200?

This is a prototype, as developed to September 2001, of the Tax Value Method legislation dealing with investment asset treatment (formerly CGT treatment) for the purposes of discussion within the Working Group. It will be developed further as a result of those discussions.

Tax Value Method Prototype: Division 100

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Status of the working draft

1. This draft Tax Value Method legislation, and accompanying explanatory material, dealing with investment asset treatment and collectables has been prepared under the auspices of the Board of Taxation. It will form part of a broader legislative framework that the Board is seeking to develop to effectively demonstrate the Tax Value Method concept and to allow comprehensive evaluation and testing of it. Depending on outcomes, the Board ultimately will make recommendations to the Government as to whether the Tax Value Method should or should not proceed.

2. As such, the draft legislation and explanatory material have not been endorsed by the Treasurer or any other Minister, nor does it reflect the official views of the Treasury, the Australian Taxation Office, the Office of the Parliamentary Counsel or the Board of Taxation.

Work in progress

3. The draft legislation and explanatory material are works in progress ('prototypes'). They are not being put forward as the final product or even as what the final product would look like. Rather, they are being exposed as the present state of the draft Tax Value Method legislation. Significant additions and deletions may be made to these drafts.

4. It is important to recognise also that in developing the Tax Value Method legislative framework it has been necessary, in some circumstances, to make assumptions about the taxation treatment of particular transactions. As with the structure of the legislation itself, those assumptions may be subject to change with further consideration of the issues, and should be regarded as in no way prejudicing any future consideration the Government may give to the relevant issues.

5. Further elements of the draft TVM legislative framework and associated explanatory material will be released on this website as and when they are developed.

Comments Welcome

6. It is uncommon for legislation to be exposed at this early stage of its preparation. That it is being exposed reflects a broader consultative approach being taken to this particular piece of legislation by the Board of Taxation because of its potential importance to the income tax system and

because of the Board's wish to be able to evaluate the best possible product.

7. Comments on this draft legislation as well as the explanatory material are welcome. Comments in writing should be addressed to:

The Board of Taxation
C/- The Treasury
Langton Crescent
PARKES ACT 2600

8. Alternatively, comments can be e-mailed to the Board of Taxation Secretariat through this website.

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Part —

Division 100—Discounting gains, and quarantining losses, on investment assets

Guide to Division 100

100-1 What this Division is about

Under the core rules, your gains and losses from investment assets are automatically taken into account in working out your net income.

> Note: The tax value of an investment asset is worked out primarily by reference to the asset's cost, so a gain or loss occurs only on realisation. See items 8, 8A and 9 in the table of tax values in subsection 6-40(1).

However, investment asset gains and losses are subject to special treatment of 2 kinds. Both are achieved by taxable income adjustments.

First, there are concessions for investment asset gains:

- Some gains are wholly or partly exempted by excluding them from taxable income. (Losses of the same kind are excluded to the same extent.)

  > Note: See, for example, Division 118.

- Some gains are rolled over. (Losses of the same kind are also rolled over.)

  > Note: See, for example, Divisions 124 and 126.

- Gains by individuals (and by some other entities) on investment assets held for at least 12 months are discounted (after reduction by available investment asset losses) by excluding a percentage of the gain from taxable income.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Secondly, investment asset *losses* are quarantined, and can only be offset against investment asset gains.

Subdivision 100-A—Objects

100-3 Objects of this Division

(1) The main objects of this Division are:

(a) to reduce the income tax payable by individuals (and some other entities) on certain *investment asset gains; and

(b) to ensure that *investment asset losses are quarantined so that they reduce taxable income from investment asset gains made in the same or a later income year, and do not reduce other taxable income.

Note: Without the quarantining mentioned in paragraph (1)(b), entities that have unrealised losses on investment assets could selectively realise those losses in order to reduce their income tax.

(2) These objects are achieved by *taxable income adjustments that modify the effect that gains and losses from realising *investment assets would otherwise have on taxable income.

Exemptions and roll-overs are not dealt with in this Division, but will be preserved in other Divisions, for example, Division 152 dealing with small business relief. Some roll-overs extend beyond investment assets to include, for example, some depreciating assets.

Subdivision 100-B—Identifying your investment asset gains and losses

100-25 Investment asset gains and losses

(1) You may have one or more *taxable income adjustments under this Division if, during the income year, you made one or more *investment asset gains or *investment asset losses.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(2) You can make an *investment asset gain or *investment asset loss only from an *investment asset event.

(3) The main ***investment asset event*** happens when you cease to hold an *investment asset. These are the other ***investment asset events***:

(a) a *non-dividend payment for shares event[1];

(b) a *trust capital distribution event[2].

