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Mr Brendan McKenna
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The Treasury
Langton Crescent
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31 May 2018

By email: stapledstructures@treasury.gov.au

Improving the integrity of Stapled Structures and Other Measures
EY Submission

Dear Mr McKenna

Ernst & Young (EY) welcomes the opportunity to comment on the exposure draft (ED) (Treasury Laws Amendment (Stapled Structures and Other Measures) Bill 2018) released for comment on 17 May 2018 for consultation, on:

- The proposed changes announced on 27 March 2018 to the taxation of stapled operating-asset structures (staples)
- Measures targeting thin capitalisation
- Foreign investment concessions for foreign pension funds
- Foreign government (sovereign wealth) funds.

We note the ED does not include the planned integrity measures and agricultural land announcements.

The ED seeks to address numerous concerns raised by EY and industry through consultation to date. However, there are still a number of issues where the ED or explanatory materials require further clarification and development.

As previously raised, the proposals will increase the complexity of investment decisions across many investor sectors and increase compliance costs for Australian funds, property and infrastructure projects.

Given the significant impact the changes will have on property, infrastructure and other foreign investment into Australia, our focus in this submission is on enhancing certainty around:

- Transitional relief for existing investments
- Ensuring a meaningful concession for new nationally significant infrastructure
- Ensuring the new regime provides certainty and simplicity in the taxation of these investments going forward.

We summarise the issues we have identified in the Appendix. We have also participated in industry association consultation and submission processes.

Design of the proposed integrity measures

We note that the “integrity provisions” that will overlay the transitional measures in the ED are still to be released for consultation. This has the potential to undermine efforts evident in the ED to provide investors certainty around access to appropriate transitional relief for their long term infrastructure investments. Considering that these unreleased integrity measures are a critical component of both the transitional relief and the new nationally significant infrastructure concession we would like to make clear our ongoing commitment to engage with Treasury on this matter going forward.

In that regard:

- While the effective date for the relevant reforms will be 1 July 2019 at the earliest, investors are understandably keen to obtain certainty as soon as possible in respect of their existing investments and potential investments currently in the market. Therefore, it is important the Federal Government announce some clear policy direction on the scope of the 'integrity provisions' as a matter of urgency. We have recommended to Treasury that a Government announcement should clearly identify the integrity provisions at the same time as the Bill is introduced.

  This is all the more significant given that the Treasurer's March statement stated only that "34. Treasury will consult separately on the conditions stapled entities must comply with to access the transitional arrangements available under Element A (for example, stronger integrity rules may be needed to protect against aggressive cross staple pricing)."

- As you would be aware, in recent infrastructure transactions the ATO has imposed various practical conditions (often referred to as "safe harbours" or "flags on the beach") on investors in respect of matters such as purchase price allocation, gearing and profit allocation. In the midst of the transaction, investors have had little choice but to accept those conditions and price into their bids. We would concerned if a similar 'one size fits all' approach is adopted with respect to the proposed integrity provisions applying to transitional relief for the reason that:
  - Investors seeking transitional relief entered into long term transactions in good faith, under the prevailing tax law and tax administration - in many cases with the support of private binding rulings. Therefore, the transitional integrity provisions should acknowledge that the reforms represent a clear change in long standing tax policy and be focused on denying relief only to clearly abusive and uncommercial arrangements.
  - The Treasurer's announcement stated the objective of the reforms was to "neutralise the tax benefits of staples *without requiring investors to restructure their existing arrangements*". This objective should be front of mind when attempting to impose pricing and structural integrity provisions on existing transactions. Any integrity requirements should be flexible and cognisant of the wide range of transactions intended to be covered by the transitional provisions and the specific commercial considerations applicable in each case.

- We consider that recent transactions carried out under the sharply increased scrutiny and guidance from the ATO's infrastructure team should have the option of being considered to automatically satisfy the integrity provisions where they simply adhere to the commitments and undertakings made to the ATO and/or FIRB during the transaction process.

- Equally, earlier transactions that were implemented in accordance with what then were long standing commercial terms should not be prejudiced in their ability to satisfy the integrity requirements merely because they depart from current ATO guidance. This is particularly relevant where the end-user pricing on such arrangements is regulated.

We would be happy to have a further discussion on the above matters at the appropriate time.

