

EXPOSURE DRAFT

EXPOSURE DRAFT

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Inserts for
**Tax and Superannuation Laws
Amendment (2015 Measures No. 4) Bill
2015: Consolidation**

Commencement information

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

EXPOSURE DRAFT

Schedule #—Consolidation

Part 1—Acquired liabilities

Income Tax Assessment Act 1997

1 Section 10-5 (table item headed “consolidated groups and MEC groups”)

After:

Assets in relation to Division 230 financial arrangement 701-61(3)

Insert:

deductible liabilities 716-420

2 Section 12-5 (table item headed “consolidated groups and MEC groups”)

After:

assets in relation to Division 230 financial arrangement... 701-61(4)

Insert:

joining time unrealised forex gains 716-430

3 Subsection 705-70(1) (Note)

Omit “Note”, substitute “Note 1”.

4 Subsection 705-70(1) (after the Note)

Insert:

Note 2: Amounts in respect of the owned part of certain deductible liabilities are not to be added under this subsection (see subsection 716-420(2)).

5 Subsection 705-75(1)

After “some or all of an accounting liability”, insert “covered by subsection (1A)”.

6 After subsection 705-75(1)

Insert:

(1A) A liability is covered by this subsection if:

(a) any of the following provisions apply in relation to the liability:

EXPOSURE DRAFT

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- 1 (i) section 713-520 (certain policy liabilities etc. of life
2 insurance company that joins consolidated group);
3 (ii) section 713-710 (certain liabilities and reserves of
4 general insurance company that joins or leaves
5 consolidated group);
6 (iii) section 715-375 (accounting liabilities that are, or are
7 part of, a Division 230 financial arrangement held by an
8 entity that joins consolidated group); or
9 (b) the liability arises under any of the following:
10 (i) a *retirement village residence contract;
11 (ii) a *retirement village services contract; or
12 (c) section 716-435 (deductible liabilities or liabilities related to
13 joining time unrealised forex gains—exit of liability in
14 joining year) applies to the liability.

7 Before subsection 705-80(1)

15 Insert:

16 (1A) This section applies to an accounting liability that:

17 (a) is covered by subsection 705-75(1A); and

18 (b) is not covered by that subsection because of

19 subparagraph (a)(iii) of that subsection (accounting liabilities
20 that are, or are part of, a Division 230 financial arrangement
21 held by an entity that joins consolidated group).
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8 Subsection 705-80(2)

23 Omit “subsection (1)”, substitute “this section”.

9 Subsection 711-45(3)

24 After “some or all of an accounting liability”, insert “covered by
25 subsection (3A)”.

10 After subsection 711-45(3)

26 Insert:

27 (3A) A liability is covered by this subsection if:

28 (a) any of the following provisions apply in relation to the
29 liability:

30 (i) section 713-520 (certain policy liabilities etc. of life
31 insurance company that joins consolidated group);
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EXPOSURE DRAFT

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- 1 (ii) section 713-710 (certain liabilities and reserves of
2 general insurance company that joins or leaves
3 consolidated group);
- 4 (iii) section 715-375 (accounting liabilities that are, or are
5 part of, a Division 230 financial arrangement held by an
6 entity that joins consolidated group); or
- 7 (b) the liability arises under any of the following:
- 8 (i) a *retirement village residence contract;
- 9 (ii) a *retirement village services contract; or
- 10 (c) section 716-435 (deductible liabilities or liabilities related to
11 joining time unrealised forex gain—exit of liability in joining
12 year) applies to the liability.

13 **11 Subsection 711-45(8) (heading)**

14 Repeal the heading, substitute:

15 *Adjustment where amount of liability differed for purpose of*
16 *calculating allocable cost amount on entry*

17 (7A) Subsections (8), (9) and (10) apply to an accounting liability that:

- 18 (a) is covered by subsection (3A); and
- 19 (b) is *not* covered by that subsection because of
20 subparagraph (a)(iii) of that subsection (accounting liabilities
21 that are, or are part of, a Division 230 financial arrangement
22 held by an entity that joins consolidated group).

