

# EXPOSURE DRAFT

1 Inserts for  
2 **Tax Laws Amendment (2010 Measures**  
3 **No. 5) Bill 2010: Extending CGT**  
4 **exemption for certain compulsory**  
5 **acquisitions**  
6

## EXPOSURE DRAFT

If you have any comments on this exposure draft, please send them to:

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Business Tax Division  
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For further information, please contact Nicholas Backhouse on (02) 6263 3241.

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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.		

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2  
3  
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## **Schedule ??—Extending CGT exemption for certain compulsory acquisitions**

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### *Income Tax Assessment Act 1997*

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#### **1 At the end of section 118-100**

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Add:

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There is a similar exemption for a CGT event that is a compulsory acquisition (or similar arrangement) happening to adjacent land but not also to the dwelling itself.

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#### **2 Section 118-105**

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Repeal the section, substitute:

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#### **118-105 Map of this Subdivision**

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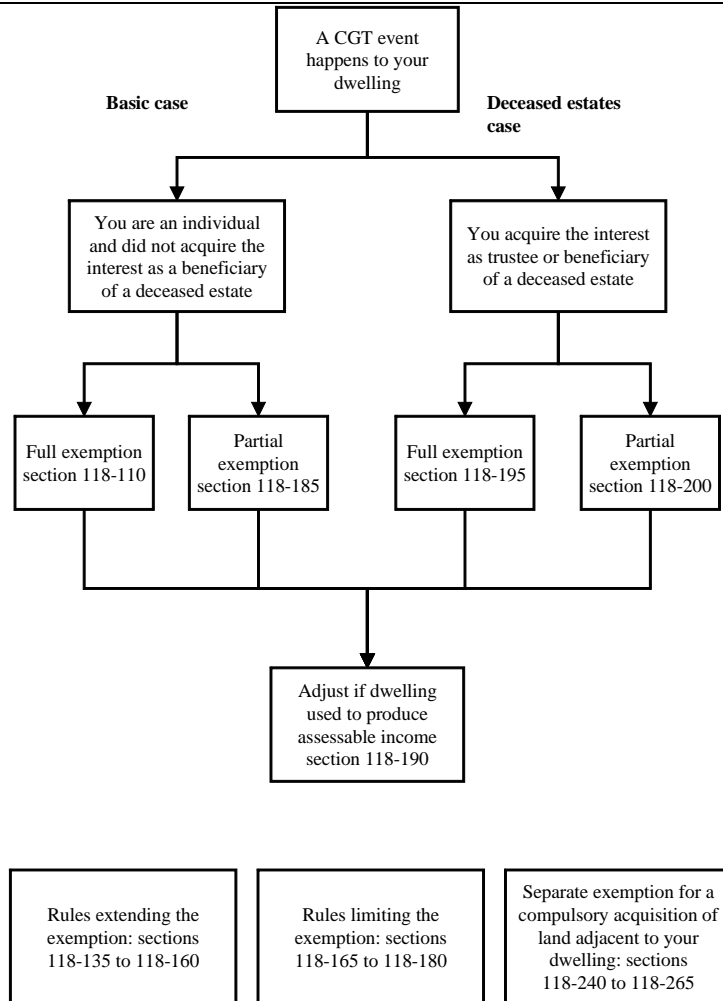
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Event that may attract exemption

The 2 different cases

Extent of exemption depends on whether dwelling is your main residence throughout ownership period (and on other factors for deceased estates)

Other rules that apply



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2

### 3 At the end of subsection 118-110(1)

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Add:

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Note 3: There is a separate rule for a CGT event that is a compulsory acquisition (or similar arrangement) happening to adjacent land but not also to the dwelling itself: see section 118-245.

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### 4 Section 118-120

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Repeal the section, substitute:

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## 118-120 Extension to adjacent land etc.

### *Adjacent land*

- (1) This Subdivision applies to a \*dwelling's \*adjacent land (if the same \*CGT event happens to that land or your \*ownership interest in it) as if it were a dwelling.
- (2) Land adjacent to a \*dwelling is its ***adjacent land*** to the extent that the land was used primarily for private or domestic purposes in association with the dwelling.
- (3) The maximum area of \*adjacent land covered by the exemption for the \*CGT event (the ***current event***) is 2 hectares, less the area of the land on which the \*dwelling is built.
- (4) However, if subsection 118-245(2) applied to you for an earlier \*CGT event that happened in relation to:
  - (a) other land that was part of the \*dwelling's \*adjacent land at the time of the earlier CGT event; or
  - (b) your \*ownership interest in that other land at that time;the maximum area of land covered by the exemption for the current event is the \*maximum exempt area for the current event and the dwelling.

### *Adjacent structures*

- (5) This Subdivision applies to an \*adjacent structure of a flat or home unit (if the same \*CGT event happens to that structure or your \*ownership interest in it) as if it were a \*dwelling.
- (6) A garage, storeroom or other structure associated with a flat or home unit is an ***adjacent structure*** of the flat or home unit to the extent that the structure was used primarily for private or domestic purposes in association with the flat or home unit.

