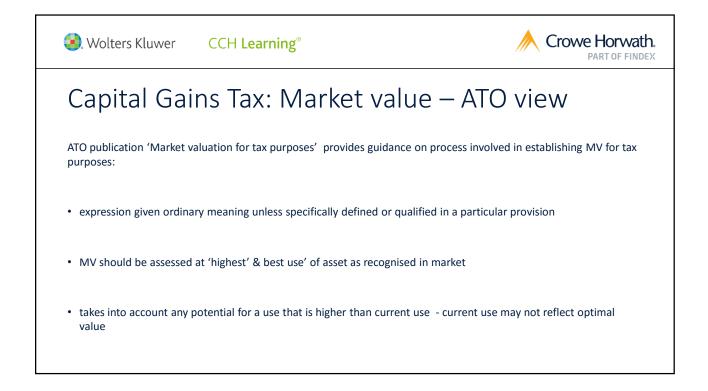
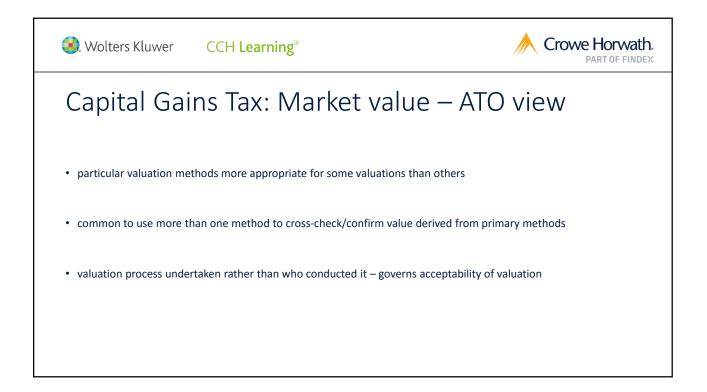


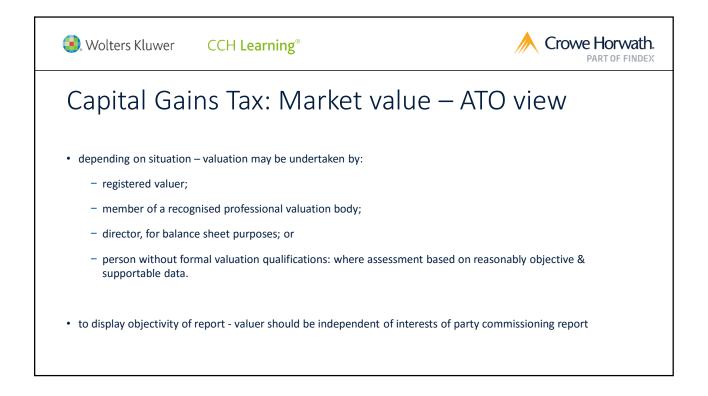


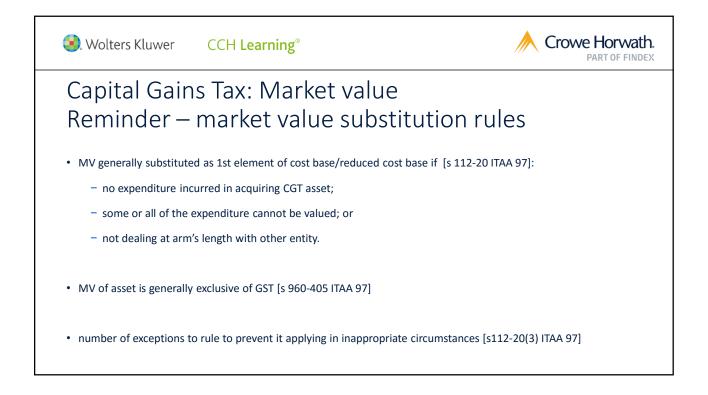
Schlers Kluwer CCH Learnin	ng [®] Crowe Ho	orwath.
Capital Gains Tax: M	1arket value – general princip	les
 the term 'market value' used extensively in 	1 CGT provisions	
• MV 'deemed' in some instances & importa	int to establish when parties not dealing at 'arms length'	
• MV not defined - limited definition in ITAA	36 only applies to specified circumstances	
 responsibility of taxpayer to determine MV can obtain assistance from qualified as may request private ruling on matter 	dvisers	

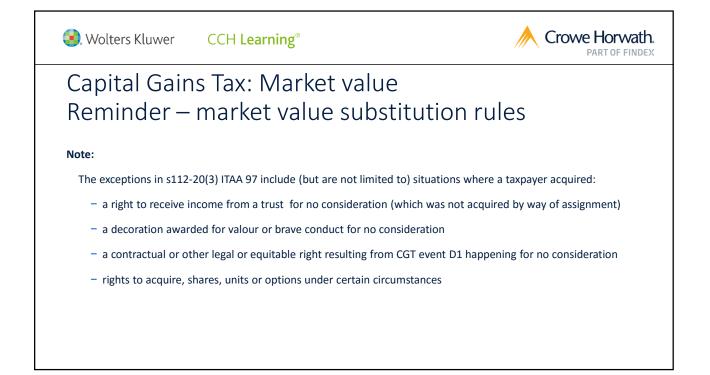
S. Wolters Kluwer CCH Learning®	Crowe Horwath.
Capital Gains Tax: Market value – g	general principles
• if asset is GST 'taxable supply' - MV is GST exclusive value [s 960-405 ITAA 97]
 price that willing but not anxious buyer would have to pay to willing but not Commonwealth (1907) 5 CLR] 	anxious seller [Spencer v
Note:	
Possible for MV to be <i>more or less</i> than the <i>actual</i> capital proceeds.	

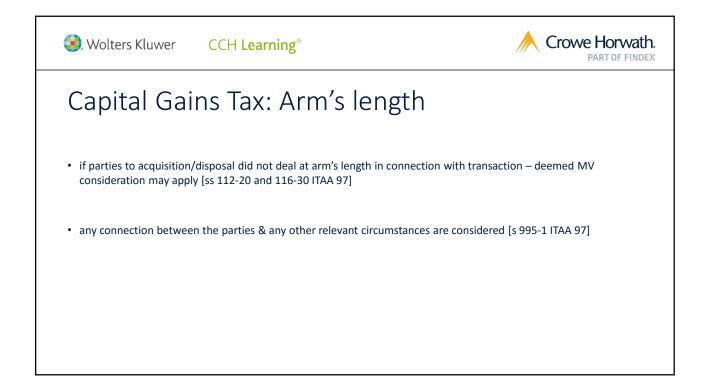








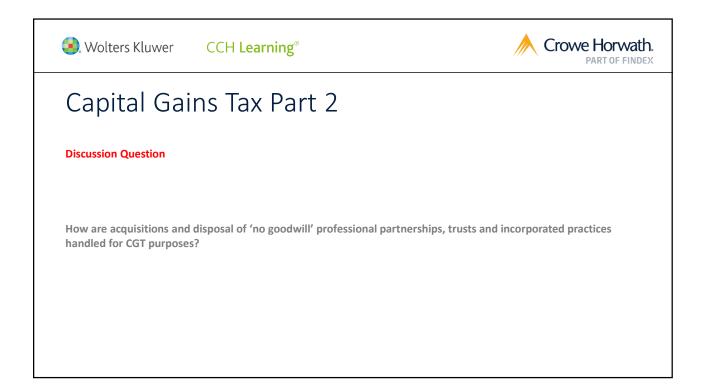




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Capital Gains Tax: Arm's length – commor	law principles
A number of principles have developed from common law:	
 whether parties dealt at arm's length – question of fact 	
• distinction between 'dealing at arm's length' & an 'arms length relationship'	
Note:	
Parties who are not at arm's length can still deal with each other on arm's length term	s on a particular transaction.

