

CGT/GST Effect of Various Property Settlements & Agreements on Transfer of Property to a Spouse

Agreement / Arrangement (Family Law Act references)	CGT Event	Tax Determination	CGT Rollover	Comment
1 S.86 or S.87 Maintenance Agreement	A1	-	No	Can no longer enter into S.87 maintenance agreement.
2 Consent Order	A1	TD 1999/47	Yes	Rollover relief applies.
3 S.78(2) Orders (Declaration of Interest)	-	TD 1999/48	No	No CGT event occurs so no relief applies.
4 Marriage Breakdown	A1	ATO ID 2003/623 TD 1999/49	-	Payments for increase in value of CGT asset not part of cost base. Rollover relief is implicitly dependent on marriage breakdown.
5 Court Order (includes S.87 Maintenance Agreement)	A1	TD 1999/50	Yes	Court Order applies to original and subsequent orders.
6 Variations in Court Orders	A1	TD 1999/51	Yes/No	Depends on the terms of Court Order. Where later order sets aside original order, relief applies on re-transfer of assets.
7 Specific & Non Specific Property Transfers	A1	TD 1999/52	-	CGT events occur for each asset transferred under a Court Order.
8 Transfers by Agreement later sanctioned by Court	A1	TD 1999/53	No	CGT event not due to Court Order, so no relief.
9 Transfers under Court Order but after Time Limit	A1	TD 1999/54	Yes	ATO accepts that transfer is because of Court Order.
10 Different Asset Transferred	A1	TD 1999/55	No	Court Order did not cause transfer, so no relief, but if change in character of asset before transfer, relief is available.
11 S.79 Order	A1	TD 1999/48	Yes/No	Depending on the terms of order there may or may not be relief.
12 Binding Financial Agreements	A1	-	Yes	Rollover relief will apply to a property transfer under a BFA, provided conditions satisfied. The main residence exemption also applies.
13 Property Distributions	-	GST Ruling GSTR 2001/14 GSTR 2003/13 GSTA TPP 067	GST adjustment increasing adjustment	Consequences of Court Orders and out of court settlements. Private assets not subject to GST. Enterprise assets may be subject to GST. Where Court orders a spouse to transfer enterprise assets to other spouse.

USEFUL TELEPHONE NUMBERS

Western Australia	
Federal Court	(08) 9268 7100
Family Court	(08) 9224 8222
Family Court After Hours Emergency	(08) 9223 1111
Legal Aid Western Australia	(08) 9261 6222
National	
Child Support Agency	131 272
Centrelink (Family)	136 150
Department of Immigration	131 881
Attorney General's Department	02 6141 6666
Central Authority for Hague Applications	1800 100 480
Department of Social Services	1300 653 227
Victoria	
Family Court	1300 352 000
Victoria Legal Aid	1300 792 387
New South Wales	
Family Court	1300 352 000
Legal Aid	1300 888 529
Legal Services Commission	(02) 9377 1800
Queensland	
Family Court	1300 352 000
Legal Aid	1300 651 188
South Australia	
Family Court	1300 352 000
Legal Services Commission	1300 366 424
Tasmania	
Family Court	1300 352 000
Legal Aid Commission	1300 366 611
ACT	
Family Court	1300 352 000
Legal Aid	(02) 6243 3411 / 1300 654 314
Northern Territory	
Family Court	1300 352 000
Legal Aid Commission	1800 019 343

**FAMILY COURT OF WESTERN AUSTRALIA
CIRCUIT SITTINGS FOR 2021**

Circuit Towns	Magistrate/Register	Judge
Albany @10.00am Monday	15 March 12 July 8 November	29 March 30 August 29 November
Broome @10.00am Monday	22 February 21 June 1 November	22 March 23 August 22 November
Bunbury @10.00am Monday	4 January 1 February 8 March 12 April 10 May 14 June 19 July 23 August 20 September 18 October 29 November	8 February 19 April 24 May 21 June 16 August 11 October 6 December
Geraldton @10.00am Monday	8 February 14 June 11 October	8 March 12 July 15 November
Kalgoorlie @10.00am Monday	15 February 28 June 25 October	15 March 19 July 8 November

LITIGATION SUPPORT SERVICES

We can assist with:

- Determining the true state of assets and liabilities;
- Interpreting affidavits of financial circumstances;
- Discovery issues;
- Inspecting financial records and interpreting and advising on same;
- Tracing foreign transactions;
- Preparing reports to be annexed to affidavits;
- Cross-examination preparation;
- Appearing in court as an Expert Witness;
- Forensic Investigations.

