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[540] Taxpayers with partial foreign residency - CGT discount still available post 1 July 2027!

by Nicole Sammel, Nicole Sammel Tax Lawyers

Is it true that the only capital gains made after 1 July 2027 by individuals and trusts that will qualify for CGT discount treatment are gains from a "new residential dwelling" and from "affordable housing"?

Perhaps not. It seems to me that there may be an additional category of post-1 July 2027 capital gains that will qualify for CGT "discount" treatment, namely, those made by taxpayers who are **foreign residents for part of the post-8 May 2012 asset ownership period**.

As counter-intuitive as it sounds, it seems to me that, if a taxpayer sells an asset, after 1 July 2027, that is neither a "new residential dwelling" nor "affordable housing":

- if the taxpayer has been an Australian resident for only *part* of the asset ownership period after 8 May 2012 - they may be entitled to discount treatment on the whole of the capital gain; whereas
- if the taxpayer has been an Australian resident for the *whole* of the asset ownership period after 8 May 2012 - discount treatment will be available only on so much of the gain, if any, that was made up to 30 June 2027 (though cost base indexation will be available for so much of the gain that is made after 1 July 2027).

This strange outcome arises because the new CGT rules (about deemed capital gains up to 30 June 2027 and cost base indexation on gains made thereafter) enacted by *Treasury Laws Amendment (Tax Reform No 1) Act 2026* (the "**New Act**") will generally apply only to taxpayers who are Australian residents (other than temporary residents) for the whole of the asset ownership period after 8 May 2012. I say "generally" because a taxpayer who is a foreign resident between 8 May 2012 and 30 June 2027 but an Australian resident for the whole of the ownership period after 1 July 2027 can "elect" to apply cost base indexation under the new rules if they wish to (by choosing not to "recalculate" their capital gain under s 115-20(2)).

A taxpayer who is a foreign resident for part of the ownership period after 8 May 2012 (a "**Partial Foreigner**") (other than one who can and does choose to apply cost base indexation) will instead be taxed under the "proportionate CGT discount" rules as per s 115-100(c). These rules allow Partial Foreigners a proportionate CGT discount based, broadly speaking, on the proportion of the post-8 May 2012 ownership period for which the taxpayer was an Australian resident.

Significantly, this means that the capital gain from a CGT event that occurs after 1 July 2027 can, in some circumstances, be smaller for a taxpayer who was an Australian resident for only part of the asset ownership period than for a taxpayer (with exactly the same profile) who was an Australian resident for the whole of the asset ownership period.

Here is an example to illustrate this:

Assume that, in August 2027, an individual acquires an Australian property that is neither a new residential dwelling nor affordable housing, leases the property for the entirety of the ownership period and then sells the property in August 2047.

If the individual is an Australian resident for the entirety of the ownership period, the individual will **not** be entitled to any discount on their capital gain (and will merely be entitled to index their cost base).

But what if the individual becomes a foreign resident 1 year before they sell the property? In that case, because the individual has been a foreign resident for part of the ownership period, the new CGT rules do NOT apply to the individual's capital gain and the individual is instead entitled to a proportionate CGT discount. And because the individual was an Australian resident for 19 of the 20 years they owned the property, the individual's "proportionate" CGT discount (calculated under s 115-115(2)) will be 19/20 of 50%, so 47.5%. And if the individual had become a foreign resident only 6 months before selling the property, then their proportionate CGT discount would be even greater, namely 39/40 of 50%, so 48.75%. In other words, **the taxpayer will get nearly a 50% CGT discount from selling, in 2047, Australian property that is neither a "new residential dwelling" nor "affordable housing"**.

Is the Government aware of this potentially highly favourable treatment for Partial Foreigners? Presumably yes, based on the Explanatory Memorandum to the Bill for the New Act. The EM states (at paragraph 1.26) that foreign and temporary residents "have their own discrete CGT treatment" and (at paragraph 1.147) that the amendments to the CGT regime "ensure that the existing proportionate reductions in the discount for individuals who are foreign or temporary residents continue to apply".

It's unclear whether this favourable CGT treatment for Partial Foreigners is here for the "long-run" or only until the Government makes further amendments to address the taxation of Partial Foreigners. The note to paragraph 1.119 of the EM states: "*There is an intention to further consider how [the] amendments apply to entities that are Australian residents for only part of the period in which they hold a CGT asset.*"

[541] Proposed innovative business CGT concession: Targeted relief for innovative startups welcome but beware compliance complexity

by Stewart Williams and Karan Subramanyam, Partners and Josephine Plumstead, Manager, Deloitte Tax & Legal

On 18 June 2026, the Government released a consultation paper proposing a targeted CGT discount for investors in innovative startups - see 2026 WTB 25 [463]. The announcement arrives amid debate over the CGT reforms announced in the 2026-27 Federal Budget, with the first tranche of legislation having received Royal Assent on 26 June 2026, acting to replace the 50% CGT discount with cost base indexation and a 30% minimum tax on capital gains.

The proposed innovative business CGT concession (IBCC) is a targeted measure aimed at preserving concessional CGT treatment for certain early-stage investments in qualifying companies.

The proposed change is significant for founders, employees, and early-stage investors because it recognizes that value drivers for high-growth startup equity may not be well suited to a uniform indexation-based CGT framework.

What are the changes being proposed?

The proposed concession would apply to certain gains on shares and options in innovative startups, providing a 50% discount on nominal capital gains. Eligible taxpayers will have a choice between the IBCC and the alternative indexation and minimum tax model. The concession is intended to apply to founders, qualifying participants in employee share schemes (ESS) and employee share option plans (ESOP), early-stage investors, and general venture capital partners. Companies, foreign resident taxpayers, and superannuation funds would not be eligible for the concession.

Broadly, the concession would apply where the relevant shares are new equity issued:

- after 30 June 2027;
- by an unlisted and independent company;
- while the company has turnover below AUD 50 million and is under 10 years old, with a potential extension to 15 years for certain industries; and
- by an active and innovative startup, with criteria broadly modelled on the existing early-stage innovation company (ESIC) framework.