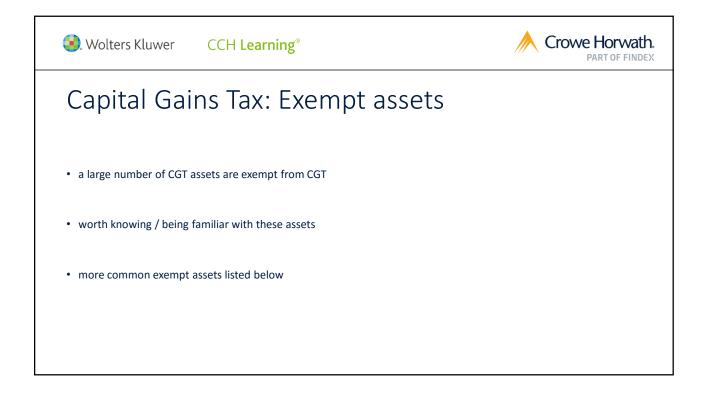
📵 Wolters Kluwer	CCH Learning [®]	Crowe Horwath.
Capital Gains	Tax: Arm's length	n – common law principles
 whether parties dealt a themselves in forming 	- ,	manner in which parties to transaction conducted
 at issue is whether par 	ties have acted separately & independ	ently in forming their bargain
 should be assessment behave – outcome mat 	•	ner as arm's length parties would be expected to
 relevant to consider na did not deal at arm's le 		if parties not at arm's length - inference may be drawn

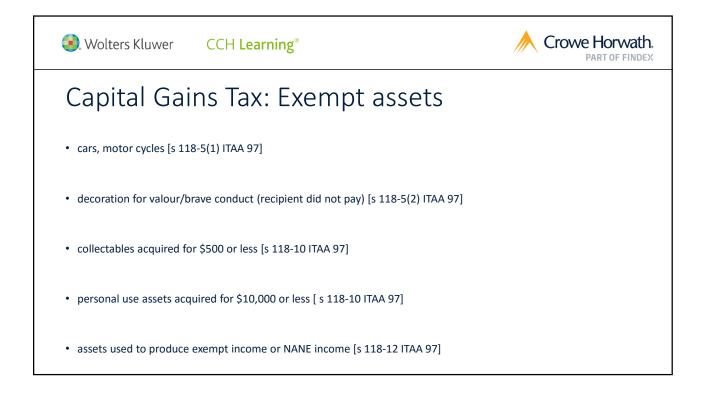
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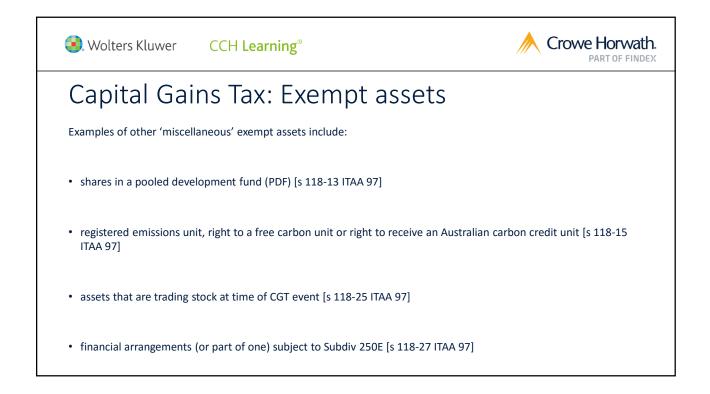


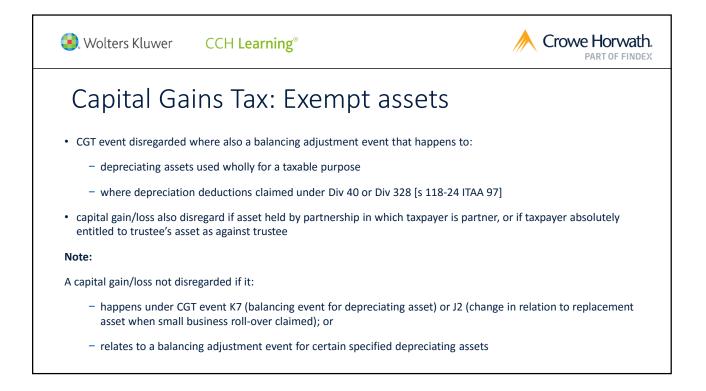


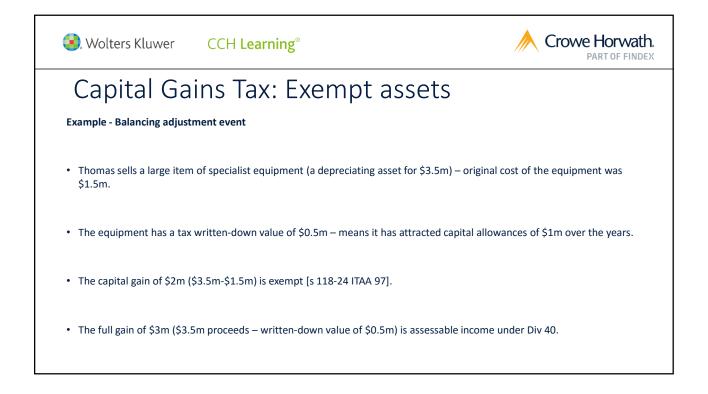
Substantiation CCH Learning®	Crowe Horwath.	
Capital Gains Tax: Exemptions & con	cessions	
 various capital gains/losses arising from CGT events disregarded 		
• certain exemptions covered in other session (e.g. general CGT exemption & main res	sidence exemption)	
remaining exemptions can be split into following broad categories:		
 exempt assets 		
 exempt receipts 		
 exempt transactions 		

