EXPOSURE DRAFT

# Income Tax Assessment (Method for Apportioning Capital Gains and Capital Losses) Determination 2026

I, Jim Chalmers, Treasurer, make the following determination.

Dated 2026

Dr Jim Chalmers **[DRAFT ONLY—NOT FOR SIGNATURE]**
Treasurer

# Contents

# Part 1—Preliminary

## 1 Name

This instrument is the *Income Tax Assessment (Method for Apportioning Capital Gains and Capital Losses) Determination 2026*.

## 2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| **Commencement information** | | |
|---|---|---|
| **Column 1** | **Column 2** | **Column 3** |
| **Provisions** | **Commencement** | **Date/Details** |
| 1. The whole of this instrument | The day after this instrument is registered. | |

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Income Tax Assessment Act 1997*.

## 4 Definitions

Note: Expressions have the same meaning in this instrument as in the *Income Tax Assessment Act 1997* as in force from time to time—see paragraph 13(1)(b) of the *Legislation Act 2003*.

In this instrument:

***cost base at start date***—see subsection 5(3).

***daily growth rate***—see subsection 5(4)

***post-start date cost base***—see subsection 5(3).

***post-start date reduced cost base***— see subsection 5(3).

***pre-start date capital proceeds***—see subsection 5(5).

***pre-start date cost base***—see subsection 5(3).

***pre-start date reduced cost base***— see subsection 5(3).

***the Act*** means the *Income Tax Assessment Act 1997*.

***total growth rate***—see subsection 5(3).

# Part 2—Method for apportioning capital gains and losses between realisation events and earlier deemed CGT events

## 5 Method for apportioning capital gains and capital losses

(1) Under subsection 112-185(1) of the Act, subsection (3) sets out the method for apportioning capital gains and capital losses between:

(a) realisation events happening in relation to the classes of CGT assets covered by subsection (2):

(i) on or after 1 July 2027; and

(ii) that are deferral realisation events; and

(b) earlier CGT events relating to those CGT assets that are taken to have happened under subsection 112-155(2), 112-165(2) or 112-175(2) of the Act.

(2) For the purposes of subsection (1), the following classes of CGT assets are covered:

(a) real property;

(b) a CGT asset which meets both of the following:

(i) the CGT asset does *not* have a readily ascertainable market value at the time of the deemed sale and reacquisition; and

(ii) the cost base of the CGT asset at the time of the deemed sale and reacquisition is *not* worked out by reference (in whole or in part) to market value (disregarding section 112-155, 112-165 or 112-175 of the Act).

Note: Subparagraph (2)(b)(ii) seeks to exclude from the scope of this apportioning method, CGT assets where the cost base of the asset is already being modified (outside of the deemed sale and reacquisition) by another provision in Part 3-1 or 3-3 of the Act by reference to market value (in whole or in part).

(3) For a CGT asset, the method is as follows:

*Method statement*

Step 1. Work out the cost base and the reduced cost base of the CGT asset as at the end of 30 June 2027. The result is the ***pre-start date cost base*** and the ***pre-start date reduced cost base*** (respectively).

Note: See Subdivision 110-A of the Act for the general rules about cost base and Subdivision 110-B of the Act for the general rules about reduced cost base.

Step 2. Divide the capital proceeds from the realisation event by the first element of the pre-start date cost base of the CGT asset. The result is the ***total growth rate***.

Step 3. Work out the number of days the asset is held from the day on which the CGT asset was first acquired to the day of the realisation event, and the number of days the asset is held from the day on which the CGT asset was first acquired until 30 June 2027.

Step 4. Work out the ***daily growth rate*** using the formula in subsection (4) (this rate will be negative if apportioning a capital loss).

Step 5. Work out the ***pre-start date capital proceeds*** using the formula in subsection (5).

Step 6. Subtract the pre-start date cost base from the pre-start-date capital proceeds. If the result is a positive amount, the amount is the capital gain from the deemed disposal. If the result is negative, subtract the pre-start date capital proceeds from the pre-start-date reduced cost base, the result is the capital loss from the deemed disposal.

Note 1: Step 6 is included for the benefit of the reader, it does *not* seek to affect the ordinary operation of section 104-10 (as affected by sections 112-155 to 112-175 of the Act).

Note 2: If the asset was a pre-CGT asset on 30 June 2027, the pre-start date capital gain or capital loss would be disregarded.

Step 7. The ***cost base at start date*** is the same as the amount of the pre-start date capital proceeds (this works out the cost base and reduced cost base of the CGT asset at the time of the deemed sale and reacquisition for the purposes of paragraph 112-185(3)(b) of the Act).

Step 8. Work out the cost base and reduced cost base of the CGT asset as at the time of the realisation event. The result is the ***post-start date cost base*** and the ***post-start date reduced cost base*** (respectively).

Note: The post-start date cost base includes indexation—see section 110-36(1A) of the Act.

Step 9. Subtract the post-start date cost base from the capital proceeds from the realisation event. If the result is a positive amount, the amount is the capital gain from the realisation event. If the result negative, subtract the capital proceeds from the post-start date reduced cost base, the result is the capital loss from the realisation event.

(4) The formula for working out the ***daily growth rate*** is as follows:

$$Daily\ growth\ rate = total\ growth\ rate^{\left(\frac{1}{days\ held}\right)} - 1$$

where:

***total growth rate*** is the amount (which maybe a negative amount) worked out at step 2 of the method statement in subsection (3).

***days held*** is the number of days from the day on which the CGT asset was first acquired to the day of the realisation event, worked out at step 3 of the method statement in subsection (3).

(5) For the purposes of paragraph 112-185(3)(a) of the Act, the capital proceeds for the sale of the CGT asset that is taken to have happened under paragraph 112-155(2)(a), 112-165(2)(a) or 112-175(2)(a) of the Act (the ***pre-start date capital proceeds***) is worked out as follows:

$$Capital\ proceeds = 1st\ element\ CB \times (1 + daily\ growth\ rate)^{pre-SD\ days\ held}$$

where:

***1st element CB*** is the first element of the pre-start date cost base of the CGT asset.

***pre-SD days held*** is the number of days from the day on which the CGT asset was first acquired until 30 June 2027, worked out at step 3 of the method statement in subsection (3).