CGT, negative gearing and LRBAs: The new law in practice webinar – 17 July 2026

Question 1

I have a client who owns her principal place of residence and wants to start renting the property out post Budget night. Can she negatively gear it?

Answer

Yes. The new quarantining rules only apply to residential dwellings acquired after 7.30pm (AEST) on 12 May 2026 (Budget night). Because your client acquired the property before Budget night, it is grandfathered from the new rules. This is the case even though the property is converted from a main residence into a rental property after Budget night. What matters is when the ownership interest was acquired, not when the property first becomes income producing.

Any net rental losses can therefore continue to be deducted against her other income, such as salary and wages, including after 1 July 2027.

Question 2

Will assets need a market valuation as at 1 July 2027?

Answer

Prima facie, yes. An asset held at 30 June 2027 that is subject to the new rules is taken to have been sold just before 1 July 2027 for its market value at that time, and reacquired on 1 July 2027 for the same amount (section 112-155). The gain accrued up to 30 June 2027 remains eligible for the 50% discount, and that market value becomes the starting point for the indexed component. A market value just before 1 July 2027 will therefore be needed when the asset is eventually sold. Any gain or loss from the deemed sale is deferred until the income year in which the asset is actually sold, so in practice the value can be established at that later time.

Two qualifications should be noted. First, section 112-185 gives the Minister power to determine, by legislative instrument, a method for apportioning gains and losses between the pre and post 1 July 2027 periods. If such a method is determined, the taxpayer can choose to use it instead of the market value approach (paragraph 112-155(3)(b)). No instrument has been made to date. Secondly, under existing CGT practice the ATO accepts valuations based on objective and supportable data, including a comparison approach, rather than always requiring a formal professional valuation. For listed shares and similar assets, published market prices will make this straightforward.

Question 3

With the minimum 30% tax on capital gains, does this mean a high income earner on more than $200,000 pays the top marginal rate of income tax on their gains?

Answer

A high income earner will continue to pay tax on their net capital gain at their marginal rates in the ordinary way. The 30% minimum operates as a floor on the *effective* rate of tax on capital gains accruing from 1 July 2027 <u>(as opposed to their *marginal tax rate*)</u>.

For someone already on the top marginal rate, the minimum <u>should</u> have no additional effect, because tax at their marginal rate already exceeds 30%. <u>However, this may be deceptive given that the new minimum 30% tax rate is calculated at the *effective* rate of tax, not the marginal rate of tax – as illustrated in this Webinar.</u> The minimum is most relevant where the effective rate on the gain

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would otherwise fall below 30%. There are also exemptions, including for recipients of certain income support and related government payments (now listed in the law itself in section 119-15). Following amendments in the Senate, the gain subject to the minimum tax is also reduced by any deductible gifts or donations. See the upcoming article in our monthly Outlook magazine which looks at this issue more closely and the true effect of the 30% minimum rate.

Question 4

Has the process of valuation been confirmed for the pre and post 1 July 2027 components of a capital gain? Is it sufficient to rely on a valuation of the property obtained by the owner?

Answer

The valuation process has not been separately confirmed for these rules. However, under the ATO's existing market valuation guidelines for CGT purposes, a valuation obtained by the owner can be acceptable, provided it is based on objective and supportable data and the process is properly documented. We see no reason why the same approach would not apply here, although further ATO guidance is expected as 1 July 2027 approaches. Owners should keep good records of the evidence supporting the 1 July 2027 value.

Question 5

When does the election of which CGT method to use need to be made? In 2027 or at the time of sale?

Answer

For most assets, no election is involved. The law automatically splits the gain into two components: the pre 1 July 2027 component (based on market value just before that date and eligible for the 50% discount) and the post 30 June 2027 component (calculated using indexation and subject to the 30% minimum tax). Both components are only brought to account in the income year in which the actual CGT event happens, that is, when the asset is sold. The one choice that may arise is whether to use a ministerial apportioning method (if one is determined under section 112-185) instead of the market value approach. Under section 103-25, that choice does not need to be made until the day the tax return is lodged for the income year in which the asset is sold.

The main exception is new residential dwellings and affordable housing. For those assets, the taxpayer can choose between the existing 50% discount (up to 60% for affordable housing) and the new indexation plus minimum tax regime. That choice is made on disposal (again, by the day the return is lodged for the year of the CGT event) and the chosen treatment applies to the whole holding period, even where the asset was acquired before 1 July 2027 and sold after that date.

Question 6

Post 30 June 2027, does indexation apply to capital losses or only to capital gains? If there is a prima facie capital loss, can the cost base be indexed to increase the final loss?

Answer

No. Indexation applies only in calculating a capital gain. It cannot be used to create or increase a capital loss. Capital losses will continue to be worked out using the unindexed reduced cost base.

Question 7

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For shares bought after Budget night but before 1 July 2027, are capital gains calculated using the indexation method from the date of purchase to the date of sale?