23 **12 At the end of Subdivision 716-S**

24 Add:

25 **716-420 Deductible liabilities**

26 (1) This section applies if:

- 27 (a) an entity (the *joining entity*) becomes a *subsidiary member
28 of a *consolidated group at a time (the *joining time*); and
- 29 (b) because the joining entity became a member of the group at
30 that time, an amount is added for an accounting liability (the
31 *joining liability*) under section 705-70 (disregarding this
32 section); and
- 33 (c) because the joining entity became a member of the group at
34 that time, an amount (the *deduction-related amount*) that is
35 all or part of the joining liability would result in a deduction

EXPOSURE DRAFT

1 to the *head company of the group if, just after the joining
2 time, the *head company of the group had made a payment to
3 discharge the joining liability; and
4 (d) the joining liability is *not* covered by subsection 705-75(1A).

5 (2) An amount is not to be added for the joining liability under
6 section 705-70, to the extent of the *owned part (if any) of the
7 joining liability.

8 (3) Include in the assessable income of the *head company an amount
9 or amounts in respect of the *acquired part of the joining liability,
10 in accordance with subsections (4) to (8).

11 *Assessable income—related to current liability*

12 (4) Include in the assessable income of the *head company:
13 (a) for the income year of the head company in which the joining
14 time occurs—the amount covered by subsection (5),
15 multiplied by the following fraction:

$$\frac{\text{The number of days in the income year that end after the joining time}}{365}$$

16 (b) for the next income year—the amount covered by
17 subsection (5) reduced by the amount included in the head
18 company's assessable income under paragraph (a) of this
19 subsection.
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21 (5) Work out the amount covered by this subsection by multiplying the
22 following:

- 23 (a) the amount of the deduction-related amount that is
24 attributable to the acquired part of the joining liability;
25 (b) the fraction of the joining liability that was a current liability
26 of the joining entity at the joining time.

27 *Assessable income—related to non-current liability*

28 (6) Include the following amounts in the assessable income of the
29 *head company:

30 (a) for the income year of the head company in which the joining
31 time occurs—25% of the amount covered by subsection (7),
32 multiplied by the following fraction:

EXPOSURE DRAFT

The number of days in the income year
that end after the joining time

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- (b) for each of the following three income years—25% of the amount covered by subsection (7);
- (c) for the income year following the last income year mentioned in paragraph (b)—the amount covered by subsection (7) reduced by the amounts included in the head company's assessable income paragraphs (a) and (b).

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- (7) Work out the amount covered by this subsection by multiplying the following:
 - (a) the amount of the deduction-related amount that is attributable to the acquired part of the joining liability;
 - (b) the fraction of the joining liability that was *not* a current liability of the joining entity at the joining time.

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Using relevant accounting principles to determine current or non-current liability

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- (8) For the purposes of this section, determine the fraction of the joining liability that was (or was not) a current liability of the joining entity at the joining time in accordance with the *accounting principles that the joining entity would have used if it had prepared its financial statements just before joining time.

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716-425 Owned part and acquired part of joining liability

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- (1) The *owned part* of the joining liability is the joining liability multiplied by the fraction in subsection (3).
- (2) The *acquired part* of the joining liability is the joining liability reduced by the *owned part of the joining liability.
- (3) The fraction is as follows:

EXPOSURE DRAFT

The sum of the *market values at the time mentioned in subsection (4) of each of the membership interests in the joining entity held by members of the *consolidated group at that time

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The sum of the market values at the time mentioned in subsection (4) of each of the membership interests in the joining entity at that time

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Note: If the market value of each membership interest in the joining entity at that time is the same, it is not necessary to work out that market value in order to calculate the fraction mentioned in paragraph (b).

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(4) The time is:

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(a) if the joining liability was, in accordance with the *accounting principles that the joining entity would have used if it had prepared its financial statements just before joining time, a current liability of the joining entity at the joining time—one year before the joining time;

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(b) otherwise—4 years before the joining time.

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716-430 Liability related to joining time unrealised forex gain

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(1) This section applies if:

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(a) an entity (the *joining entity*) becomes a *subsidiary member of a *consolidated group at a time (the *joining time*); and

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(b) because the joining entity became a member of the group at that time, an amount is added for an accounting liability (the *joining liability*) under section 705-70 (disregarding this section); and

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(c) the *head company of the group would have made a *forex realisation gain (the *joining time unrealised forex gain*) under Division 775 if just after the joining time:

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(i) the head company had made a payment to discharge the joining liability; and

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(ii) *forex realisation event 4 had happened in relation to the joining liability; and

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(d) the joining liability is *not* covered by subsection 705-75(1A).