Note: The other events are set out in Subdivision 100-D.

100-35 Investment assets

(1) An asset is an ***investment asset*** of an entity if the asset's tax value at a particular time when held by the entity is worked out under:

(a) item 8 (which deals with goodwill); or

(b) item 8A (which deals with shares in companies and interests in trusts); or

(c) item 9 (under which the tax value is the asset's cost at that time);

of the table in subsection 6-40(1).

Note: Examples of assets that can be investment assets are:

- land;
- shares in a company or units in a unit trust;
- a perpetual option;
- foreign currency;
- a high-cost private-use collectable.[3i]

Listed zero tax value assets, trading stock, depreciating assets[4] and financial assets cannot be investment assets.

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[1] This is the existing G1.

[2] This is the existing E4.

[3] See endnote i.

[4] The implications for buildings and structures of the uniform capital allowances system will be subject to further consultation: see Treasurer's Press Release no 74 dated 11 November 1999.

Exclusions

(2) However, none of these is an ***investment asset*** of an entity:

(a) an asset covered by item 3 of the table in section 6-20 (about purchased information that is not generally available);

(b) a *pre-CGT asset;[5]

(c) a *private asset held by an individual;[6]

(#) [others?].

> *Recommendation 4.10(b)(i) in the Final Report of the Review of Business Taxation provides that a share in a company (or an interest in a trust) that an entity last began to hold before the transition to the tax value method should not have investment asset treatment if it was a revenue asset of the entity immediately before the transition.*

100-45 Working out your investment asset gain or loss

(1) You work out as follows whether you have made an ***investment asset gain*** or an ***investment asset loss*** from ceasing to hold an *investment asset.[7] The gain or loss is made when you cease to hold the asset.

> *Working out your investment asset gain or loss*
>
> *Step 1.* Work out your *proceeds of realising the asset.
>
> *Step 2.* Subtract from the step 1 result:
>
> (a) the asset's tax value immediately before you ceased to hold it; and

[5] Defined as in the present law (put signpost in Dictionary).

[6] Check that the time element of the private asset definition works correctly for other events (and replacement for K5).

[7] Dictionary signpost for investment asset gain and investment asset loss needed.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(b) each amount you paid in order to cease to hold the asset, except so far as it has become part of that tax value.

Step 3. If the step 2 result is a positive amount, it is your ***investment asset gain*** from ceasing to hold the asset. If it is a negative amount, your ***investment asset loss*** from ceasing to hold the asset is that amount expressed as a positive amount.

Note: If the result is nil, you have neither an investment asset gain nor an investment asset loss.

Note 1: Under the core rules, your investment asset gains and losses are automatically taken into account in working out your net income. The purpose of identifying them separately is to work out whether you have taxable income adjustments.

Note 2: If:

- the investment asset is shares in a company or an interest in a trust; and
- there has been a fall in the market value of a high cost collectable held by the company (or a member of the same wholly-owned group)[8] or trust mainly for your (or your associate's) personal use or enjoyment;

section 12A-170 changes how this section applies.

(2) You work out as provided in Subdivision 100-D (other investment asset events) whether you have made an ***investment asset gain*** or an ***investment asset loss*** from any other *investment asset event.

100-65 Effect of exemptions and roll-overs

(1) The amount of an *investment asset gain you make during the income year is reduced (but not below nil) by the amount of each *downward adjustment that you have for the income year and that is specific to that gain.

8 Check effects of consolidation on this.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: A downward adjustment that exempts all or part of a gain from income tax, or rolls it over, is specific to the gain. The adjustment reverses the effect the gain would otherwise have on net income. For examples of exemptions and roll-overs, see Divisions 118, 124 and 126.

(2) The amount of an *investment asset loss you make during the income year is reduced (but not below nil) by the amount of each *upward adjustment that you have for the income year and that is specific to that loss.

Note: An upward adjustment that reverses the effect a loss would otherwise have on net income is specific to that loss. For examples, see Divisions 118, 124 and 126.

Subdivision 100-C—Adjustments giving effect to discounting and quarantining

100-75 Working out your adjustments

(1) Compare:

- the total of the *investment asset gains you made during the income year; with
- the total of the *investment asset losses you made during the income year.

Note: If you are an individual:

- your investment asset gains from high-cost private-use collectables are taken into account under this section only to the extent provided in section 12A-155; and
- your investment asset losses from high-cost private-use collectables are not taken into account under this section: see section 12A-150.

Gains exceed losses

(2) If the total of the gains exceeds the total of the losses, you have ***downward adjustments*** as worked out under this method statement.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Downward adjustments

Step 1. Reduce the gains (in whichever order you choose) by the losses.