Answer

No. It depends on when the shares are sold, as the CGT changes turn on 1 July 2027 rather than Budget night. If the shares are sold before 1 July 2027 and have been held for at least 12 months, the 50% discount still applies to the whole gain.

If the shares are sold on or after 1 July 2027, they are taken to have been sold just before 1 July 2027 at market value and reacquired on 1 July 2027 for that amount (section 112-155). The discount applies to the gain accrued up to that market value. Growth after that date is calculated using indexation running from the quarter starting 1 July 2027, not from the original purchase date. The deemed sale and reacquisition are disregarded in applying the 12 month holding period test, so the original acquisition date is preserved. The same applies for the purposes of the small business CGT concessions.

Question 8

Will the indexation factors to be used from 1 July 2027 be provided by the ATO, or do we use the index figures published each quarter? Will it always be the same indexation factor at 1 July 2027?

Answer

The existing consumer price index (CPI) figures published quarterly by the Australian Bureau of Statistics will be used. The new law plugs into the existing indexation machinery in Subdivision 960-M, with the indexation factor being the index number for the quarter in which the CGT event happens divided by the index number for the quarter in which the expenditure was incurred (new subsection 960-275(1B)). No new or special index is being created, and we expect the ATO to publish the relevant indexation factors as it did before 21 September 1999.

Note that the factor is not fixed at 1 July 2027. Indexation runs from the quarter in which the relevant amount is incurred through to the quarter in which the CGT event happens, so it grows over time with movements in the CPI. For the deemed market value cost base of assets held at 30 June 2027, the expenditure is treated as incurred in the quarter starting on 1 July 2027 (the September 2027 quarter), not the quarter ending 30 June 2027.

Question 9

Does the cost base include all the other elements of cost, and are they indexed too?

Answer

Yes, and the legislation confirms the position. Under new subsection 110-36(1A) and section 114-1, expenditure in each element of the cost base is indexed, except the third element (costs of ownership), which is expressly excluded from indexation (see also subsection 960-275(4)). Each amount is indexed from the quarter in which it is incurred through to the quarter of the CGT event. For example, a later capital improvement is indexed from when that expenditure is paid, not from the original acquisition date. This element by element indexation was one of the reasons indexation was abandoned in favour of the discount back in 1999.

Question 10

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Post 10 August 2026, can a residential dwelling used as a doctor's practice (for example) qualify for an LRBA?

Answer

Yes, it can. From 10 August 2026, section 67A of the SIS Act requires that any real property acquired under a new LRBA be business real property (BRP) within the meaning of section 66. The BRP test turns on the use of the property, not its zoning or physical character. Under the ATO's ruling SMSFR 2009/1 (see Example 21), a residential dwelling used wholly and exclusively to conduct a doctor's surgery business satisfies the definition of BRP. A dwelling used wholly and exclusively as a medical practice can therefore still be acquired under a new LRBA after 10 August 2026.

The key qualification is the phrase 'wholly and exclusively'. If part of the property is used as residential accommodation (for example, the doctor or a tenant lives upstairs), the property will generally fail the test. The other usual requirements, including the sole purpose test and consistency with the fund's investment strategy, continue to apply.

Question 11

Is there anything preventing a new LRBA being entered into today?

Answer

No. The ban does not commence until 10 August 2026, being 45 days after the amending Act received Royal Assent on 26 June 2026. Until then, an SMSF can still enter into a new LRBA, including over residential property.

Importantly, the restriction does not apply to an arrangement entered into before commencement, even if settlement occurs after that date.

Question 13

Do we have any idea when Treasury or ATO guidance on the LRBA changes is expected to be released?

Answer

No timeframe has been announced. The measure passed Parliament very quickly and without a full explanatory memorandum, so guidance is widely expected, but neither Treasury nor the ATO has committed to a date.

Question 14

Has there been any clarity on a shop that has a residential dwelling above it, where the shop is used in a business and the dwelling is rented out to a third party?

Answer

From 10 August 2026, this type of property could generally not be acquired under a new LRBA. The property must be business real property, which requires the whole property to be used wholly and exclusively in one or more businesses. A dwelling rented to a third party as residential accommodation is not business use. The ATO accepts in SMSFR 2009/1 that minor, insignificant or incidental non business use will not breach the wholly and exclusively test, but a separately tenanted flat is unlikely to fall within that tolerance.

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Question 15

Can gold be purchased under an LRBA?

Answer

The new restriction applies only to real property, so it does not affect LRBAs over other asset types. Gold can be acquired under an LRBA subject to the ordinary rules in section 67A of the SIS Act. In particular, the borrowing must be over a single acquirable asset. The ATO accepts in SMSFR 2012/1 that a collection of assets that are identical and have the same market value, such as identical bullion bars, can be treated as a single acquirable asset.

As always, the investment must be permitted by the fund's trust deed and investment strategy. In practice, few lenders operate in this space, so obtaining finance may be the bigger hurdle.
Finally, note the tax treatment of the borrowing costs.

Gold bullion produces no assessable income, so the interest on the loan will generally not be deductible to the fund under section 8-1 of the ITAA 1997

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