## 5 At the end of section 118-165

Add:

Note: There is a separate rule for a CGT event that is a compulsory acquisition (or similar arrangement) happening to adjacent land but not also to the dwelling itself: see section 118-245.

## 6 At the end of Subdivision 118-B

Add:

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## 1 Compulsory acquisitions of adjacent land only

### 2 118-240 What the following provisions are about

3 You can ignore a capital gain or capital loss you make from a  
4 compulsory acquisition (or similar arrangement) that happens only  
5 to land that is adjacent to:

6 (a) a dwelling that is your main residence; or

7 (b) a dwelling that passed to you as a beneficiary, or  
8 trustee, of a deceased estate;

9 to the extent that the land was used primarily for private or  
10 domestic purposes in association with the dwelling.

11 There is a limit on the maximum area of land covered by the  
12 exemption.

13 Note: The exemption may not apply in full if the dwelling:

14 (a) was not always a main residence; or

15 (b) was used for the purpose of producing assessable income.

### 16 118-245 CGT events happening only to adjacent land

17 *Total adjacent land is 2 hectares or less*

18 (1) A \*capital gain or \*capital loss you make from a \*CGT event that  
19 happens in relation to land (the ***exempt land***), or your \*ownership  
20 interest in it, is disregarded if:

21 (a) you are an individual; and

22 (b) the exempt land is all or part of a \*dwelling's \*adjacent land  
23 at the time of the CGT event; and

24 (c) the CGT event does not happen in relation to the dwelling  
25 and does not happen in relation to your ownership interest in  
26 the dwelling; and

27 (d) one of the following subparagraphs applies:

28 (i) the dwelling was your main residence throughout all or  
29 part of your \*ownership period of the dwelling;

30 (ii) your ownership interest in the dwelling \*passed to you  
31 as a beneficiary in a deceased estate;

32 (iii) you own your ownership interest in the dwelling as the  
33 trustee of a deceased estate; and

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- 1 (e) section 118-250 (about compulsory acquisitions of adjacent  
2 land) applies to the CGT event and the exempt land; and  
3 (f) the sum of the following is 2 hectares or less:  
4 (i) the area of all of the dwelling's adjacent land at the time  
5 of the CGT event;  
6 (ii) the area of the land on which the dwelling is built;  
7 (iii) if this section applied to you for an earlier CGT event  
8 that involved reducing the area of the dwelling's  
9 adjacent land at the time of that earlier CGT event—that  
10 reduction in area.

11 Note: You may get only a partial exemption for the gain or loss (see  
12 section 118-260).

13 *Total adjacent land is more than 2 hectares*

- 14 (2) If:  
15 (a) apart from paragraph (1)(f), subsection (1) would apply to the  
16 gain or loss; and  
17 (b) you choose for this subsection to apply to the gain or loss;  
18 disregard so much of the gain or loss that relates to land (the  
19 ***exempt land***) within the \*maximum exempt area for the \*CGT  
20 event and the \*dwelling.

21 Note: You may get only a partial exemption for this portion of the gain or  
22 loss (see section 118-260).

## 23 **118-250 Compulsory acquisitions of adjacent land**

- 24 (1) This section applies to the \*CGT event and the exempt land if the  
25 CGT event involves:  
26 (a) the compulsory \*acquisition of the exempt land by:  
27 (i) an \*Australian government agency; or  
28 (ii) an entity under a power conferred by an \*Australian  
29 law; or  
30 (b) you \*disposing of the exempt land to an entity in  
31 circumstances meeting all of these conditions:  
32 (i) the disposal takes place after a notice was served on you  
33 by or on behalf of the entity;  
34 (ii) the notice invited you to negotiate with the entity with a  
35 view to the entity acquiring the exempt land by  
36 agreement;