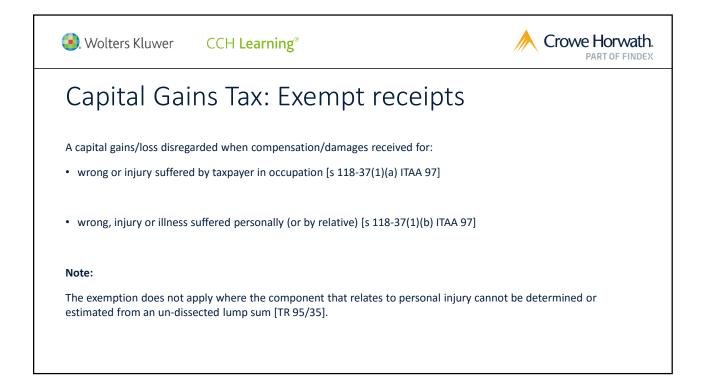




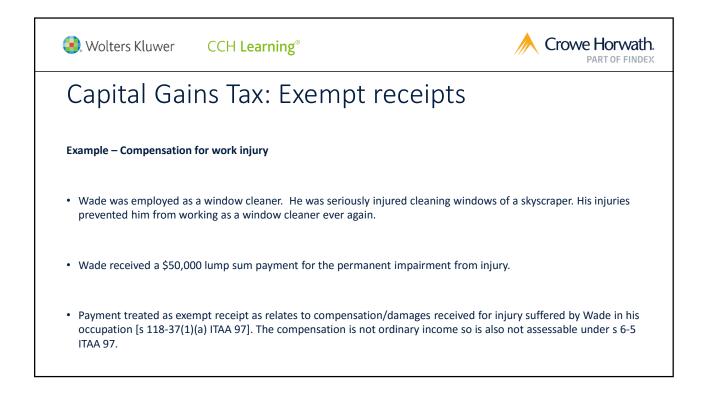






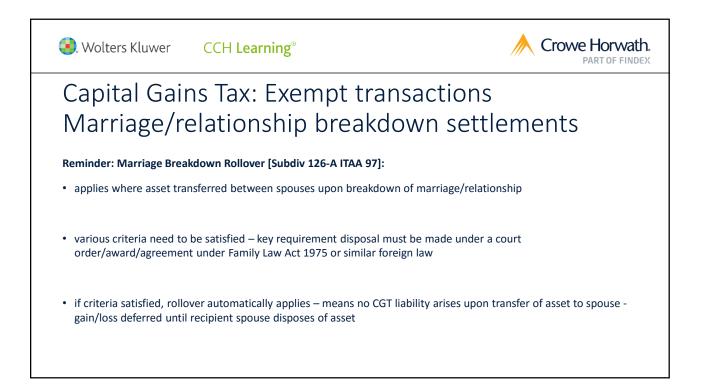


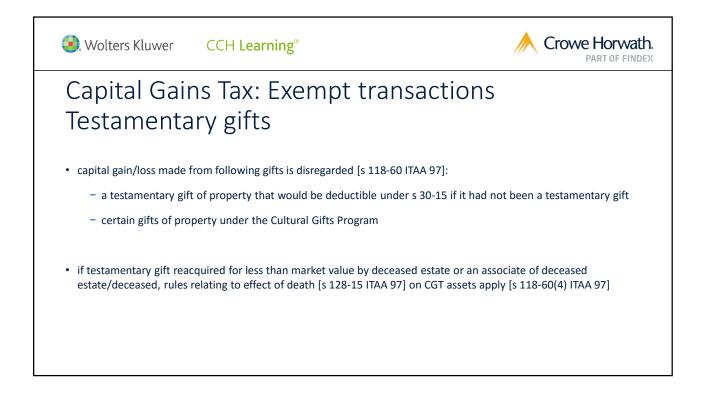
Wolters Kluwer CCH Learning®	Crowe Horwath.
Capital Gains Tax: Exempt receipts	S
Example – Compensation for personal injury	
 David disturbed 2 escaped convicts breaking into his car & was bashed in the head injuries & spent 3 months recuperating in hospital. The convicts were captured, fou years. 	
 Compensation of \$30,000 awarded to David for his pain and suffering resulting from received \$20,000 to compensate her for loss of enjoyment of life – she had consequal alone. 	
Both amounts are exempt as they relate to personal injury suffered by David and hi	is wife [s 118-37(1)(b) ITAA 97].

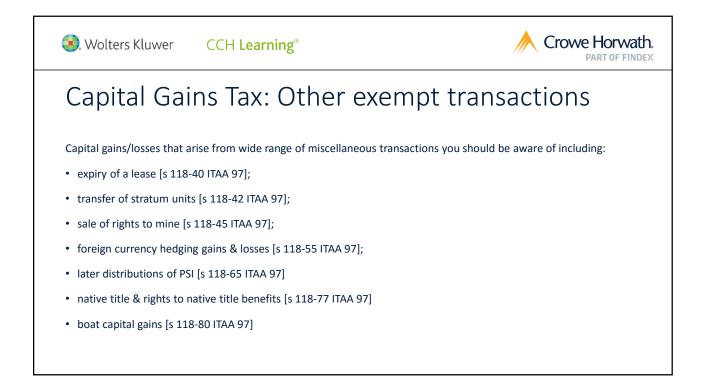


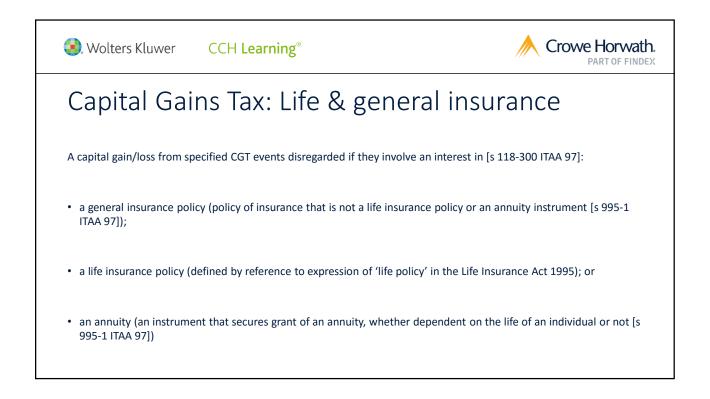
Score CCH Learning®	Crowe Horwath.
Capital Gains Tax: Exempt receipts	
 winnings/losses - gambling, games or competition prizes [s 118-37(1)(b) ITAA 97] exemption applies to race bets, tatts lotto, lotto & other such lotteries, raffles & q does not apply to capital gain/loss on disposal of CGT asset obtained from gambli 	
 other miscellaneous receipts of money/property/reimbursements [s118-37 ITAA 97]: – certain industry exit grants – compensation received under the firearms surrender arrangements – certain government incentives 	

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Capital Gains Tax: Exempt transacti Marriage/relationship breakdown s	
A capital gain/loss made from CGT event C2 happening (rights ending) disregarded	d [s 118-75 ITAA 97] if:
• capital gain/loss made in relation to a right that directly relates to the breakdow	wn of a relationship between spouses; &
 at the time of the CGT event the spouses involved are separated & there is no resumed 	reasonable likelihood of cohabitation being
 whether spouses / former spouses have separated for CGT purposes determine - spouse extends to married couples, same sex & opposite-sex de facto couples 	

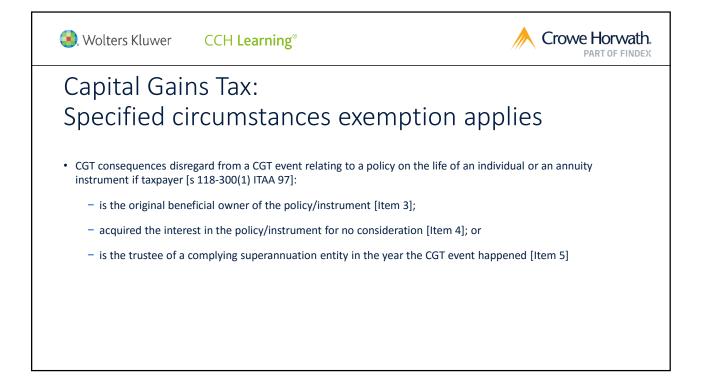


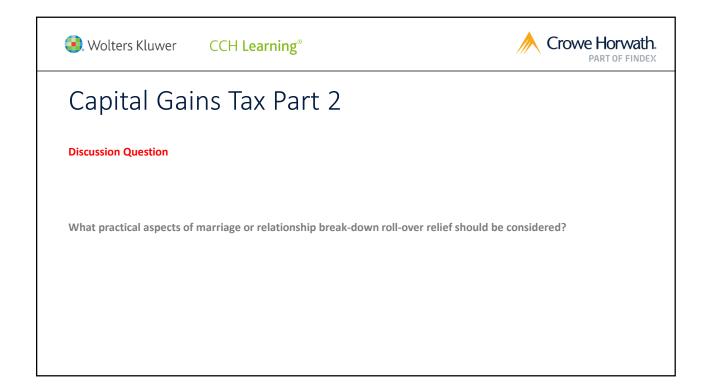


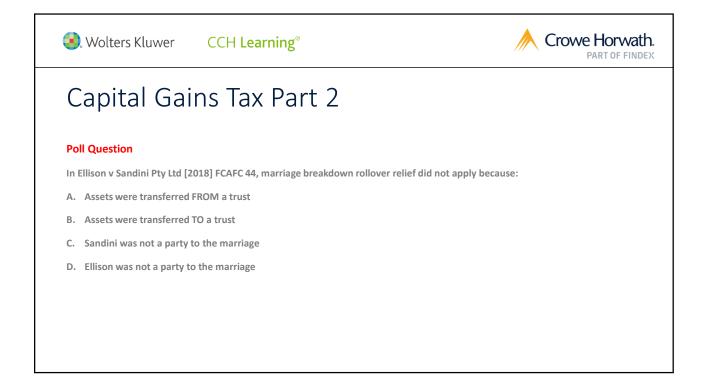




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Capital Gains Tax: Life & general	insurance
 exemption only applies to specified CGT events [s 118-300(2)] including CGT events I1, I2, K3 	ents A1, B1, C2, E1, E2, E3, E5, E6, E7, E8,
 CGT consequences disregarded [s 118-300(1) ITAA 97]: for the insurer/entity that issued the instrument from CGT events arising f an insurance company issues [Item 1] for the insured arising from CGT events relating to general insurance polici net [Item 2] i.e. pre-CGT assets, motor vehicles, trading stock, main reside for life insurance company on CGT events arising from a policy of life insur annuity instrument that provide for liabilities under the policy to be discharassets or segregated exempt assets [Item 6] 	ies covering property outside of the CGT nce ance on the life of an individual or an









