TechKnow podcast – August 2026 – ***Five unanswered questions on the biggest tax changes in decades***

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Synopsis

The recent BT Academy webinar (episode #156 on the capital gains tax and negative gearing changes) generated a range of adviser questions. In this episode of TechKnow, Matt Manning addresses five key questions that were not covered during the webinar.

Transcript

Hello everyone, my name is Matt Manning, a technical services consultant in the BT Technical Services team – a group of qualified individuals who can help you, as advisers, answer any advice technical related queries you might have.

On the 29 July, I delivered episode 156 of our fortnightly webinar series titled 'CGT and negative gearing, the biggest tax changes in decades'. If you missed it, you can still watch on demand by clicking on this session in the webinar's menu of BT Academy.

There were a few questions from advisers during and after the session, which is always great to see, so for this podcast I've grouped these into themes to create five questions that I either didn't address, or didn't address in detail, during the webinar.

1. <u>Question 1 "When can the apportionment method be used alternative to obtaining a 1 July 2027 market value?"</u>

So as a bit of context, this question is relevant to assets purchased prior to 1 July 2027 and sold on or after that date. For CGT purposes such assets are effectively deemed to be sold and reacquired with the pre-1 July 2027 gain remaining under the CGT discount system and being deferred to the financial year of eventual sale or disposal, with the post 1 July 2027 gain subject to the new CGT indexation method.

All the examples in the webinar assumed the market value methods would be used, but I made a quick reference to potentially using the apportionment method, however I couldn't provide specifics as the relevant legislative instrument that would do so had not been released.

Since the webinar, there has been some progress on this front with a draft legislative instrument now being released.

Now these are only draft provisions, they could well be changed before being made and registered, but based on these, here are a few specifics for the scope and the calculation methodology.

For scope purposes, the draft determination is intended to apply to two broad categories of assets. The first is real property. The second is other CGT assets that do not have a readily ascertainable market value as at the deemed sale and reacquisition on 1 July 2027, provided their cost base is not already worked out, in whole or in part, by reference to market value under another provision of the tax law.

The draft legislative instrument doesn't define this new term 'readily ascertainable market value', and therefore the term takes its ordinary meaning, which naturally makes the matter far more subjective than if they decided to provide a specific definition.

So aside from real property, one asset type that may commonly fall in this category is unlisted shares, particularly shares in a family company. Often by the very nature of this type of asset, the market value is often not readily ascertainable given the ownership of the shares does not change regularly and often when they do it is from one family member to another and therefore not necessarily for arm's length consideration.

However, for the most commonly held assets of listed shares and managed funds, I think it is clear the market value method is required as a 1 July 2027 market value will be readily ascertainable because it will be easy to look up the share or unit price, then multiply by the number of shares or units.

As far as the calculation methodology of the apportioning method, based on the draft instrument this will be a nine-step calculation. In broad terms, it assumes that the asset's value increased or decreased at a constant compound daily rate over the full ownership period (yes daily rate). It uses that daily rate to estimate the asset's value at the end of 30 June 2027. That estimated amount is then used to calculate the pre-1 July 2027 component and establish the starting cost base for the post-1 July 2027 component.

Over time, the team will be developing some case studies to illustrate, but for now, if you would like to see an example, two are contained in the draft legislative instrument. If so and you can't find online, please feel free to email us, mention this podcast and we can send you a copy.

Also I did cover in the session, but please remember that the 1 July 2027 sale and repurchase for CGT purposes is a deemed event. So to use case study 2 from the webinar as an example, if a parcel of ASX listed shares was purchased in 2020 and sold on 27 September 2030 the actual disposal and the recognition of the pre 1 July 2027 deferred gain occurred in the 2030/2031 income year.

That is to determine the amount of the total capital gain that is the deferred (or discounted) capital gain versus the indexed capital gain, we take the market value of the shares as at 1 July 2027, however there is no gain to declare for 2027/28 financial year.

2. Question 2 was in the context of the 30% minimum tax applicable to a post 1 July 2027 indexed capital gain that I outlined in case study 7 which was a four-part case study that illustrated how this worked for various income levels.

The question was essentially a simpler version of the first part of case study 7 where the client had a $52,000 indexed capital gain and $15,000 of other income and was "How will the 30% minimum work for a client with no other income during the relevant financial year except for a small indexed capital gain, say $10,000."

In this scenario all of the $10,000 would otherwise be part of the tax-free threshold, however if the 30% minimum rate applies the client will pay top up tax of $3,000 i.e. 30% of their $10,000 taxable income.