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Deduction—joining time unrealised forex gain related to current liability

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(2) The *head company is entitled to a deduction:

EXPOSURE DRAFT

- 1 (a) for the income year of the head company in which the joining
2 time occurs—the amount covered by subsection (3),
3 multiplied by the following fraction:

$$\frac{\text{The number of days in the income year that end after the joining time}}{365}$$

- 4
5 (b) for the next income year—the amount covered by
6 subsection (3) reduced by the amount of the deduction under
7 paragraph (a).

- 8 (3) Work out the amount covered by this subsection by multiplying the
9 following:

- 10 (a) the amount of the joining time unrealised forex gain that is
11 attributable to the acquired part of the joining liability;
12 (b) the fraction of the joining liability that was a current liability
13 of the joining entity at the joining time.

14 *Deduction—joining time unrealised forex gain related to*
15 *non-current liability*

- 16 (4) The *head company is entitled to to the following deductions:

- 17 (a) for the income year of the head company in which the joining
18 time occurs—a deduction equal to 25% of the amount
19 covered by subsection (5), multiplied by the following
20 fraction:

$$\frac{\text{The number of days in the income year that end after the joining time}}{365}$$

- 21
22 (b) for each of the following three income years—a deduction
23 equal to 25% of the amount covered by subsection (5);
24 (c) for the income year following the last income year mentioned
25 in paragraph (b)—the amount covered by subsection (5)
26 reduced by the amount of the deductions under
27 paragraphs (a) and (b).

- 28 (5) Work out the amount covered by this subsection by multiplying the
29 following:

- 30 (a) the amount of the joining time unrealised forex gain that is
31 attributable to the acquired part of the joining liability;

EXPOSURE DRAFT

1 (b) the fraction of the joining liability that was *not* a current
2 liability of the joining entity at the joining time.

3 *Using relevant accounting principles to determine current or*
4 *non-current liability*

5 (6) For the purposes of this section, determine the proportion of the
6 joining liability that was (or was not) a current liability of the
7 joining entity at the joining time in accordance with the
8 *accounting principles that the joining entity would have used if it
9 had prepared its financial statements just before joining time.

10 **716-435 Exit of joining liability in joining year**

11 This section applies to the joining liability mentioned in
12 section 716-420 or 716-430 if:

- 13 (a) in the income year in which the joining time occurs, an entity
14 (the *leaving entity*) (whether or not the joining entity) ceases
15 to be a *member of the *consolidated group at a time (the
16 *leaving time*); and
17 (b) because the leaving entity ceased to be a member of the
18 group at that time, the joining liability ceases to be a liability
19 of the *head company of the group at that time; and
20 (c) the amount of the joining liability at the leaving time is
21 substantially the same as the amount of the joining liability at
22 the joining time; and
23 (d) the circumstances that resulted in the leaving entity ceasing
24 to be a member of the group also resulted in a *CGT event
25 happening to one or more *membership interests in the
26 leaving entity held by a member or members of the group.

27 **13 Application**

28 (1) The amendments made by this Part apply in relation to:

- 29 (a) an entity that becomes a subsidiary member of a consolidated
30 group or MEC group under an arrangement that commences
31 (see Part 6 of this Schedule) on or after the 2013 budget time;
32 and
33 (b) an entity that ceases to be a subsidiary member of a
34 consolidated group or MEC group under an arrangement that
35 commences on or after the 2013 budget time.

36 (2) In this item:

EXPOSURE DRAFT

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2013 budget time means 7.30 pm, by legal time in the Australian Capital Territory, on 14 May 2013.

EXPOSURE DRAFT

1 Part 2—Securitised assets

2 *Income Tax Assessment Act 1997*

3 **14 At the end of section 705-70**

4 Add:

5 *Exclusion of amounts for certain securitisation liabilities*

- 6 (4) An amount is not to be added for an accounting liability of the
7 joining entity under subsection (1) if the accounting liability is
8 covered under section 705-76 (securitisation liabilities).

9 **15 After section 705-75**

10 Insert:

11 **705-76 Liability arising from transfer or assignment of securitised** 12 **assets**

13 This section covers an accounting liability (the *securitisation*
14 *liability*) if the following circumstances exist:

- 15 (a) at the joining time, a *member of the joined group is an *ADI
16 or a *financial entity;
- 17 (b) in working out the step 2 amount mentioned in
18 subsection 705-70(1) in relation to the joining entity, an
19 amount would be added under that subsection for the
20 securitisation liability (disregarding subsection 705-70(4));
- 21 (c) the joining entity transferred or equitably assigned one or
22 more assets (the *underlying securitised assets*) to another
23 entity before the joining time;
- 24 (d) the securitisation liability:
- 25 (i) arose from the transfer or equitable assignment of the
26 underlying securitised assets; and
- 27 (ii) is a liability of the joining entity at the joining time
28 (according to the joining entity's *accounting principles
29 for tax cost setting);
- 30 (e) the other entity was established for the purpose of
31 securitising assets;

EXPOSURE DRAFT

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- 1 (f) the underlying securitised assets were securitised in
2 accordance with that purpose before the joining time;
3 (g) at the joining time the *market value of the joining entity's
4 interest in the underlying securitised assets was nil, or was
5 substantially less than the amount of the securitisation
6 liability.

