- CGT is taxed under statutory income (ITAA97) – not ordinary
- Net = CG = Capital proceeds – cost base
- *Capital losses cannot be deducted from assessable income (Quarantined)*
- *Capital losses may be carried forward and offset against future capital gains*

A capital gain or capital loss you make is disregarded if you acquired the asset before 20 September 1985.

- ***3 Step process to determine if affected by CGT:***

1. Has a CGT event happened to the taxpayer?
2. Is the asset a CGT asset?
3. Does an exception or exemption apply?

- Five-step process to calculate the **NET CAPITAL GAIN** (ie ***gains*** and ***losses*** for all events in the income year) in **s 102-5 ITAA97.** Broadly:

1. *Current year* capital gains less current year capital losses **(in the order the taxpayer chooses)**
2. **Remaining capital gains are reduced by any unapplied net capital losses from previous years**
3. **Reducing any remaining discount capital gains by the discount percentage**
4. **Apply small business concessions (if available)**
5. **Add up: any remaining capital gains that are not discount capital gains + any remaining discount capital gains**

Step 1: s 102-[illegible]: Has the taxpayer made a CAPITAL GAIN or LOSS? Pg. 306

Capital gain = capital proceeds > cost base
Capital loss = capital proceeds < *reduced cost base*

Q1: HAS A CGT EVENT HAPPENED TO THE TAX PAYER?

s 102-20: A taxpayer only makes a capital gain or loss **if a CGT event occurs**

s 102-25(1): use the most specific to the situation if more than one CGT event happens

4 main types of CGT events:

CGT event A1 – Disposals – Pg. 307

- **s 104-10 (ITAA97):**
- **(1)** CGT event A1 happens if you *dispose of a CGT asset*
- **(2):** Disposal occurs when you change ownership. A change of ownership does not occur if you stop being the ***legal owner*** of the asset but continue to be its ***beneficial owner***
- **(3)** The *time of the disposal* is **EARLIER** of:
  - **(a)** when you enter into the contract for the disposal; **OR**
  - **(b)** if there is no contract--when the change of ownership occurs

Timing issues:

Disposals:

FC of T v Sara Lee Household (Pg. 142 ATL):

-Amended original contract – Eg. Purchase price – the timing of CGT – was it the original contract or the amended?

-When there is more than one contract (original and subsequent) **the date of disposal** will be **determined by** reference **to the contract giving rise to the obligation** to sell **or transfer the asset – in this case the original contract**

Acquisitions:

-McDonald v FCT (19[illegible]): oral contract, enforceable or not, will determine the date of acquisition

-Elmslie v FCT (19[illegible]): where there is no contract, time of event will be the time of change of ownership to be determined by the facts (eg: handing over keys)

CGT event C1 – End of TANGIBLE property – Pg. 309

- **s 104-20 (ITAA 97)**
- **(1):** CGT event C1 happens if a CGT asset you own *is lost or destroyed.*
- **(2)** The time of the event is:
  - **(a)** when you first ***receive compensation*** for the loss or destruction; **OR**
  - **(b)** if you receive no compensation--when the loss is discovered or the destruction occurred
- Eg. Building collapsed – you receive compensation for loss of capital asset (permanent v temporary) – is there a capital gain at the end of the life? – will be covered under C1

CGT event C2 – End of INTANGIBLE property – Pg. 309

s 104-25 (ITAA 97)

(1) CGT event C2 happens if your ownership of an intangible CGT asset ends by the asset being:

- *Redeemed, cancelled, released, discharged, satisfied, abandoned, forfeited etc*

(2) The time of the event is:

- When you enter into the contract that results in the asset ending; **OR**
- If there is no contract--when the asset ends

CGT event D1 – Creating contractual or other rights – Pg. 310

- **S 104.35**
- **(1)** CGT event D1 happens if you **create a contractual right** or **other legal or equitable right** in **another entity**
- **(2)** The **time** of the event is when you **enter into the contract** or **create the other right.**
- **(3) Capital gain** made if: ***Capital proceeds > Incidental costs relating to the event***

Eg. Restrictive Covenants (Capital):

- You enter into a contract with the purchaser of your business not to operate a similar business in the same [illegible]. The contract states that $20,000 was paid for this.
- If you paid a lawyer $1,500 to draw up the contract: CG = $20k – 1.5k = 18.5k

Q2. IS THERE A CGT ASSET? Pg. 315

CGT asset defined in **s 108-5(1)** as:

- **(a)** Any kind of property, tangible or intangible: Eg. buildings and [illegible] or goodwill) OR
- **(b)** CGT asset can be a legal or equitable right that is not property (Eg. Right to sue)

s 109-5(1): Time of acquisition of the CGT asset is generally when the taxpayer becomes its owner

Table in s 109-5(2)

Acquisition of CGT Asset: usually when contract is signed – Pg. 320 PoTL

Divide them up in to 3 groups: each with their own special rules

- ***CGT assets- ordinary assets***
- ***Collectibles***
- ***Personal use assets***

CGT Assets

s 108-5 (ITAA 97):

- Land and buildings - Shares in a company - Units in a unit trust - Options - Debts owed to you - Right to enforce a contractual obligations - Foreign currency

Collectibles Pg. 316

s 108-10(2) defined as

- Artwork, jewellery, an antique or a coin or medallion; or a rare folio, manuscript or book; or a postage stamp or first day cover that is used or kept mainly for personal use or enjoyment.

