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## Identify your Capital Gains Tax Liability

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The Capital Gains Tax ("CGT") provisions of the Income Tax Assessment Act ("the Tax Act") apply to a wide variety of assets many of which may not be immediately thought of as being subject to CGT. You should be aware that there is potential liability attaching to assets acquired after 19 September 1985.

There is a clear intention on the part of the Government for CGT provisions to apply to a wide variety of property. In fact, the CGT rules will apply to every asset, unless the asset is subject to a specific exclusion.

It is not generally understood but the CGT provisions categorise assets into:

1. Collectables;
2. Personal-use assets; and
3. Other assets.

It is in the last category that the majority of assets fall into and which are most readily recognised as carrying the CGT implications. This category includes assets such as land, buildings, houses and shares as well as goodwill, etc. Debts, options and partnership interests are also assets.

Personal-use assets are assets that are used or kept primarily for personal use or enjoyment.

Attached to this information sheet are following:

1. Capital Gains Tax Check List (this may be used as a guide to ascertain which assets may be subject to CGT);
2. Capital Gains Tax Records Keeper (this document can be photocopied and completed **for each asset** that may be subject to Capital Gains Tax);
3. Notes for Completion of the Record Keeper.

### Why Identify assets subject to CGT?

First, you should be aware of the true nature of your asset holdings and the real value of your assets after taking tax issues into account.

Secondly, it is important for you to identify which assets may be subject to Capital Gains Tax in the context of leaving these

assets to beneficiaries in your Will. For example, you may leave \$100,000.00 in cash to one family member and a house worth \$100,000.00 to another family member. If the house is subject to a CGT liability then the beneficiary who receives the house will inherit the liability and may then inherit an amount less than intended because the CGT liability may have been overlooked.

### Why keep CGT records?

To comply with the CGT Record Keeping requirements each tax payer is required to maintain documents which are necessary to ascertain:

1. the date the asset was acquired;
2. any amount that forms part of the "cost base" of the asset for CGT purposes (eg, legal costs of purchase or cost of improvements); and
3. the amount of cash or other property received in respect of the disposal of the asset.

The legislation not only requires the records to be maintained, but imposes penalties, which in some cases may be of \$3,400.00 if records are not kept.

The records must be kept for 5 years after the disposal of the asset to which the records relate.

If property is to remain within a family for a number of years it would not be uncommon for CGT documents to be required to survive a number of generations.

Capital Gains Tax will soon affect all property and it will mean that the CGT liability for that property will pass onto successive generations and it will become increasingly more important to ensure that documents that will be required to calculate the CGT liability are also passed on.

### Conclusion

By using the attached Check List and Record Keeper you have the administrative and the record keeping tools that you need to identify and address your CGT obligations.

## Capital Gains Tax Checklist for

Name: .....

Address: .....

If you answer **YES** to any of the following questions you have an asset that may, in whole or in part, be subject to Capital Gains Tax ("CGT") and you **must keep records** for that asset which include details of acquisition date, acquisition cost, disposal date, disposal proceeds, additions, improvements and other associated expenditure. This Checklist should be used in conjunction with the Capital Gains Tax Best Record Keeper.

*(The principal residence exemption will not apply to the sale or creation of an easement or right of way).*

**Have you subdivided and sold some of your land separately to the principal residence itself?** ☐

*(Land sold separately to a principal residence will not be exempt from CGT).*

**TICK if YES**

### Principal Residence

**If your current principal residence was acquired after 19 September 1985, have you used any part of it for income producing purposes?** ☐

*(A proportion of your principal residence may be subject to CGT if it has been used partially for income producing purposes eg, as a doctors surgery, place of business or market garden).*

**If your current principal residence was acquired after 19 September 1985 have you, for any period of time, used it as a rental property or otherwise used it for income producing purposes?** ☐

*(A proportion of your principal residence may be subject to CGT if it has been used for any period of time for income producing purposes).*

**Does your principal residence and the surrounding land exceed 2 hectares?** ☐

*(If the total area that your principal residence exceeds 2 hectares, the surrounding land that exceeds 2 hectares will not be exempt under the principal residence rules).*

**Have you created an easement or right of way over land that is adjacent to your principal residence?** ☐

**Have you disposed of a garage, storeroom, laundry, parking space or other structure that forms part of your principal residence separately from the residence itself?** ☐

*(The asset sold separately will not be exempt from CGT).*

**Have you owned land for a period of more than four (4) years prior to building your principal residence on it?** ☐

*(Land only forms part of a residence once the principal residence is constructed but this can be retrospective for up to 4 years in some cases).*

**When acquiring a new principal residence did you own both your old principal residence and your new principal residence simultaneously for more than six (6) months during the changeover period?** ☐

