



TECHNICAL ANALYSIS REPORT

Cross-Border Tax Implications: Australia - United Kingdom

UK Property Sale, UK Business Income, UK Superannuation

Client: Accounting Firm | Prepared for: Accounting Firm

Date: March 2026 | Income Year: 2024-25

Reference: BRV-2026-TA-0013

Client Brief / Query

Fact:

Mr Wilson is 56 years of age. Australian tax resident since 10th June 2021. Living in Canberra. Single, no children. Working as a part time admin for an Australian Real Estate company in Canberra. Annual gross income in Australia: \$72,000.00. Retail Superannuation Fund in Australia with current benefits of \$30,000.00. Living in Australia since June 2021.

He is currently running a small business in London (partnership with his brother, permanent establishment in London). After all business expenses he ended up with GBP 21,000.00 in 2025 financial year. Its transferred to Australia as of May 2025; Tax Paid in the UK GBP 2,080.00; Net income reinvested back in the UK to the business.

His superannuation benefits in the UK: GBP 285,000.00. He prefers to transfer to Australia to his Australian retail superfund.

He sold his residential investment property in April 2025. Bought back in 2019 (purchase price GBP 1,020,000.00 including legal cost, tax etc. Cost base (market value) as of 10th June 2021 was GBP 1,250,000.00 including initial stamp duty and related expenses. Proceeds GBP 1,500,000.00 net after commission, legal cost, tax. Total Capital Gains Tax paid in the UK GBP 91,000.00. He transferred GBP 1,500,000.00 to Australia in May 2025.

Discuss:

- 1: Tax implications of the money transferred (from the property sale) to Australia.
- 2: Tax implications of his UK business income.
- 3: Tax implications of Transferring his UK superannuation benefits (if he can) to his Australian retail superfund.
- 4: Tax implications if he decides to keep his UK superannuation benefits in the UK.

1. Summary

Mr Wilson is an Australian tax resident (since 10 June 2021) and is assessable on his worldwide income under s 6-5 and s 6-10 ITAA 1997. The Australia-UK Double Taxation Convention (2003) allocates taxing rights and provides relief from double taxation via the foreign income tax offset (FITO) under Division 770 ITAA 1997.

The UK property gain requires careful analysis because Mr Wilson acquired the property in 2019 (before Australian residency) and sold in April 2025. Under s 855-45 ITAA 1997, the cost base for Australian CGT purposes is reset to the market value at the date he became an Australian resident (10 June 2021: GBP 1,250,000), not the 2019 purchase price. This means Australia only taxes the capital appreciation from June 2021 onwards. The estimated Australian capital gain is approximately AUD 850,000 before the 50% CGT discount (AUD 425,000 net). Critically, only a proportion of the UK CGT paid (GBP 91,000) can be claimed as a FITO - the portion attributable to the pre-residency gain is not creditable.

The UK business income of GBP 21,000 (~AUD 42,840) is assessable regardless of whether the funds are remitted. The proposed superannuation transfer to an Australian retail fund is high-risk: most retail funds are not HMRC-approved QROPS, and a transfer to a non-compliant fund triggers a UK penalty of up to 55%.

2. Facts & Assumptions

Facts Provided

- Mr Wilson, aged 56, single, no children
- Australian tax resident since 10 June 2021, living in Canberra
- Part-time admin for an Australian real estate company; gross annual income AUD 72,000
- Australian retail superannuation fund with current benefits of AUD 30,000
- UK small business: partnership with his brother, permanent establishment in London
- UK business net profit FY2024-25: GBP 21,000; UK tax paid: GBP 2,080; net income reinvested back into the UK business; amount transferred to Australia May 2025
- UK residential investment property: purchased 2019 for GBP 1,020,000 (including legal costs, tax, etc.)
- Market value (cost base) as of 10 June 2021: GBP 1,250,000 including initial stamp duty and related expenses
- UK property sold April 2025: proceeds GBP 1,500,000 net after commission, legal costs, tax
- UK CGT paid on property sale: GBP 91,000
- GBP 1,500,000 transferred to Australia May 2025
- UK superannuation benefits: GBP 285,000; prefers to transfer to Australian retail super fund