If you would like to discuss this submission in more detail, would you please contact in the first instance either Richard Lambkin [redacted] who leads our taxation advisory to the infrastructure sector, or Alf Capito [redacted] our Oceania Tax Policy Services leader or Tony Stolarek [redacted] in our Tax Policy Services group.

Yours sincerely

Ernst & Young

EY Building a better working world

EY Submission – Improving the integrity of Stapled Structures and Other Measures
APPENDIX

Schedule 1 – Non-concessional MIT income

ISSUE	SUMMARY
Non-concessional MIT income – capital gains (s12-440)	The definition of non-concessional income currently captures capital gains arising from cross staple transactions. Asset transfers in stapled structures are a common occurrence including as part of group restructures and as preparatory steps for a change of use or divestment of assets. In the ordinary course of property and infrastructure structures such gains are not a re-characterisation of active income into passive income and are therefore outside the scope of the policy of the measures. The inclusion of capital gains also affects the calculations necessary for the de minimis test resulting in capital gains being included on only one side of the calculation (See further de minimis issues below). We submit that capital gains should be excluded from the definition of non-concessional MIT income. Treasury may consider whether an integrity rule is needed to cover circumstances where steps are taken to manufacture capital gains on the disposal of assets in circumstances where profits would otherwise be ordinary income.
Third party rent - attributable (ss12-440(3))	The proposed amendments contain an exception for cross-staple payments that are "attributable" to an amount of third party rent however there is no clear meaning to the term "attributable" in this context. We submit that the reference to "attributable" should be replaced by a requirement for a link between the lease agreements – i.e., the space that is leased by the Operating Co (OpCo) to third parties is the area (or part of the area) that is subject to a lease between the Asset Trust and the OpCo. This is preferred because requiring an amount to be "attributable" to third party rent has no clear meaning in this context. For example: · Where an OpCo derives both rent and service income from third parties, transfer pricing principles may result in the arm's length cross-staple rent exceeding the rent from the third party, noting that a lease of the space also creates capacity to derive service income and the pricing of lease on whole building is different from pricing of short term leases · Where an OpCo is in a loss position, it is not clear how to "attribute" the cross staple rent to third party rent (e.g., student accommodation not fully leased in the initial years) · Where an OpCo has transfer priced its cross-staple rent, but there is an unexpected downturn in the third party market (e.g., a local tertiary institute changes its admissions policy), it is possible that cross-staples rental amounts will exceed the third party rental income. In these cases, we consider that the cross-staple rent is still "attributable" to the third party rent, provided it was priced in accordance with the arm's length requirements, and that it was based on reasonable forecast information at the time the cross-staple lease agreement was entered into, i.e. no amount of the cross-staple rent should be considered to be non-concessional income (or sourced out of service fees). Obviously, it may

ISSUE	SUMMARY
	be necessary to revise the cross-staple rental payments (in accordance with arm's length principles) for future years. The EM should include examples in this regard.
Third party rent – rent definition (ss12-440(3))	Rent should be extended to include 'rent-like payments', such as amounts derived from third parties for hotel rooms. Such payments should be within the intended policy of the exception. This will also reduce the need for extensive analysis and potential requirements for ATO rulings on the technical nature of income received from the use of property – which we submit are inefficient from a policy and economic perspective. The potential exclusion of, for example, rent-like licence fees from a hotel investment, will lead to inappropriate and inconsistent outcomes. It is clear that it is intended that hotels are able to be held in a MIT, as is confirmed by the definition of a clean building which includes hotels. Given that a hotel can be held in a MIT, and a hotel is not "leased" to guests (such that the MIT does not derive rent), a hotel that is held in a MIT must be subject to a lease with a hotel operator (i.e., so the MIT derives rent from the hotel operator, and the hotel operator licenses the rooms to guests). There is no rational basis, from a policy perspective, to prevent hotels from being held in a stapled structure (noting the arm's length income requirements should result in the MIT deriving the income it would have derived if it appointed a third party operator), but allow hotels to be held in a MIT with a third party operator.
De minimis exception (s12-445)	Issues with the de minimis calculation include: · Clarification required of the numerator in the calculations. The numerator is currently the non-concessional MIT income from the previous year, which as defined in section 12-440 is a broad term, including amounts paid across the staple which forms part of the assessable income. Para 12-440(1)(c) excludes non fund payments (interest, non-TAP gains) using the vague terminology of "received, derived or made" by the second entity. This gives cause for uncertainty on interpretation where cross-staple interest payments take place. · Capital gains are included in definition of non-concessional MIT income for purposes of de minimis calculations on the numerator side. This is inconsistent. Capital gains should be excluded from both the numerator and the denominator as they do not represent the conversion of active income to passive income. · Treatment of groups. The calculation is performed on both an individual entity and at a head of a group basis, potentially resulting in different outcomes between groups dependant on whether a single or multi entity structure is used. Such an outcome results in an un-level playing field.
De minimis exception – downstream MIT income (s12-445)	The proposed amendments may result in a MIT deriving (indirectly) non-concessional income through a downstream entity that it does not control. That is, even in circumstances where the MIT holds only a portfolio interest (such that it would not be expected to control the entity for Division 6C