**You can benefit from our experience by calling:
Charles Napoli**

Telephone: +61 8 6163 1888 Facsimile: +61 6163 1800
Charles Mobile: 0419 367 258
Email: office@napoliaccounting.com.au
Web: www.napoliaccounting.com.au
8th Floor Golden Square, 32 St Georges Terrace
Perth Western Australia 6000
PO Box Z5326 St Georges Terrace Perth WA 6831

**THIS GUIDE SHOULD NOT BE USED AS A
SUBSTITUTE FOR PROFESSIONAL ADVICE**

2021 SCHOOL TERM DATES FOR WA

SEMESTER (1)	
Term One	1 February - 1 April
Term Two	19 April - 2 July
SEMESTER (2)	
Term Three	19 July - 24 September
Term Four	11 October - 16 December

January	February	March
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April	May	June
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July	August	September
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October	November	December
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School Holidays

New Year's Day 2019	1 January
Australia Day (Holiday)	26 January
Labour Day (WA)	1 March
Good Friday	2 April
Easter Monday	5 April
Anzac Day	26 April
WA Day	7 June
Queen's Birthday (WA)	27 September
Christmas Day	27 December
Boxing Day (Holiday)	28 December

Public Holidays



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Tel: +61 8 6163 1888
Fax: +61 8 6163 1800

8th Floor Golden Square
32 St Georges Terrace
Perth, Western Australia 6000

Email: office@napoliaccounting.com.au
www.napoliaccounting.com.au

INCOME TAX RATES 2020/21

Residents 2020/21	
Taxable Income	Tax on this income
0 - \$18,200	Nil
\$18,201 - \$45,000	19c for each \$1 over \$18,200
\$45,001 - \$120,000	\$5,092 plus 32.5c for each \$1 over \$45,000
\$120,001 - \$180,000	\$51,667 plus 37c for each \$1 over \$120,000
\$180,001 and over	\$29,467 plus 45c for each \$1 over \$180,000

*Excludes Medicare Levy (2%)

Non-Residents 2020/21

0 - \$120,000	32.5c for each \$1
\$120,001 - \$180,000	\$39,000 plus 37c for each \$1 over \$120,000
\$180,001 and over	\$61,200 plus 45c for each \$1 over \$180,000

*Foreign residents are not required to pay the Medicare Levy

Family Tax Benefit (FTB)

Part A - Help with raising dependant children

Family Income	Benefit	Age	Max Rate for each child per fortnight
< \$53,728	Max Rate		
≤ \$53,728	Reduce by additional 20c per dollar over \$53,728	< 13	\$182.84
		13-19	\$237.86
≥ \$94,316	Reduce by additional 20c per dollar earned over \$94,316	0-19	\$58.88 - in an approved care organisation

*Dependant = Dependant child or student aged up to 19

**Amount of Part A may FTB may be reduced by child support

Part B Conditions - may be reduced by shared care

Youngest Child Age	Max Rate for each child per fortnight
<5	\$155.54
5-18 (or 16-18 if full time student)	\$108.64

# Parents	Payment amount	Supplement	Reductions	Limits (for lower earning parent)
Sole Parent	Max rate of FTB (Part B) payable provided the sole parent's income is \$100,000 per year or less. Sharing care of child may reduce benefit.	\$357.70 at end of financial year	No reductions	No limit
Two Parents	The income of the parent earning the higher amount (primary earner) must be equal to or less than the income limit of \$100,000 per year	\$357.70 at end of financial year	20c per dollar earned over \$5,548 (for parent earning a lesser income)	Youngest child <5 = \$27,722 Youngest child 5-18 = \$21,608

MEDICARE LEVY 2020/2021 (not applicable to non-residents)

The rate of Medicare levy is 2% of a resident individual's taxable income for the income year.