Assumptions Made

- The UK property was held as a passive investment (not trading stock or development for resale). **[ASSUMED]** - Affects: Whether gain is capital (Div 104) or ordinary income (s 6-5). If ordinary income, no CGT discount and no s 855-45 cost base reset.
- GBP/AUD exchange rate at 10 June 2021 (residency date): 1.84; at disposal (April 2025): 2.10. **[ASSUMED]** - Affects: AUD cost base and capital proceeds. Exact rates must be verified from the RBA.
- The GBP 1,250,000 market value at 10 June 2021 is a formal valuation acceptable to the ATO. **[ASSUMED]** - Affects: If the ATO disputes the valuation, the cost base changes and the entire CGT calculation shifts.
- The GBP 1,500,000 property proceeds are net after deducting selling costs (commission, legal) but before UK CGT. **[ASSUMED]** - Affects: Capital proceeds calculation for Australian CGT.
- Mr Wilson's share of UK partnership profit is GBP 21,000 (his individual share). **[ASSUMED]** - Affects: Assessable amount under s 92 ITAA 1936 / Div 5.
- Mr Wilson's UK super fund is a defined contribution fund (not defined benefit). **[ASSUMED]** - Affects: Transfer mechanics and AFE calculation methodology.

Information Needed

- Independent valuation report supporting the GBP 1,250,000 market value at 10 June 2021. **[NEEDED]** - The ATO may challenge the cost base if the valuation is not supported by a qualified, independent valuer's report.
- Exact GBP/AUD exchange rates at: (a) 10 June 2021, (b) the April 2025 disposal date, (c) May 2025 transfer date. **[NEEDED]** - These must be sourced from the RBA for the precise dates. Indicative rates used in this report will differ.

- Gross sale price of the UK property (before selling costs) and itemised selling costs. **[NEEDED]** - For precise Australian CGT: capital proceeds = gross price; selling costs reduce the gain as a third element of cost base (s 110-25(4)).
- Name and QROPS/ROPS status of the intended Australian retail superannuation fund. **[NEEDED]** - If not on HMRC ROPS list, transfer triggers up to 55% UK penalty.
- Value of UK super fund at 10 June 2021 and contributions made since then. **[NEEDED]** - Required for Applicable Fund Earnings calculation under s 305-75(3) ITAA 1997.

3. Related Areas & Cross-Over Analysis

Area	Relevance	Key Provision	Impact
Income Tax	Australian resident taxed on worldwide income	s 6-5, s 6-10 ITAA 1997	All UK income streams assessable in Australia
CGT - Cost Base Reset	Pre-residency asset: cost base reset to market value at residency date	s 855-45 ITAA 1997	Cost base = GBP 1,250,000 at 10 June 2021 (not 2019 purchase price)
CGT Discount	50% discount if asset deemed held >12 months from residency date	Div 115 ITAA 1997	Deemed acquisition 10 June 2021; sold April 2025 = ~3 years 10 months - eligible
FITO - Proportioning	Only proportion of UK CGT relating to post-residency gain counts toward FITO	Div 770, s 770-10(1) ITAA 1997	~52% of UK CGT relates to the Australian-assessable gain; further halved by CGT discount
DTA - Real Property	Both countries may tax gains on UK real property	Article 13(1) AU-UK DTA (2003)	UK taxes full gain; Australia taxes post-residency gain; credit method
DTA - Business Profits	UK business profits taxable in UK via PE; also assessable in Australia	Article 7 AU-UK DTA (2003)	UK taxes GBP 2,080; Australia gives FITO
DTA - Pensions	Pensions paid to Australian resident taxable only in Australia	Article 17(1) AU-UK DTA (2003)	UK should not tax pension payments to Mr Wilson
Partnership Tax	Mr Wilson's share of UK partnership income flows through under Div 5	Div 5 ITAA 1936 (s 92)	Individual partner assessed on their share
Superannuation Transfer	Foreign super transfer; AFE taxable; QROPS compliance	Subdiv 305-B ITAA 1997	AFE assessed at marginal rate or 15% via s 305-80 election
QROPS/ROPS	HMRC requires transfer to approved scheme	UK Finance Act 2004	Most retail funds NOT QROPS - critical risk
Contribution Caps	Transfer counts as NCC	Div 292 ITAA 1997	~AUD 598,500 likely exceeds \$360,000 bring-forward NCC cap
Foreign Currency	Each cost base element converted at date-specific rate	s 960-50 ITAA 1997	GBP appreciation from 1.84 (2021) to 2.10 (2025) amplifies AUD gain