7 **16 At the end of section 711-45**

8 Add:

9 *Exclusion of amounts for certain securitisation liabilities*

- 10 (11) An amount is not to be added for an accounting liability of the
11 leaving entity if the accounting liability is covered under
12 section 711-46 (securitisation liabilities).

13 **17 After section 711-45**

14 Insert:

15 **711-46 Liability arising from transfer or assignment of securitised** 16 **assets**

17 This section covers an accounting liability (the *securitisation*
18 *liability*) if the following circumstances exist:

- 19 (a) just before the leaving time, a *member of the old group is an
20 *ADI or a *financial entity;
- 21 (b) in working out the step 4 amount mentioned in
22 subsection 711-45(1) in relation to the leaving entity, an
23 amount would be added under that subsection for the
24 securitisation liability (disregarding subsection 711-45(11));
- 25 (c) a member of the old group transferred or equitably assigned
26 one or more assets (the *underlying securitised assets*) to
27 another entity before the leaving time;
- 28 (d) the securitisation liability:
- 29 (i) arose from the transfer or equitable assignment of the
30 underlying securitised assets; and
- 31 (ii) is a liability of the leaving entity at the leaving time
32 (according to the leaving entity's *accounting principles
33 for tax cost setting);
- 34 (e) the other entity was established for the purpose of
35 securitising assets;

EXPOSURE DRAFT

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- 1 (f) the underlying securitised assets were securitised in
2 accordance with that purpose before the leaving time;
3 (g) at the leaving time the *market value of the leaving entity's
4 interest in the underlying securitised assets was nil, or was
5 substantially less than the amount of the securitisation
6 liability.

7 **18 Application—joining case**

- 8 (1) The amendments made by items 14 and 15 of this Schedule apply in
9 relation to an entity that becomes a subsidiary member of a consolidated
10 group or MEC group under an arrangement that commences (see Part 6
11 of this Schedule) after the 2014 budget time.
- 12 (2) Subject to subitems (3) and (6), the amendments made by items 14 and
13 15 of this Schedule also apply in relation to an entity (the *joining entity*)
14 that becomes a subsidiary member of a consolidated group or MEC
15 group under an arrangement that commences (see Part 6 of this
16 Schedule) on or before the 2014 budget time.
- 17 (3) Subitem (2) does not apply if the Commissioner considers that it is
18 reasonable to conclude that:
- 19 (a) the circumstances mentioned in section 705-76 of the *Income*
20 *Tax Assessment Act 1997* (as inserted by this Schedule)
21 existed in respect of the joining entity; and
- 22 (b) before the 2014 budget time, the head company of the group:
23 (i) worked out the group's allocable cost amount for the
24 joining entity; and
25 (ii) for the purposes of working out that allocable cost
26 amount, worked out the step 2 amount mentioned in
27 subsection 705-70(1) of that Act; and
- 28 (c) in working out that step 2 amount before the 2014 budget
29 time, the head company added the amount mentioned in
30 paragraph 705-76(b) of that Act (as inserted by this
31 Schedule).
- 32 (4) Subitem (5) applies if:
33 (a) subitem (2) does not apply because of subitem (3); and
34 (b) the Commissioner considers that it is reasonable to conclude
35 that, before the 2014 budget time, the head company of the
36 group worked out a tax cost setting amount for the joining
37 entity's interest in the underlying securitised assets

EXPOSURE DRAFT

1 mentioned in paragraph 705-76(c) of that Act (as inserted by
2 this Schedule).

- 3 (5) Reduce the group's allocable cost amount for the joining entity by the
4 tax cost setting amount mentioned in paragraph (4)(b).
- 5 (6) Subitem (2) does not apply if the Commissioner considers that it is
6 reasonable to conclude that:
- 7 (a) the circumstances mentioned in section 705-76 of the *Income*
8 *Tax Assessment Act 1997* (as inserted by this Schedule)
9 existed in respect of the joining entity; and
- 10 (b) the head company of the group first worked out the group's
11 allocable cost amount for the joining entity:
- 12 (i) after the 2014 budget time; and
13 (ii) before the commencement of this item.