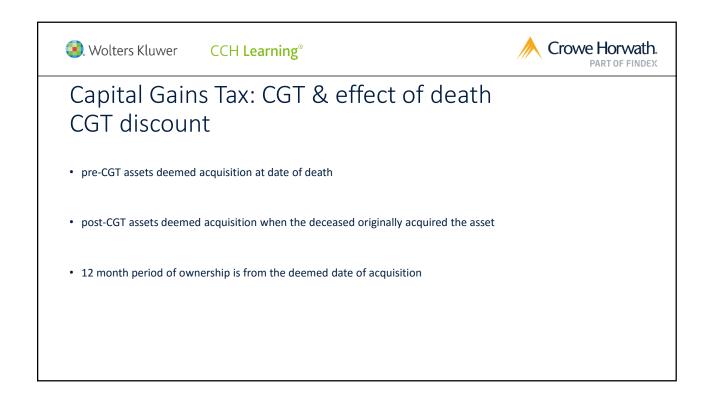
Substantiation CCH Learning®	Crowe Horwath.
Capital Gains Tax: Effect of death	
• death does not cause a deemed disposal of assets [s 128-10 ITAA 97]	
 s 104-215 ITAA 1997 sets out exception to this rule if the post-CGT asset passes to a a tax-exempt entity; a complying superannuation fund; or 	beneficiary under a will who is:
 foreign resident Note: 	
If asset passes to a foreign resident, CGT event triggered only if asset is not 'taxable Au	ıstralian property'

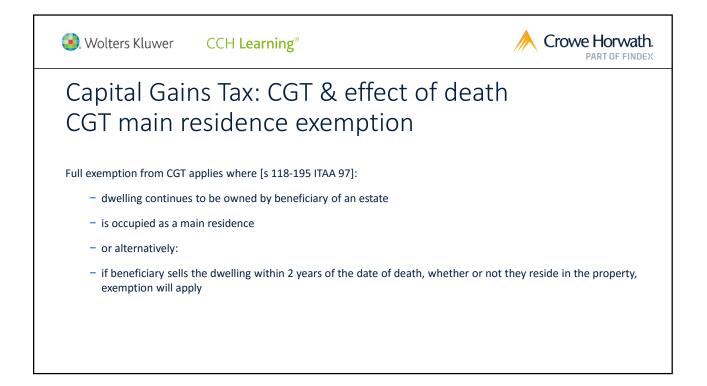
Substantiation CCH Learning®	Crowe Horwath. PART OF FINDEX
Capital Gains Tax: Effect of death Legal personal representative	
• any capital gain or capital loss LPR makes if asset passes to a beneficiary is disregarded	d [s 128-15 ITAA 97]
• an LPR is [s 995-1 ITAA 97]:	
 an executor or administrator of an estate of a person who has died; or 	
 a trustee of an estate of a person who is under a legal disability; or 	
 a person with general power of attorney granted by another person 	

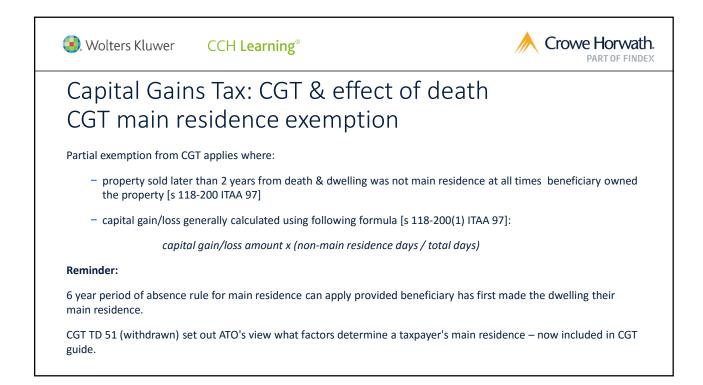
Score CCH Learning®	Crowe Horwath.
Capital Gains Tax: Effect of death CGT implications to LPR	
ordinary CGT rules apply for any CGT assets LPR sells	
• Division 128 only applies to a CGT asset owned by the taxpayer before dying	
if LPR acquires assets ordinary CGT rules apply	
Note:	
If beneficiary is absolutely entitled to the asset there would be no CGT event when the as LPR to the beneficiary [s 106-50 ITAA 97, TD 93/36]	sset was transferred by the

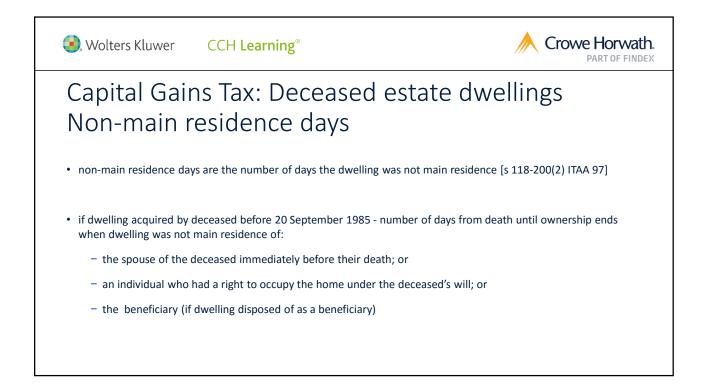
Substantiation CCH Learning®	Crowe Horwath.
Capital Gains Tax: Effect of death CGT assets passing to beneficiary	
 if deceased acquired an asset pre-CGT, then beneficiary deemed to have acquired as deceased [s128-15(4) ITAA 97] 	set at MV on date of death of
 if deceased acquired asset post-CGT, beneficiary deemed to have acquired asset for base 	its cost base or reduced cost
exception to the above rules relates to a main residence	

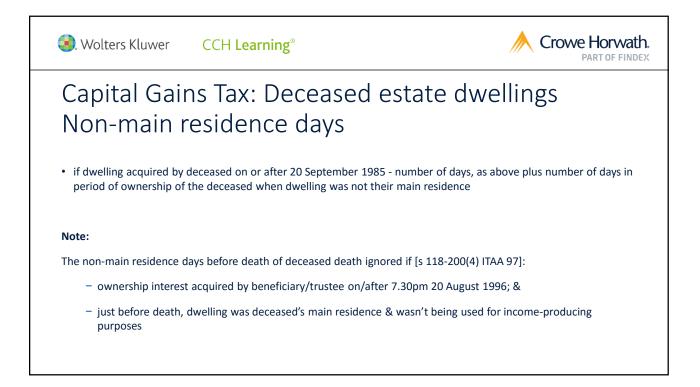
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Сар	Capital Gains Tax: CGT & effect of death				
	Time of death	Acquisition date of Deceased	Acquisition date for Beneficiary	Deemed cost base	
	Pre CGT	Pre CGT	Pre CGT	N/A	
	Post CGT	Pre CGT	Date of death	Market value at date of death	
	Post CGT	Post CGT	Date of death (for Div 115 when deceased acquired asset)	Cost base of Deceased	