4. Analysis

Issue 1: Tax Implications of UK Property Sale

Relevant Law - Section 855-45: Cost Base Reset on Becoming a Resident

Mr Wilson acquired the UK property in 2019 while he was a non-resident of Australia. He became an Australian tax resident on 10 June 2021. Under s 855-45 ITAA 1997, when a person who was a foreign resident becomes an Australian resident, the first element of the cost base of their CGT assets (other than taxable Australian property) is reset to the market value of the asset at the time they become a resident.

The UK property is not 'taxable Australian property' (it is not Australian real property, nor an indirect interest in Australian real property). Therefore s 855-45 applies and the cost base is reset to GBP 1,250,000 - the market value at 10 June 2021. The original 2019 purchase price of GBP 1,020,000 is irrelevant for Australian CGT purposes.

The deemed acquisition date for CGT discount purposes is also 10 June 2021 (s 855-45(4)). Mr Wilson is deemed to have acquired the asset on that date. The property was sold in April 2025, a holding period of approximately 3 years and 10 months - well over 12 months - so the 50% CGT discount under Div 115 ITAA 1997 applies.

Why this matters: The cost base reset under s 855-45 means Australia only taxes the capital appreciation that occurred while Mr Wilson was an Australian resident (June 2021 to April 2025). The gain from 2019 to June 2021 (GBP 230,000 in GBP terms) is not subject to Australian CGT. This significantly reduces the Australian tax liability compared to using the original purchase price.

CGT Calculation

For Australian CGT on foreign-currency assets, each cost base element is converted to AUD at the exchange rate prevailing when that element was incurred, and capital proceeds are converted at the rate at the time of the CGT event (s 960-50 ITAA 1997).

Step	Calculation	Amount (AUD)	Reference
Cost base (market value at residency)	GBP 1,250,000 x 1.84 (10 June 2021 rate)	\$2,300,000	s 855-45, s 960-50
Capital proceeds	GBP 1,500,000 x 2.10 (April 2025 rate)	\$3,150,000	s 116-20, s 960-50
Gross capital gain	\$3,150,000 - \$2,300,000	\$850,000	
Less: 50% CGT discount		(\$425,000)	Div 115
Net capital gain		\$425,000	s 102-5

Note: The gross gain of AUD 850,000 includes two components: (a) the underlying GBP gain of GBP 250,000 (GBP 1,500,000 - GBP 1,250,000), and (b) the currency gain from GBP appreciation against AUD between June 2021 (1.84) and April 2025 (2.10). The currency movement adds approximately AUD 325,000 to the gain beyond what the GBP-denominated gain alone would produce.

FITO on UK CGT - Proportioning Required

The UK CGT of GBP 91,000 was levied on the full UK gain (GBP 1,500,000 - GBP 1,020,000 = GBP 480,000). However, Australia only taxes the post-residency gain (GBP 250,000 in GBP terms). Under s 770-10(1) ITAA 1997, the FITO is available only for foreign tax paid 'in respect of an amount that is all or part of an amount included in assessable income'. Only a proportionate share of the UK CGT relates to the Australian-assessable gain:

FITO Proportioning Step	Calculation	Amount
UK total gain (UK cost base to proceeds)	GBP 1,500,000 - GBP 1,020,000	GBP 480,000
Australian-assessable gain (post-residency, GBP terms)	GBP 1,500,000 - GBP 1,250,000	GBP 250,000
Proportion attributable to Australian-assessable gain	GBP 250,000 / GBP 480,000	52.08%
UK CGT attributable to Australian gain	GBP 91,000 x 52.08%	GBP 47,396
Further halved for CGT discount (ATO ID 2010/175)	GBP 47,396 x 50%	GBP 23,698
FITO in AUD	GBP 23,698 x 2.10	AUD 49,766

FITO loss: Of the GBP 91,000 UK CGT paid (AUD 191,100 at 2.10), only AUD 49,766 can be claimed as a FITO. The remaining AUD 141,334 is permanently lost - comprising (a) the portion attributable to the pre-residency gain (GBP 2019-2021) which Australia does not tax, and (b) the 50% reduction due to the CGT discount halving the assessable gain. This loss is a structural consequence of the interaction between s 855-45 (cost base reset), Div 115 (CGT discount), and Div 770 (FITO).