14 (7) In this item:

15 *2014 budget time* means 7.30 pm, by legal time in the Australian
16 Capital Territory, on 13 May 2014.

17 **19 Application—leaving case**

- 18 (1) The amendments made by items 16 and 17 of this Schedule apply in
19 relation to an entity that ceases to be a subsidiary member of a
20 consolidated group or MEC group under an arrangement that
21 commences (see Part 6 of this Schedule) after the 2014 budget time.
- 22 (2) Subject to subitem (3), the amendments made by items 16 and 17 of this
23 Schedule also apply in relation to an entity (the *leaving entity*) that
24 ceases to be a subsidiary member of a consolidated group or MEC
25 group under an arrangement that commences (see Part 6 of this
26 Schedule) on or before the 2014 budget time.
- 27 (3) Subitem (2) does not apply if the Commissioner considers that it is
28 reasonable to conclude that:
- 29 (a) the circumstances mentioned in section 711-46 of the *Income*
30 *Tax Assessment Act 1997* (as inserted by this Schedule)
31 existed in respect of the leaving entity; and
- 32 (b) before the 2014 budget time, the head company of the group
33 (the *old group*):
- 34 (i) worked out the old group's allocable cost amount for
35 the leaving entity; and

EXPOSURE DRAFT

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- 1 (ii) for the purposes of working out that allocable cost
2 amount, worked out the step 4 amount mentioned in
3 subsection 711-45(1) of that Act; and
- 4 (c) in working out that step 4 amount before the 2014 budget
5 time, the head company added the amount mentioned in
6 paragraph 711-46(b) of that Act (as inserted by this
7 Schedule).
- 8 (4) Subitem (5) applies if:
- 9 (a) subitem (2) does not apply because of subitem (3); and
- 10 (b) the Commissioner considers that it is reasonable to conclude
11 that, in working out that allocable cost amount before the
12 2014 budget time, the head company of the old group
13 included in the step 1 amount mentioned in
14 subsection 711-25(1) of that Act an amount (the *addition to*
15 *step 1*) in respect of the leaving entity's interest in the
16 underlying securitised assets mentioned in
17 paragraph 711-46(c) of that Act (as inserted by this
18 Schedule).
- 19 (5) Increase the old group's allocable cost amount for the leaving entity by
20 the addition to step 1.
- 21 (6) In this item:
- 22 *2014 budget time* means 7.30 pm, by legal time in the Australian
23 Capital Territory, on 13 May 2014.

EXPOSURE DRAFT

1 Part 3—Churning

2 *Income Tax Assessment Act 1997*

3 **20 At the end of Subdivision 716-S (after section 716-420)**

4 Add:

5 **716-440 Membership interests in joining entity not subject to CGT** 6 **under Division 855— foreign entity ceasing to hold** 7 **interests**

8 (1) Subsection (2) applies if:

- 9 (a) an entity (the *joining entity*) becomes a *subsidiary member
10 of a *consolidated group at a time (the *joining time*); and
11 (b) another entity (the *gain entity*) ceased to hold *membership
12 interests in the joining entity during the period that:
13 (i) started 12 months before the joining time; and
14 (ii) ended immediately after the joining time; and
15 (c) a *CGT event happened because the gain entity ceased to
16 hold the membership interests; and
17 (d) a *capital gain of the gain entity from the CGT event was
18 disregarded because of the operation of Division 855; and
19 (e) section 701-10 (cost to head company of assets of joining
20 entity) applies to the joining entity's assets in respect of the
21 joining entity becoming a subsidiary member of the group
22 (disregarding subsection (2)); and
23 (f) it is reasonable to conclude that, throughout the period
24 mentioned in paragraph (b), an entity (the *control entity*) had
25 a *total participation interest in the joining entity of 50% or
26 more; and
27 (g) if the control entity is *not* the gain entity—it is reasonable to
28 conclude that the control entity had a total participation
29 interest in the gain entity of 50% or more at the time the CGT
30 event happened.

31 (2) The following provisions do not apply to the joining entity's assets
32 in respect of the joining entity becoming a *subsidiary member of
33 the group:

EXPOSURE DRAFT

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- 1 (a) section 701-10 (cost to head company of assets of joining
2 entity); and
3 (b) subsection 701-35(4) (setting value of trading stock at
4 tax-neutral amount); and
5 (c) subsection 701-35(5) (setting value of registered emissions
6 unit at tax-neutral amount).