ISSUE	SUMMARY
	purposes), the legislation requires the MIT to consider whether it is indirectly deriving non-concessional amounts. The likelihood of obtaining information from a downstream non-MIT trust in which a MIT holds a portfolio interest in respect of its non-concessional income is low. A de minimis threshold of at least 10% would be more appropriate.
De minimis exception - application issues (s12-445)	First year application needs to be drafted. It would appear this rule is currently not available in the first year of operation of a fund. Such an outcome results in an un-level playing field. A start up rule should be included to provide an exemption for that first year. Application in 2019/20 year needs to be reviewed and redrafted. It would appear that 2018/19 income would need to be analysed and classified for the purpose of applying the de minimis rule. This will be a compliance burden in the first year as no systems will have captured that information. Another proxy should be included or a reasonable estimate should be allowed for this first year.
Definition of non-concessional MIT income - Application issues (s12-440)	The references to amounts "derived, received or made" throughout section 12-440 would appear to capture relevant fund payments of 2018/19 year income made in the 2019/20 year under the up to 3 months after year end fund payment rule. This outcome would potentially capture income of years before the 1 July 2019 application date. We submit a transitional rule should exclude income from the 2018/19 year and earlier.
Non-concessional MIT income attributable to trading business (ss12-440(7))	We expect that income from a public trading trust (ie where the public unit trust requirement is met) is not intended to be caught by this provision. To avoid confusion (including with the interaction with the exclusions in para 12-440(1)(c) the ED and EM should make this clear.
Interaction issues	The new rules add to technical issues with determining the correct application of the various withholding tax provisions. While this is not a new issue the inclusion of additional withholding tax provisions presents an opportunity for Treasury to clarify all interactions and priority of application and also to ensure multiple withholding does not technically arise. The withholding tax interaction should be clarified if not in this Bill then in the following Bill which will introduced the announced measures not yet covered.
Approved economic infrastructure asset exemption – asset definition (s12-450)	The definition of economic infrastructure asset requires additional and more specific examples. This definition creates the potential that ATO rulings will be sought on many projects to remove uncertainty, increasing the costs of compliance from the measure. For instance, will storage qualify?
Approved economic infrastructure asset exemption – process for applications	The limitation that only Australian government agencies may apply to the Treasurer for the concession raises issues for privately procured projects which satisfy all the other requirements. For example, in large scale renewables projects typically undertaken among wholly private sector

