefit arising from private use of a motor vehicle other than a car ('cents per km' basis) 2012-13 and 2013-14 FBT year			
FBT year ending	0 – 2500cc	Over 2500cc	Motorcycles
31 March 2014	49c	59c	15c
31 March 2013	48c	57c	14c

Indexation factors for non-remote area housing for 2012-13 and 2013-14 FBT year		
State/Territory	2012-13	2013-14
New South Wales	1.060	1.051
Victoria	1.040	1.030
Queensland	1.028	1.028
South Australia	1.042	1.031
Western Australia	1.035	1.057
Tasmania	1.039	1.020
Australian Capital Territory	1.056	1.045
Northern Territory	1.026	1.030

	Record keeping exemption	Benchmark interest rate	Car parking threshold
2012-13	$7,642	7.40%	$7.83
2013-14	$7,779	6.45%	$8.03

Living-away-from-home (LAFH) allowance fringe benefits: Reasonable food component
The requirement to be satisfied in order to access the LAFH allowance concessions changed significantly from 1 October 2012. Access to the concession is typically limited to a period of 12 months (with exceptions). Eligibility criteria apply. The reasonable food components for 2012-13 and 2013-14 FBT years are contained in Tax Determinations TD 2012/5 and TD 2013/4 respectively.

Foreign currency exchange rates

Foreign income, deductions and tax paid must be reported in the tax return in Australian dollars. Generally, amounts are converted at the current rate at the time of the transaction or the average rate.

Foreign currency exchange rates for the financial year ended 30 June 2013 (foreign currency equivalent to $1 Australian)

	Average rate for year ended		Nearest actual rate		
Country	**31 Dec 2012**	**30 June 2013**	**31 Dec 2012**	**30 June 2013**	**Currency**
Canada	1.0712	1.0672	1.0691	1.0077	Canadian dollar
China (estimate)	N/A	6.4146	N/A	5.6991	Yuan
Denmark	6.1745	6.0993	6.0242	5.4788	Kroner
Europe	0.8362	0.8259	0.8154	0.7425	Euro
Fiji	1.8939	1.8791	1.9015	1.7803	Fijian dollar
Hong Kong	8.2566	8.1886	8.2620	7.4173	Hong Kong dollar
India	56.4568	57.4971	58.1850	57.4800	Indian rupee
Israel	4.1123	4.0154	3.9899	3.4717	Israeli new shekel
Japan	86.0931	93.2625	92.6900	94.9100	Yen
Kuwait	0.2980	0.2981	0.3009	0.2718	Kuwait dinar
New Cal/Tahiti	98.4949	97.0853	95.6700	87.4200	South Pacific franc
New Zealand	1.3142	1.2818	1.2959	1.2208	New Zealand dollar
Norway	6.2339	6.1266	5.9993	5.8205	Kroner
Oman	0.4212	0.4177	0.4215	0.3800	Oman rial
PNG	2.3530	2.3475	2.3706	2.2286	Kina
Philippines	45.4584	44.2744	44.3780	42.1340	Philippines peso
Poland	3.4708	3.3967	3.3027	3.1839	Polish zloty
Saudi	3.9826	3.9501	3.9910	3.5723	Saudi riyal
Singapore	1.3409	1.3194	1.3162	1.2225	Singapore dollar
Solomon Islands	7.9279	7.8292	7.8795	7.1648	SI dollar
South Africa	8.8541	9.4163	9.1403	9.5899	Rand
Sri Lanka	135.5138	135.5579	135.3700	124.7500	Sri Lankan rupee
Sweden	7.2121	6.9777	6.9524	6.4496	Kronor
Switzerland	1.0011	0.9968	0.9761	0.9061	Swiss franc
Thailand	32.9002	31.9710	32.4200	29.5200	Baht
Turkey	1.9146	1.9043	1.9042	1.8310	Turkish lira
United Kingdom	0.6764	0.6780	0.6646	0.6308	Pound sterling
USA	1.0668	1.0580	1.0677	0.9583	US dollar
Vanuatu	103.9632	102.7402	107.4700	100.4700	Vatu

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The Month of July...