Step 2. Reduce any remaining amounts of the gains (in whichever order you choose) by applying any previously unapplied *carry forward investment asset losses from earlier income years (in the order in which you made them). You have a ***downward adjustment*** equal to the total of the carry forward losses so applied.

Step 3. For each remaining gain that is a *discountable gain (see Subdivision 100-F), you have a ***downward adjustment*** equal to the *discount percentage multiplied by the remaining amount of the gain.

Example: For the 2006-07 income year, Camille has $10,000 of investment asset gains, all of which are discountable gains. She also has $6,000 of investment asset losses for that income year. She has no other net income for the income year, so her net income is:

$10,000 - $6,000=$4,000

She also has an unapplied carry forward investment asset loss of $1,000 for an earlier income year.

She works out downward adjustments as follows:

Step 1: The investment asset gains are reduced by the investment asset losses:

$10,000 - $6,000=$4,000

Step 2: The remaining amounts of investment asset gains are reduced by the unapplied carry forward investment asset loss:

$4,000 - $1,000=$3,000

She has a downward adjustment for the $1,000.

Step 3: She also has a downward adjustment worked out by multiplying the discount percentage by the remaining amounts of investment asset gains:

50% x $3,000=$1,500.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

So the $4,000 of her net income is reduced by $1,000+$1,500=$2,500 of downward adjustments, resulting in $1,500 of taxable income.

Losses exceed gains

(3) If the total of the losses exceeds the total of the gains:

(a) you have an ***upward adjustment*** equal to that excess; and

(b) the excess is your ***carry forward investment asset loss*** for the income year.

Note: The upward adjustment quarantines the excess losses by reversing their effect on net income. When the carry forward investment asset loss is applied in a later income year, it gives rise to a downward adjustment under Step 2 of the method statement in subsection (2).

100-80 What is the *discount percentage* for a discountable gain?

The ***discount percentage*** for an amount of a *discountable gain is:

(a) 50% if the gain is made:

(i) by an individual; or

(ii) by a trust (other than a trust that is a *complying superannuation entity); or

(b) $33^{1}/_{3}$% if the gain is made:

(i) by a complying superannuation entity; or

(ii) by a *life insurance company from an *investment asset that is a *virtual PST asset.

Rules about bankrupts to be included later. These will be generic, based on existing Subdivision 36-B and subsections 102-5(2) and (3).

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Subdivision 100-D—Other investment asset events

100-85 Non-dividend payment for shares event

(1) A ***non-dividend payment for shares event***[9] happens at the time when you receive one or more amounts from a company:

(a) in respect of a *share in the company that is an *investment asset that you hold; and

(b) otherwise than because you stop holding the share;

if:

(c) at least one amount has a *non-dividend part (see section #-50[10ii]); and

(d) the total of the one or more non-dividend parts of the one or more amounts exceeds the share's tax value immediately before that time.

(2) You make an ***investment asset gain*** from the event equal to the amount of the excess. The gain is made at the time of the event.[11iii]

Note 1: You cannot make an investment asset loss from the event.

Note 2: The share's tax value is also reduced to nil: see section #-50[12iv] (about the tax value of assets) and subsection 6-40(2).

100-95 Trust capital distribution event

(1) A ***trust capital distribution event***[13] happens at the time when….:

The gain is made at the time of the event.

This event is the trust analogy of the non-dividend payment for shares event. Its specific details depend on what happens with trust issues.

[9] This is the existing G1.
[10] See endnote ii.
[11] See endnote iii.
[12] See endnote iv.

Subdivision 100-E—Discountable gains

Table of sections

What is a discountable gain?

100-155 Conditions to be met

A ***discountable gain*** is an *investment asset gain that:

(a) meets the requirements of sections 100-160, 100-170 and 100-185; and

(b) is *not* prevented by section 100-205 from being a discountable gain.

100-160 Who can make a discountable gain?

To be a *discountable gain, the gain must be made by:

(a) an individual; or

(b) a *complying superannuation entity; or

(c) a trust; or

(d) a *life insurance company in relation to a *discountable gain from an *investment asset event in respect of an *investment asset that is a *virtual PST asset.

100-170 Discountable gain must not have indexed tax value

> *This provision needs to be reframed to take account of the mechanism that will be used to preserve indexation of cost bases before 21 September 1999. The difference between an asset's cost base and indexed cost base at the transition to TVM would give rise to a "gain reduction amount" for the asset, which will in turn produce a downward adjustment when you cease to hold the asset.*

[13] This is the existing E4.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

> *Taxpayers will have a choice between the downward adjustment from the gain reduction amount and the downward adjustment for the discount.*

100-185 You must have held the asset for at least 12 months

(1) To be a *discountable gain, the gain must result from an *investment asset event happening after the period of 12 months beginning on the day you last started to hold the asset.