MEDICARE LEVY SURCHARGE 2020/2021

Income	Singles	Families*		
\$0 - \$90,000	\$90,001 - \$105,000	\$105,001 - \$140,000	\$140,001 and over	
\$0 - \$180,000	\$180,001 - \$210,000	\$210,001 - \$280,000	\$280,001 and over	
Private health insurance rebates (to 31 March 2021)				
	Tier 1	Tier 2	Tier 3	
Under 65 years	25.059%	16.706%	8.352%	0%
65 - 69 years	29.236%	20.883%	12.529%	0%
70 years and over	33.413%	25.059%	16.706%	0%
Medicare levy surcharge				
Percentage rate	0%	1%	1.25%	1.5%

*The families' threshold is increased by \$1,500 for each dependant child after the first. Families include couples and single parent families.

TAX ISSUES ON PROPERTY SETTLEMENT

Capital Gains Tax (CGT)

CGT is disregarded on breakdown of marriage or de facto relationship and has been extended to same sex couples (conditions apply). Rollover relief applies to a disposal of a CGT asset by a spouse, company or trust to a spouse pursuant to a Family Court Order which includes:

- consent orders - binding financial agreements
- arbitral awards - binding agreements or awards

- No CGT at this point.

Effect on subsequent sales:

-(Pre CGT) Pre 20 September 1985 - generally no CGT;

-(Post CGT) Post 19 September 1985 - CGT applies.

CGT exemption applies to certain assets.

No rollover relief if asset is transferred to children, trust or company.

CGT rollover relief applies on transfer of assets between small complying superannuation funds in certain circumstances. Rollover automatically applies where there is a "payment split" under the Family Law Act.

From 13/12/06 need to consider both spouses and use of dwelling to determine if transferee spouse is eligible for CGT exemption on main residence.

Small Business Entity Provisions

Range of Tax Concessions available to small business entities

ie: with aggregate turnover of less than \$10m

TAX ISSUES ON PROPERTY SETTLEMENT

(continued)

Indexation v 50% CGT Discount

Indexing of cost base for CGT is frozen at 30 September 1999. Indexing of CGT assets will not apply to disposals after 21 September 1999. Individuals or trusts acquiring assets pre 21 September 1999 and holding > 12 months have a choice to calculate CGT on:

- 50% of capital gain; or
- 100% of the difference between capital proceeds and frozen indexed cost base.

50% CGT Discount and Small Business CGT Concessions Eligibility

	Individuals	Trusts	Companies
(a) 50% CGT discount	YES (2)	YES (2)	(3) NO
(b) Frozen indexation asset owned before 21/9/99	YES	YES	YES
- Active asset 50% reduction	YES	YES	YES
- Retirement Exemption	YES	YES (1)	YES (1)
- Roll-over relief (replacement active asset)	YES	YES	YES
- 15 year asset exemption	YES	YES (1)	YES (1)

Notes (1) The 20% significant individual test must be satisfied.

(2) Asset must have been held for at least 12 months.

(3) Discount is 33⅓% for certain complying superannuation funds.

Disposal of Assets of a Trust

Tax Impact

- Beneficiary fully taxable on distribution of taxable capital gain from trust. Tax offset may be available for tax paid by the trustee.
- If the trust's net capital gain is reduced by either the 50% CGT discount or the active asset 50% reduction, then the gain is doubled for the beneficiary. Capital losses of the beneficiary can be applied against the capital gain before applying the 50% CGT discount (conditions apply).
- Distribution of non-assessable gain (attributable to either the 50% CGT discount in trust or the active asset 50% reduction) may be tax free to the beneficiary.

Small Business CGT Concessions

Basic Conditions to be eligible:

- CGT event happens and capital gain arises.
- You are a small business entity (<\$2m aggregated turnover) OR a partner in a partnership that is a small business entity, OR your net value of assets that you and related entities own must not exceed \$6m.
- Active Asset test is satisfied.
- If the asset is a share or interest in a trust, there must be a CGT concession stakeholder just before the CGT event, and the entity claiming the concession must be a CGT concession stakeholder in the company or trust or the CGT concession stakeholder in the company or trust must have a small business participation percentage in the entity of at least 90%.

