

EXPOSURE DRAFT

1 Inserts for

2 **Tax and Superannuation Laws**
3 **Amendment (2014 Measures No. 2) Bill**
4 **2014: Investment Manager Regime**
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Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1.	The day this Act receives the Royal Assent.	

9 **Schedule 00—Investment Manager Regime**
10

11 *Income Tax Assessment Act 1997*

12 **1 Subdivision 842-I**

13 Repeal the Subdivision, substitute:

14 **Subdivision 842-I—Investment manager regime**

15 **Guide to Subdivision 842-I**

16 **@842-200 What this Subdivision is about**

17 This Subdivision sets out rules about the taxation of certain foreign
18 funds (known as IMR foreign funds) that invest into or through
19 Australia.

20 IMR income and IMR capital gains from IMR financial
21 arrangements are not subject to Australian income tax. IMR capital
22 losses from IMR financial arrangements are disregarded for the
23 purposes of this Act.

24 These rules does not apply in relation to Australian residents.

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Operative provisions

@842-205 Objects of this Subdivision

- (1) The object of this Subdivision is to remove impediments in Australia's income tax laws to particular kinds of investment made into or through Australia by certain foreign managed funds that have wide membership.
- (2) This object is achieved by providing an exemption from Australian income tax to foreign residents for their investments through such funds.

@842-210 *IMR income*

- (1) *IMR income* is assessable income for an income year of an *IMR foreign fund in relation to an income year that is attributable to:
 - (a) a return or gain from an *IMR financial arrangement that is a *derivative financial arrangement; or
 - (b) a return or gain from a *CGT event that happens in relation to an IMR financial arrangement.
- (2) For the purposes of this section, in working out what is assessable income of the *IMR foreign fund:
 - (a) disregard section @842-220; and

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(b) disregard any *net capital gain for the income year of the IMR foreign fund.

@842-215 *IMR capital gain and IMR capital loss*

(1) An *IMR capital gain* is a *capital gain in relation to an income year if the capital gain is from a *CGT event that happens in the income year in relation to an *IMR financial arrangement of an IMR foreign fund.

(1) An *IMR capital loss* is a *capital loss in relation to an income year if the capital loss is from a *CGT event that happens in the income year in relation to an *IMR financial arrangement of an IMR foreign fund.

@842-220 *IMR concession*

Annual information statement is condition of concession

(1) This section applies if an *IMR foreign fund in relation to an income year gives the Commissioner a statement for that year in accordance with section 395-5 (Annual information statement) in Schedule 1 to the *Taxation Administration Act 1953*.

Concession does not apply to Australian residents

(2) Disregard this section in applying this Act in relation to an entity that is an Australian resident.

Example: An Australian resident is a beneficiary of a trust that is an IMR foreign fund. In working out amounts included in the Australian resident's assessable income that are attributable to the fund:

- (a) disregard this section in determining the net income of the fund for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936*; and
- (b) disregard this section in determining the capital gains of the fund for the purposes of Subdivision 115-C of this Act.

Portfolio interest in issuer of IMR financial arrangement

(3) The *IMR income for the income year of the *IMR foreign fund, to the extent that it is attributable to a return or gain from a particular *IMR financial arrangement, is *non-assessable non-exempt income of the fund if:

- (a) where the return or gain is from a *CGT event—just before the CGT event, the interest of the fund in the issuer of the

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- 1 IMR financial arrangement does *not* pass the *non-portfolio
2 interest test (see section 960-195); or
- 3 (b) otherwise—just before the return or gain is made, the interest
4 of the fund in the issuer of the IMR financial arrangement
5 does *not* pass the *non-portfolio interest test.
- 6 (4) Disregard an *IMR capital gain or *IMR capital loss if:
- 7 (a) the gain or loss is from a *CGT event that happens in the
8 income year in relation to a particular *IMR financial
9 arrangement of the *IMR foreign fund; and
- 10 (b) just before the CGT event, the interest of the IMR foreign
11 fund in the issuer of the IMR financial arrangement does *not*
12 pass the *non-portfolio interest test (see section 960-195).
- 13 *Permanent establishment that arises solely from general authority*
- 14 (5) Subsections (6) and (7) apply if:
- 15 (a) the *IMR foreign fund carries on business through a
16 permanent establishment (within the meaning of
17 section 23AH of the *Income Tax Assessment Act 1936*) in
18 Australia; and
- 19 (b) that permanent establishment arises solely because of the
20 existence or habitual exercise of a general authority to
21 negotiate and conclude contracts on the fund's behalf by an
22 entity engaged by the fund as an agent.
- 23 (6) The *IMR income for the income year of the *IMR foreign fund is
24 *non-assessable non-exempt income of the IMR foreign fund to
25 the extent that it is attributable to the permanent establishment.
- 26 (7) Disregard the existence of the permanent establishment in
27 determining whether or not an *IMR capital gain or *IMR capital
28 loss from a *CGT event that happens in the income year in relation
29 to an *IMR financial arrangement of the IMR foreign fund is
30 disregarded under section 855-10.