ISSUE	SUMMARY
(s12-450)	parties, the parties would need to ask a government agency to make the application on their behalf, but we query if this would happen in practice. We recommend that the scope to apply for the concession should be broadened to allow agencies of governments other than the Australian (ie Commonwealth) government. This may require further Treasury support to be provided for the purpose of considering applications.
Approved economic infrastructure asset exemption - public purposes (12-450(4))	The law should clarify how the public purposes definition applies to a project, and in particular that this is not a binary definition (100% or nil). For example if a port is available for public purposes but happens to have an initial group of users who represent 95% of its throughput, we submit that it should be accepted as being capable of use for public purposes. We submit that "public purposes" should include assets used to indirectly provide services to the public (eg electricity transmission or desalination assets) and assets capable of use by the public through some form of open access regime. An open access requirement would allow appropriate elimination of assets not available for public access.
Approved economic infrastructure asset exemption - $500m condition (Para 12-450(3)(b))	The $500m capital expenditure condition's reference to "the asset" creates uncertainty and will likely lead to disputes. The law and EM should make clear that this is a reference to expenditure on a particular economic infrastructure project rather than a particular asset. EM examples similar to those considering the enhancement of an asset for the transitional rule for non-concessional MIT income should also be included.
Approved economic infrastructure asset exemption – other issues (s12-450)	Guidance is needed on how the exemption for amounts attributable to an approved economic infrastructure asset applies where there is a mix of rents and license income in the relevant amount, eg a port with 60% rent and 30% services income. This could be in the EM or the law. The 15 year concession period commences when the asset is first put to use, which is preferable to commencing the concession period from financial close. However as most greenfield projects will be in tax losses for many years into operations we note this limits the practical benefit. Part IVA interaction - The ED confirms availability of a deduction for cross staple rent during the concession period. However, it is not clear that the drafting removes the deduction from a potential application of Part IVA which was the intent as announced by the Treasurer. The implementation of this announced exclusion should be clearly set out. We submit that a minimum this requires discussion in the EM.
Transitional rules – establishment issues (Schedule 1 – part 3)	The transitional measures subitem 9(2) contains a requirement that "all of the stapled entities in relation to the cross staple arrangement already exist before 27 March 2018": this needs to be broadened. Where an asset has been acquired and is being developed by the asset trust, it is possible that the operating entity may not have yet been established (noting that it

<table>
<tr><th>ISSUE</th><th>SUMMARY</th></tr>
<tr><td></td><td>would only be required post-development). Similarly, an operating entity may have been established, but there may be an intention to establish sub trusts and sub operating entities for each asset.

Accordingly, there should be no requirement that all of the entities were established as at 27 March 2018, given that the transitional measures are only available where it is reasonable to conclude that a cross staple arrangement will be entered into in relation to the asset.

Where one entity for example the trust is in existence however the other (the company is not), but the intention remains to create the company and complete the stapled entity the transitional rules should still be available.</td></tr>
<tr><td>Transitional rules – restructures (Schedule 1 – part 3)</td><td>The transitional measures should recognise that over the decades-long infrastructure project life there will be internal restructures – not motivated by tax avoidance purposes but by commercial factors. The current drafting is problematic. Where assets are held in a pre-existing stapled structure, the transitional measures will not apply where those assets are internally restructured. It may be necessary to internally restructure assets within a stapled structure in preparation (for example) for an Initial Public Offering. Similarly, a restructure may also be undertaken at the behest of lenders, in order to ensure that appropriate security is able to be taken over assets.

The transitional measures should be extended to include the following circumstances:
· Preferably, entities created post 27 March 2018 where those entities were created when an existing stapled structure is internally reorganised with no change in the ultimate total participation interests in each of the stapled entities (and the same ultimate total participation interests held in the newly established entities i.e., some of those stapled entities may be new entities); or
· As a fall back (less preferred option), entities created post 27 March 2018 where an existing stapled structure is internally reorganised, with a CGT rollover being applicable to the restructure.

