CGT

- Net capital gain = (total capital gains – capital losses) x 50% discount for gains
- Net capital gain is taxed at marginal tax rate
- Disposal of asset, esp. when carrying on a business: thought sequence
    1. Is it trading stock? Ordinary income
    2. Is it disposal in the ordinary course of the business? Ordinary income
    3. Was disposal an isolated transaction, with characteristics of a business? Ordinary income *Whitfords Beach*
    4. Was disposal isolated or extraordinary? If so, was there intention of profit when transaction was entered? Was the same profit realized? If so, *Myer's first strand* applies → ordinary income
    5. Is disposal used to produce income, and did taxpayer claim capital allowances under Div 40? Statutory income/loss may arise from a balancing adjustment under Div 40, no CGT
    6. Is disposal used partially to produce assessable income and did taxpayer claim capital allowances under Div 40? Statutory income/loss may arise from a balancing adjustment under Div 40. Thereafter, consider CGT related to the non-business use of the asset, using event K7.
    7. Did asset qualify for Div 43 allowances and was it destroyed? Consider Div 43 before you calculate CGT if asset was destroyed
    8. If none of the above is relevant, then consider CGT. Only applies to realized gains, if you own shares and market price goes up, no CGT consequences until you sell shares
- Gains and losses on assets acquired before 20 September 1985 are generally exempt from CGT
- The only references to specific sections of the Income Tax Assessment Acts you need to know are: **s 102-5 gain and s 102-10 loss**
- Determining CGT effects on taxpayer:
    1. Have you made a capital gain/loss?
        i. CGT event?

A1	Disposal of asset
C1	Loss or destruction of asset
C2	Loss related to cancellation, surrender or similar ending of intangible asset
C3	Capital gains by companies that issue options to acquire shares
D1	Capital gains bringing contractual or other right into existence *NB: 50% general discount N/A to D1/D2 events*
D2	Capital gain from granting an option *NB: 50% general discount N/A to D1/D2 events*
K4	Gain or loss when a capital asset become trading stock
K7	Gain or loss on disposal of asset that first returned a balancing adjustment

ii. CGT asset?

CGT asset examples	Land and buildings, shares, units in a unit trust, options, debts owed to you, right to enforce a contractual obligation, foreign currency
Categories	**CGT assets, collectables, personal use assets**
Collectables Must satisfy both limbs	**1)** Artwork, jewelry, antiques, coins, medallions, rare folio/manuscript/book, postage stamp or first day cover, **2)** that is used/kept mainly for personal use or enjoyment. Artwork purchased as investment (rather than to be enjoyed) is not a collectable 4 specific rules: 1. Gains/losses from collectables where the first element of asset's cost base is $500 or less are disregarded 2. When calculating the cost base of a collectable, disregard the third element (non-capital costs of ownership) 3. Capital losses from collectables can only be used to reduce capital gains from collectables (quarantining rule). Any losses not used in the current tax year can be carried forward to offset future gains on collectables 4. If collectables are part of a set, then that set of collectables is treated as a single collectable
Personal Use Asset	CGT asset other than a collectable that is used or kept mainly for personal use and enjoyment. Four rules: 1. Capital gains made from personal use assets are disregarded where the first element of asset's cost base is <$10,000 2. When working out the cost base of a personal use asset, disregard the third element (non-capital costs of ownership) 3. A capital loss made from personal use asset is disregarded 4. If you own personal use assets that are part of a set, then the set is treated as a single personal use asset E.g. TV at home, mobile phone for private use, bicycle, yacht owned for personal use and enjoyment. Does not include land or buildings. Unlikely to find a personal use asset that is subject to tax on gains **(greater than $10,000)**, example: yachts or racehorses
Separate CGT assets	• If land acquired on/after 20 Sept 1985, building or structure on the land is taken to be separate CGT asset if depreciating asset or research and development balancing adjustment provisions apply • If after 20 Sept 1985, building/structure is constructed on the land, it's taken to be a separate CGT asset if contact was entered on that day • A depreciating asset that is part of a building is a separate CGT asset • Land acquired on or after 20 Sept 1985 adjacent to land already owned is taken to be separate CGT asset if two parcels of land are combined into the one title • Capital improvement → separate CGT asset to land if: - Balancing adjustment provision applies to the land - Cost base of capital improvement to asset acquired before 20/9/85 is more than the improvement threshold *(FY16 $143,392, FY17 $145,401, FY18 $147,582)* and more than 5% of the capital proceeds

Time of acquisition of CGT asset	• Assets acquired before 20/9/85, generally exempt from CGT • Indexation or CGT 50% general discount only applies where asset is held for at least 12 months. • 50% discount does not apply to CGT events D1, D2, D3, companies, trustees • 50% discount only applies to gains, not losses

iii. Exception/exemption?

Common Exemptions	• Asset acquired before 20/9/85 • Main residence **1. Exempt gains and losses on certain assets** **2. Exempt or loss denying transactions** **3. Anti-overlap provision** **4. Small business relief**
Main residence exemption	• Capital gain/loss resulting from CGT event happening to taxpayer's main residence is generally ignored. Disregard capital gain/loss that happens to a dwelling that is taxpayer's main residence. Only applicable if residence was the main residence during the whole ownership period (own home → basic case vs deceased estate → deceased estate case) • Basic case: taxpayer is an individual and main residence during whole ownership period. • If spouse has another main residence, pick on (higher value) • If moving, can treat both as main residence for 6 months provided old main residence was main residence for continuous period of 3 months in the last 12 months, and not used to produce assessable income in the last 12 months • If absent from home, and **not rented** out, still main residence indefinitely as long as there is not another main residence • If absent from home and **rented** out, can still be main residence for maximum of 6 years • If buy property, renovate, build, repair, still main residence for maximum 4 years if took time to move in as long as no other main residence • *Claimed occupancy costs, will have capital gain or loss = income producing % of capital gain/loss*
1. Disregarded capital gains/losses on certain assets	• Cars (carry less than 1 tonne, fewer than 9 passengers), motor cycles, valour decorations • Collectables less than $500 /personal use assets less than $10,000 • Assets used to produce exempt income • Shares in a Pooled development fund (PDF) • Investments made in start-up companies (from 1 July 2016) when held for 12 months to 10 years • Depreciating assets • Trading stock