31 @842-225 IMR foreign fund

- 32 An entity is an *IMR foreign fund* in relation to an income year if:
- 33 (a) the entity:
- 34 (i) is not an Australian resident at any time during the
35 income year; and

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- 1 (ii) is not a resident trust estate for the purposes of
2 subsection 95(2) of the *Income Tax Assessment Act*
3 *1936* at any time during the income year; and
- 4 (iii) the entity is a resident of an *information exchange
5 country (as determined in accordance with subsection
6 12-390(7) in Schedule 1 to the *Taxation Administration*
7 *Act 1953*) at all times during the income year; and
- 8 (b) the entity:
- 9 (i) does not carry on a trading business (within the meaning
10 of section 102M of the *Income Tax Assessment Act*
11 *1936*) in Australia at any time during the income year;
12 and
- 13 (ii) does not control, and is not able to control, directly or
14 indirectly, the affairs or operations of such a trading
15 business in Australia at any time during the income
16 year; and
- 17 (c) any of the following conditions are satisfied:
- 18 (i) the entity is an *IMR widely held entity (see section
19 @842-250) at all times during the income year;
- 20 (ii) the entity satisfies the *IMR widely held test (see
21 section @842-230) at all times during the income year;
- 22 (iii) the entity is an entity of a kind specified in regulations
23 made for the purposes of this subparagraph.

24 @842-230 IMR widely held test—general

- 25 (1) An entity satisfies the ***IMR widely held test*** if the entity has at least
26 25 *members (as determined in accordance with section
27 @842-245).
- 28 (2) Despite subsection (1), the entity does not satisfy the ***IMR widely***
29 ***held test*** if:
- 30 (a) a *member of the entity has a *total participation interest in
31 the entity of 10% or more (as determined in accordance with
32 section @842-245); or
- 33 (b) the sum of the total participation interests in the entity of 10
34 or fewer members of the entity is 50% or more (as
35 determined in accordance with section @842-245).

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@842-235 IMR widely held test—special rule for unpreventable circumstances of short duration

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- 3 (1) Treat an entity as satisfying the *IMR widely held test at a time
4 during the income year if:
- 5 (a) (apart from this section) the entity does not satisfy the *IMR
6 widely held test at the time only because of a circumstance
7 (or circumstances); and
- 8 (b) none of the following could have prevented the circumstance
9 (or circumstances) from arising:
- 10 (i) a trustee of the entity;
11 (ii) a manager of the entity;
12 (ii) an *associate of the entity, or of a trustee or manager of
13 the entity; and
- 14 (c) the number of days covered under subsection (2) in the
15 income year does not exceed 30.
- 16 (2) A day is covered under this subsection if (apart from this section):
- 17 (a) because of the circumstance (or circumstances), there is a
18 time during the day when the entity does not satisfy the
19 *IMR widely held test; or
- 20 (b) if subsection (1) has a separate operation in respect of the
21 income year in relation to another circumstance (or other
22 circumstances)—because of the other circumstance (or other
23 circumstances), there is a time during the day when the entity
24 does not satisfy the IMR widely held test; or
- 25 (c) the entity satisfies the IMR widely held test at a time in the
26 day only because of subsection @842-240(2) (start-up
27 period).

@842-240 IMR widely held test—special rules for start-up and wind-down years

Start-up year

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- 31 (1) If an entity is created at a time in an income year (the *start-up*
32 *year*), apply the following rules for the purposes of section
33 @842-230:
- 34 (a) treat the period in the start-up year during which the entity
35 was in existence as the whole income year;
- 36 (b) treat the entity as satisfying the *IMR widely held test (see
37 section @842-240) at all times in the period:

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- 1 (i) starting when the entity was created; and
2 (ii) ending 12 months after the entity was created.

3 (2) However, paragraph (1)(b) is taken not to have applied if, apart
4 from this subsection:

- 5 (a) the entity was an *IMR foreign fund in relation to the
6 start-up year as a result of paragraph (1)(b); and
7 (b) the entity:
8 (i) is *not* in existence at all times during the income year
9 after the start-up year (the *second year*); or
10 (ii) is *not* an *IMR foreign fund in relation to the second
11 year.