Concessions:

- 15 years exemption (55+ and retiring OR permanent incapacity)
- 50% active asset exemption
- Retirement Exemption (lifetime limit of \$500,000)
- Rollover Relief (replacement active asset)

Note: Concessions subject to further conditions.

For individuals and trusts the CGT is reduced by 75% where asset is held in own name. Where replacement active assets are purchased the otherwise assessable capital gain is deferred.

Change in Shareholding in Company > 50% Test

Pre-CGT assets in a company will become post-CGT assets when there is a change in the majority underlying ownership of at least 50% shareholding held immediately before 20/9/85.

Change in Post-CGT Property in Company ≥75% Test

Where the market value of post-CGT property (other than trading stock) is ≥ 75% of the net value of the company the disposal of shares will result in CGT applying and divided between pre-CGT and post-CGT assets. This also applies to units in unit trusts.

Loan Accounts & Debit Loan Accounts

Complying Division 7A loan agreements may be required where company lends money to its shareholders (or associate of the shareholder). A Family Court order binding a private company, as a party to the proceedings, to pay cash to shareholders or associates will be now be subject to Division 7A (sec 109J), due to ruling TR 2014/5.

At Call Loans

From 1/7/05 an "at call" loan between related parties will continue to be a debt if company turnover is <\$20m. (This test must be satisfied each year.)

Debt Forgiveness Provisions

Operates from 27 June 1996 to offset the net forgiven amount of commercial debt in the following order against the borrower's:

1. Revenue Loss;
2. Net Capital Loss of prior years;
3. Deductible amount of certain expenditure (eg expenditure on depreciable plant); and
4. Cost Base of certain CGT assets

Company Losses

To carry forward tax losses the Company must satisfy the continuity of ownership test or continuity of business test.

TAX ISSUES ON PROPERTY SETTLEMENT

(continued)

Family Trust Election

Where a family trust election has been made, distributions are limited. Former spouse and lineal descendants are included as beneficiaries.

Unpaid Present Entitlements (PE)

UPE owed by a trust to a private company beneficiary may be deemed unranked dividends under certain circumstances and subject to Division 7A.

Foreign Resident Capital Gains Withholding

Purchases of the following:

- Taxable Australian Real Property
- Indirect Australian Real Property - where entity owns 10% or more shares in a company whose underlying value is principally derived from Australian Real Property
- Option or right to acquire such property or such an interest

Made on or after 1 July 2017 are subject to a 12.5% (previously 10%) non-final withholding tax when sold, if the market value on the sale is \$750,000 or more. The purchaser will be required to withhold 12.5% and remit this amount to the ATO, unless a Clearance Certificate is obtained before Settlement.

SUPERANNUATION CONTRIBUTIONS

Age	Concessional Contributions Cap (Tax Deductible)	Non-Concessional Contributions Cap (Not Tax Deductible)	Lifetime CGT Cap
Up to 70	\$ 25,000	\$ 100,000	\$ 1,565,000
70 to 75	\$ 25,000	\$ 100,000	NA
Over 75	\$ 25,000	Nil	NA

Individuals under age 65 can bring forward non-concessional contributions of up to three years of their non-concessional contribution caps. The maximum a person can bring forward is based on their Total Superannuation Balance:

- Less than \$1.4M Access to \$300,000
- Greater than or equal to \$1.4M and less than \$1.5M Access to \$200,000
- Greater than or equal to \$1.5M and less than \$1.6M Access to \$100,000
- Greater than or equal to \$1.6M Nil

Superannuation Guarantee

Employer super support is generally payable at the rate of 9.50% of ordinary time earnings for those earning \$450 or more per month, over the age of 18.

The maximum contribution base per quarter is \$57,090 for the 2020/2021 income year.

Tax on Superannuation Contributions

Type	Concessional	Non-Concessional
Tax on Entry	15% / 30%*	Nil
Excess Contributions	Marginal Rates	47%
No Tax File Number	49%	Unable to accept contributions

*30% tax on contributions applies to members with income over \$250,000.