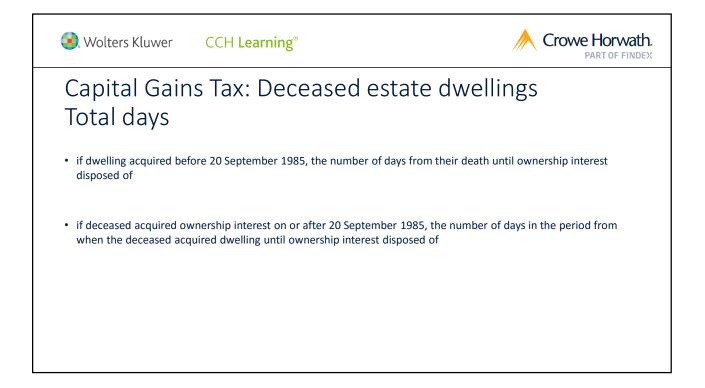


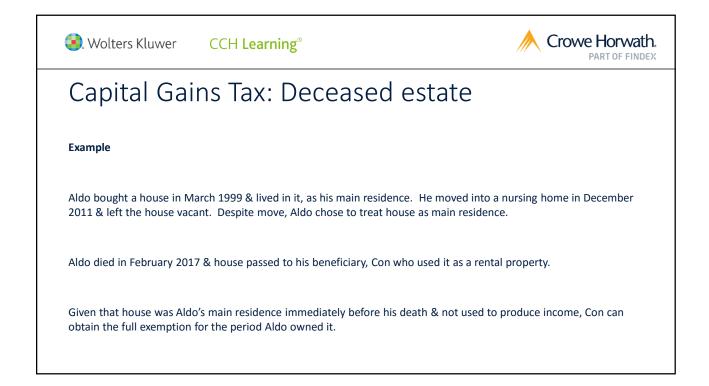


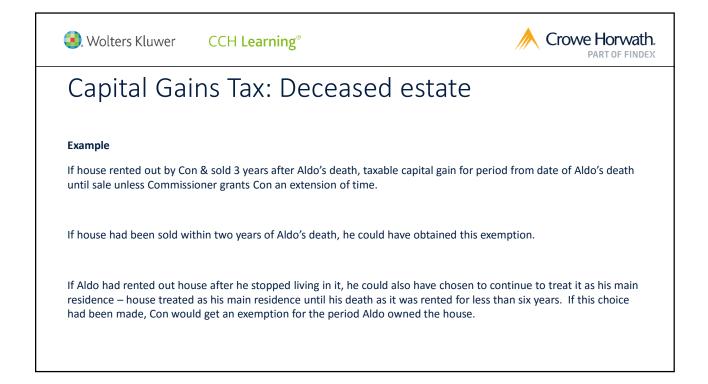




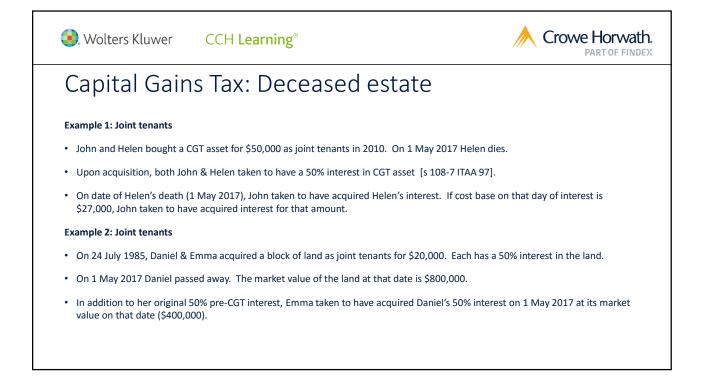


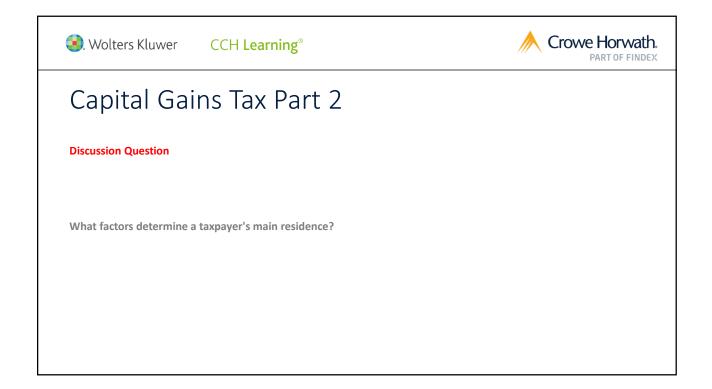






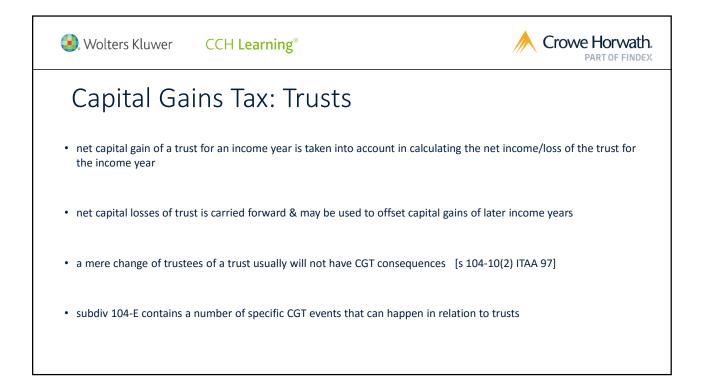
S. Wolters Kluwer CCH Learning®	Crowe Horwath.
Capital Gains Tax: Deceased estate Assets held by deceased as joint tena	nts
 assets held by deceased as a joint tenant do not form part of estate – interest autom tenants [s 125-50 ITAA 97] 	natically divests to other joint
 each tenant has a separate vested right to a specific share or portion of an asset whe 	en held as tenants in common
• at common law joint tenancy is presumed in the absence of a contrary intention	





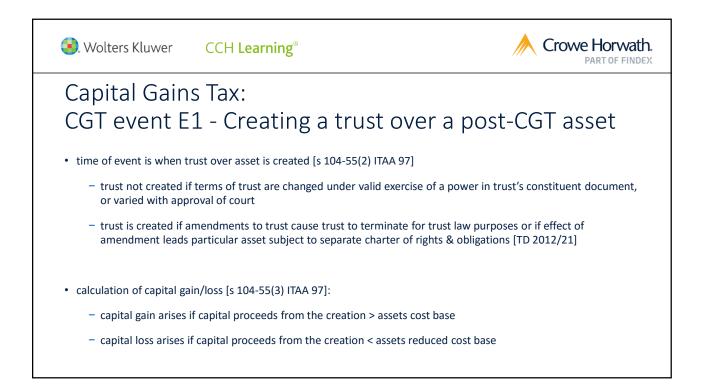
OCH Learning®	Crowe Horwath.
Capital Gains Tax Part 2	
Poll Question	
While death rollover relief in Division 128 does not apply if an asset is bequeathed necessarily arise:	d to a charitable trust, a capital gain may not
A. True	
B. False	

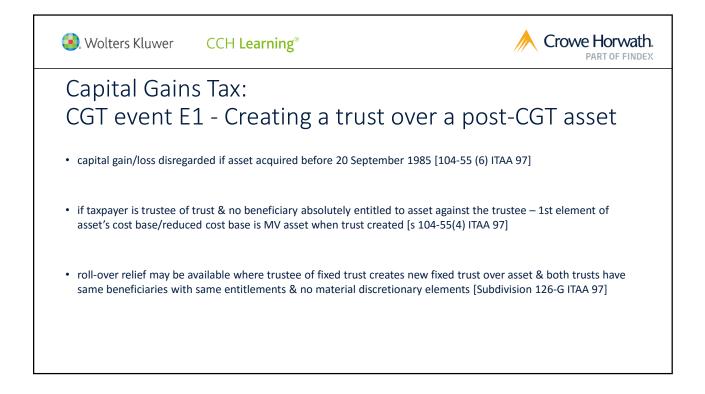


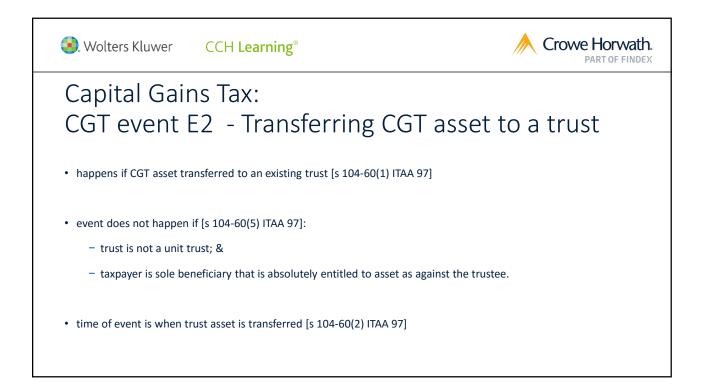


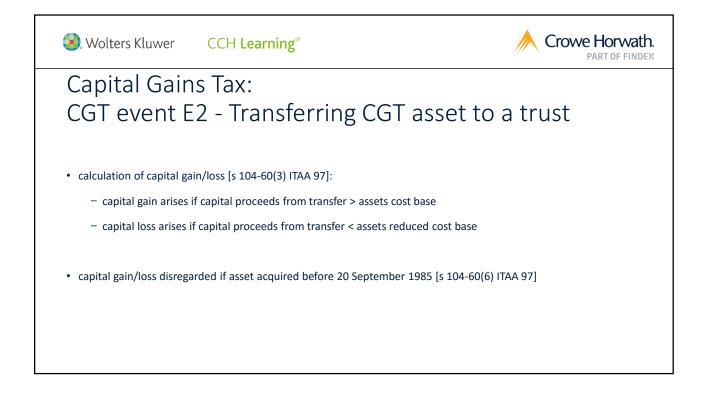
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Capital Gains Tax: CGT events & trusts			
	CGT Event	Circumstance	
	E1	Creating a trust over a post-CGT asset	
	E2	Transferring a post-CGT asset to a trust	
	E3	Converting a trust to a unit trust	
	E4	Capital payment for post-CGT trust interest	
	E5	Beneficiary becoming entitled to a trust asset	
	E6	Disposal to beneficiary to end an income right	
	E7	Disposal to beneficiary to end a capital interest	
	E8	Disposal by beneficiary of capital interest	
	E9	Creating a trust over future property	