Issue 2: Tax Implications of UK Business Income

Relevant Law

Mr Wilson's share of the UK partnership profit is assessable in Australia under s 6-5(2) ITAA 1997 as ordinary income from a foreign source. Partnership income is assessed under Division 5 ITAA 1936: the net income of the partnership is calculated as if the partnership were a taxpayer (s 90), and each partner includes their share in their individual return (s 92).

Under Article 7(1) of the Australia-UK DTA, business profits are taxable in the state of residence unless the enterprise carries on business through a permanent establishment in the other state. The UK partnership has a PE in London, so the UK has the right to tax the profits (GBP 2,080 paid). Australia also taxes Mr Wilson on this income as a resident and provides a FITO.

Critically, the income is assessable in Australia when derived (in the 2024-25 income year), regardless of whether funds are physically remitted to Australia. Australia does not operate a remittance basis of taxation for residents. The fact that the net income is reinvested back into the UK business does not defer, reduce, or eliminate the Australian tax liability. Mr Wilson is assessed on his GBP 21,000 share of partnership profit even though none of that money may have left the UK.

Application to Facts

- UK partnership profit (Mr Wilson's share): GBP 21,000 x 2.04 (FY2025 average) = AUD 42,840
- UK tax paid: GBP 2,080 x 2.04 = AUD 4,243
- FITO available: AUD 4,243 (subject to FITO limit under s 770-75)

The full AUD 42,840 is included in Mr Wilson's assessable income.

Issue 3: Transferring UK Superannuation to Australian Retail Super Fund

A. UK-Side: QROPS/ROPS Requirement

Under UK law (Finance Act 2004, as amended), a transfer from a UK registered pension scheme to an overseas fund is only permitted tax-free if the receiving fund is a Qualifying Recognised Overseas Pension Scheme (QROPS/ROPS) listed with HMRC. A transfer to a non-QROPS fund is treated as an unauthorised payment attracting a charge of up to 55%.

CRITICAL WARNING: Retail Super Fund QROPS Status

The vast majority of Australian retail superannuation funds do NOT qualify as QROPS. Since April 2015, HMRC removed most Australian super funds from the QROPS list because they permit access to benefits before age 55 under financial hardship provisions. As of 2025, only one retail fund (the Australian Expatriate Superannuation Fund - AESF) and certain purpose-built SMSFs with specific trust deed provisions are on the HMRC ROPS list. Mr Wilson's intended retail fund must be verified against the HMRC ROPS list before any transfer is initiated. If it is not listed, the UK will impose a charge of up to 55% on the entire GBP 285,000 - a potential penalty of GBP 156,750.

If the fund IS QROPS-compliant, the 25% Overseas Transfer Charge (OTC) would not apply to Mr Wilson provided he is tax resident in Australia at the time of transfer and the receiving fund is based in Australia. Both conditions are met. At GBP 285,000, Mr Wilson is also well within the Overseas Transfer Allowance (GBP 1,073,100). Mr Wilson is 56, meeting the UK minimum pension age of 55.

B. Australian-Side: Subdivision 305-B ITAA 1997

Mr Wilson has been an Australian tax resident since 10 June 2021 - more than 6 months. Section 305-70 ITAA 1997 applies: the assessable portion is the Applicable Fund Earnings (AFE), calculated under s 305-75(3) as the growth in the fund since 10 June 2021.

If the entire GBP 285,000 is transferred directly to a complying Australian super fund and Mr Wilson no longer has an interest in the UK fund, he may elect under s 305-80 ITAA 1997 for all or part of the AFE to be included in the assessable income of the receiving fund (taxed at 15% under s 295-200) instead of his personal marginal rate (potentially 45%).

