
TAX AND SUPERANNUATION LAWS AMENDMENT (DEBT AND EQUITY
SCHEME INTEGRITY RULES) BILL

EXPOSURE DRAFT EXPLANATORY MEMORANDUM

DRAFT

Glossary

The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
Commissioner	Commissioner of Taxation
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
the Review	Board of Taxation's <i>Review of the Debt and Equity Tax Rules – the Related Scheme and Equity Override Integrity Provisions</i> , December 2014

Debt and equity scheme integrity rules

Outline of chapter

1.1 Schedule # to this Exposure Draft Bill amends the debt-equity rules in Division 974 of the *Income Tax Assessment Act 1997* (ITAA 1997) to ensure that multiple schemes are treated as a single scheme only where this accurately reflects the economic substance of the schemes.

1.2 All references to legislative provisions in this Chapter are references to the ITAA 1997, unless otherwise stated.

Context of amendments

1.3 The Australian taxation system operates differently with respect to debt interests and equity interests in a company. Returns on equity interests (such as dividends) may entitle the shareholder to franking credits but are not deductible to the company. Returns on debt (such as interest) are generally deductible to the company but do not carry franking credits.

1.4 The debt-equity rules in Division 974 ensure that interests arising from schemes are correctly classified as either debt or equity according to their economic substance.

1.5 Once classification as debt or equity occurs, other provisions of the income tax law apply on that basis, notwithstanding the legal form of the arrangement. That is, an interest that is, in substance, an equity interest cannot attract the tax treatment available to a debt interest merely because the legal form of the interest is that of a debt interest (or vice versa).

1.6 The debt-equity rules ensure that taxpayers cannot achieve tax outcomes that are different from economic reality by splitting a single scheme into multiple schemes. Currently, the related scheme rules take two or more schemes that are ‘related to one another in any way’ (subsection 974-155(1)) and assess whether the participants intended the schemes to have the combined effect of giving rise to either a debt or equity interest.

1.7 The Commissioner of Taxation (Commissioner) has a discretion not to apply the aggregation rules if he or she considers applying them to be unreasonable (subsections 974-15(4) and 974-70(4)).

1.8 Section 974-80 is an equity override integrity provision, which looks through certain sequential financing arrangements. It has the potential to overlap with the existing related scheme rules. Section 974-80 is intended to apply to specific circumstances where a group raises capital by issuing an effective equity interest through the issue of debt to an interposed entity connected to the issuer. The central test is whether the return on a debt interest in one scheme is designed to be used to fund the return on an equity interest in a separate scheme. If these criteria are satisfied, the debt issued is treated as an equity interest.

1.9 The application of section 974-80 in more complex situations has been contentious because of the potential breadth of that provision. The former government announced, in the 2011-12 Budget, that the scope of section 974-80 would be clarified.

1.10 On 14 December 2013, the Government announced that the 2011-12 Budget measure would proceed and that the design of the measure would be considered by the Board of Taxation as part of its review of the debt-equity rules.

1.11 In December 2014, the Board of Taxation finalised its *Review of the Debt and Equity Tax Rules – the Related Scheme and Equity Override Integrity Provisions* (the Review). The Review recommended that, to address the uncertainty around the operation of the existing provisions, both section 974-80 and the existing related scheme rules be repealed and replaced with a new scheme aggregation rule.

1.12 On 2 April 2015, the Government announced that it would proceed with the recommendations in the Board of Taxation's Review.

Summary of new law

1.13 Schedule 1 to this Exposure Draft Bill introduces a new rule for determining when schemes should be aggregated for the purpose of the debt-equity rules in Division 974.

1.14 This new scheme aggregation rule ensures that multiple schemes are treated as a single scheme only where this accurately reflects the economic substance of the schemes. Under the new rule, it is necessary to consider:

- whether the pricing, terms and conditions of the schemes are interdependent in a way that would change their debt or equity treatment under Division 974; and
- whether it would be concluded that the schemes were designed to operate to produce their combined economic effect — a link that is either accidental or present, without any element of design, is not sufficient to cause the schemes to be aggregated.