12 Note: If this subsection has the effect that the entity is not an IMR foreign
13 fund in relation to the start-up year, an assessment in respect of an
14 entity for the start-up year may need to be amended.

15 *Wind-down year*

16 (3) If an entity was an *IMR foreign fund in relation to an income
17 year, but ceases to exist in the next income year (the *wind-down*
18 *year*), apply the following rules for the purposes of section
19 @842-230:

- 20 (a) treat the period in the wind-down year during which the
21 entity was in existence as the whole income year;
22 (b) treat the entity as satisfying the *IMR widely held test (see
23 section @842-240) at all times in the period:
24 (i) starting at the start of the wind-down year; and
25 (ii) ending when the entity ceased to exist.

26 **@842-245 Determining members and total participation interests** 27 **for purposes of IMR widely held test**

28 (1) For the purposes of section @842-230 (IMR widely held test),
29 apply the rules in this section in determining:

- 30 (a) the *members of an entity (the *test entity*); and
31 (b) the *total participation interest in the test entity of each of
32 those members.

33 (3) If an individual has a *membership interest in the test entity
34 indirectly, through one or more interposed entities:

- 35 (a) treat the individual as a *member of the test entity; and
36 (b) do not treat any of those interposed entities as a member of
37 the test entity.
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- 1 (4) For the purposes of subsection (3):
2 (a) if an *IMR widely held entity or an entity covered by
3 subsection (5) has a *total participation interest in the test
4 entity—assume that all the *membership interests in the IMR
5 widely held entity are held by a number of individuals (the
6 **notional members**); and
7 (b) work out the number of those notional members as follows:
8 (i) work out the IMR widely held entity’s total
9 participation interest in the test entity;
10 (ii) multiply that *total participation interest by 50 and
11 round the result upwards to the nearest whole number;
12 and
13 (c) treat the *total participation interest in the test entity of each
14 of those notional members as nil.
- 15 (5) An entity is covered by this subsection if:
16 (a) it is an entity that is covered by paragraph 12-402(3)(e) in
17 Schedule 1 to the *Taxation Administration Act 1953* (foreign
18 collective investment vehicles with a wide membership); and
19 (b) any of these requirements are met:
20 (i) it has a *total participation interest in the test entity of
21 less than 50%;
22 (ii) another entity that controls it has a total participation
23 interest in the test entity of less than 50%.
- 24 (6) If the test entity is a trust, do not treat an object of the trust as a
25 member of the trust.
- 26 (7) Treat the following entities as together being one individual:
27 (a) an individual;
28 (b) each of his or her *relatives.
- 29 (8) If two or more individuals (the **actual individuals**) are treated as
30 one individual (the **notional individual**) under subsection (7), treat
31 the notional individual as having all of the interests and rights of
32 the actual individuals.
- 33 Note: Such interests and rights may give rise to a participation interest
34 and/or a membership interest in the test entity.
- 35 (9) If an entity (the **nominee**) has interests and rights in the capacity of
36 nominee of another entity:
37 (a) treat the nominee as *not* having those interests and rights; and
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1 (b) instead, treat the other entity as having those interests and
2 rights (in addition to the other entity's interests and rights
3 apart from this subsection).

4 (10) In determining a *direct participation interest of one entity in
5 another entity, disregard paragraph 350(1)(b) of the *Income Tax*
6 *Assessment Act 1936* (rights of shareholders to vote or participate
7 in certain decision-making).

8 @842-250 *Meaning of IMR widely held entity*

9 An *IMR widely held entity* is any of the following:

- 10 (a) an entity, the units or shares in which are listed for quotation
11 in the official list of an *approved stock exchange;
- 12 (b) a *foreign life insurance company;
- 13 (c) an entity that is covered by paragraph 12-402(3)(a) in
14 Schedule 1 to the *Taxation Administration Act 1953* (life
15 insurance companies);
- 16 (d) an entity that is covered by paragraph 12-402(3)(b) in that
17 Schedule (complying superannuation funds etc. with at least
18 50 members);
- 19 (e) an entity that is covered by paragraph 12-402(3)(c) in that
20 Schedule (pooled superannuation trusts a member of which is
21 a complying superannuation fund member with at least 50
22 members);
- 23 (f) an entity that is covered by paragraph 12-402(3)(d) in that
24 Schedule (managed investment trusts);
- 25 (g) an entity that is covered by paragraph 12-402(3)(f) in that
26 Schedule (certain foreign pension funds);
- 27 (h) an entity that is covered by paragraph 12-402(3)(g) in that
28 Schedule (foreign sovereign wealth funds);
- 29 (i) an entity that is covered by paragraph 12-402(3)(h) in that
30 Schedule (entities whose capital and investment returns are
31 used for the primary purpose of meeting statutory
32 government liabilities or obligations).