C. Contribution Cap Implications

The transfer amount (excluding AFE covered by s 305-80 election) is treated as a non-concessional contribution (NCC) under s 292-85(3). Mr Wilson's current total super balance is AUD 30,000 (well below \$1.9M), so the NCC cap is available. However:

- GBP 285,000 x 2.10 = approximately AUD 598,500

- Even after a substantial AFE portion is directed to the fund via s 305-80 (estimated AUD 100,000-150,000 of growth since 2021), the remaining NCC portion (~AUD 448,500-498,500) would still exceed the \$360,000 bring-forward cap
- Excess NCCs attract penalty tax on the excess amount

Practical note: Mr Wilson should consider establishing a purpose-built SMSF with a QROPS-compliant trust deed as an alternative to the retail fund. An SMSF can be structured to meet HMRC requirements (restricting access before age 55), would resolve the QROPS barrier, and his combined balance of ~AUD 628,500 comfortably justifies the cost of running an SMSF. The setup cost (~AUD 3,000-5,000) is negligible compared to the GBP 156,750 penalty for transferring to a non-QROPS fund.

Issue 4: Keeping UK Superannuation in the UK

While Benefits Remain Undistributed

If the GBP 285,000 remains in the UK fund and no payments are made to Mr Wilson, there is no Australian tax event. Fund earnings reinvested within the fund are not assessable income of Mr Wilson. Australia does not 'look through' to the underlying earnings of a foreign superannuation fund while benefits remain undistributed.

When Benefits Are Eventually Drawn

Under Article 17(1) of the Australia-UK DTA (2003), pensions and annuities paid to a resident of a Contracting State shall be taxable only in that State. For Mr Wilson as an Australian resident:

- Pension payments from the UK fund are taxable only in Australia - not the UK
- Mr Wilson should lodge HMRC Form Australia-Individual 2003 to claim relief from UK income tax
- If drawn as a lump sum, Subdivision 305-B applies - AFE is assessable (s 305-80 election available if transferred to a complying Australian fund)
- Regular pension payments cannot benefit from the s 305-80 election - AFE is taxed at marginal rate

Comparison: Transfer vs Keep in UK

Factor	Transfer to Australia	Keep in UK
QROPS risk	HIGH - most retail funds not QROPS; up to 55% UK penalty	No QROPS issue
AFE tax	15% if s 305-80 election (fund pays)	Marginal rate when drawn (no s 305-80 for pension payments)
Contribution caps	NCC cap likely breached (~AUD 598K vs \$360K cap)	Not applicable
Currency management	Converted to AUD; no further FX risk	Ongoing GBP/AUD exposure
Investment control	Managed within Australian super framework	Subject to UK fund rules

Factor	Transfer to Australia	Keep in UK
Death benefits	Australian super rules; potential tax-free to dependants	UK inheritance rules; complex for Australian beneficiaries
Ongoing compliance	Single jurisdiction	Dual reporting obligations
Access	Australian preservation rules (age 60)	UK rules (age 55, rising to 57 in 2028)

5. Worked Example Tables

Total Australian Tax Position - FY2024-25

Income Component	Amount (AUD)	Source	Tax Treatment
Australian employment income	\$72,000	Australian	Assessable under s 6-5
UK property - net capital gain (after 50% discount)	\$425,000	UK (foreign)	CGT event A1; s 855-45 cost base; Div 115 discount
UK business profit (GBP 21,000 x 2.04)	\$42,840	UK (foreign)	Assessable under s 6-5 / Div 5 s 92
Total taxable income	\$539,840		

Australian Income Tax Calculation (2024-25 Rates)

Bracket	Taxable Amount	Rate	Tax
\$0 - \$18,200	\$18,200	Nil	\$0
\$18,201 - \$45,000	\$26,800	16%	\$4,288
\$45,001 - \$135,000	\$90,000	30%	\$27,000
\$135,001 - \$190,000	\$55,000	37%	\$20,350
\$190,001 - \$539,840	\$349,840	45%	\$157,428
Income tax			\$209,066
Medicare levy (2%)	\$539,840	2%	\$10,797
Gross tax payable			\$219,863

FITO Calculation

Item	Calculation	Amount (AUD)
UK CGT eligible for FITO (52.08% x 50% of GBP 91,000)	GBP 23,698 x 2.10	\$49,766
UK business tax	GBP 2,080 x 2.04	\$4,243
Total FITO claimable		\$54,009
FITO limit check:		
Gross tax on total income (\$539,840)		\$219,863