1.15 In accordance with a recommendation of the Review, the new scheme aggregation rule will be supported by examples, declared by the Minister in a legislative instrument. These examples will give guidance as to how the new scheme aggregation rule will apply in particular circumstances.

1.16 The new scheme aggregation rule replaces the existing related scheme rules in subsections 974-15(2) and 974-70(2), and the equity override integrity provision in section 974-80.

Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
<p>Schemes are aggregated if:</p> <ul style="list-style-type: none"> • their pricing, terms and conditions are interdependent in a way that would change their debt or equity treatment; and • it would be concluded that the schemes were designed to operate to produce their combined economic effect. <p>The ‘related schemes’ threshold has been removed.</p>	<p>Schemes can be combined to affect the characterisation of an interest on a standalone basis if the schemes have, and the scheme participants intended the schemes to have, the combined effect of either a debt or equity interest.</p> <p>For this to occur, the schemes must be ‘related schemes’.</p>
<p>Section 974-80 is repealed. However, the new scheme aggregation rule can apply to schemes that would have been captured by section 974-80.</p>	<p>Section 974-80 recharacterises certain debt interests as equity interests where the interest is held by a connected entity and is designed to operate to fund a return on a separate equity interest.</p>

Detailed explanation of new law

1.17 Schedule 1 to this Exposure Draft Bill introduces a new rule for determining when schemes should be aggregated for the purpose of the debt-equity rules in Division 974.

1.18 This new scheme aggregation rule ensures that multiple schemes are treated as a single scheme only where this accurately reflects the economic substance of the schemes. Under the new rule, it is necessary to consider:

- the interdependence test — that is, whether the pricing, terms and conditions of the schemes are interdependent in a way that would change their debt or equity treatment under Division 974; and
- the design test — that is, whether it would be concluded that the schemes were designed to operate to produce their combined economic effect;
 - a link that is either accidental or present, without any element of design, is not sufficient to cause the schemes to be aggregated.

[Schedule #, item 1, section 974-155]

1.19 Two or more schemes that satisfy the new scheme aggregation rule will be treated as a single scheme for the purposes of the debt-equity rules. *[Schedule #, item 1, section 974-155]*

1.20 A *scheme* is defined in subsection 995-1(1) to mean any arrangement, or any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise. An *arrangement* is defined to mean any arrangement, agreement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable (or intended to be enforceable) by legal proceedings. Whether a series of transactions are part of a single scheme or constitute more than one scheme is a question of fact.

1.21 To avoid circularity, the new scheme aggregation rule does not apply to schemes that have already been aggregated under the rule. For similar reasons, the new scheme aggregation rule does not apply for the purposes of Division 974's objects clause in section 974-10. *[Schedule #, items 1 and 39, subsection 974-155(4) and the note at the end of the definition of 'scheme' in subsection 995-1(1)]*

1.22 The new scheme aggregation rule is consistent with the objects of Division 974 — that is:

- the debt-equity rules should operate on the basis of the economic substance of the rights and obligations arising under two or more schemes rather than merely on the basis of the legal form of the schemes (subsection 974-10(2)); and
- to prevent the debt and equity tests from being circumvented by entities entering into a number of schemes (subsection 974-10(3)).

1.23 The new scheme aggregation rule replaces the existing related scheme rules in subsections 974-15(2) and 974-70(2), and the equity override integrity provision in section 974-80. *[Schedule #, items 14, 21 and 22, sections 974-15, 974-70 and 974-80]*

1.24 Currently, to be treated as giving rise to the one interest, two schemes must first satisfy the low threshold of being ‘related schemes’ (in current section 974-155). They must then satisfy the existing related scheme rules in sections 974-15 (for debt interests) and 974-70 (for equity interests). Removing the ‘related schemes’ threshold for the purposes of the new scheme aggregation rule will reduce compliance costs.