33 @842-255 *IMR financial arrangement*

- 34 (1) A *financial arrangement is an *IMR financial arrangement* unless
35 subsection (2) or (3) applies.
- 36 (2) A *financial arrangement is not an *IMR financial arrangement* if
37 it is or relates to a *CGT asset that is:

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- 1 (a) *taxable Australian real property (see section 855-20); or
2 (b) an *indirect Australian real property interest (see section
3 855-25).
- 4 (3) A *financial arrangement is not an *IMR financial arrangement* if
5 its terms allow the *IMR foreign fund to:
6 (a) vote at a meeting of the Board of Directors (or other
7 governing body) of the issuer of the financial arrangement; or
8 (b) participate in making financial, operating or policy decisions
9 in respect of the operation of the issuer of the financial
10 arrangement; or
11 (c) deal with the assets of the issuer of the financial arrangement.
- 12 (4) Subsection (3) does not apply if that subsection applies solely
13 because the issuer of the *financial arrangement breached a term of
14 the financial arrangement.

15 @842-260 Amendment of assessments

- 16 Section 170 of the *Income Tax Assessment Act 1936* does not
17 prevent the amendment of an assessment of an entity for the
18 purpose of giving effect to this Subdivision for an income year if:
19 (a) the amendment is made to give effect to the operation of
20 subsection @842-240(2); and
21 (b) the amendment is made within 7 years after the day on which
22 the Commissioner gives notice of the assessment to the
23 entity.

24 2 Subsection 995-1(1) (definition of *IMR capital gain*)

25 Omit “842-255(1)”, substitute “@842-215(1)”.

26 3 Subsection 995-1(1) (definition of *IMR capital loss*)

27 Omit “842-255(2)”, substitute “@842-215(2)”.

28 20 Subsection 995-1(1)

29 Insert:

30 *IMR income* has the meaning given by section @842-210.

31 21a Subsection 995-1(1)

32 Insert:

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1 *IMR financial arrangement* has the meaning given by
2 section @842-255.

3 **23 Subsection 995-1(1)**

4 Insert:

5 *IMR widely held entity* has the meaning given by
6 section @842-250.

7 **24 Subsection 995-1(1)**

8 Insert:

9 *IMR widely held test* has the meaning given by section @842-230.

10 *Taxation Administration Act 1953*

11 **27 After Division 394 in Schedule 1**

12 Insert:

13 **Division 395—IMR foreign fund reporting**

14 **Table of Subdivisions**

15 Guide to Division 395

16 **Guide to Division 395**

17 **@395-1 What this Division is about**

18 Entities responsible for IMR foreign funds must give the
19 Commissioner an annual information statement about the fund.

20 **Table of sections**

21 @395-5 Annual information statement

22 **@395-5 Annual information statement**

- 23 (1) An entity with responsibility for the day-to-day management of an
24 *IMR foreign fund in relation to an income year must give the
25 Commissioner a statement for that year in relation to the fund.

26 Note: Section 286-75 provides an administrative penalty for breach of this
27 subsection.

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- 1 (2) If:
2 (a) more than one entity is obliged under section (1) to give the
3 Commissioner a statement for an income year in relation to a
4 fund;
5 (b) one of those entities complies with that obligation;
6 treat each of other entities as having complied with that obligation.
- 7 (3) A statement under subsection (1) must be in the *approved form.
- 8 (4) The statement must be given to the Commissioner no later than 3
9 months after the end of the income year.
- 10 Note: Section 388-55 allows the Commissioner to defer the time for giving
11 an approved form.
- 12 (5) The *approved form may require the statement to contain the
13 following information:
14 (a) the name and address of the fund;
15 (b) either:
16 (i) the country of which the fund is a resident throughout
17 the income year; or
18 (ii) if subparagraph (i) does not apply—each country of
19 which the fund is a resident at any time in the income
20 year; and
21 (c) other information that is relevant to:
22 (i) the fund's status as an *IMR foreign fund in relation to
23 that income year; and
24 (ii) the application of Subdivision 842-I of the *Income Tax*
25 *Assessment Act 1997* to the fund.