Item	Calculation	Amount (AUD)
Less: Tax if foreign income excluded (\$72,000 only)		\$13,828
FITO limit (s 770-75(2)(b))		\$206,035
FITO claimed (lower of claimable and limit)		\$54,009
Net Australian tax payable	\$219,863 - \$54,009	\$165,854

Key takeaway: Mr Wilson's estimated net Australian tax liability for FY2024-25 is approximately AUD 165,854. The s 855-45 cost base reset reduces the capital gain substantially compared to using the original 2019 purchase price. However, of the GBP 91,000 UK CGT paid (AUD 191,100), only AUD 49,766 can be claimed as a FITO - the remaining AUD 141,334 is permanently lost (pre-residency portion + CGT discount halving). The currency gain from GBP appreciating against AUD adds approximately AUD 325,000 to the capital gain beyond the GBP-denominated gain.

6. Case Law Support

Primary Authority

Case	Court	Principle	Application
Harding v FCT [2019] FCAFC 29	FCAFC	FITO entitlement and limit calculation under Div 770	Confirms the FITO limit methodology applied to Mr Wilson's UK tax credits
FCT v Lamesa Holdings BV (1997) 77 FCR 597	FCA	Interaction between DTA capital gains articles and domestic CGT provisions	Supports Australia's right to tax the UK property gain under Article 13 alongside domestic CGT
Burton v FCT (2018) FCA 1857	FCA	Cross-border tax treatment; interaction between DTA provisions and domestic tax law	Relevant to the interplay between the DTA credit mechanism and the cost base reset under s 855-45
Came and FCT [2023] AATA 3948	AAT	s 305-80 election valid where lump sum routed through intermediary	Relevant to superannuation transfer mechanics; supports flexibility in transfer routing

Supporting Authority

Case	Court	Principle	Relevance
FCT v Myer Emporium Ltd (1987) 163 CLR 199	HCA	Isolated transaction with profit-making purpose generates ordinary income	Relevant only if UK property was acquired with profit-making intention (would deny CGT discount and s 855-45 reset)
Whitfords Beach Pty Ltd v FCT (1982) 150 CLR 355	HCA	Property acquired and developed for resale = ordinary income	Would apply if the UK property was held as part of a profit-making scheme
FCT v Bamford (2010) 240 CLR 481	HCA	Trust income determination; proportionate approach	Background authority on income characterisation principles

7. Conclusion

Issue 1 (UK Property Sale): The critical provision is s 855-45 ITAA 1997 which resets the cost base to the market value at the date Mr Wilson became an Australian resident (10 June 2021: GBP 1,250,000). Australia only taxes the post-residency gain. The estimated net capital gain is AUD 425,000 (after the 50% CGT discount). Only AUD 49,766 of the GBP 91,000 UK CGT can be claimed as a FITO - the pre-residency proportion and the CGT discount halving permanently eliminate AUD 141,334 of credits. The physical transfer to Australia does not trigger additional tax. Mr Wilson must ensure the GBP 1,250,000 market value is supported by a formal independent valuation.

Issue 2 (UK Business Income): The GBP 21,000 (AUD 42,840) is assessable as ordinary income under s 6-5 ITAA 1997 in the year derived. Australia does not operate a remittance basis - reinvestment in the UK business does not defer the liability. FITO of AUD 4,243 available for UK tax paid.

Issue 3 (Transfer UK Super to Australia): This carries the highest risk. Mr Wilson's retail fund is almost certainly not QROPS-compliant, meaning a transfer attracts up to 55% UK penalty (GBP 156,750). If QROPS-compliant, AFE since June 2021 is assessable - the s 305-80 election to have the fund pay 15% is strongly recommended. The transfer will almost certainly breach the NCC cap. Establishing a QROPS-compliant SMSF should be considered as the primary alternative.

Issue 4 (Keep UK Super in the UK): The lower-risk option. No Australian tax while benefits remain undistributed. When drawn, pension payments are taxable only in Australia under Article 17(1) of the DTA. However, Mr Wilson loses the s 305-80 election benefit (15% tax on AFE) if he draws regular pension payments rather than transferring as a lump sum. Dual-jurisdiction compliance and currency exposure should be weighed against the QROPS risk of transferring.

8. Risks & Caveats

Part IVA risk: Low. Straightforward cross-border income and transfer arrangements.