There are two limbs to this definition

- ***1) Item must be one of the kind listed***
- ***2) Asset must be used or kept mainly for personal use or enjoyment***

Special Rules

S108 ITAA 97

1. Capital gains and capital losses are disregarded when the **first element** of a collectible's ***cost base* is less than $500** (Collectible = Set)
2. ***Cost base*** of a collectible: ***disregard 3rd element*** (***non-capital costs of ownership***) (Eg. interest on money borrowed to purchase CGT asset)
3. *Quarantining rule: ***capital losses from collectibles can only be used to reduce capital gains from collectibles*** (Can't offset losses from other types of CGT assets Only collectibles)
4. ***If you own collectibles as part of a set, they are treated as a single collectible***

Personal use assets Pg. 317

s 108-20(2)

- CGT asset (other than a collectible) that is used or kept mainly for personal use or enjoyment
- Eg. Boats, yachts, *expensive TV's*, Stereo's (>$10k)

s 108-20(3)

- Does not include land or building, or assets considered a collectible

S108-20(1)

- Personal use asset capital loss always disregarded

Special Rules

1. Capital gains and capital losses are ***disregarded*** when the **first element of a personal use asset's cost base** is ***less than $10k***
2. Cost base of a personal use asset: disregard 3rd element (noncapital costs of ownership)
3. **Capital *losses* from personal use assets are disregarded**
   (Can't offset it against anything – unlike collectibles where can offset losses against other collectibles)

Separate CGT assets Pg. 318

- Special rules in **S108-D 97**
- Not a separate group (out of the 3)
- Arises with unique circumstances
- Provides exception to common law rule of: what is attached to the land is part of the land
- ***Can consider land and buildings as two separate CGT assets or capital improvements***

s 108-55(2) 97: Pre-CGT land and post-CGT buildings

- **s 108-55(2):** Land acquired ***before 20 September 1985,*** a building or structure constructed on land is taken to be a separate CGT asset
  - Time of contract must be after that day or if no contract – time construction commenced
- You bought a block of land with a building on it on ***10 August 1984***. On ***1 December 1999*** you construct another building on the land. The other building is taken to be a separate CGT asset from the land

(s 108-70): Capital improvements

- A capital improvement is a separate CGT asset to the land if a *balancing adjustment* applies to the improvement
- If land acquired pre-CGT
  1. Cost base of the capital improvement (or related capital improvements) is greater than the improvement threshold; ***AND***
  2. More than 5% of the capital proceeds from the event.
- ***Improvement threshold*** is $143,392 (for year ended 30 June 2016) (TD 2015/13)

Q3. ARE THERE ANY EXEMPTIONS OR EXCEPTIONS? Pg. 321

*Will disregard the gain all together – don't forget about 20th September 1985 exception too

1. Exempt gains and losses on certain assets

- **S 118-5:** Cars, Motor Cycles and Valour Decorations
- **S 118-10:** Collectables < $500; Personal Use Assets < $10,000
- **S 118-12(1):** Assets used to produce exempt income
- **S 118-24(1):** Depreciating Assets
- **S 118-25:** Trading Stock

2. Exempt of loss denying transactions

- **Compensation:** capital gain or loss disregarded if made of **compensation or damages for:** *wrong, injury or illness suffered* – **S 118-37(1)(a) & (b)**
- **Gambling and Competitions with Prizes:** capital gain or loss disregarded if made from gambling or competition with prizes – **S 118-37(1)(c)**
  → However, exemption WILL NOT APPLY to capital gains or losses where taxpayer is considered ***to be in the business of gambling under ordinary income concepts***

3. Anti-overlap provisions

s 118-20(1): Reduces a capital gain ***to the extent (partially)*** the amount is included in the taxpayer's assessable income
If amount is considered ordinary/statutory income under another provision of ITAA 36/97. That amount excluded from the capital gain

4. Main residence exemption Pg. 326

- Disregard capital gains or loss as a result of a CGT event happening to a taxpayer's **main residence**
  → Only apply where the residence was the main residence during the **whole of the ownership** period and it was **not used for the purposes of producing assessable income**

ITAA97 S118-110 (1) A capital gain or capital loss you make from a CGT event that happens in relation to a CGT asset that is a ***dwelling*** or your ownership interest in it is disregarded if:

- **(a)** you are an ***individual***; AND
- **(b)** the dwelling was your ***main residence throughout your ownership period***; AND
- **(c)** the interest DID NOT pass to you as a **beneficiary** in, and you did not acquire it as a **trustee** of, the estate of a deceased person

S 118-115(1) Dwelling: includes a unit of accommodation that is a building which consists wholly or mainly of residential accommodation, a caravan, houseboat or mobile home and the land immediately under the accommodation

Rules that may EXTEND the main residence exemption Pg. 328:	Rules that may LIMIT the exemption Pg. 329:
• **S 118-135 97:** Main residence exemption may be extended from time of acquisition to time the taxpayer moved in • **S 118-140** **(1) Changing residences:** where the taxpayer acquires a new dwelling intended to be their main residence [illegible]dly, the old dwelling may be retained for up to 6 months **(2) Extension only applies** original main residence was taxpayer's main residence for a continuous period of at least 3 months in the 12 months before it was disposed of and not used to produce income • **Absence – S 118-145 (97)** >Dwelling may be used for income producing purposes where the taxpayer is *absent for up to six years.* >No other dwelling can be treated as a main residence. Eg. gone overseas to work – can produce income (rent) but still be treated as a main residence (CGT exempt)	May be partially exempt: **s 118-190** • Dwelling used for the purpose of producing assessable income (eg, a room in the dwelling was rented out – business purposes) **s118- 185** • Partial exemption for a CGT event that happens where main residence was for part of the ownership period.

** There is more to this topic that has been intentionally left out