(2) Also, the event must not happen under an agreement you made before the end of that period of 12 months.

What investment asset gains are *not* discountable gains?

100-205 Investment asset gain from equity in an entity with newly acquired assets

Purpose of this section

(1) The purpose of this section is to deny you a *discountable gain on your *share in a company or interest in a trust if you would *not* have had *discountable gains on the majority of *investment assets (by *cost and by *market value) underlying the share or interest if:

- (a) you had held them for the same period as the company or trust did; and
- (b) *investment asset events had happened to them when the investment asset event happened to your share or interest.

When an investment asset gain is not a discountable gain

(2) Your *investment asset gain from an *investment asset event happening to:

- (a) your *share in a company; or
- (b) your *trust voting interest, unit or other fixed interest in a trust;

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

is *not* a discountable gain if the 3 conditions in subsections (3), (4) and (5) are met. This section has effect despite section 100-155.

Note: This section does not prevent an investment asset gain from being a discountable gain if:

(a) there are at least 300 members or beneficiaries of the company or trust and control of the company or trust is not and cannot be concentrated (see section 100-210); or

(b) the investment asset gain is from a trust capital distribution event due to payments from the discounted parts of the trust's discountable gains (see section 100-220).

You had at least 10% of the equity in the entity before the event

(3) The first condition is that, just before the *investment asset event, you and your *associates beneficially owned:

(a) at least 10% by *market value of the *shares in the company (except shares that carried a right only to participate in a distribution of profits or capital to a limited extent); or

(b) at least 10% of the *trust voting interests, issued units or other fixed interests (as appropriate) in the trust.

Tax values of new assets are more than 50% of all tax values of entity's assets

(4) The second condition is that:

- the total of the tax values of *investment assets that the company or trust had, at the time of the *investment asset event, held for *less* than 12 months;

is *more* than half of:

- the total of the tax values of the *investment assets the company or trust held at that time.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Net gain on entity's new investment assets would be more than 50% of net gain on all the entity's investment assets

(5) The third condition is that the amount worked out under subsection (6) is *more* than half of the amount worked out under subsection (7).

(6) Work out the amount by which the total of the *investment asset gains made by the company or trust during the income year would exceed the total of the *investment asset losses it made during that year if:

(a) just before the *investment asset event, the company or trust had ceased to hold all the *investment assets that it had held for less than 12 months at the time of the event; and

(b) it had received the *market value of those assets as the *proceeds of realising them; and

(c) it had made no other investment asset gains or investment asset losses during that year; and

(d) it had not had a *carry forward investment asset loss for an earlier income year.

(7) Work out the amount by which the total of the *investment asset gains made by the company or trust during the income year would exceed the total of the *investment asset losses it made during that year if:

(a) just before the *investment asset event, the company or trust had ceased to hold all the *investment assets that it then held; and

(b) it had received the *market value of those assets as the *proceeds of realising them; and

(c) these provisions were disregarded in working out the amounts of those gains and losses:

(i) section 100-65 (about the effect of exemptions and roll-overs); and

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

(ii) paragraph 100-35(2)(b) (which prevents *pre-CGT assets from being investment assets); and[14]

(d) the company or trust had made no other investment asset gains or investment asset losses during that year; and

(e) the company or trust had not had a *carry forward investment asset loss for an earlier income year.

100-210 Discountable gain from equity in certain entities

Investment asset gain from share in company with 300 members

(1) Section 100-205 does not prevent an *investment asset gain from an *investment asset event happening to a *share in a company with at least 300 *members from being a *discountable gain, unless subsection (3) or (6) applies in relation to the company.

Investment asset gain from interest in fixed trust with 300 beneficiaries

(2) Section 100-205 does not prevent an *investment asset gain from an *investment asset event happening to an interest in a trust from being a *discountable gain if:

(a) entities have fixed entitlements to all of the income and capital of the trust; and

(b) the trust has at least 300 beneficiaries; and

(c) neither subsection (4) nor subsection (6) applies in relation to the trust.

No discountable gain if ownership is concentrated

(3) Section 100-205 may prevent an *investment asset gain from a *share in a company from being a *discountable gain if an individual owns, or up to 20 individuals own between them,

[14] Check whether this gives full effect to the equivalent in the current Division 115, in particular concerning pre-CGT assets.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

directly or indirectly (through one or more interposed entities) and for their own benefit, *shares in the company:

(a) carrying fixed entitlements to:

(i) at least 75% of the company's income; or

(ii) at least 75% of the company's capital; or

(b) carrying at least 75% of the voting rights in the company.