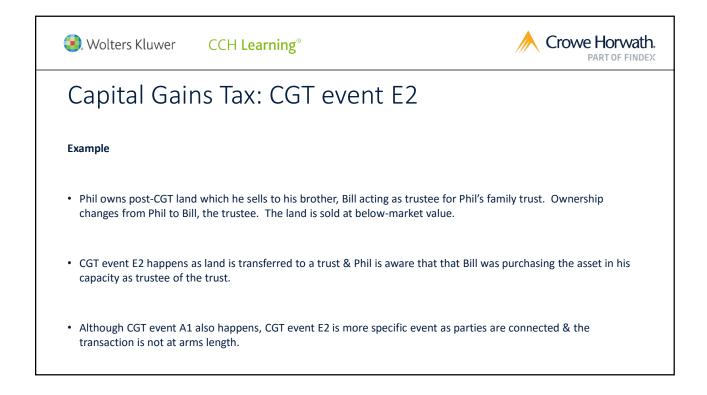
🜏. Wolters Kluwer 🛛 📿	CH Learning [®]	Crowe Horwath.
Capital Gains Ta CGT event E1		over a post-CGT asset
 happens if taxpayer created a 	trust over a CGT asset by declaration	on or settlement [s 104-55(1) ITAA 97]
• event does not happen if [s 10	04-55(5) ITAA 97]:	
 trust is not a unit trust; 8 	k	
 taxpayer is the sole bene disability) 	ficiary that is absolutely entitled to	asset as against the trust (ignoring any legal







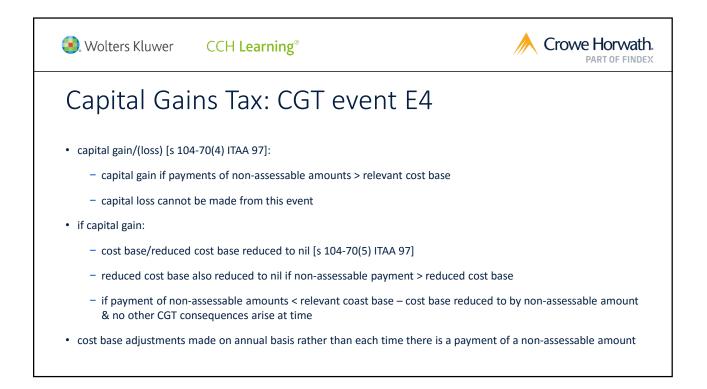


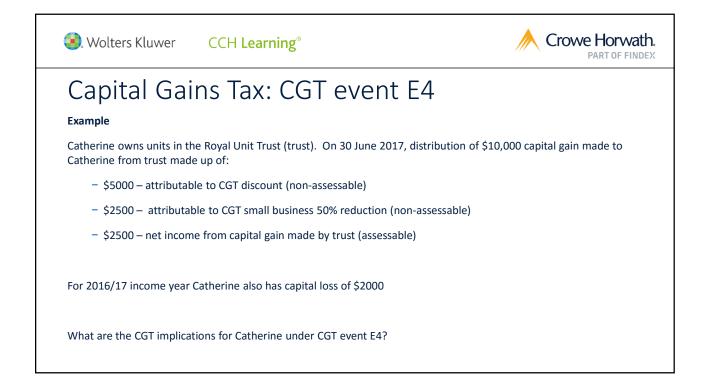


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Capital Gains Tax: CGT event E4	
 triggered if beneficiary receives non-assessable payment in respect of trust intere ownership of trust interest [s 104-70(1) ITAA 97] 	st where beneficiary retains
 payment can include giving property [s 104-70(2) ITAA 97] - the MV of property u payment 	used to work out amount of
• time of event [s 104-70(3) ITAA 97]:	
 generally just before end of income year in which trustee makes payment 	
 if another CGT event happens prior to year-end, relating to trust interest after event taken to occur immediately prior to the time of other CGT event 	er trustee has made payment –

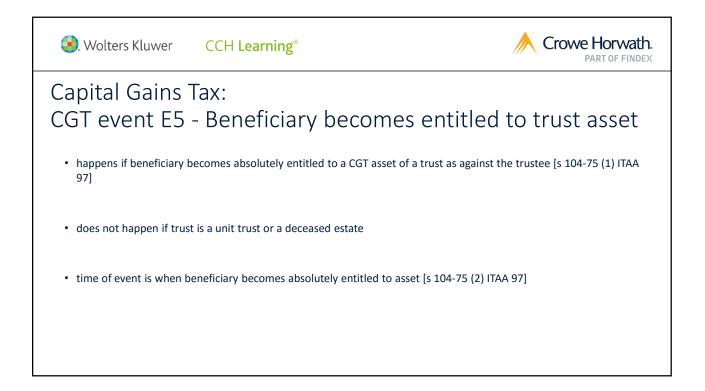
Substantiation CCH Learning®	Crowe Horwath.
Capital Gains Tax: CGT event E4	
 excluded non-assessable payments, such as [s 104-71 ITAA 97]: payments that are NANE income; 	
 amounts already assessed to trustee; attributed PSI already included in assessable income; 	
 excluded non-assessable payments do not include amounts for which beneficiar 71(2) ITAA 97] 	y can claim a deduction [s 104-
 certain 'tax-free' amounts & 'CGT concession amounts' are also excluded non-as (4) ITAA 97] 	ssessable payments [s 104-71(3) &

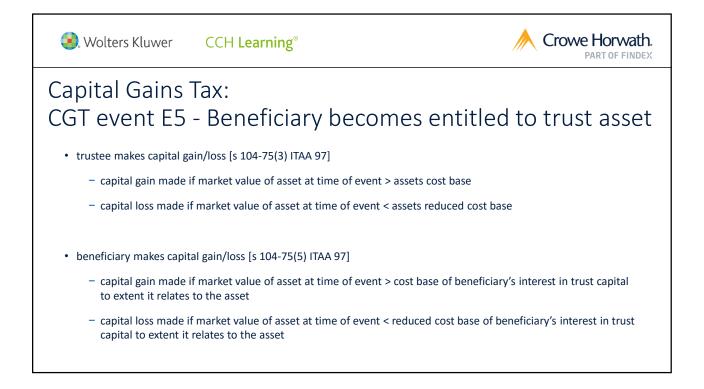
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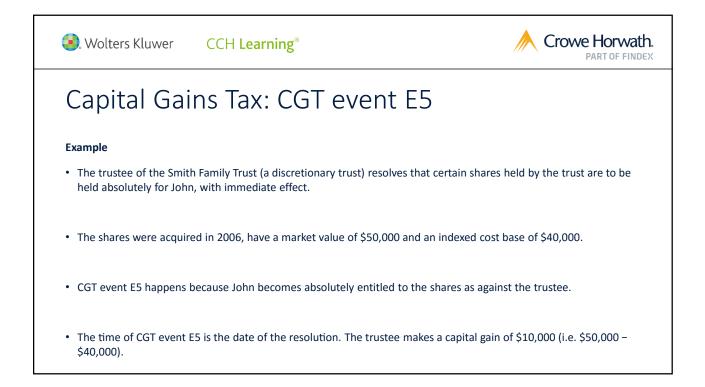