The interdependence test

1.25 The first part of the new scheme aggregation rule looks at the interdependence between the pricing, terms and conditions of the two or more schemes. This ‘interdependence test’ is satisfied if the pricing, terms and conditions of one or more schemes are dependent on, or linked to, or operate to change the economic consequences of, the pricing, terms and conditions of one or more of the other schemes. *[Schedule #, item 1, paragraph 974-155(1)(a)]*

1.26 ‘Pricing, terms and conditions’ is a single concept that encapsulates the economic rights and obligations that a scheme gives rise to, and in particular, the monetary returns and consideration provided under the scheme. In determining the ‘pricing, terms and conditions’ of the schemes, it is necessary to consider when or whether a party is obliged or able to pay an amount and what factors affect the calculation of that amount. These rights and obligations, which go to the nature of returns on an interest, are fundamental to the classification of interests as debt or equity interests.

‘Dependent on or linked to’

1.27 The interdependence test is satisfied if the pricing, terms and conditions of one or more of the schemes are dependent on or linked to

the pricing, terms and conditions of one or more of the other schemes.
[Schedule #, item 1, subparagraph 974-155(1)(a)(i)]

1.28 A dependency or link between schemes exists where something in the pricing, terms and conditions of one scheme affects the operation of an obligation under another scheme. A dependency or link between the terms of two or more schemes may be direct or indirect, but must be more than a scheme's terms and conditions merely referencing those of another scheme. This is because the 'dependency or link' requirement is narrower than the 'related to one another in any way' test in the current 'related schemes' test.

1.29 Aggregation does not occur where one scheme merely funds, is stapled to, subordinate to, or merely involves the taking of security over another scheme, at least where these are stand-alone features (see the 'mere funding', 'mere stapling', 'mere subordination' and 'mere taking of security' carve outs, below).

'Operate to change the economic consequences'

1.30 The interdependence test is also satisfied if the pricing, terms and conditions of one or more of the schemes operate to change the economic consequences of the pricing, terms and conditions of one or more of the other schemes. *[Schedule #, item 1, paragraph 974-155(1)(a)(ii)]*

1.31 The interdependence test is not limited to dependence of a legal nature. Interdependence by reference to pricing may be an economic link. Economic interdependence requires a conclusion that the understanding of an obligation when looked at under an individual scheme is not the same when the schemes are looked at in aggregate. This is particularly so where the circumstances or requirements for performance or enforcement are altered.

1.32 However, economic interdependence is not established merely by the practical fact that there will not be sufficient financial benefits to fund returns under one scheme unless there is performance under another scheme. The mere fact that one scheme can be seen as funding another scheme (or funding returns under that scheme) is not enough to show economic interdependence (see the 'mere funding' carve out, below).

1.33 It also follows from the breadth of the definition of 'scheme' in subsection 995-1(1) that the 'pricing, terms and conditions' of a scheme can extend beyond the formal documentation that underpins the scheme. The interdependence test therefore looks at the dependence, link or operation resulting from the actual (as opposed to merely formal) rights and obligations that arise from that scheme, and to the economic effects that arise from those rights and obligations.

Carve outs for minor connections

1.34 There are carve outs from the new scheme aggregation rule for certain situations where the interdependence between schemes is only minor. These carve outs provide certainty for taxpayers by specifying that schemes are not aggregated if the interdependence test would only be satisfied because of basic funding, stapling, subordination or taking of security between the schemes. [*Schedule #, item 1, paragraph 974-155(2)(a)*]

1.35 These carve outs reflect interdependence that does not require aggregation because the interdependence does not have a quality that alters the character of the returns to be provided.

1.36 For each of these carve outs, there is a core quality of the stapling, funding, subordination or taking of security that is permissible. If this feature operates outside of this core quality, it falls outside the carve out, and has to be tested against the new scheme aggregation rule.

1.37 In some cases the connections captured by these carve outs would not cause the interdependence test or the design test to be satisfied. However, these carve outs make clear that these connections are not on their own substantial enough to warrant aggregation of the schemes.

