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This is a prototype, as developed to the end of August 2001, of the Tax Value Method legislation dealing with collectables 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 12A***



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## ***Status of the working draft***

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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

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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 12A** How items relating to collectables affect an individual's taxable income

**Subdivision 12A-A** Objects and application

Section 12A-1

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2 **Part —**

3 **Division 12A—How items relating to collectables affect an**  
4 **individual's taxable income**

5 **Guide to Division 12A<sup>1</sup>**

6 **Subdivision 12A-A—Objects and application**

7 **12A-1 Object of this Division**

8 **12A-5 Application**

9 *Individuals*

10 (1) This Division applies in working out an individual's taxable  
11 income.

12 *Partnerships*

13 (2) This Division also applies in working out the taxable income of a  
14 partnership (except a \*limited partnership) for an income year if at  
15 any time during that year an individual was a member of the  
16 partnership.

17 **Subdivision 12A-B—Payments that relate to collectables but do**  
18 **not form part of their cost**

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<i>To be included.</i>
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<sup>1</sup> This will point out that low-cost private-use collectables are excluded from the tax base as private assets.

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

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**Subdivision 12A-C—Quarantining investment asset losses from high-cost private-use collectables**

**Table of sections**

**12A-150 How investment asset gains and losses from high-cost private-use collectables are treated**

- (1) If during the income year you made one or more \*investment asset gains or \*investment asset losses (or both) from \*high-cost private-use collectables:
- (a) the losses *cannot* be used to reduce investment asset gains in working out your \*taxable income adjustments under section 100-75; and
  - (b) the gains are *not* taken into account in working out those adjustments, except as provided in section 12A-155; and
  - (c) you may have a taxable income adjustment under section 12A-155.

Note: Low-cost private-use collectables are private assets. See [relevant provisions<sup>2</sup>].

- (2) A \*collectable<sup>3i</sup> that an individual holds is a ***high-cost private-use collectable*** if:
- (a) at the time when the individual begins to hold the collectable, he or she intends to \*use it at least partly for \*private or domestic purposes; and
  - (b) the \*first element of the collectable's \*cost is more than \$10,000.
- (3) An \*interest<sup>4ii</sup> that an individual holds in a \*collectable is a ***high-cost private-use collectable*** if, at the time when the individual begins to hold the interest:

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<sup>2</sup> Include cross references.

<sup>3</sup> See endnote i.

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

**Part**

**Division 12A** How items relating to collectables affect an individual's taxable income

**Subdivision 12A-C** Quarantining investment asset losses from high-cost private-use collectables

**Section 12A-155**

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- 1 (a) he or she intends to \*use the collectable at least partly for  
2 \*private or domestic purposes; and  
3 (b) the collectable's \*market value is more than \$10,000.

4 **12A-155 Working out your taxable income adjustments for high-**  
5 **cost private-use collectables**

- 6 (1) Compare:  
7 • the total of the \*investment asset gains you made from \*high-  
8 cost private-use collectables during the income year; with  
9 • the total of the \*investment asset losses you made from high-  
10 cost private-use collectables during the income year.

11 *Gains exceed losses*

- 12 (2) If the total of the gains exceeds the total of the losses, the  
13 consequences are worked out under this method statement.

14 *Method statement*

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

17 *Step 2.* Reduce any remaining amounts of the gains (in  
18 whichever order you choose) by applying any previously  
19 unapplied \*carry forward investment asset losses from  
20 high-cost private-use collectables from earlier income  
21 years (in the order in which you made them). You have a  
22 ***downward adjustment*** equal to the total of the carry  
23 forward investment asset losses so applied.

24 *Step 3.* Each remaining gain is taken into account in working out  
25 your \*taxable income adjustments under section 100-75  
26 (in the same way as an investment asset gain that is *not*  
27 from a high-cost private-use collectable).

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<sup>4</sup> See endnote ii.

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

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**Part**  
**Special investment asset loss from high-cost collectable** **Division 12A**  
**Quarantining investment asset losses from high-cost private-use collectables**  
**Subdivision 12A-D**

**Section 12A-170**

1                   Note:       One effect of Step 3 is that a remaining investment asset gain from a  
2                                   high-cost private-use collectable can be further reduced by an  
3                                   investment asset loss, or a carry forward investment asset loss, that is  
4                                   *not* from a high-cost private-use collectable: see Steps 1 and 2 of the  
5                                   method statement in subsection 100-75(2). If any of the gain remains  
6                                   after that, it may be a discountable gain: see Subdivision 100-E.

7                   *Losses exceed gains*

- 8                   (3) If the total of the losses exceeds the total of the gains:  
9                               (a) you have an *upward adjustment* equal to that excess; and  
10                              (b) the excess is your *carry forward investment asset loss from*  
11                                   *high-cost private-use collectables*<sup>5</sup> for the income year.

12                   Example: For the income year, you have an investment asset gain of \$200 from  
13                                   a high-cost private-use collectable and an investment asset loss of  
14                                   \$600 from another high-cost private-use collectable.

15                                   Your loss from the one collectable reduces your gain from the other to  
16                                   nil. Because of subsection 12A-150(1), you cannot apply the  
17                                   remaining \$400 of the loss in this income year, but you can apply it in  
18                                   a later income year under step 2 of the method statement in subsection  
19                                   (2) of this section.