*(A partial CGT liability may arise on the disposal of the old residence).*

**Did you receive the principal residence of another person (now deceased) as a beneficiary of that person's Will (or as a result of letters of administration), where the person died after 19 September 1985?** ☐

*(The residence may be subject to CGT on disposal depending on the*

*use to which you put the residence and also the use to which the deceased put the residence).*

### Investment Assets

**Have you obtained an interest in an asset by means of a lease entered into after 19 September 1985?** ☐

*(The lease is a separate asset for CGT purposes and its sale or sub-lease may lead to a CGT liability).*

**Have you purchased or obtained an interest in any other land or property since 19 September 1985 (eg vacant land, rental property, holiday home, offices etc)?** ☐

*(Such assets may be subject to CGT on their disposal).*

**Since 19 September 1985 have you built anything on land that you owned prior to that date?** ☐

*(The asset built may be deemed to be a separate asset acquired after 19 September 1985 and may be subject to CGT on disposal).*

**Have you made any improvements or alterations to an asset that you acquired before 20 September 1985, the total cost of such improvements being more than \$50,000 in 1985/86 dollars (indexed for CPI rises to \$82,290 in 1994/95, and \$130,418 in 2011/12 etc)?** ☐

*(In these circumstances, the improvement may be deemed to be a separate asset acquired after 19 September 1985 and may be subject to CGT on disposal. The application of CGT may also be dependent upon the amount of money you receive from the event).*

**Have you acquired any shares or units in a unit trust since 19 September 1985?** ☐



# Capital Gains Tax Checklist for

Name: .....

Address: .....

*(These items are assets for CGT purposes).*

**Have you acquired an option to purchase property, shares, units in a unit trust, etc or an option to lease since 19 September 1985?**

*(Options are separate assets for CGT purposes. The sale of the option may lead to a CGT liability and is treated differently to the exercise of the option).*

## Personal Use Assets

**Since 19 September 1985 have you acquired any of the following assets (of an interest therein) at a per item cost of more than \$500:-**

- a print, etching, drawing, painting, sculpture, photograph or similar work of art; ☐
- jewellery; ☐
- a rare folio, manuscript or rare book; ☐
- a postage stamp or first day cover; ☐
- a coin or medallion; ☐
- an antique? ☐

*(These assets are listed personal-use assets and may be subject to special CGT rules).*

**Since 19 September 1985, have you acquired any assets (other than those listed above) that you use for your personal use or enjoyment which you could sell for more than \$10,000?** ☐

*(These assets are "personal-use assets" and may be subject to special CGT rules).*

## Assets acquired as a result of a death

**Are you a surviving joint tenant of an asset that was originally acquired prior to 20 September 1985?** ☐

*(Tax laws treat joint tenancy as tenants in common. You may not wholly be exempt from CGT in respect of this asset as part of the asset was acquired by you on the date of death of the deceased joint tenant).*

**Did you acquire any assets as a beneficiary of a deceased estate?** ☐

*(Inherited assets may give rise to a CGT liability when they are subsequently disposed of depending on the application of the CGT death rules).*

## Miscellaneous

**Since 19 September 1985, have you acquired any motor vehicles designed to carry more than eight (8) passengers or loads exceeding one tonne?** ☐

*(Most private use motor vehicles are exempt from CGT. Vehicles of the kind mentioned above are not exempt from CGT).*

**Have you received a payment after 19 September 1985 for any of the following:-**

- giving up amateur status; ☐
- a forfeited deposit; ☐
- a restrictive covenant; ☐
- rights to a story/novel, etc? ☐

*(These "rights" or "interests" may be assets for CGT purposes and the payment received may be taxable).*

**Since 19 September 1985, have you acquired a life insurance policy from another person in exchange for money, other property or some other promise or obligation?** ☐

*(The proceeds of a life insurance policy are not always free from CGT).*

**Have you forgiven in whole or in part a debt, which was first owing to you after 19 September 1985?** ☐

*(The forgiveness of a debt owing to you constitutes the disposal of an asset for CGT purposes).*

**Have you acquired any rights, options or other assets not previously mentioned since 19 September 1985?** ☐

*(Please discuss these acquisitions with your Accountant or Solicitor).*

## CGT Record Keeper

### Notes for Completion

#### GENERAL:

**Description of Asset** - the CGT deals with some types of assets differently to other types. Describing the asset will assist in determining what type of asset it is. For example, the asset may be described as real estate, shares, jewellery, antique clock, etc.

**Location of Asset** - the information provided here can be the address or Certificate of Title reference number in the case of real estate or, where appropriate, a safety deposit box number and location.

**Owner(s)** - who owns the asset is important in estate planning. Do you own the asset in your own name or jointly with someone? Is the asset owned by your family company or family trust.

**Nature of Ownership** - if an asset is held jointly you should specify whether it is held as tenants in common or as joint tenants. If you are unsure of the difference please contact your Solicitor.