Mere funding

1.38 The first carve out relates to mere funding — that is, the use of a return on an interest arising from one of the schemes to fund a return on an interest arising from another scheme does not cause the interdependence test to be satisfied unless this funding is part of the terms and conditions, express or implied, of the schemes. [*Schedule #, item 1, subparagraph 974-155(2)(a)(i)*]

1.39 This carve out means that interdependence is not established merely by the practical fact that there will not be enough money to fund returns under one scheme unless there is performance under another scheme.

Mere stapling

1.40 The second carve out relates to mere stapling — that is, the mere stapling of interests in a basic way does not cause the interdependence test to be satisfied. [*Schedule #, item 1, subparagraph 974-155(2)(a)(ii)*]

1.41 Stapled interests are created when two or more different interests are contractually bound together, usually under a stapling deed, so that they must be traded together. The stapling of shares in a company to units in a unit trust is a common example.

1.42 *Mere stapling of interests includes:*

- a prohibition on the disposal of one interest to a third party without a corresponding transfer of the other interest to the same third party; and
- a restriction on cancelling one ownership interest without a corresponding cancellation of the other ownership interest (that is, a proportionate dealings requirement).

1.43 In circumstances where the terms of the stapling deed go beyond ‘*mere stapling*’, the schemes in the arrangement would fall outside this carve out. They would need to be tested against the interdependence test and the other elements of the new scheme aggregation rule.

Mere subordination

1.44 The third carve out relates to mere subordination — that is, the interdependence test is not satisfied merely because of the making of an agreement that one interest is subordinate to another in the event of insolvency. In this regard, it is not a sufficient connection that the right to a return on a debt interest arising from one of the schemes is subordinate to the right to a return on a debt interest arising from another scheme.

[Schedule #, item 1, subparagraph 974-155(2)(a)(iii)]

1.45 The effect of this carve out is that, on its own, subordination does not amount to interdependence that leads to aggregation under the new scheme aggregation rule. This remains the case notwithstanding the degree to which returns on an interest are subordinated.

Mere taking of security

1.46 The fourth carve out relates to mere taking of security — that is, the subjecting of an interest arising from one of the schemes, or assets of the entity that issued the interest, to a security interest does not cause the interdependence test to be met. For example, where, under a loan agreement, a mortgage is held over shares in a company to secure the loan, this, on its own, does not cause the loan and the shares to be aggregated. *[Schedule #, item 1, subparagraph 974-155(2)(a)(iv)]*

1.47 However, this carve out is only available to the extent that the taking of security is to secure a return on or of the other interest. Where the taking of security over one scheme affects obligations under another scheme more fundamentally, this falls outside this carve out.

1.48 For the purposes of this provision, a security interest is a security interest within the meaning of the *Corporations Act 2001*.

Interdependence affects whether a scheme gives rise to a debt or an equity interest

1.49 The new scheme aggregation rule aggregates schemes only if the rights and obligations of the schemes operating together produce a different debt or equity result to applying the debt and equity tests to the schemes individually. The interdependence between the schemes must result in a scheme that would not have been treated as giving rise to an equity interest under Division 974 being treated as giving rise to an equity interest (or the same with respect to a debt interest) when it is considered as part of the aggregated scheme. *[Schedule #, item 1, paragraph 974-155(1)(b)]*

1.50 For example, if two schemes that each give rise to an equity interest would, if aggregated, amount to a single scheme that gives rise to an equity interest, then these schemes would not be aggregated. This is because aggregation would not change whether or not Division 974 treats a debt or equity interest as arising from the schemes.

1.51 By contrast, if one scheme that gives rise to an equity interest and one scheme that gives rise to a debt interest would, if aggregated, give rise to an equity interest, then these schemes would be aggregated (assuming the interdependence test and the design test are also satisfied). This is because, with respect to the second scheme, aggregation would change whether Division 974 treats a debt interest as arising.

1.52 Paragraph 974-155(1)(b) can also be satisfied where a scheme that is treated as giving rise to neither a debt interest nor an equity interest, such as a unit in a trust, would, when aggregated, be treated as giving rise to either a debt interest or an equity interest.