7 Note: This subsection does not affect the application of subsection 701-1(1)
8 (the single entity rule).

9 **21 Application**

10 (1) The amendments made by this Part apply in relation to an income year
11 in respect of an entity that becomes a subsidiary member of a
12 consolidated group or MEC group under an arrangement that
13 commences (see Part 6 of this Schedule) on or after the 2013 budget
14 time.

15 (2) In this item:

16 **2013 budget time** means 7.30 pm, by legal time in the Australian
17 Capital Territory, on 14 May 2013.

EXPOSURE DRAFT

1 **Part 4—TOFA**

2 *Income Tax Assessment Act 1997*

3 **22 Section 715-375 (heading)**

4 Repeal the heading, substitute:

5 **715-375 Cost setting on joining—amount of liability that is**
6 **Division 230 financial arrangement**

7 **23 Section 715-378 (heading)**

8 Repeal the heading, substitute:

9 **715-378 Cost setting on joining—head company’s right to receive or**
10 **obligation to provide payment**

11 **24 After section 715-378**

12 Insert:

13 **715-379 Cost setting on leaving—amount of intragroup liability that**
14 **is Division 230 financial arrangement**

15 (1) Subsection (2) applies if:

- 16 (a) an entity (the *leaving entity*) ceases to be a *subsidiary
17 member of a *consolidated group at a time (the *leaving time*);
18 and
19 (b) a thing (the *accounting liability*) is, in accordance with
20 *accounting standards, or statements of accounting concepts
21 made by the Australian Accounting Standards Board:
22 (i) a liability of the leaving entity at the leaving time that
23 can or must be recognised in the entity’s statement of
24 financial position; or
25 (ii) a liability of the *head company of the group at the
26 leaving time that can or must be recognised in the head
27 company’s statement of financial position; and
28 (c) because subsection 701-1(1) (the single entity rule) ceases to
29 apply to the leaving entity at the leaving time:
30 (i) if subparagraph (b)(i) applies—the accounting liability
31 becomes a liability of the leaving entity, and an asset
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EXPOSURE DRAFT

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- 1 (the *corresponding asset*) that consists of the liability
2 becomes an asset of the head company; or
3 (ii) if subparagraph (b)(ii) applies—the accounting liability
4 becomes a liability of the head company, and an asset
5 (the *corresponding asset*) that consists of the liability
6 becomes an asset of the leaving entity; or
7 (d) the corresponding asset’s *tax cost is set at the leaving time
8 under:
9 (i) if subparagraph (b)(i) applies—section 701-20; or
10 (ii) if subparagraph (b)(ii) applies—section 701-45; and
11 (e) the accounting liability is or is part of a *Division 230
12 financial arrangement.
- 13 (2) For the purposes of Division 230 and Schedule 1 to the *Tax Laws*
14 *Amendment (Taxation of Financial Arrangements) Act 2009*:
15 (a) if subparagraph (1)(b)(i) applies—treat the leaving entity as
16 starting to have the accounting liability at the leaving time for
17 receiving a payment equal to the *tax cost setting amount of
18 the corresponding asset; or
19 (b) if subparagraph (1)(b)(ii) applies—treat the *head company
20 as starting to have the accounting liability at the leaving time
21 for receiving a payment equal to the tax cost setting amount
22 of the corresponding asset.
- 23 Note: The tax cost setting amount of the corresponding asset is determined
24 under section 701-60A.

715-379A Cost setting on leaving—head company’s or leaving entity’s right to receive or obligation to provide payment

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26
- 27 (1) This section applies in relation to an asset or a liability if:
28 (a) an entity (the *leaving entity*) ceases to be a *subsidiary
29 member of a *consolidated group at a time (the *leaving time*);
30 and
31 (b) because subsection 701-1(1) (the single entity rule) ceases to
32 apply to the leaving entity at the leaving time, the asset or
33 liability becomes the asset or liability of:
34 (i) the leaving entity; or
35 (ii) the *head company of the group; and
36 (c) if subparagraph (b)(i) applies:
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EXPOSURE DRAFT