**Document Evidencing Ownership** - for example, a Certificate of Title evidences ownership of real estate while a Share Certificate evidences ownership of Shares.

**Location of Documents** - a Certificate of Title is likely to be held by the bank or financial institution that is the mortgagee in respect of the property. The name, branch and address of the bank should be specified. Share Certificates may be held in a safety deposit box and again the exact location of the safety deposit should be specified.

#### COST BASE RECORDS:

**Date Cost Incurred** - the date that a cost is incurred is generally the date on which you make the payment.

However, you may pay some costs (eg. the purchase price of the asset) by instalments. Where this occurs, enter only the date of the contract rather than the dates of each separate payment.

**Description of Expenditure** - an explanation of the types of costs which can be included in the cost base can be found on the ATO Website, particularly in the Capital Gain or Capital Loss Worksheet.

**Amount Incurred** - this information will be recorded on the documents and receipts relating to the expenditure. If the asset was purchased by instalments, enter the full purchase price rather than the amounts of each separate payment.

**Deductible? Yes/No** - if any part of the costs were allowable as an income tax deduction in any year, enter the amount here. These are not included in the CGT cost base of the asset. Some deductions, such as depreciation, do not relate to a particular outlay but should be entered somewhere in this column anyway.

**Documents** - you must keep all relevant documents until at least 5 years have elapsed since the disposal of the asset. If you no longer have the original documents you should obtain copies.

**Description of Documents** - what type of document is it? It may be an invoice for capital expenditure incurred or it may be the contract of sale itself evidencing purchase price.

**Location of Documents** - it is no use having all the records if they can't be found. Ideally all your CGT records should be kept in the one place. This may be "my filing cabinet, filed under CGT". Alternatively, your Solicitor or Accountant may hold your records.

In this case, the name and address of that person should be specified. It is always advisable for you to keep copies of these records if you do not physically hold the originals.

#### DISPOSAL CONSIDERATION RECORDS:

**Date of Disposal** - the date upon which the asset was sold. If payment is to occur by instalments, the date you entered into the contract of sale is the relevant date to record.

**Description of Proceeds** - this refers to the type of consideration you received from the purchaser. This may include cash, property, debit note etc.

**Amount of Proceeds** - this is the total received for the asset. If more than one item is received (eg cash and property) then the total value of the proceeds (including the market value of the property is included. If payment occurs by instalments record the total amount, not each instalment.

**Date Received** - this is the actual date of payment.

**Description of Documents** - what type of document is it? It may be an invoice for sale proceeds or it may be the contract of sale itself evidencing purchase price.

**Location of Documents** - it is no use having all the records if they can't be found. Ideally all your CGT records should be kept in the one place. This may be "my filing cabinet, filed under CGT". Alternatively, your Solicitor or Accountant may hold your records. In this case, the name and address of that person should be specified. It is always advisable for you to keep copies of these records if you do not physically hold the originals.

## How to make best use of the Record Keeper

1. Any questions that you have concerning the Record Keeper should be directed to your Accountant.
2. The Record Keeper is designed to assist you maintain capital gains tax ("CGT") details relating to your assets. You will find it a useful summary record as well as a means of enabling you to readily locate your CGT records.
3. Use it.
4. Remember to update the Record Keeper when costs are incurred in respect of your asset.
5. It is advisable for the following people to receive a copy of the Record Keeper **each time** that it is updated:-
  - \* your financial adviser;
  - \* your accountant;
  - \* your intended executor (where appropriate).

This will assist these people in locating your CGT records in the event of a tax audit by the Taxation Office or in the event of your death.

6. The Record Keeper together with all documents evidence CGT cost base and consideration proceeds should be left in your Will to your intended beneficiary together with the asset to which they relate.
7. Keep the Record Keeper in a safe place with the originals or copies of all your other CGT records.



# Capital Gains Tax Record Keeper

For

Name.....

of.....

Owner(s)..... Nature of Ownership Interest:.....

Document Evidencing Ownership:..... Location of Document:.....

Cost Base Records:

<u>Date Cost Incurred</u>	<u>Description of Expenditure (eg purchase price, agent's capital improvements)</u>	<u>Amount Incurred</u>	<u>Deductible—Yes/No</u>	<u>Documents - Yes/No</u>	<u>Description of Documents</u>	<u>Location of Documents</u>
					(eg contract, deed, invoice)	

Disposal Consideration Records:

<u>Date of Disposal</u>	<u>Description of Proceeds</u>	<u>Amount of Proceeds</u>	<u>Date Received</u>	<u>Documents - Yes/No</u>	<u>Description of Documents</u>	<u>Location of Documents</u>
	(eg cash, property, forgiveness of debt)				(eg contract, deed, invoice)	