The design test

1.53 For the new scheme aggregation rule to be satisfied, it must be objectively concluded that the schemes were designed to operate together to produce the schemes' combined economic effect. *[Schedule 1, item 1, paragraph 974-155(1)(c)]*

1.54 The test is an objective test — the conclusion to be reached is that of the reasonable person, who knows of the objective facts surrounding the schemes including their pricing, terms and conditions. The subjective or actual intentions of the parties to the schemes are not relevant.

1.55 In determining whether the design test is met, regard must be had to the following factors:

- the nature and extent of any involvement of the parties to one of the schemes in any of the other schemes;
- the way the schemes are entered into or carried out;
- any dealing, between any of the parties to any of the schemes, that is not at arm's length;
- the relationships between any of the parties to any of the schemes;
- normal commercial understandings and practices; and
- any other relevant matters.

[Schedule #, item 1, paragraph 974-155(1)(c)]

1.56 Regard must be had to each of the factors in determining whether the relevant design is evident with respect to the schemes. In some cases the factors may point in different directions. The relative importance of each of the factors varies depending on the facts and circumstances surrounding the particular schemes.

1.57 Parties to financing arrangements often rely on professional advice in formulating the schemes. The design test can encompass the intentions of professional advisers, objectively discerned, where a party to the schemes acts on their advice in the formulation of the schemes.

1.58 Additionally, the term 'parties to the schemes' encompasses arrangers — that is, advisors or entities that put the arrangement together without being legally bound by any of the constituent schemes.

Nature and extent of any involvement of the parties to one of the schemes in any of the other schemes

1.59 The first factor that must be considered in determining whether the design test is met is the nature and extent of any involvement of one or more of the parties to one of the schemes in the other schemes. *[Schedule #, item 1, subparagraph 974-155(1)(c)(i)]*

1.60 When the issuer and others participate in a way that demonstrates that the schemes are designed to operate together in a particular way to secure their combined economic result, this will tend to support aggregation. Where there is no common involvement across multiple schemes, it is less likely that the multiple schemes are designed to operate together in an interdependent way.

1.61 This factor is relevant to derivatives that are linked to the dividend yield or price of a share in a company. Where these derivatives are created and sold by financial intermediaries, without any involvement of the relevant company, they will not be aggregated with the shares. While there would be a clear link between the two schemes in the express terms of the derivatives, there would be no common involvement between the promoters of the derivatives and the company. Accordingly, it would not be appropriate to aggregate the derivatives with the shares.

The way the schemes are entered into and carried out

1.62 The second factor that must be considered in determining whether the design test is met is the manner in which the schemes are entered into or carried out — that is, the means or procedure by which the schemes are formulated, established and put into effect. *[Schedule #, item 1, subparagraph 974-155(1)(c)(ii)]*

1.63 The factor captures elements of artificiality or contrivance in the design of the schemes. In particular, if there is a more straightforward or ordinary method of achieving the outcome that the schemes lead to, this will tend to support the view that the schemes are designed to operate to produce their combined economic effect.

1.64 Matters beyond the contracts and legal documents underpinning the schemes should be considered, including the circumstances surrounding how the rights and obligations came about.

Non-arm's length dealings between parties to the schemes

1.65 The third factor that must be considered in determining whether the design test is met is whether there are any non-arm's length dealings between parties to the schemes. This factor is distinct from the first factor, which looks at relationships between parties, in that it looks to the quality of the *dealing* between the parties to the schemes. This allows for the purpose test to encompass circumstances in which arm's length parties have non-arm's length dealings. *[Schedule #, item 1, subparagraph 974-155(1)(c)(iii)]*

1.66 In determining whether parties deal at arm's length, any connection between them and any other relevant circumstances are to be considered (see the definition of *arm's length* in subsection 995-1(1)).

The relationships between any of the parties to the schemes

1.67 The fourth factor that must be considered in determining whether the design test is met is the relationships between any of the parties to the schemes. *[Schedule #, item 1, subparagraph 974-155(1)(c)(iv)]*

1.68 A close relationship between parties to the schemes tends to support the proposition that the schemes are designed to operate to produce the dependency, link or operation. If the different parties to the schemes are related parties, associates or connected entities, then it is more likely that the schemes are coordinated to produce a combined result.