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- 1 (i) in the case of an asset—subsection 701-55(5A) applies
2 in relation to the asset at the leaving time because of
3 section 701-45; or
4 (ii) in the case of a liability—subsection 715-379(2) applies
5 in relation to the liability at the leaving time; or
6 (d) if subparagraph (b)(ii) applies:
7 (i) in the case of an asset—subsection 701-55(5A) applies
8 in relation to the asset at the leaving time because of
9 section 701-20; and
10 (ii) in the case of a liability—subsection 715-379(2) applies
11 in relation to the liability at the leaving time; and
12 (e) the asset or liability is or is part of a *Division 230 financial
13 arrangement.
- 14 (2) If subparagraph (1)(b)(i) applies:
15 (a) in the case of an asset—for the purposes of section 230-60,
16 assume that the leaving entity acquired the asset at the
17 leaving time (as mentioned in subsection 701-55(5A)) in
18 return for the leaving entity starting to have an obligation to
19 provide the payment mentioned in that subsection; and
20 (b) in the case of a liability—for the purposes of section 230-60,
21 assume that the leaving entity started to have the liability at
22 the leaving time in return for the leaving entity starting to
23 have a right to receive the payment mentioned in
24 subsection 715-379(2).
- 25 (3) If subparagraph (1)(b)(ii) applies:
26 (a) in the case of an asset—for the purposes of section 230-60,
27 assume that the head company acquired the asset at the
28 leaving time (as mentioned in subsection 701-55(5A)) in
29 return for the head company starting to have an obligation to
30 provide the payment mentioned in that subsection; and
31 (b) in the case of a liability—for the purposes of section 230-60,
32 assume that the head company started to have the liability at
33 the leaving time in return for the head company starting to
34 have a right to receive the payment mentioned in
35 subsection 715-379(2).
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EXPOSURE DRAFT

1 **25 Application**

2 (1) The amendments made by this Part apply in the same way as Part 2 of
3 Schedule 1 to the *Tax Laws Amendment (Taxation of Financial*
4 *Arrangements) Act 2009* applies.

5 Note: The application of the amendments made by Part 2 of Schedule 1 to the *Tax Laws*
6 *Amendment (Taxation of Financial Arrangements) Act 2009* is set out in Part 3 of that
7 Schedule.

8 (2) The Commissioner cannot amend an assessment of an entity for an
9 income year in a particular way if:
10 (a) the entity lodged its income tax return for the income year
11 before the 2013 budget time; and
12 (b) the Commissioner could not amend the assessment in that
13 way if the amendments made by this Part and Part 5 were
14 disregarded; and
15 (c) the entity has not requested the Commissioner to amend the
16 assessment in that way.

17 (3) In this item:
18 ***2013 budget time*** means 7.30 pm, by legal time in the Australian
19 Capital Territory, on 14 May 2013.

EXPOSURE DRAFT

Part 5—Value shifting

Income Tax Assessment Act 1997

26 Section 701-60 (item 3 of the table)

Repeal the item, substitute:

3	section 701-20 (Cost to head company of assets consisting of certain liabilities owed by entity that leaves group)	the *market value of the asset
3A	section 701-45 (Cost of assets consisting of liabilities owed to entity by members of the group)	the amount worked out in accordance with section 701-60A

27 After section 701-60

Insert:

701-60A Tax cost setting amount for asset emerging when entity leaves group

- (1) This section applies for the purpose of working out the *tax cost setting amount of an asset if:
- (a) an entity (the *leaving entity*) ceases to be a *subsidiary member of a *consolidated group (the *old group*) at a time (the *leaving time*); and
 - (b) the asset's tax cost is set under section 701-45 because it consists of a liability (the *corresponding liability*) owed to the leaving entity.
- (2) The *tax cost setting amount is:
- (a) unless subsection (3) or (4) applies—the *market value of the asset at the leaving time; or
 - (b) if subsection (3) applies—nil; or
 - (c) if subsection (4) applies—the lesser of the following:
 - (i) the tax cost setting amount mentioned in paragraph (4)(c);
 - (ii) the market value of the asset at the leaving time.
- (3) This subsection applies if:

EXPOSURE DRAFT

-
- 1 (a) the corresponding liability is *not* a debt; and
2 (b) either:
3 (i) at the time the corresponding liability arose, the entity to
4 whom the corresponding liability was owed and the
5 entity owing the corresponding liability were both
6 *members of the old group; or
7 (ii) if subparagraph (i) does not apply—after the time the
8 corresponding liability arose, a member of the old group
9 *acquired the asset.
- 10 (4) This subsection applies if:
11 (a) the corresponding liability is *not* a debt; and
12 (b) at the time the corresponding liability arose, the entity to
13 whom the corresponding liability was owed and the entity
14 owing the corresponding liability were *not* both members of
15 the old group; and
16 (c) the tax cost of the asset was set under section 701-10 at the
17 time an entity became a *subsidiary member of the old group,
18 at the asset’s *tax cost setting amount (whether or not
19 section 701-58 applied in relation to the setting of that tax
20 cost).

