Australian Property Institute Ltd.
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The Treasury
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Submission on the Capital Gains Tax and Negative Gearing Tranche 2 exposure draft legislation and the draft Income Tax Assessment (Method for Apportioning Capital Gains and Capital Losses) Determination 2026

Dear Sir or Madam,

Thank you for the opportunity to comment on the Tranche 2 exposure draft legislation and the draft apportionment determination implementing the negative gearing and capital gains tax reforms. The Australian Property Institute (API) supports measures that keep the valuations underpinning the reforms accurate, reliable and independent, and takes no position on the underlying tax policy.

About API

API is the professional body for property valuers and advisers in Australia. We set the professional standards that govern valuation practice, including the API Rules of Professional Conduct, Valuation Guidance Papers, Valuation Protocols and the API Standards Series articles, and we adopt the valuation concepts in the International Valuation Standards as part of our suite of professional standards documents.

The single figure at the centre of the reforms

From 1 July 2027 the reforms divide a capital gain into the part that accrues before that date and the part that accrues after. For a CGT asset acquired earlier, Subdivision 112-E of the Income Tax Assessment Act 1997 treats the asset as sold just before, and reacquired on, 1 July 2027. The capital proceeds on that deemed sale are the market value as at the end of 30 June 2027, or an amount worked out under the apportioning method the draft Determination would prescribe. That single figure decides how much of the eventual gain retains the former 50 per cent discount and how much is taxed under cost base indexation and the 30 per cent minimum.

The integrity consequence should be stated plainly. Every dollar added to the 30 June 2027 figure moves a dollar of eventual gain from the new regime into the more concessional former regime. Taxpayers therefore have a direct and continuing incentive to support the highest defensible figure. Applied across the millions of properties the reforms touch, even modest systematic overstatement of the baseline would produce a material loss to revenue, and a corresponding dispute burden for the ATO years after the event, when contemporaneous evidence has degraded. The integrity of the reforms accordingly turns on the quality and independence of the evidence for that figure.

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The draft apportionment Determination

API supports the Determination as a formulaic default for taxpayers who choose not to obtain a valuation. It is verifiable and uses actual transaction data. Two limitations should, however, be acknowledged in the explanatory materials and the supporting ATO guidance.

Accuracy. The method assumes a constant compounding daily growth rate across the entire ownership period. Real property does not grow evenly. Where growth was concentrated before 30 June 2027, the method understates the true market value at that date and taxes gains that accrued under the former regime as if they accrued under the new one; where growth comes later, the reverse occurs. The method is administratively simple, but it is not accurate, and the explanatory materials should not present it as an approximation of market value.

Timing. Because the method derives the growth rate from the actual capital proceeds, it can only be applied at the realisation event. A taxpayer using the method cannot know their position in advance. Only a market valuation allows the 30 June 2027 position to be established and documented contemporaneously.

Both limitations make the quality of the market valuation pathway more important, not less: it is the only route to an accurate, contemporaneous baseline.

The risk profile of valuation methods is not uniform

Neither the Act nor the draft instrument prescribes who may determine the 30 June 2027 market value or the evidence required to support it. In practice, taxpayers will be offered a wide spectrum of products, and these differ materially in evidence, replicability and accountability.

- A comprehensive valuation by a qualified valuer rests on physical inspection, verified property attributes, analysed comparable evidence and a reasoned report that can be tested and replicated, prepared under professional conduct rules, professional indemnity insurance and a disciplinary regime. The ATO website notes “Valuations undertaken by professional valuers are more credible than those provided by someone who isn’t a professional valuer.”[1]
- Desktop assessments with no inspection by the Valuer or automated valuation models generated by technology based systems/algorithms. Under API's published standards a desktop can produce only an indicative value, and an automated model output is an estimate, not a valuation. Neither can verify the condition or improvements of a property as at 30 June 2027, and model error is largest for exactly the atypical properties where the tax outcome is largest.
- Real estate agent appraisals are marketing/price estimates. They are prepared without valuation standards, are typically supplied without charge, and are produced by parties with a direct commercial interest in the relationship with the owner. The sustained enforcement activity on underquoting in several jurisdictions demonstrates how elastic agent price estimates can be under commercial incentives.
- Estimates prepared by the taxpayer, or by the taxpayer's own accountant or adviser, are prepared on the client's instructions and in the client's interest. Accountants are not, in general, qualified valuers, and no independence exists between the person supplying the figure and the person benefiting from it.

1 Market valuation of assets | Australian Taxation Office

Independence is the integrity safeguard

Where the person supplying the 30 June 2027 figure is the taxpayer's own agent or adviser, or holds a commercial interest in the owner relationship, the incentive to overstate the baseline is unchecked. If non-independent estimates are accepted as evidence of market value, the baseline becomes, in substance, self-assessed on conflicted evidence. That would open a significant avenue for tax avoidance through baseline inflation, concentrated in precisely the high-value and atypical assets where automated and informal estimates are least reliable, and it would transfer the cost of correction to the ATO through audit and objection activity long after the valuation date. Independence protects the revenue; it equally protects compliant taxpayers, because an independent, professionally prepared valuation is the evidence most likely to withstand review without adjustment.

Recommendations

1. Retain the taxpayer's choice between a market valuation and the apportioning method, and finalise the Determination as the formulaic default, with its accuracy and timing limitations acknowledged in the explanatory materials.
2. Provide in the explanatory materials, and in the ATO guidance foreshadowed in the explanatory statement, that the market value pathway requires evidence that is independent, replicable and defensible, consistent with the ATO's Market Valuation for Tax Purposes guide, and that a valuation prepared by a qualified valuer in accordance with professional standards, including the API Rules of Professional Conduct and the International Valuation Standards, is best practice and should be treated as accepted evidence.
3. State expressly that real estate agent appraisals, automated valuation model outputs, and estimates prepared by the taxpayer or by the taxpayer's own advisers are not, of themselves, acceptable evidence of the 30 June 2027 market value.
4. Define independence for this purpose: the person determining the value should hold no financial interest in the property or in any transaction concerning it.
5. Encourage contemporaneous evidence: guidance should note that a valuation report prepared by a qualified Valuer close to 30 June 2027 is the strongest evidence of market value at that date, and should address the treatment of retrospective valuations. API would welcome the opportunity to assist Treasury and the ATO in developing this guidance and the supporting tools.

Please contact Harriet Warr, General Manager Policy and Standards, on 0474 772 291 or at hwarr@api.org.au to discuss any aspect of this submission.

Kind regards,

John Winter
Chief Executive Officer
Australian Property Institute Ltd.