

EXPOSURE-DRAFT

1 Inserts for
2 **Tax Laws Amendment (2013 Measures**
3 **No. 2) Bill 2013: removing CGT discount**
4 **for foreign individuals**

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Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details

1.

2. Schedule ?? The day this Act receives the Royal Assent.

3.

Schedule ??—Removing CGT discount for foreign individuals

Income Tax Assessment Act 1997

1 Subsection 115-30(1)

Omit “and 115-45”, substitute “, 115-45, 115-105 and 115-110”.

2 After subsection 115-30(1)

Insert:

(1A) For the purposes of sections 115-105 and 115-110, item 2 of the table in subsection (1) applies in relation to all *replacement-asset roll-overs, including those covered by paragraph 115-34(1)(c).

3 Subparagraph 115-100(a)(i)

After “individual”, insert “and neither section 115-105 nor 115-110 applies to the gain”.

4 At the end of section 115-100

Add:

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1 ; or (c) the percentage resulting from section 115-115 if
2 section 115-105 or 115-110 applies to the gain.

3 **5 At the end of Subdivision 115-B**

4 Add:

5 **115-105 Foreign residents or temporary residents—direct gains**

6 *Object*

- 7 (1) The object of this section (with section 115-115) is to adjust the
8 discount percentage so as to deny you a discount to the extent that
9 you accrued the *capital gain while a foreign resident or
10 *temporary resident.

11 *When this section applies*

- 12 (2) This section applies to a *discount capital gain if:
- 13 (a) you are an individual; and
 - 14 (b) you *acquire a *CGT asset; and
 - 15 (c) you make the discount capital gain from a *CGT event
16 happening in relation to the CGT asset; and
 - 17 (d) the period (the *discount testing period*):
 - 18 (i) starting on the day you acquired the CGT asset; and
 - 19 (ii) ending on the day the CGT event happens;
20 ends after 8 May 2012; and
 - 21 (e) you were a foreign resident or *temporary resident during
22 some or all of so much of that period as is after 8 May 2012.

23 Note: Section 115-30 has special rules about when assets are acquired.

24 *Changed residency status*

- 25 (3) For the purposes of this section and section 115-115, if:
- 26 (a) another entity owned the *CGT asset on a particular day
27 before the *CGT event happens; and
 - 28 (b) on that day, that entity was one of the following (its
29 *residency status*):
 - 30 (i) an Australian resident (but not a *temporary resident);
 - 31 (ii) a temporary resident;
 - 32 (iii) a foreign resident; and

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- 1 (c) section 115-30 treats you as having *acquired the CGT asset
2 when that entity, or an earlier owner of the CGT asset,
3 acquired it;
4 you are treated as having the same residency status on that day as
5 the first-mentioned entity had on that day.

6 **115-110 Foreign residents or temporary residents—gains from** 7 **trusts**

- 8 (1) The object of this section (with section 115-115) is to adjust the
9 discount percentage so as to deny you a discount for a *capital gain
10 you make because of section 115-215 to the extent that the relevant
11 trust accrued the gain while you were a foreign resident or
12 *temporary resident.
- 13 (2) This section applies to a *discount capital gain if:
- 14 (a) you are an individual and a beneficiary of a trust estate; and
 - 15 (b) because of section 115-215, Division 102 applies to you as if
16 you had made the discount capital gain; and
 - 17 (c) the relevant trust gain was made from a *CGT event
18 happening in relation to a *CGT asset the trustee had
19 *acquired; and
 - 20 (d) the period (the *discount testing period*):
 - 21 (i) starting on the later of the day the trustee acquired the
22 CGT asset and the day you last became a beneficiary of
23 the trust estate; and
 - 24 (ii) ending on the day the CGT event happens;
25 ends after 8 May 2012; and
 - 26 (e) you were a foreign resident or *temporary resident during
27 some or all of so much of that period as is after 8 May 2012.

28 Note: Section 115-30 has special rules about when assets are acquired.

29 **115-115 Foreign residents or temporary residents—percentage**

- 30 (1) This section applies if section 115-105 or 115-110 applies to a
31 *discount capital gain.

32 *Periods starting after 8 May 2012*

- 33 (2) If the discount testing period starts after 8 May 2012, the following
34 (expressed as a percentage) is the percentage resulting from this
35 section:

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Number of days during discount testing period that you
were an Australian resident (but not a *temporary resident)

2 × Number of days in discount testing period

Note 1: The percentage will be 0% if you were a foreign resident or temporary resident during all of the discount testing period.

Note 2: If section 115-105 applies to the gain, subsection 115-105(3) may change your residency status for this formula.

Periods starting earlier—Australian residents

(3) If:

(a) the discount testing period starts on or before 8 May 2012;
and

(b) you were an Australian resident (but not a *temporary resident) on 8 May 2012;

the following (expressed as a percentage) is the percentage resulting from this section:

Number of days in discount testing period — Number of apportionable days that you were a foreign resident or *temporary resident
2 × Number of days in discount testing period

where:

apportionable day means a day, after 8 May 2012, during the discount testing period.

Note: If section 115-105 applies to the gain, subsection 115-105(3) may change your residency status for this formula.

Periods starting earlier—other residents may choose market value

(4) The percentage resulting from this section is worked out from the following table if:

(a) the discount testing period starts on or before 8 May 2012;
and

(b) you were a foreign resident or *temporary resident on 8 May 2012; and

(c) the *CGT asset's *market value on 8 May 2012 exceeds the amount that was its *cost base at the end of that day; and

(d) you choose for this subsection to apply.

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Percentage using market value

Item	If the excess from paragraph (c):	then, the percentage is:
1	is equal to or greater than the amount of the *discount capital gain	50%
2	falls short of the amount of the *discount capital gain	worked out under subsection (5)

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- (5) For the purposes of table item 2 in subsection (4), the following (expressed as a percentage) is the percentage resulting from this section:

$$\frac{\text{Excess} + \left(\frac{\text{Shortfall} \times \text{Number of apportionable days that you were an eligible resident}}{\text{Number of apportionable days}} \right)}{2 \times \text{Amount of the *discount capital gain}}$$

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6

where:

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apportionable day means a day, after 8 May 2012, during the discount testing period.

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eligible resident means an Australian resident who is not a *temporary resident.

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excess means the excess from paragraph (4)(c).

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shortfall means the amount that the excess falls short of the amount of the *discount capital gain.

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Note: If section 115-105 applies to the gain, subsection 115-105(3) may change your residency status for this formula.

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Periods starting earlier—other residents not choosing market value

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- (6) If:
- (a) the discount testing period starts on or before 8 May 2012; and
 - (b) you were a foreign resident or *temporary resident on 8 May 2012; and
 - (c) you do not choose for subsection (4) to apply;
- the following (expressed as a percentage) is the percentage resulting from this section:

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1 Number of apportionable days that you were an
 Australian resident (but not a *temporary resident)

$2 \times$ Number of days in discount testing period

2 where:

3 ***apportionable day*** means a day, after 8 May 2012, during the
4 discount testing period.

5 Note 1: The percentage will be 0% if you were a foreign resident or temporary
6 resident on each of the apportionable days.

7 Note 2: If section 115-105 applies to the gain, subsection 115-105(3) may
8 change your residency status for this formula.