From the Government

Proposed removal of statutory formula method for FBT

On 16 July 2013, the government announced that it will remove the statutory formula method for both salary-sacrificed and employer-provided cars from 1 April 2014. Additional information has been made available as a fact sheet and a question and answer (Q&A) document.

Key aspects discussed in the documents include:

1. The proposed change removes the use of the statutory formula method as an option in valuing car fringe benefits from 1 April 2014. The operating cost method will be the only method available from that time. This method values the benefit by using the running costs of the car multiplied by the proportion of personal use of the car worked out by a log book. The statutory formula method values the benefit by multiplying the cost of the car by 20% regardless of its actual personal use.
2. The changes will apply to all new 'commitments' for car fringe benefits entered into after 16 July 2013 and will take effect from 1 April 2014. The implications are as follows:

   Commitment entered into after 16 July 2013:

   a. These commitments will continue to have the existing rules apply for the remainder of the 2013-14 FBT year (ie. the statutory formula method or operating cost method may be used).
   b. From 1 April 2014, these commitments will be required to use the operating cost method in determining the taxable value.

   Commitment entered into before 17 July 2013:

   a. Pre-existing commitments that are in place prior to 17 July 2013 will continue under the old rules (ie. the statutory formula method or the operating cost method).
   b. This applies unless there is a material change or variation to the commitment. The new rules apply in these cases.
3. A commitment is considered to be entered into at the point that there is a commitment to the transaction (ie. the commitment is financially binding on one or more of the parties).
4. A material change or variation will include refinancing a car, altering the duration of an existing contract or changing employers.
5. Employees can still enter into salary sacrifice arrangements for a car (eg. novated lease) however the new rules will apply (ie. the log book method).
6. A log book would need to be:
   a. maintained for 12 continuous weeks to work out the business use, and
   b. completed once every five years unless there is a major change in pattern of use.

From the Commissioner of Taxation

Compliance Program

Compliance in focus 2013-14

Actions being taken by the Tax Office to deter, detect and deal with those who do not meet their tax and superannuation obligations have recently been outlined in the 2013-14 compliance program. Some key areas identified for the year include:

- **Individuals:**
  - Paying attention to high claims made by building and construction labourers, construction supervisors and project managers, and sales/marketing managers.
  - Undertake 500 income tax reviews and audits of 'highly wealthy' individuals (net wealth > $30 million) and contact 750 to check claims or provide advice.
  - Undertake 1,000 income tax reviews and audits of 'wealthy' Australians (net wealth between $5 -$30 million) and contact 8,000 to check claims or provide advice.
  - Based on data revealing extensive use of complex structures, 680 reviews and 115 audits will be undertaken of wealthy individuals who may be using tax havens.
- **Employer obligations:**
  - Review 17,700 businesses to ensure that employers are meeting their PAYG withholding obligations.
  - 950 reviews of employers who may try to avoid their tax and superannuation obligations by improperly treating workers

as contractors rather than employees.

- Contact around 19,500 employers as a result of complaints by employees reporting their superannuation guarantee entitlements have not been paid. Cafes and restaurants, carpentry services, and real estate services will be industries of focus.

- **Activity statement refunds:** 41,000 activity statement refunds will be reviewed to ensure businesses are correctly reporting their GST transactions and to identify any fraud.
- **Small business (annual turnovers < $2 million):** There are concerns with some small businesses:
  - overclaiming concessions
  - attempting to hide income and operating in the cash economy, and
  - claiming CGT concessions they are not entitled to.
- **Medium-sized businesses (annual turnover between $2-$250 million):** Undertake more than 1,000 income tax reviews and audits and contact 2,500 to verify information, including:
  - making sure businesses lodge their outstanding returns, particularly with privately owned groups with trusts, partnerships and companies
  - misuse of trusts and omitted income
  - CGT non-disclosure and under-reporting, and
  - fraudulent phoenix behaviour – with emphasis on property developers.
- **Self-managed super funds reviews:**
  - 1,100 funds to check they comply with income tax obligations
  - 15,100 funds for compliance with regulatory obligations, and
  - 160 approved auditors.