- 20                   (4) A \*taxable income adjustment or \*carry forward investment asset  
21                                   loss under this section is additional to a taxable income adjustment  
22                                   or carry forward investment asset loss under section 100-75.

23                   **Subdivision 12A-D—Special investment asset loss from high-**  
24                                   **cost collectable**

25                   **12A-170 Special collectable loss on ceasing to hold shares or trust**  
26                                   **interest**

- 27                   (1) The purpose of this section<sup>6</sup> is to ensure that the tax consequences  
28                                   of a fall in the \*market value of a high-cost collectable that a  
29                                   company or trust holds for your (or your \*associate's) personal use  
30                                   or enjoyment:

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<sup>5</sup> Signpost and asterisking required.

<sup>6</sup> This replaces Event K5.

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

**Part**

**Division 12A** Special investment asset loss from high-cost collectable

**Subdivision 12A-D** Quarantining investment asset losses from high-cost private-use collectables

**Section 12A-170**

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- 1 (a) are similar to what they would have been if you had held the  
2 collectable yourself; and  
3 (b) take effect when you cease to hold \*shares in the company  
4 (or in a company that is a member of the same  
5 \*wholly-owned group) or an interest in a trust.

6 Note: This is achieved by in effect converting the impact of the collectable's  
7 fall in market value into an investment asset loss from a collectable.  
8 You make the loss when you cease to hold the shares or interest. See  
9 subsection (4).

10 The loss is offset by reversing, to the extent of the impact of the fall in  
11 market value, what would otherwise have been the outcome of your  
12 ceasing to hold the shares or interest. See subsections (2) and (3).

- 13 (2) This section changes the way you work out your \*investment asset  
14 gain or \*investment asset loss under section 100-45 if:  
15 (a) the \*investment asset you cease to hold is \*shares in a  
16 company or an interest in a trust, and no roll-over applies to  
17 your ceasing to hold it; and  
18 (b) there has been a fall in the \*market value of a \*collectable<sup>7</sup>:  
19 (i) held by the company (or by a company that is a member  
20 of the same \*wholly-owned group) or by the trust; and  
21 (ii) \*used or kept mainly for your (or your \*associate's)  
22 personal use or enjoyment; and  
23 (c) the \*first element of the collectable's \*cost is more than  
24 \$10,000; and  
25 (d) the \*market value of the investment asset when you stopped  
26 holding it (worked out as if the fall in market value of the  
27 \*collectable had not happened) exceeds your \*proceeds of  
28 realising the investment asset.
- 29 (3) In working out under section 100-45 whether you have made an  
30 \*investment asset gain or \*investment asset loss from ceasing to  
31 hold the \*investment asset:

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<sup>7</sup> Consider also interests in collectables.

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

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- 1                                   • the \*market value of the investment asset when you stopped  
2                                   holding it (worked out as if the fall in market value of the  
3                                   \*collectable had not happened);  
4                   is treated as being:  
5                                   • your \*proceeds of realising the asset.

6                   Note:       This effectively increases your proceeds of realising the investment  
7                                   asset by the amount attributable to the fall in market value of the  
8                                   collectable. The effect is either to reduce your investment asset loss  
9                                   from ceasing to hold the asset, to turn the loss into a gain, or to  
10                                  increase your investment asset gain from ceasing to hold the asset.

- 11                   (4) In addition to the \*investment asset gain or \*investment asset loss  
12                                  worked out under section 100-45, you make an **investment asset**  
13                                  **loss** (from ceasing to hold the \*investment asset) equal to the  
14                                  excess referred to in paragraph (2)(d). That investment asset loss is  
15                                  treated as being from a \*high-cost private-use collectable.

16                   Note:       The investment asset loss can be applied only against investment asset  
17                                  gains you made from high-cost private-use collectables during the  
18                                  income year. Any of the loss that remains will result in an upward  
19                                  adjustment. See section 12A-155.

20                   Example: You own 50% of the shares in a company. You bought them for  
21                                  \$60,000. The company owns a painting worth \$100,000 and another  
22                                  asset worth \$20,000. The painting falls in value to \$40,000.

23                                  You sell your shares for \$30,000 (the actual proceeds of realising  
24                                  them). Apart from this section, you would make an investment asset  
25                                  loss of \$30,000 under section 100-45.

26                                  However, under this section the actual proceeds of realising the shares  
27                                  are replaced with \$60,000 (the market value of the shares if the  
28                                  painting had not fallen in value). As a result, you do not make an  
29                                  investment asset loss under section 100-45.

30                                  Instead, you make an investment asset loss under this section from a  
31                                  high-cost private-use collectable. The loss is equal to:

32                                  \$60,000 - \$30,000=\$30,000.

## End notes

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

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**Part**

**Division 12A** Special investment asset loss from high-cost collectable

Section 12A-170

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<sup>i</sup> Defined in Division 12, as follows:

(2) A **collectable** includes (but is not limited to) the following:

- (a) \*artwork, jewellery, an antique or a coin or medallion; or
- (b) a rare folio, manuscript or book; or
- (c) a postage stamp or first day cover; or
- (d) [other?].

However, to be a collectable under this subsection, an asset must be a tangible asset (other than \*land).

<sup>ii</sup> Defined in Division 12, as follows:

(3) An **interest** in a \*collectable includes:

- (a) an option or right to start to hold a collectable; or
- (b) an option or right to start to hold an interest in a collectable.

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