

EXPOSURE DRAFT

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Inserts for
**Tax and Superannuation Laws
Amendment (2014 Measures No. 4) Bill
2014: allowing foreign pension funds to
access the MIT withholding regime**

Commencement information

| Column 1 | Column 2 | Column 3 |
|--------------|--------------|--------------|
| Provision(s) | Commencement | Date/Details |

| | | |
|---------------|---|--|
| 1. Schedule # | The day this Act receives the Royal Assent. | |
|---------------|---|--|

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4 Amendment of assessments

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Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment if:

- (a) the assessment was made before the commencement of this section; and
- (b) the amendment is made within 2 years after that commencement; and
- (c) the amendment is made for the purpose of giving effect to Schedule # (MIT withholding regime for foreign pension funds) to this Act.

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Schedule #—MIT withholding regime for foreign pension funds

Income Tax Assessment Act 1997

1 Section 840-800

After “beneficiary”, insert “(other than a foreign pension fund)”.

2 After subsection 840-805(4)

Insert:

Modification—foreign pension funds

(4A) For the purposes of subsections (2), (3) and (4), if:

(a) the beneficiary, in respect of a fund payment part, is a beneficiary in the capacity of a trustee of another trust; and

(b) the beneficiary is a *foreign pension fund;

the foreign pension fund is taken, in respect of that fund payment part, to be a beneficiary in its own right, and not a beneficiary in the capacity of the trustee of another trust.

(4B) ***Foreign pension fund*** means an entity, the principal purpose of which is to fund pensions (including disability and similar benefits) for the citizens or other contributors of a foreign country, if:

(a) the entity is a fund established by an *exempt foreign government agency; or

(b) the entity is established under a *foreign law for an exempt foreign government agency; or

(c) the entity is a *wholly-owned subsidiary of an entity mentioned in paragraph (a) or (b).

(4C) If:

(a) a *foreign pension fund is liable to pay income tax on a fund payment part (a ***taxed part***) because of the operation of subsection (4A); and

(b) you are a beneficiary of the foreign pension fund and are presently entitled to a share of the income or capital of the foreign pension fund;

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1 then, in working out for the purposes of paragraph (4)(b) whether
2 all or part of that share is reasonably attributable to a payment that
3 is a *fund payment, disregard the taxed part.

4 **3 Subsection 995-1(1)**

5 Insert:

6 *foreign pension fund* has the meaning given by
7 subsection 840-805(4B).

8 ***Taxation Administration Act 1953***

9 **4 At the end of section 18-32 in Schedule 1**

10 Add:

11 (3) Subsection (4) applies if:

- 12 (a) all or part of an amount (the *fund payment part*) is
13 represented by a payment that is a *fund payment; and
14 (b) under subsection 840-805(4A) of the *Income Tax Assessment*
15 *Act 1997*, a *foreign pension fund is taken, in respect of the
16 fund payment part, to be a beneficiary in its own right, and
17 not a beneficiary in the capacity of the trustee of another
18 trust; and
19 (c) there is an *amount withheld from the fund payment under
20 Subdivision 12-H.

21 (4) For the purposes of paragraph (1)(b):

- 22 (a) treat the *foreign pension fund as having borne all or part of
23 the amount withheld; and
24 (b) treat a beneficiary of the foreign pension fund as *not* having
25 borne all or part of the amount withheld.

26 **5 Application**

27 The amendments made by this Schedule apply to fund payments made
28 in relation to the first income year starting on or after 1 July 2008 and
29 later income years.