Decision Impact Statement – *Greenhatch v Commissioner of Taxation* [2012] FACFC 84

Background

The Full Federal Court decision involved a discretionary trust which made a capital gain of $450,635 in the 2008 income year of which only half was included in the income of the trust (totalling $600,260). The taxpayer was made presently entitled to 50% of the entire capital gain.

The taxpayer was assessed by the Commissioner of Taxation under s97 ITAA36 on 18.7863% of the 'net income' of the trust (the share calculated as [$450,635 x 50% x 50%]/$600,260). Consequently, the taxpayer was disallowed a deduction for a personal superannuation contribution because he had breached the '10% test' (s290-160 ITAA97).

Issue

The issue was whether the taxpayer's share of the net income of the trust assessed to him under s97 ITAA36 was attributable to the trust's capital gain within the meaning of former s115-215 ITAA97. In particular, this turned on whether the part attributable was calculated by reference to:

- the character of the amount of income to which the taxpayer had been made presently entitled per the trustee resolution for trust purposes - the taxpayer's view, or
- the percentage (ie. 18.7683%) used to determine the taxpayer's share of the net income included in his assessable income under s97 ITAA36 - the Commissioner's view.

Decision

The Court agreed with the Commissioner. It concluded that the proportionate share of the net income of a trust that is included in the assessable income of a beneficiary under s97 ITAA36 has no character beyond that inherent in the share of the net income as being a proportionate share of all of the net income.

Tax Office view

The Commissioner accepts the approach adopted in *Greenhatch* and considers that the streaming of amounts for trust law purposes by reference to the character of those amounts will only be effective for tax law purposes where that result is facilitated by specific statutory rules.

Whilst the tax laws in relation to the effective streaming of capital gains and franked distributions have since been amended, the Commissioner acknowledges that there are questions as to the tax effectiveness of streaming of amounts for trust law purposes by reference to their character in other contexts.

Specifically, the Commissioner has indicated his intention to issue rulings on the tax effectiveness of streaming income to non-residents (specifically foreign income, and dividend, interest and royalty income), and the streaming of income on which foreign tax has been paid. ■

From the helpline: Q&As

Income tax

QUESTION: WM Accounting Services Pty Ltd (WM Accounting), a professional services firm, held an annual planning day for its professional staff. This was held off-site. The event provided staff with technical training, discussed specific practice management issues and outlined the financial objectives for the business going forward.

Event details

Venue:	*Happy Valley Conference Centre. Room 125 - Seats 30; 9am – 5pm*
Morning:	*Accounting training: 1.5 hours, Morning tea: 15 minutes, Tax training: 1.5 hours*
Lunch:	*Buffet lunch: 1.5 hours*
Afternoon:	*Practice management discussions: 1 hour, Afternoon tea: 15 minutes*
	Goal setting and objectives for financial year: 2 hours

Costs

An invoice from Happy Valley Conference Centre, totalling $11,000 (including GST) itemises room hire and facilities – $7,700 (including GST); and meals and lunch – $4,400 (including GST)

Some staff from interstate branches were flown in for the day. Return flights and taxi fares were paid for by the firm. This amounted to $2,200 (including GST).

Required

You are the Finance Manager of WM Accounting. You have been asked by the directors whether the relevant expenses incurred are tax deductible.

ANSWER: Yes. A deduction for the costs detailed above is available to WM Accounting (pursuant to s8-1 and s32-35 of the *Income Tax Assessment Act 1997* (ITAA97)). The total deduction is therefore $12,000 (excl GST). The basis for the deduction in respect of each expense is explained below.

Room hire and facilities

A general deduction is available to WM Accounting under s8-1 ITAA97 in respect of the room hire expenses of $7,000. This is an expense necessarily incurred by the firm in conducting its business (ie. deriving fee income). The expense is also not capital (or of capital in nature) and is not specifically prevented from being a deduction under tax law.