Normal commercial understandings and practices

1.69 The fifth factor that must be considered in determining whether the design test is met is the normal commercial understandings and practices regarding the rights and obligations under the schemes (including whether the schemes are regarded commercially as separate or as a group or series that forms a whole). This factor focusses attention on how schemes are normally understood commercially and how they are practically treated in normal commercial dealings. [*Schedule #, item 1, subparagraph 974-155(c)(v)*]

1.70 This is a broad practical enquiry and focusses on what is normally understood by, and what is normally done by, people and entities engaged in the relevant sphere of commerce. Commercial understandings and practices should be applied as they exist from time to time.

Any other relevant matters

1.71 The final factor that must be considered in determining whether the design test is met is any other matters that are relevant with respect to the particular schemes and circumstances. [*Schedule #, item 1, subparagraph 974-155(1)(c)(vi)*]

Commissioner's determination

1.72 The Commissioner may determine that it would be unreasonable to apply the new scheme aggregation rule to particular schemes. Given the comprehensiveness of the new scheme aggregation rule, this discretion is a provision of last resort. [*Schedule #, item 1, paragraph 974-155(2)(b)*]

1.73 In exercising the power to make a determination, the Commissioner is required to have regard to the objects of the Division stated in subsections 974-10(2) and 974-10(3). [*Schedule #, item 13, paragraph 974-10(5)(f)*]

1.74 Other factors that may be relevant to the exercise of the Commissioner's discretion include the particular circumstances that result in aggregation, including the commercial basis of the transaction.

1.75 An entity can request that the Commissioner make a determination not to aggregate two or more schemes if, upon self-assessment, applying the rules leads to an inappropriate aggregation of the schemes. An entity may apply for a determination in relation to an interest of which they are the issuer. They may also apply for a determination in relation to an interest of which they would be the issuer if the determination were made or were not made (subsection 974-112(3)). The Commissioner may also make the determination on his or her own initiative (subsection 974-112(2)). *[Schedule #, item 33, section 974-112]*

1.76 To avoid overlap with the Commissioner's power under paragraph 974-155(2)(b), the Commissioner's power under subsection 974-150(1) does not apply to a scheme that is the result of applying the new scheme aggregation rule. The Commissioner's power under subsection 974-150(1) is a power to determine that a single scheme is to be treated as two or more separate schemes. *[Schedule #, items 36 and 37, subsections 974-150(1) and (4)]*

1.77 A similar amendment is made to avoid overlap between the new scheme aggregation rule and the power in subsection 974-150(3) to make regulations to specify circumstances in which a single scheme is to be treated as two or more separate schemes. *[Schedule #, items 36 and 37, subsections 974-150(3) and (4)]*

Examples in legislative instrument

1.78 In accordance with a recommendation of the Review, the new scheme aggregation rule will be supported by examples, declared by the Minister in a legislative instrument. These examples will give guidance as to how the new scheme aggregation rule will apply in particular circumstances. *[Schedule #, item 1, subsection 974-155(3)]*

1.79 The instrument-making power provides that an example may extend or narrow the operation of the new scheme aggregation rule. This is consistent with paragraph 15AD(b) of the *Acts Interpretation Act 1901*, which provides that an example in an Act of the operation of a provision may extend the operation of that provision.

Returns or transactions in respect of schemes

1.80 Section 974-105 currently provides that where a return is paid in respect of a component element of a scheme that gives rise to an equity interest (including an aggregated scheme), the return is taken to be paid in respect of an equity interest and not in respect of the component element. This reflects the policy that something that is part of an equity interest should not give rise to deductions.

1.81 However, because of the way paragraph 974-105(1)(b) is worded, section 974-105 cannot currently extend to returns paid in respect of a component element of a scheme where they are paid by an entity that is not a company (such as a trust). This may cause problems where schemes that include a trust paying returns on a scheme are aggregated under the new scheme aggregation rule and are treated as giving rise to an equity interest.