(4) Section 100-205 may prevent an *investment asset gain from an interest in a trust from being a *discountable gain if an individual owns, or up to 20 individuals own between them, directly or indirectly (through one or more interposed entities) and for their own benefit, interests in the trust:

(a) carrying fixed entitlements to:

(i) at least 75% of the trust's income; or

(ii) at least 75% of the trust's capital; or

(b) if beneficiaries of the trust have a right to vote in respect of activities of the trust—carrying at least 75% of those voting rights.

(5) Subsections (3) and (4) operate as if all of these were a single individual:

(a) an individual, whether or not the individual holds *shares in the company or interests in the trust (as appropriate);

(b) the individual's *associates;

(c) for any *shares or interests in respect of which other individuals are nominees of the individual or of the individual's associates—those other individuals.

No discountable gain if rights can be varied to concentrate ownership

(6) Section 100-205 may prevent an *investment asset gain from a *share in a company, or from an interest in a trust, from being a *discountable gain if, because of anything listed in subsection (7), it is reasonable to conclude that the rights attaching to any of the

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

*shares in the company or interests in the trust (as appropriate) *can be* varied or abrogated in such a way that subsection (3) or (4) would be satisfied.

(7) These are the things:

(a) any provision in the constituent document of the company or trust, or in any contract, agreement or instrument:

(i) authorising the variation or abrogation of rights attaching to any of the *shares in the company or interests in the trust (as appropriate); or

(ii) relating to the conversion, cancellation, extinguishment or redemption of any of those shares or interests;

(b) any contract, *arrangement, option or instrument under which a person has power to acquire any of those shares or interests;

(c) any power, authority or discretion in a person in relation to the rights attaching to any of those shares or interests.

(8) It does not matter for the purposes of subsection (6) whether or not the rights attaching to any of the *shares or interests *are* varied or abrogated in the way described in that subsection.

100-220 Discountable gain from trust capital distribution event[15]

To be included, taking account of how this event develops.

[15] This is the existing E4.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Subdivision 100-F—Other special rules

100-300 Exceptions and modifications

Special rules affecting investment asset gains and investment asset losses

Item	For this kind of entity:	There are these special rules:	See:
1			
2			

End Notes

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[i] To ensure that high-cost private-use collectables get investment asset treatment (and low-cost private-use collectables do not get caught up in the depreciating asset regime), the definition of ***depreciating asset*** now excludes:

(d) a *collectable that is held by an individual if, when he or she began to hold the collectable, he or she intended to *use it at least partly for *private or domestic purposes;

(e) an *interest that an individual holds in a collectable if, when he or she began to hold the interest, he or she intended to *use the collectable at least partly for *private or domestic purposes;

[ii] Section #-50 is as follows:

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*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Division #—Tax value of shares in a company and interests in a trust

#-50 Tax value of a share

(1) The ***tax value*** at a particular time of a *share in a company that you hold is the *cost of the share as at that time, reduced by the *non-dividend part of each amount you receive from the company in respect of the share at or before that time.

(2) The ***non-dividend part*** of an amount that you receive from a company:

(a) in respect of a *share in the company that you hold; and

(b) otherwise than because you stop holding the share;

is so much of the amount (which may be all of it) as:

(c) is not a *dividend; and

(d) is not taken to be a dividend under section 47 of the *Income Tax Assessment Act 1936*.

(3) In working out the *non-dividend part of an amount you receive, disregard:

(a) any of the amount you repay (or are required to repay); and

(b) any compensation you pay (or are required to pay) that can reasonably be regarded as a repayment of all or part of the amount.

The reduction rule is not really a taxing point, because the change in tax value is matched by the non-dividend part. The taxing point arises when there is no more tax value left to reduce. It arises naturally under the net income formula. The non-dividend payment for shares event serves only to generate an investment asset gain that can absorb quarantined losses.

[iii] Existing 104-135(6) and (7) provide:

(6) You disregard a payment by a liquidator for the purposes of this section if the company is dissolved within 18 months of the payment.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.

Note: The payment will be part of your capital proceeds for CGT event C2 happening when the share ends.

(7) You also disregard a payment that is *personal services income included in your assessable income, or another entity's assessable income, under section 86-15.

[iv] The change in tax value aspect of this is handled for now by including the following new item in the tax value table in section 6-40:

8A[iv]	A *share in a company or an [interest in a trust]	The amount worked out under Division ##.

*To find definitions of asterisked terms, see the Dictionary, starting at section 995-1.