21 **28 Section 711-40**

22 Repeal the section, substitute:

23 **711-40 Liabilities owed to the leaving entity by members of the old** 24 **group—step 3 in working out allocable cost amount**

25 For the purposes of step 3 in the table in subsection 711-20(1), the
26 step 3 amount is the total, for all liabilities owed by *members of
27 the old group to the leaving entity at the leaving time, of the *tax
28 cost setting amounts of the corresponding assets of the leaving
29 entity.

30 Note: The tax cost of a corresponding asset of the leaving entity is set under
31 section 701-45. The tax cost setting amount of the corresponding asset
32 is determined under section 701-60A.

33 **29 Section 711-45(4)**

34 Omit “*market value”, substitute “*tax cost setting amount”.

EXPOSURE DRAFT

30 Application

- 1
- 2 (1) The amendments made by this Part apply in relation to an entity that
3 ceases to be a subsidiary member of a consolidated group or MEC
4 group under an arrangement that commences on or after the 2013
5 budget time.
- 6 (2) If an asset mentioned in subsection 701-60A(1) of the *Income Tax*
7 *Assessment Act 1997* (as inserted by this Schedule) is or is part of a
8 Division 230 financial arrangement at the leaving time mentioned in
9 that subsection, the amendments made by this Part also apply in relation
10 to that asset in the same way as Part 2 of Schedule 1 to the *Tax Laws*
11 *Amendment (Taxation of Financial Arrangements) Act 2009* applies.

12 Note: The application of the amendments made by Part 2 of Schedule 1 to the *Tax Laws*
13 *Amendment (Taxation of Financial Arrangements) Act 2009* is set out in Part 3 of that
14 Schedule.

- 15 (3) The following subitem applies if:
- 16 (a) an entity ceases to be a subsidiary member of a consolidated
17 group or MEC group under an arrangement that commences
18 before the 2013 budget time; and
- 19 (b) the amendments made by this Part apply because of
20 subitem (2).
- 21 (4) The Commissioner cannot amend an assessment of an entity for an
22 income year in a particular way if:
- 23 (a) the entity lodged its income tax return for the income year
24 before the 2013 budget time; and
- 25 (b) the Commissioner could not amend the assessment in that
26 way if the amendments made by Part 4 and this Part were
27 disregarded; and
- 28 (c) the entity has not requested the Commissioner to amend the
29 assessment in that way.

30 Note: Subitems (2), (3) and (4) have the effect that the amendments made by this Part operate
31 in relation to an asset that is or is part of a Division 230 financial arrangement in the
32 same way that the amendments made by Part 4 of this Schedule operate.

- 33 (5) In this item:

34 **2013 budget time** means 7.30 pm, by legal time in the Australian
35 Capital Territory, on 14 May 2013.

EXPOSURE DRAFT

1 **Part 6—Commencement of arrangements**

2 **31 Commencement of arrangements**

- 3 (1) Subitems (2), (3) and (4) specify, for the purpose of this Schedule, the
4 time of commencement of an arrangement under which:
- 5 (a) an entity becomes a subsidiary member of a consolidated
6 group or MEC group; or
 - 7 (b) an entity that ceases to be a subsidiary member of a
8 consolidated group or MEC group.
- 9 (2) If the arrangement is or relates to a takeover bid (within the meaning of
10 the *Corporations Act 2001*) the time is when:
- 11 (a) for an off-market bid (within the meaning of that Act)—step
12 4 of the table in subsection 633(1) of that Act is completed;
13 or
 - 14 (b) for a market bid (within the meaning of that Act)—step 2 of
15 the table in subsection 635(1) of that Act is completed.
- 16 (3) If a court orders, under subsection 411(1) of the *Corporations Act 2001*:
- 17 (a) a meeting or meetings of a company's members about the
18 arrangement; or
 - 19 (b) a meeting or meetings of one or more classes of a company's
20 members about the arrangement;
- 21 the time is when the application for the order was made.
- 22 (4) If subitem (2) or (3) does not apply, the time is when the decision to
23 enter into the arrangement was made.