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- 1 (iii) the notice informed you that if the negotiations were  
2 unsuccessful, the exempt land would be compulsorily  
3 acquired by the entity;
- 4 (iv) the compulsory acquisition would have been under a  
5 power of compulsory acquisition conferred by an  
6 Australian law.
- 7 (2) This section applies to the \*CGT event and the exempt land if the  
8 CGT event involves:
- 9 (a) your \*ownership interest in the exempt land being  
10 compulsorily cancelled (however described) or varied  
11 (however described) by:
- 12 (i) an \*Australian government agency; or  
13 (ii) an entity under a power conferred by an \*Australian  
14 law; or
- 15 (b) you surrendering (however described) or varying (however  
16 described) your ownership interest in the exempt land in  
17 circumstances meeting all of these conditions:
- 18 (i) the surrender or variation takes place after a notice was  
19 served on you by or on behalf of an entity;
- 20 (ii) the notice invited you to negotiate with the entity with a  
21 view to you agreeing to surrender or vary your  
22 ownership interest;
- 23 (iii) the notice informed you that if the negotiations were  
24 unsuccessful, your ownership interest would be  
25 compulsorily cancelled, or varied, under a power  
26 conferred by an Australian law.
- 27 (3) This section applies to the \*CGT event and the exempt land if the  
28 CGT event involves:
- 29 (a) an interest or right in or relating to the exempt land being  
30 compulsorily conferred on:
- 31 (i) an \*Australian government agency; or  
32 (ii) an entity under a power conferred by an \*Australian  
33 law; or
- 34 (b) you conferring on an entity an interest or right in or relating  
35 to the exempt land in circumstances meeting all of these  
36 conditions:
- 37 (i) the conferral takes place after a notice was served on  
38 you by or on behalf of an entity;
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- 1 (ii) the notice invited you to negotiate with the entity with a  
2 view to you agreeing to confer an interest or right in or  
3 relating to the exempt land;  
4 (iii) the notice informed you that if the negotiations were  
5 unsuccessful, an interest or right in or relating to the  
6 exempt land would be compulsorily conferred on the  
7 entity under a power conferred by an Australian law.
- 8 (4) This section applies to the \*CGT event and the exempt land if:  
9 (a) your \*ownership interest in the exempt land:  
10 (i) was conferred on you by an \*Australian government  
11 agency; and  
12 (ii) had a limited, but renewable, period of operation; and  
13 (b) the CGT event involves that ownership interest not being  
14 renewed by that agency.
- 15 (5) In this section, a reference to an entity includes a reference to an  
16 \*Australian government agency.

## 17 **118-255 Maximum exempt area**

18 Your *maximum exempt area* for the \*CGT event and the \*dwelling  
19 is 2 hectares less the amount worked out as follows:

### 20 *Method statement*

21 Step 1. Identify each earlier \*CGT event (if any) that:

- 22 (a) happened in relation to land that was part of the  
23 \*dwelling's \*adjacent land at the time of the earlier  
24 CGT event, or happened in relation to your  
25 \*ownership interest in that land at that time; and
- 26 (b) resulted in you losing rights to the substantial use  
27 and enjoyment of that land either completely or for  
28 at least 10 years;

29 for which you made a \*capital gain or \*capital loss that  
30 was wholly or partly disregarded because of the  
31 application of subsection 118-245(2).

32 Step 2. For each earlier \*CGT event covered by step 1, work out  
33 the area of the exempt land for that application of  
34 subsection 118-245(2).

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Step 3. Add the results from step 2 to the area of the land on which the \*dwelling is built.

## 118-260 Partial exemption rules

- (1) If section 118-245 applies to a \*CGT event, the \*capital gain or \*capital loss that you would have made apart from this section from the CGT event is increased by an amount that is reasonable having regard to the following:
  - (a) the extent that the \*dwelling was not a main residence for the relevant period;
  - (b) the extent that the dwelling was used for the \*purpose of producing assessable income during the relevant period.
- (2) In determining what is a reasonable increase, have regard to the principles in this Subdivision applicable to \*CGT events happening in relation to a \*dwelling or your \*ownership interest in it.

## 118-265 Extension to adjacent structures

Sections 118-245 to 118-260 (with appropriate modifications) apply to an \*adjacent structure of a flat or home unit in a corresponding way to the way they apply to a \*dwelling's \*adjacent land.

## 7 Subsection 995-1(1)

Insert:

*adjacent land* has the meaning given by subsection 118-120(2).

## 8 Subsection 995-1(1)

Insert:

*adjacent structure* has the meaning given by subsection 118-120(6).

## 9 Subsection 995-1(1)

Insert:

*maximum exempt area* has the meaning given by section 118-255.

## 10 Application

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- 1 (1) Subject to subitem (2), the amendments made by this Schedule apply in  
2 relation to CGT events happening on or after the day (the  
3 ***commencement day***) this Act receives the Royal Assent.
- 4 (2) You may choose the amendments made by this Schedule to apply in  
5 relation to CGT events relating to you that happen during the period:  
6 (a) starting at the start of the 2004-05 income year; and  
7 (b) ending immediately before the commencement day.
- 8 (3) A choice you can make under subitem (2) must be made:  
9 (a) by the day you lodge your income tax return for the income  
10 year that includes the commencement day; or  
11 (b) within a further time allowed by the Commissioner.
- 12 (4) The way you prepare your income tax return for the applicable income  
13 year is sufficient evidence of the making of a choice under subitem (2).
- 14 (5) Section 170 of the *Income Tax Assessment Act 1936* does not prevent  
15 the amendment of an assessment if:  
16 (a) the assessment was made before the commencement day; and  
17 (b) the amendment is made within 2 years after the start of the  
18 commencement day; and  
19 (c) the amendment is made for the purpose of giving effect to  
20 this Schedule.

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