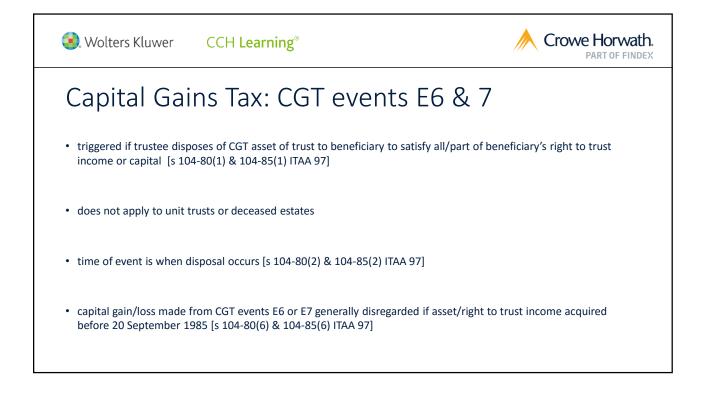


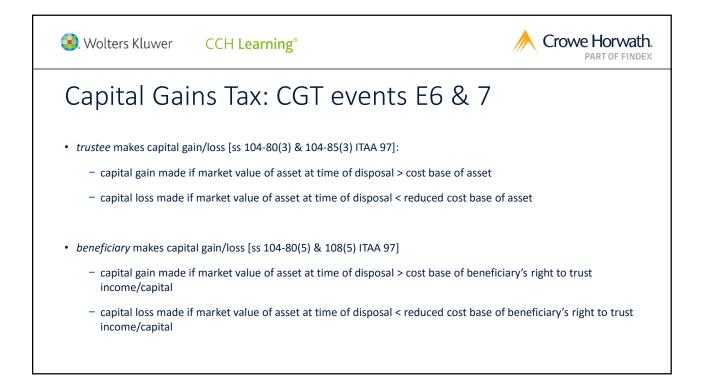
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Capital Gains Tax: CGT event E4	
Example:	
\$10,000 payment reduced by:	
 \$2,500 (the assessable gain) 	
 \$5,000 (the CGT general discount component – Item 1 of table in s 104-71(4)) 	
- \$500 (1/4 of Catherine's capital loss of \$2,000)	
Non-assessable part of distribution for CGT event E4 is \$2,000	

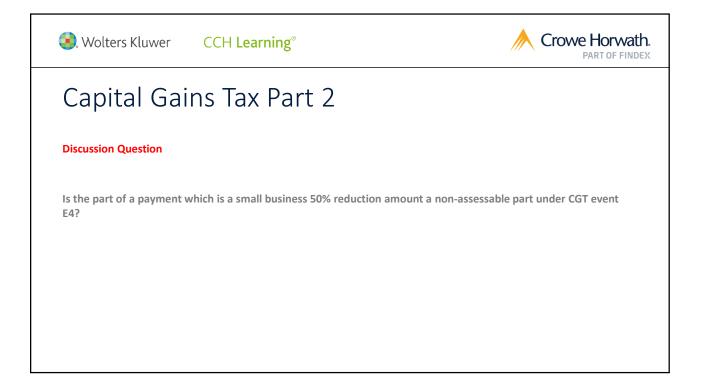


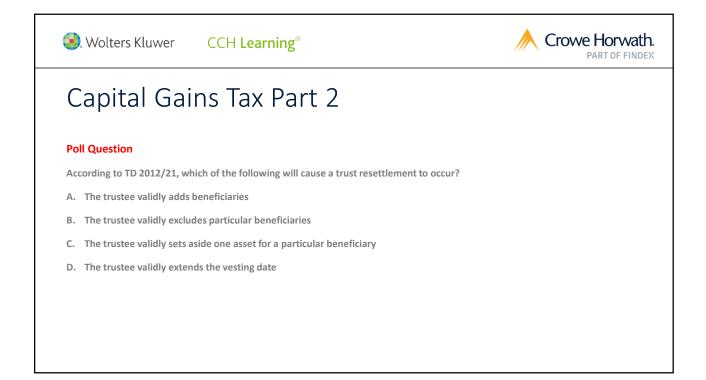










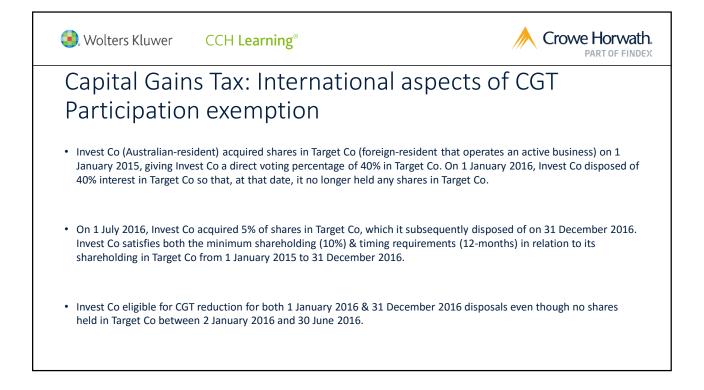


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International	



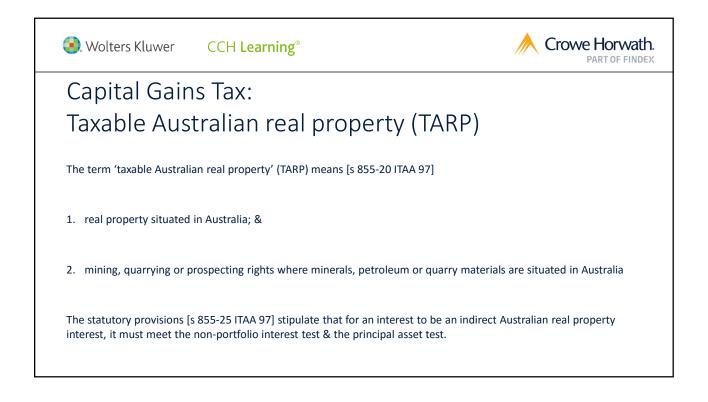


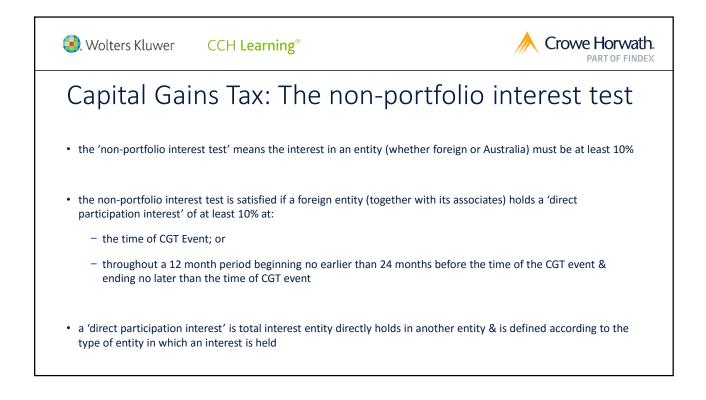
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Capital Gains Tax: International aspe Participation exemption	cts of CGT
 capital gains / losses made from sale of shares in foreign company disregarded to underlying <i>active</i> business [s 768-510 ITAA 97] 	extent foreign company has an
• conditions – Australian resident company must [s 768-505 ITAA 97]:	
 make capital gain/loss from specified series of CGT events relating to share i 	in foreign resident company;
 the shares were not eligible finance shares or widely distributed finance shares 	ares;
 hold the shares throughout a 12 month period in the two years before CGT 	event; &
 have a total voting percentage (direct and indirect) in a foreign company of 	10% or more

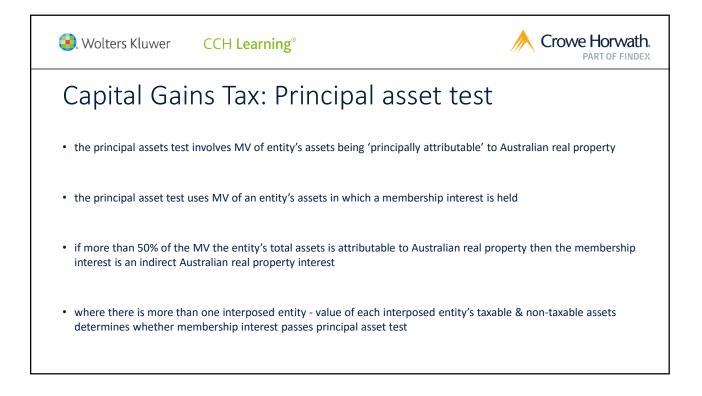


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Capital Gains Tax:	
International aspects of CGT - Foreign	residents
• foreign residents only subject to CGT in Australia on 'taxable Australian property' (TAP) [s 855-10 ITAA 97]
foreign residents not subject to CGT on pre-CGT TAP	
CGT discount not available to foreign residents in respect of capital gains accrued on 8 M	1ay 2012 - applies to:
 all foreign residents: individual, company and trustees of foreign trusts 	
 temporary residents: made in personal capacity, not in capacity as trustee of a trust 	:

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Capital Gains Tax: Taxable Australian property (TAP)	
1. taxable Australian real property (directly held);	
2. indirect Australian real property interests (other than interests in category 5);	
3. business assets used in an Australian PE a foreign resident (other than assets in cate	egory 1, 2 or 5);
4. options or rights over category 1-3 assets; &	
5. assets where a CGT gain or loss deferred when entity ceases to be Australian reside	ent.