The one important exception to this is if at some stage during the financial year in which the indexed capital gain arises, the individual receives certain government support payments such as income support payment including Age Pension, Disability Support Pension, Carer Payment and JobSeeker. Where this is the case, the 30% minimum doesn't apply, and the client with $10,000 of assessable income, all from an indexed capital gain will not pay income tax as this amount of income is with the effective tax-free threshold.

And I'll be back after a short break.

<<BREAK>>

Welcome back.

3. Question 3 also related to the 30% minimum and was "Where a client is subject to the minimum 30% on an indexed capital gain, can they

reduce this tax payable by claiming a deduction for a personal contribution to super?

The answer is no. Under the special minimum-tax calculation, basic income tax liability is worked out after effectively adding back deductions, other than specified deductions for gifts or contributions under Division 30 and certain conservation covenants under Division 31. A deduction for a personal super contribution arises under Division 290, so it is not one of the deductions preserved in that calculation.

Accordingly, claiming a deduction for a personal super contribution may reduce the client's ordinary taxable income and ordinary income-tax liability, but it does not reduce the 30% minimum amount attributable to the indexed capital gain.

4. Question 4 "How are superannuation funds impacted by the CGT changes?"

The CGT changes don't apply to superannuation funds. They only apply to assets owned by individuals, trusts and partnerships. Super funds will continue to be eligible for their existing one-third CGT discount where an asset has been held for more than 12 months.

5. Question 5 was specific to the negative gearing changes and was "What happens if a client currently owns a property they purchased in 2024 (i.e. prior to 12 May 2026, and let's call this property #1) that they currently use as their main residence. How do the new negative gearing rules work if post this date they borrow to purchase another property (let's say property #2 and this is not a new build), and they then use property #2 as their main residence and rent out property #1 to a 3rd party."

And I think the example is a good one to not forget about the standard principle of deductibility when considering the new rules. In this scenario, the new borrowings to purchase property #2 are not deductible with the reason being the principles of deductibility which have not been impacted by the negative gearing changes. That is for an investment expense to be deductible, it must pass the positive limb in section 8-1 of the 1997 Income Tax Assessment Act that the expense was incurred in gaining or producing assessable income, and not fail any of the 4 negative limbs.

As property #2 is not being used to produce income. We don't need to consider the new negative gearing rules as the interest on a borrowing to purchase property #2 are not deductible.

In this scenario, if property #1 is negatively geared because the interest expense on the borrowing to purchase property #1 combined with other deductible expenses such as strata levies and council rates are greater than the rental income they are receiving during the 2027/28 or subsequent financial year. This negative gearing income loss does not have to be quarantined and can be used to offset other income such as income from salary and self-employment. This is because property #1 was purchased prior to 12 May 2026 and is therefore grandfathered from the negative gearing changes. It does not matter that as at this date the property was being used as a main residence.

Let's carry on, would the situation change if they instead continued to live in property #1, and used property #2 to produce income?

Going back to the principles of deductibility, expenses relating to property #1 are not deductible as property #1 does not have a nexus with assessable income.

The interest and other deductible expenses relating to property #2 will be deductible. However as property #2 is not grandfathered due to being purchased after to 12 May 2026, if this results in an income loss, this loss will be a quarantined negative gearing loss and therefore cannot be used to offset other types of income. Instead, it must be carried forward to use in a future financial year, and can only be used to offset assessable income from property #2 or if applicable another residential property.

Furthermore, if property #2 is later sold and there remains a carried forward quarantined negative gearing loss. This can be applied against an eligible capital gain from the property, subject to the ordering and application rules with example 8 of the recent webinar illustrating in detail.

Issues such as these are what our team loves to discuss, not only in our fortnightly BT Academy Webinar series, but also when we speak to advisers around strategy and legislation support when formulating advice for their clients.

Don’t forget you can watch all of our previous BT Academy episodes, plus register for upcoming live sessions, which will allows you to participate in the live polls, Q&A and discussion, by heading to www.bt.com.au/professional and following the links to the BT Academy webinar series.

Tim Howard will be hosting our next webinar, Episode 158 on Wednesday 26 August at noon NSW time on the topic of ‘Farewell to the LRBA?’ With the synopsis being ‘Borrowing rules for SMSFs have shifted, with leverage now largely confined to commercial property this session cuts through what’s changed and why it matters, focusing on the real-world impact for advisers and their clients’. We will explore the remaining options available and identify what will influence client decisions, SMSF strategy, and advice recommendations going forward.

In the meantime, if you have any technical questions, you can contact the BT Technical Services team via the Panorama app or by email to technical@btfinancialgroup.com Thanks for joining, and until next time, bye for now.