1.82 Therefore, section 974-105 is being amended so that it can apply to circumstances where returns on equity interests in a company are paid by trusts or other connected entities of the company. An amendment is also made to section 26-26 to prevent such entities from deducting returns on non-share equity interests. This is consistent with the position for companies, which are prevented from deducting returns on equity interests under section 26-26. *[Schedule #, items 2 and 3, subsection 26-26(3) and paragraph 974-105(1)(b)]*

Consequential amendments

1.83 Two or more schemes that are aggregated under the new scheme aggregation rule are treated as a single scheme for the purposes of the debt-equity rules in Division 974. The current related scheme rules do not deem aggregated schemes to be a single scheme; instead, they refer to a single interest arising from the schemes — that is, ‘two or more related schemes that give rise to a debt or equity interest’. The change in approach means that provisions which refer to aggregated schemes can be simplified. *[Schedule #, items 4 to 7, 11, 17 to 20, 25 to 27, 31 and 34, subparagraphs 128F(1)(c)(ii), 128F(1A)(d)(ii), and 128F(1B)(b)(ii), and subsections 128F(15) and (16) of the Income Tax Assessment Act 1936, subsections 974-10(3), 974-55(1), 974-60(1) and (3), and 974-110(1), (2) and (3), and the note to subsection 974-112(3) of the ITAA 1997]*

1.84 This change in approach also means that provisions that are only needed to accommodate the current approach can be repealed. Provisions that refer to the current related scheme rules or section 974-80 are also amended or repealed. *[Schedule #, items 8, 10, 12, 15, 16, 23, 24 and 32, table item 4 in subsection 820-930(1), section 974-1, paragraphs 974-10(5)(a) and (d), 974-25(1)(c) and (d), and 974-85(4)(a), subsections 974-95(2) and (3), and paragraphs 974-112(1)(a) and (d)]*

1.85 Because the definition of related schemes, currently in section 974-155, is no longer relevant to Division 974, it has been moved to subdivision 215-B, where the definition is still used. *[Schedule #, items 1, 9 and 38, sections 215-40 and 974-155, and the definition of ‘related schemes’ in subsection 995-1(1)]*

1.86 The Commissioner's power in paragraph 974-150(1)(b) to determine that two schemes are not related schemes for the purpose of Division 974 is no longer relevant. The power to make regulations for similar purposes in paragraph 974-150(3)(b) is also no longer relevant. Both of these powers are removed. *[Schedule #, items 35 to 37 and 39, heading to section 974-150, subsections 974-150(1) and (3), and the note at the end of the definition of 'scheme' in subsection 995-1(1)]*

1.87 Minor changes are made to the wording of certain provisions to improve clarity. These are not intended to alter the operation of the law. *[Schedule #, items 4 to 7, 14, and 28 to 31, subparagraphs 128F(1)(c)(ii), 128F(1A)(d)(ii) and 128F(1B)(b)(ii), and subsections 128F(15) and (16) of the Income Tax Assessment Act 1936, sections 974-15, 974-105 and 974-110 of the ITAA 1997]*

Application and transitional provisions

Application

1.88 The amendments in this Exposure Draft apply to transactions entered into on or after the commencement of this Schedule. The Schedule commences on a day fixed by Proclamation (or if there is no Proclamation, 6 months after Royal Assent) *[Schedule #, item 40]*

Transitional protection for taxpayers who anticipated the announcement

1.89 The former government announced, in the 2011-12 Budget, that the scope of section 974-80 would be clarified. Therefore, transitional amendments provide protection for taxpayers who relied on the 2011-12 Budget announcement.

1.90 In this regard, section 170B of the *Income Tax Assessment Act 1936* provides protection to taxpayers who anticipated legislation giving effect to certain announced but discontinued taxation measures. The scope of section 170B is being extended so that it also protects taxpayers that anticipated that the 2011-12 Budget measure would be legislated as it was then announced. This protection applies from the date of the 2011-12 Budget announcement (10 May 2011) to the day before the present amendments commence. *[Schedule #, item 41, subsections 170B(3) and 170B(8) of the Income Tax Assessment Act 1936]*