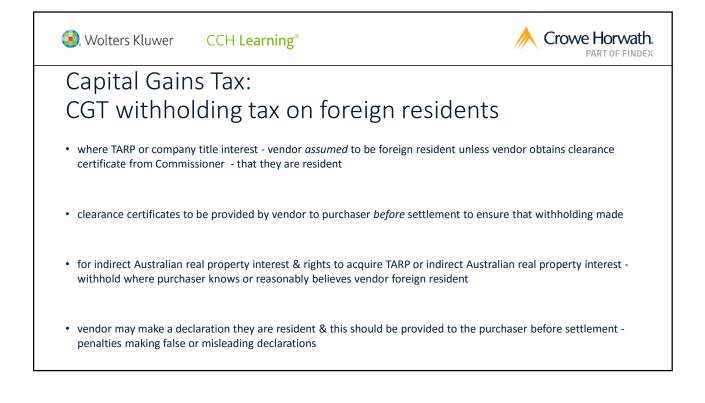




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Capital Gains CGT withhold	Tax: ling tax on foreign re	esidents
 12.5% withholding tax appli resident vendor 	es to purchasers of certain real property & rela	ted interests where property acquired from foreign
 rules apply to acquisition of 	an asset made under a contract entered into o	n or after 1 July 2016
applies to TARP, indirect Aus	stralian real property interests or options / righ	ts to acquire these property or interests
obligation triggered where a	any vendor of the relevant property is a <i>foreign</i>	resident [ATO: LCR 206/6]
administrative penalties in 1	FAA are on point when there is a failure to with	nold



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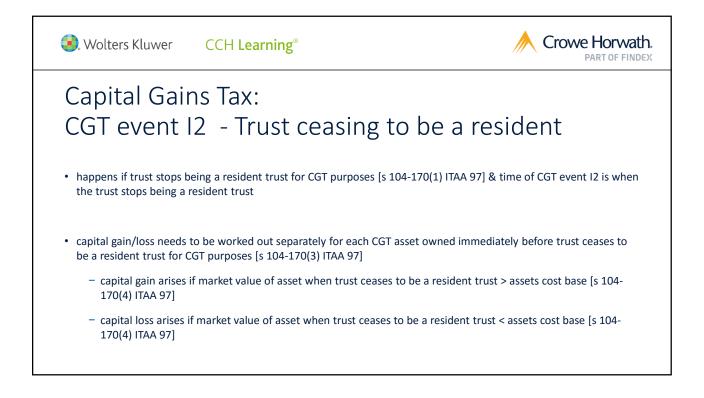
Substantiation CCH Learning®	Crowe Horwath.
Capital Gains Tax:	
CGT withholding tax on foreign residents	
 vendor or purchaser may apply for a variation of amount of withholding obligation – Commis provided to purchaser <i>before</i> settlement 	sioner's notice of variation
 reasons for seeking a variation - pre-CGT assets; CGT roll-over or exemption is claimed and lia any non-monetary consideration 	ability < 12.5% of proceeds &
specific on-line ATO administrative arrangements include:	
 clearance certificate application form for Australian residents 	
 variation applications for foreign residents & other parties to a transaction 	
 purchaser payment notifications 	

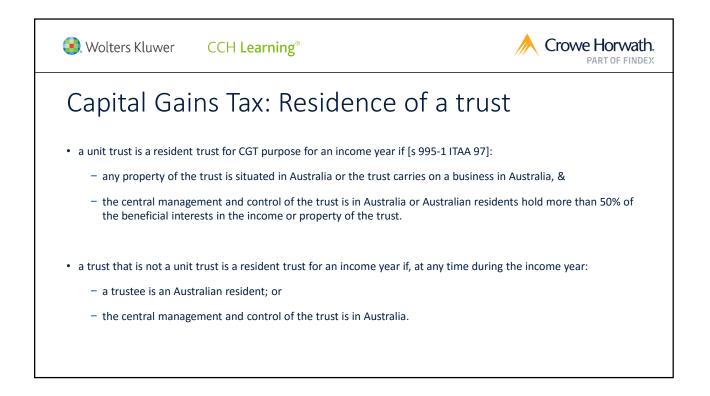
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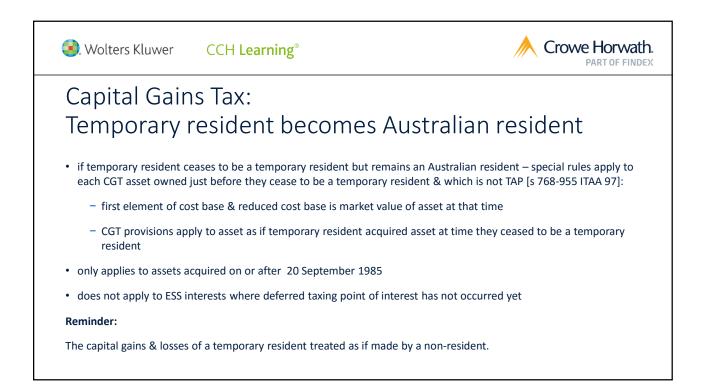
🜏. Wolters Kluwer	CCH Learning [®]	Crowe Horwath.
Capital Gains Internationa		hange of residence
CGT event I1 & I2 apply	if cease to be an Australian resident	5
	vidual or company stops being an Austral t stops being a resident trust	ian resident
• Subdiv 768-R deals with	temporary residents becoming Australia	n residents
Subdiv 855-B deals with	foreign residents becoming Australian re	sidents

Substantiation CCH Learning®	Crowe Horwath.
Capital Gains Tax: CGT event	11
 happens if individual or company stops being Australian resident [s certain exceptions, CGT applies to all CGT assets of individual/comp 	
 time of event is when individual or company stops being resident [s to be worked out for every CGT asset owned immediately before ta: ITAA 97] 	
capital gain/loss disregarded in range of circumstances including:	
 where asset acquired before 20 September 1985 [s 104-160(5) 	ITAA 97];
 individual chooses to defer making of capital gain/loss from all event happens relating to asset or they become Australian resi 	,

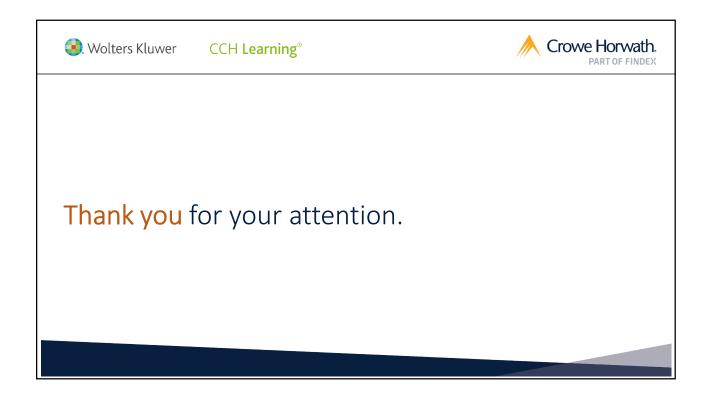
Substantiation CCH Learning®	Crowe Horwath.
Capital Gains Tax: CGT event I1	
 Example Stu has been an Australian resident all his life & ceases to be resident on 30 July only asset that he owns on that date 	y 2013. Land in New Zealand is the
• On 18 February 2017, Stu disposes of the land.	
 If Stu makes a choice under s 104-165(2), he's not treated as having disposed of land deemed to have necessary connection with Australia until immediately after gain/loss made at time land disposed of, being 18 February 2017. 	







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Capital Gain Individual, c		becoming a resident
 deemed to have acquire becoming a resident [s a 		ts acquired before 20 September 1985) at time of
assets deemed to have	been acquired at MV at time they b	became a resident [s 855-45(3) ITAA 97]
 capital gains accrued be 	fore becoming Australian resident p	protected from Australian CGT
CGT discount not availa	ble if asset that is not TAP is sold wi	ithin 12 months of taxpayer becoming a resident



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