Meals and lunch

The provision of the meals and lunch at the planning day constitute ‘entertainment’ expenses for income tax purposes (s32-10(1)(a) ITAA97).

Specifically, the term ‘entertainment’ for tax purposes means:

- Entertainment by way of food, drink or recreation, or
- Accommodation or travel to do with providing entertainment by way of food, drink or recreation.

The mere provision of food and drink would not necessarily constitute entertainment (eg. where it is provided as sustenance) – see TR 97/17 for the factors to consider in working out whether food and drink constitute entertainment.

As a general rule, expenses incurred in the provision of ‘entertainment’ are prevented from being deductible under s8-1 (pursuant to s32-5). Notwithstanding this, certain circumstances are contemplated under tax law which may permit a deduction for entertainment costs. In particular, a deduction may be allowed for the provision of food, drink, accommodation or travel to an individual that is reasonably incidental to that individual attending a ‘seminar’ under s32-35 ITAA97.

The term ‘seminar’ is broadly defined under s32-65. It includes such events as conferences, conventions, lectures and training sessions.

A deduction under s32-35 would be available for meals provided at the seminar if the following are satisfied:

- The seminar must have a duration of at least four hours. Note that any part of the seminar that occurs during a meal, or any break during the seminar for the purpose of a meal, rest or recreation are not counted towards the four hours.
- None of the following apply:
  - The seminar is a 'business meeting' (Item 2.1(a) of the table in s32-35 ITAA97) – this is taken to mean a meeting where the main purpose is for individuals to give or receive information or to discuss business matters. A seminar is not taken to be a 'business meeting' if it is organised by the taxpayer, as an employer, for one or both of the following purposes:
    - training the employer and/or its employees in matters relevant to the employer's current (or prospective) business, or
    - enabling the employer and/or its employees to discuss general policy issues relevant to the internal management of the employer's business (see s32-65(3) ITAA97).
  - The seminar's main purpose is to either:
    - promote or advertise a business (or prospective business) or its goods or services, or
    - provide entertainment at, or in connection with, the seminar (item 2.1(b) and (c) of the table in s32-35 ITAA97).

WM Accounting, in this case, satisfies the above conditions. A deduction is allowed for the food and drink costs for the following reasons:

- The meals provided are 'reasonably incidental' to staff attending the planning day (which falls within the meaning of a 'seminar').
- The planning day exceeds four hours. Excluding meal times, the total duration of the planning day is 6 hours (ie. three hours of technical training and three hours of strategy meetings).
- The seminar is not a 'business meeting'. Its main purpose is providing staff with technical training and to discuss general policy issues relevant to the business, which in this case relates to practice management and financial objectives. The main purpose of the planning day is neither to promote or advertise the firm's business, or provide entertainment.

Travel costs for interstate staff

Travel costs incurred by WM Accounting would also constitute 'entertainment' for tax purposes because travel and accommodation costs to do with providing entertainment by way of food, drink or recreation by taxpayer also fall within that meaning (s32-10(1)(b) ITAA97) (see discussion above). Similarly, the conditions in s32-35 ITAA97 require consideration in working out whether a deduction for the travel costs for interstate staff to attend the planning day is available to WM Accounting.

On this basis, a deduction would be available to the firm for these travel costs for the same reasons that apply to the meal and lunch costs incurred (see above).

▶**TIP!** WM Accounting should not be subject to any adverse FBT implications in this case. The provision of these benefits to the staff constitutes either an expense payment or property fringe benefit. In most cases, the taxable value of the benefits provided would be reduced under the 'otherwise deductible' rule. Under this rule, the taxable value of a benefit is reduced to the extent that a tax deduction would have been available to an employee had they incurred the expense themselves. This outcome is subject to certain conditions – see TD 93/195 & TR 97/17 (para 104-120). Also note that the GST treatment of costs in providing the benefit typically follows its income tax treatment (ie. input tax credits would be available to the extent that a tax deduction is allowed). ■