ATO audit focus: Foreign income disclosure is a current ATO priority. Mr Wilson must disclose all UK-sourced income. The ATO exchanges information with HMRC under the DTA (Article 27) and the Common Reporting Standard (CRS).

Valuation risk: The GBP 1,250,000 market value at 10 June 2021 must be supported by an independent, qualified valuation. If the ATO disputes this figure, the entire CGT calculation changes. A retrospective valuation by a qualified RICS-registered valuer is recommended if not already obtained.

QROPS non-compliance risk: CRITICAL. Transfer to a non-QROPS fund attracts up to 55% UK charge on GBP 285,000. The fund's QROPS status must be verified with HMRC before any transfer.

NCC excess risk: HIGH. Transfer value (~AUD 598,500) exceeds the \$360,000 bring-forward NCC cap. Excess NCCs attract penalty tax.

Currency conversion risk: AUD amounts use indicative exchange rates. A 0.05 movement in GBP/AUD changes the capital gain by approximately AUD 62,500. Exact RBA rates for the transaction dates must be used.

FITO loss: Approximately AUD 141,334 of UK CGT is permanently lost due to the combined effect of proportioning (pre-residency gain not taxed in Australia) and the CGT discount halving. This cannot be mitigated.

Penalty exposure: Failure to disclose foreign income attracts penalties under Div 284 TAA 1953 (base penalty 25-75%). Complete disclosure of all UK income, the capital gain, and superannuation movements is essential.

Key deadlines: 2024-25 tax return must be lodged by the relevant due date. Any s 305-80 election is irrevocable once made (ATO ID 2012/27). UK CGT Property Disposal Return must be filed with HMRC within 60 days of completion.

9. Rulings & References

Legislation

- Income Tax Assessment Act 1997, s 6-5, s 6-10 - assessable income (worldwide basis for residents)
- Income Tax Assessment Act 1997, s 855-45 - cost base reset for pre-residency CGT assets on becoming Australian resident
- Income Tax Assessment Act 1997, Div 104 (s 104-10) - CGT event A1 (disposal)
- Income Tax Assessment Act 1997, Div 110-114, s 110-25(4) - cost base elements including third element (selling costs)
- Income Tax Assessment Act 1997, Div 115 - 50% CGT discount for individuals
- Income Tax Assessment Act 1997, Div 770 (ss 770-10, 770-75) - foreign income tax offset
- Income Tax Assessment Act 1997, Subdiv 305-B (ss 305-70, 305-75, 305-80) - foreign superannuation fund transfers
- Income Tax Assessment Act 1997, s 295-200 - assessable income of complying super fund (AFE election)
- Income Tax Assessment Act 1997, Div 292, s 292-85(3) - non-concessional contribution caps
- Income Tax Assessment Act 1997, s 960-50 - foreign currency translation
- Income Tax Assessment Act 1936, Div 5 (s 90, s 92) - partnership income assessment
- International Tax Agreements Act 1953, Schedule - Australia-UK DTA (2003)
- UK Finance Act 2004 (as amended) - QROPS/ROPS requirements and Overseas Transfer Charge

DTA Articles Cited

- Article 7 - Business profits (taxable in country of permanent establishment)
- Article 13(1) - Alienation of real property (taxable in country where property situated)
- Article 17(1) - Pensions and annuities (taxable only in country of residence)
- Article 22 - Elimination of double taxation (credit method)
- Article 27 - Exchange of information

ATO Rulings & Guidance

- TR 2001/12 - Income tax and capital gains: double tax agreements - Binding
- ATO ID 2010/175 - FITO where CGT discount applies to foreign capital gain - Non-binding
- ATO ID 2012/27 - s 305-80 election irrevocable once made - Non-binding

Case Law

- *Harding v FCT* [2019] FCAFC 29 - FITO limit calculation
- *FCT v Lamesa Holdings BV* (1997) 77 FCR 597 - DTA and CGT interaction
- *Burton v FCT* (2018) FCA 1857 - cross-border tax treatment
- *Came and FCT* [2023] AATA 3948 - s 305-80 election and indirect transfers
- *FCT v Myer Emporium Ltd* (1987) 163 CLR 199 - ordinary income vs capital characterisation
- *Whitfords Beach Pty Ltd v FCT* (1982) 150 CLR 355 - profit-making scheme

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