

Why your investment profits are now firmly in the government's sights – and why it won't work

A Senate committee examining capital gains tax could trigger the biggest shake-up to property investment since 1999, with wealthy investors in the crosshairs. But the plan is doomed to fail, writes Noel Whittaker

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January 25, 2026 - 4:00AM - **The Australian Business Network**

Fasten your seat belts. Capital gains tax (CGT) is back in the firing line, and the forces pushing for change are better organised than ever.

In the lead-up to the 2019 election, Labor proposed halving the 50 per cent CGT discount for assets held longer than 12 months, to 25 per cent. The Greens wanted for the discount to be abolished entirely on investment properties beyond a first one. Both promised any changes would be grandfathered, meaning existing assets would be spared. Last November, Labor and the Greens showed how effectively they could work together by passing the Environment Reform Bill. Then, on 4 November 2025, with barely a ripple of publicity, the Senate established a committee to examine the CGT discount. Its brief includes inequality — particularly housing — how the discount influences investment choices, and who really benefits. It was initiated by the Greens, who later said they would have no objection to reducing the discount for residential investment property. Treasurer Jim Chalmers has also openly flagged concerns about intergenerational inequality.

The ducks are lining up. Labor and the Greens have the CGT discount firmly in their sights, and this time there is no obvious reason changes could not make it through parliament.

Until October 1985, there was no CGT. Profits on asset sales were dealt with under Section 26(a), which taxed gains only if the asset had been acquired for the purpose of “profit making by sale”. If that intention could be shown, the gain was taxed at the seller’s full marginal rate. If it couldn’t, there was no tax at all. It was a vague, subjective test that invited endless disputes and generated a mountain of litigation, paperwork, and imaginative tax planning.

That all changed when Treasurer Paul Keating introduced CGT. Believing it was wrong to tax purely inflationary gains, he allowed the cost base to be indexed for inflation. That delivered certainty, but it was paperwork-heavy, particularly for long-term investors reinvesting dividends. So in 1999, the Howard government abolished indexation and replaced it with a flat 50 per cent discount on assets held for more than 12 months. The justification was simplicity and international competitiveness.

Since then, the discount has been a constant topic of debate. Labor argues that it disproportionately benefits those wealthy enough to hold appreciating assets, encourages speculative investment in housing, and has pushed home prices through the roof. The Coalition counters that discouraging investment in residential property would reduce supply and drive up rents.

Real problems with change emerge in implementation. Both Labor and the Greens favour grandfathering, meaning any change would apply only to assets acquired after a legislated date. That sounds simple, but the market response is entirely predictable. Announce a change in a May Budget, apply it from 1 July the following year, and you typically see a frantic rush to buy beforehand — driving up prices — followed by a slump once the deadline passes.

A grandfathered change would also distort tax planning. Pre-change assets would become more valuable simply because of their tax treatment, while post-change investments would carry a permanent penalty. Matters become even more complicated if, as some propose, the changes apply only to residential property. If housing is taxed more heavily than shares or commercial property, capital will flow elsewhere.

Other options are on the table. The Grattan Institute wants to cut the CGT discount to 25 per cent over five years, with no grandfathering, based on the date of sale rather than purchase.

Much of the push for change rests on the claim that investors are driving house prices. That’s wrong. Prices are high because demand has surged through strong immigration, supply is strangled by planning delays, and governments keep distorting the market with buyer subsidies. Pouring more money into a system with limited supply only pushes prices higher — then investors take the blame.

The big question is this: what sort of housing system do we want? Those on the left are pushing hard to make private investment in housing unattractive. If that continues, do they seriously believe the alternative is better? A Dystopian future where the government becomes the dominant landlord, running rental housing through bureaucracy and regulation? Governments are not keen to take that on, and I shudder at the thought.

There's more. CGT is calculated by adding the profit less discount to your taxable income in the year the contract is signed. Given our top marginal rate is 47 per cent, including Medicare levy the maximum effective tax rate is 23.5 per cent. Cut the discount to 25 per cent and the maximum effective tax rate jumps to 35.25 per cent. That number matters. As we saw with Treasurer Chalmers' flirtation with taxing unrealised capital gains, 30 per cent is the psychological and practical red line for tax planning: push tax above it and behaviour changes immediately. An investor deterred by a 35.25 per cent CGT rate doesn't stop investing, they simply invest differently. The same share exposure can be achieved through an insurance bond, where the maximum tax rate is 30 per cent and capital gains disappear altogether after 10 years. Others will move investments into a family company, where tax is again capped at 30 per cent.

If the aim is to raise more revenue by increasing CGT, the biggest weakness in the strategy is that it tackles only one small part of the tax system. Everyone accepts that salary and wage earners already bear most of the tax burden, and because tax scales are not indexed, they pay more every year through bracket creep. At the same time, the fastest-growing group in the community is retirees, many of whom can legitimately shelter large sums in low-tax or tax-free superannuation. Any serious discussion about tax fairness has to acknowledge that reality.

From time to time, someone suggests retirees should simply "pay their fair share" by taxing all superannuation at a flat 15 per cent. It sounds clever, but it wouldn't work. A couple with \$800,000 in super could withdraw the lot, invest in exactly the same assets in their own names, and still pay no tax. A typical \$800,000 portfolio might produce about \$37,000 a year in income and \$27,000 in capital growth, on which no immediate tax is payable. In joint names, that's tax-free.

So lifting CGT isn't a solution. It distorts behaviour, shifts money around, and doesn't raise tax revenue significantly. If we are serious about fixing long-term budget deficits, there is really only one practical answer left: a broadbased, universal GST.