TAXATION OF SUPERANNUATION

Superannuation benefits - Lump Sums

	Thresholds ⁴	Tax rate ¹
Tax free component	0%	0% ²
Taxable component - taxed element ³		
Age 60 & over		0%
Preservation age to 60	\$0 - \$215,000	0%
	Over \$215,000	15%
Under preservation age		20%
Departing Australian Superannuation Payment		36%
Taxable component - untaxed element ³		
Age 60 & over	\$0 - \$1,565,000	15%
	Over \$1,565,000	45%
Preservation age to 60	\$0 - \$215,000	15%
	\$215,000 - \$1,565,000	30%
Under preservation age		45%
Departing Australian Superannuation Payment	\$0 - \$1,565,000	30%
	Over \$1,565,000	45%

1. Plus Medicare Levy (2%)
2. Where benefits have been subject to tax in the fund, amounts are not assessable and are tax free.
3. If benefit paid has a component with both a taxed and untaxed element, the low rate cap applies to the taxed element first.
4. Indexed to AWOTE, will only increase in \$5,000 increments

TAXATION OF SUPERANNUATION BENEFITS (continued)

Income Streams	Maximum Tax Rate*
Tax Free component	0%**
Taxable component - taxed element	0%**
Age 60 & over	Marginal rate with 15% tax offset
Preservation age to 60	Marginal rate
Under preservation age	
Taxable component - untaxed element	Marginal rate with 10% tax offset
Age 60 & over	Marginal rate
Age 59 & under	

* Plus Medicare Levy (2%)

** Where benefits have been subject to tax in the fund, amounts are not assessable and are tax free.

DEATH BENEFIT SUPERANNUATION PAYMENTS

	Maximum Tax Rate*
Lump sum - paid to dependant	0%**
Lump sum - paid to non-dependant	0%**
Tax free component	
Taxable component	15%
- Taxed element	30%
- Untaxed element	
Pension - deceased/primary beneficiary over 60	0%
- Taxed element	Marginal rates
- Untaxed element	Recipient entitled 10% tax offset
Pension - Primary beneficiary under 60	0%**
Tax free component	
Taxable component	Marginal tax rate
- Included in assessable income	Pension rebate of 15% for individuals between preservation age & 60

* Plus Medicare Levy (2%)

** Not assessable

GOODWILL CO-CONTRIBUTIONS

Annual Income	Maximum Co-Contribution
\$39,837 or less	\$500
\$39,838 to \$54,836	\$500 - (Income-\$39,837) x 0.033333
\$54,837 or above	Nil

Income includes assessable income, reportable fringe benefits, reportable employer superannuation contributions, less deductible expenses from carrying on a business.

TRANSFER DUTY (WA)

General rate			
\$0-\$80,000		\$1.90	Per \$100 or part thereof
\$80,001-\$100,000	\$1,520+	\$2.85	Per \$100 or part thereof above \$80,000
\$100,001-\$250,000	\$2,090+	\$3.80	Per \$100 or part thereof above \$100,000
\$250,001-\$500,000	\$7,790+	\$4.75	Per \$100 or part thereof above \$250,000
\$500,001 & upwards	\$19,665+	\$5.15	Per \$100 or part thereof above \$500,000
Residential Rate			
\$0-\$120,000		\$1.90	Per \$100 or part thereof
\$120,001-\$150,000	\$2,280+	\$2.85	Per \$100 or part thereof above \$120,000
\$150,001-\$360,000	\$3,135+	\$3.80	Per \$100 or part thereof above \$150,000
\$360,001-\$725,000	\$11,115+	\$4.75	Per \$100 or part thereof above \$360,000
\$725,001 & upwards	\$28,453+	\$5.15	Per \$100 or part thereof above \$725,000
Concessional Rate			
\$0-\$100,000		\$1.50	Per \$100 or part thereof above
\$100,001-\$200,000	\$1,500+	\$4.39	Per \$100 or part thereof above \$100,000

Residential Rates apply to principal places of residence, residential rental properties and vacant land on which a residence is built within five years. In some circumstances transfers pursuant to Family Court Orders may be minimal or exempt.

Concessional Rates applies to principal place of residence or West Australian Business Asset with Market Value does not exceed \$200,000.

Duty is payable on GST.

PAYROLL TAX

Payable by employers in WA on wages (including benefits and superannuation) paid to employees in excess of \$1,000,000 at the rate of 5.5%. Certain payments are exempt.

LAND TAX

Payable on the unimproved value of land above \$300,000. Some exemptions and concessions apply.