2. Exempt or loss denying transactions	• Compensation: CGT disregarded if gain/loss is made from a CGT event that relates directly to compensation or damages received for any wrong or injury s prizes: disregarded – no CGT consequences. Exemption does not apply where taxpayer is in the business of gambling under ordinary income provisions.
3. Anti-overlap provisions	• If amount is considered ordinary/statutory income under another provision, no CGT. Already taxed at marginal rates as ordinary income.
4. Small business relief	• Small business → net value less than $6M, turnover less than $2M • CGT asset must be active asset, used readily in the course of the business (tangible) or inherently connected with the business (intangible, goodwill) • A CGT concession stakeholder wants to claim the concessions • There must be a CGT concession stakeholder just before the CGT event. A significant individual in the company or trust, controls at least 20% of the shares or has at least a 20% interest in the trust = small business participation percentage. • All CGT concession stakeholders must have a small business participation percentage in the entity of at least 90% before the CGT event • Market value of the active assets of the company or trust must be more than 80% or more of the market value of all assets of the company or trust 1. 15-year exemption - Total exemption for any capital gains of assets owned for at least 15 years where the taxpayer is older than 55 years and retiring or permanently decapacitated. If applicable, priority application 2. 50% reduction - Reduce capital gains by 50%. Can be used after the general 50% discount, giving a total discount of 75%. The gain may also be reduced by small business retirement exemption or roll-over 3. Retirement concession - Disregard CGT if the proceeds are used in connection with retirement. Lifetime limit of $500,000. May apply other concessions to reduce amount before applying retirement concession. If under 55 years old, proceeds must be paid into super fund, approved deposit fund or retirement savings. If over 55 years old, concession is automatically available – not necessary to rollover the capital gain to super fund 4. Roll-over relief - If chosen, all or part of capital gain is not included in assessable income until circumstances change. Can defer paying CGT in small business if taxpayer acquires a replacement active asset and elects to obtain a roll over. May be applied after general discount and active asset reduction.

Cost base	**<u>E1 Acquisition cost</u>** = total value to paid or given to acquire asset – capital allowance deductions **<u>E2 Incidental costs</u>** = sum of • Remuneration for services • Costs of transfer • Stamp duty • Cost of advertising to find a seller/buyer • Costs to obtain valuation • Search fees relating to CGT asset • Cost of conveyancing kit • Borrowing expenses **<u>E3 Non-capital costs of ownership</u>** *(only applicable if acquired after 20 August 1991)* = interest + repairs/maintenance + insurance + rates and land taxes. Not applicable for collectables or personal use assets. Cannot index, cannot include if claimed under s8-1. **<u>E4 Enhancement expenditure</u>** = costs to increase value of asset – capital allowance deductions claimed (e.g. extensions or major renovations to property, non-deductible initial repairs, landscaping, swimming pool, driveway, solar panels, ducted air conditioning) **<u>E5 Expenditure to establish, preserve or defend title to or rights over the asset</u>**, eg. Legal court costs associated with land resumption order by government
Death	• CGT asset: Cost Base Beneficiary = Cost Base Deceased • Pre-CGT asset: Cost base beneficiary = market value at date of death • Main residence: cost base beneficiary = market value at date of death
Indexation	• Indexation applicable if incurred/acquired before 21 Sept 1999 • Index each individual element • Expenditure element * index factor = indexed element • Indexation factor = index number for 30 Sept 1999 = **68.7** ÷ index number for quarter when expenditure was incurred • Indexation factor is calculated to 3 decimal places • Cannot index E3 • Cannot index to create a capital loss ⍰ Best case = $0 • You purchase a holiday home for $200,000 in January 1994. You sell in the June 2017 for $205,000. The indexed cost base is $200,000 x *1.117 (68.7/61.5 = 1.117)* = $223,400 • The excess of the indexed cost base over the capital proceeds does not produce a capital loss. It just reduces any gain to $0

Indexation Table

CGT Indexation – CPI Figures				
	Quarter ending			
Year	31 March	30 June	30 Sep	31 Dec
1985	-	-	39.7	40.5
1986	41.4	42.1	43.2	44.4
1987	45.3	46.0	46.8	47.6
1988	48.4	49.3	50.2	51.2
1989	51.7	53.0	54.2	55.2
1990	56.2	57.1	57.5	59.0
1991	58.9	59.0	59.3	59.9
1992	59.9	59.7	59.8	60.1
1993	60.6	60.8	61.1	61.2
1994	61.5	61.9	62.3	62.8
1995	63.8	64.7	65.5	66.0
1996	66.2	66.7	66.9	67.0
1997	67.1	66.9	66.6	66.8
1998	67.0	67.4	67.5	67.8
1999	67.8	68.1	**68.7**	**N/A**

- Expenditure element * index factor = indexed element
- Indexation factor = index number for 30 Sept 1999 **68.7** ÷ index number for quarter when expenditure was incurred
- Indexation factor is calculated to 3 decimal places