It will also be necessary to make corresponding changes to the requirement that an asset was acquired (or an agreement to acquire the asset was entered into) prior to 27 March 2018 (since the new entity could not have entered into such an agreement).</td></tr>
<tr><td>Transitional rules - contracts (Schedule 1 – part 3)</td><td>More clarity is needed regarding “entry into a contract” in respect of the acquisition or creation of an asset and if the stapled arrangement is still in the process of being established. For example:
· Would it include an option to acquire, where the option holder intended to exercise the option as at 27 March 2018?
· If a windfarm is intended to be built but the sponsor has merely entered into option for land is this enough to constitute entry into contract?</td></tr>
<tr><td>Transitional rules</td><td>Subitem 9(2) requires an additional transitional measure. The item contains a requirement that “it is reasonable to conclude that a cross staple arrangement will be entered into in relation to the asset”. Unlike subitem</td></tr>
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ISSUE	SUMMARY
(Schedule 1 – part 3) Drafting error between items 9(1) and 9(2)	9(1), this subitem does not include a transitional measure for where "a cross staple arrangement was entered into in relation to the asset before 27 March 2018". We submit that this should be included, noting that it appears to be a drafting error – the draft EM (DEM) suggests that this is the intention.
Transitional rules - asset (Schedule 1 – part 3)	The definition of "asset' in the ED is, we submit narrower than the policy intent in the draft EM, and the ED drafting needs adjustment. What constitutes the "asset" for these purposes will be critical to determining whether enhancements, refurbishments and/or expansions of the asset are covered by the transitional regime. Some assistance is provided by examples in the DEM: one example contemplates that an electricity network would be the relevant asset such that later network expansions may be covered by the transitional measures. The DEM is the correct policy approach with which we agree. We query whether a privatised infrastructure business, for example an electricity network, could be properly characterised as an "asset" within the ordinary meaning of that term without legislative clarification. While the DEM example 1.4 is helpful in demonstrating the legislative intent, of itself, the EM would not be considered determinative by a court where the ordinary meaning of the term "asset" is considered clear on the face of the legislation. Therefore, we consider that some additional legislative clarification of the treatment of the whole of a privatised business as a single asset for the purposes of the transitional provisions is appropriate. Further clarity should also be provided in the EM regarding the application of the transitional arrangements to staged developments.
Transitional rules – Part IVA (Schedule 1 – part 3)	The ED confirms availability of a deduction for cross staple rent during the concession period. However, as above, it is not clear that the drafting removes the deduction from a potential application of Part IVA as announced by the Treasurer. The implementation of this announced exclusion should be clearly set out, at minimum in the EM.
Transitional trading income rules (Schedule 1 – part 3 item 10)	The transitional measures need to cover scenarios where a MIT increases its percentage interest in a downstream trust. The lack of coverage in the ED of scenarios where a MIT increases its percentage interest in a downstream trust results in any additional interest acquired not being transitioned. This leads to unusual results, since: · If a non-MIT upstream investor increases its percentage interest in the MIT, the transitional measures will be available (i.e., distributions by the MIT will be eligible for the 15% concessional tax) · If a MIT divests of some of its interests in a Sub Trust which qualifies as a MIT (and that derives cross-staple payments) to a non-resident, the non-resident will be eligible for the 15% withholding tax. However, if the non-resident establishes its own MIT for the acquisition of the interests in the Sub Trust, then the MIT will not be eligible for the 15% rate.

Schedule 3 - Superannuation funds for foreign residents withholding tax exemption

Participation interests – debt interests carve out (ss128B(3CC))	The proposed measure broadens the definition of a participation interest to include a "debt interest" where that interest confers on its holder a right to participate in making financial, operating, and policy decisions in respect of the issuer, subject to a limited carve out for rights that arise because of a breach of terms. In genuine third party debt arrangements, it is common for a lender to restrict the capacity of the borrower to (for example) make certain investments, pay distributions, or undertake certain other financial and operational matters without their consent. This should not be the target of the proposed measures – these are genuine third party arrangements, not to effect control of the underlying entity, but instead to ensure that their right to interest and principal payments is not adversely affected. The carve out for lender rights should be extended to include rights which facilitate the participating in making financial, operating and policy decisions which arise as a result of providing financial accommodation under ordinary commercial terms.
Meaning of 'influence' – further issues (DEM paragraph 3.11)	The DEM contains at 3.11 some words which seem not precisely aligned with the ED. DEM 3.11 contains the requirement: "where the superannuation fund does not hold an ownership interest of 10 per cent or more and does not have influence over the entity's key decision making." But the proposed para 128B(3CB)(b) refers to: "that interest confers or those interests confer a right on the first entity: (i) to vote at a meeting of the Board of Directors (or other governing body) of the second entity; or (ii) to participate in making financial, operating and policy decisions in respect of the second entity; or (iii) to deal with assets of the second entity We submit that more detail is required in the law on the meaning given to 'influence' for the purpose of qualifying for the withholding tax exemption. In particular we are concerned about the breadth of preventing the concession for any foreign superannuation fund (FSF) which can vote or participate in some circumstances. The ED recognises, and we welcome this, that the interest that gives rise to the right can be an equity or debt interest, and there is a carve-out for rights conferred by a debt interest which arise because of a breach of the terms (proposed ss128B(3CC). However, there may be a range of other rights which facilitate the FSF participating in making financial, operating and policy decisions which arise as a result of providing financial accommodation under ordinary commercial terms – we think such rights should also be included in the carve out.

	Given the deeming provisions and the wide ambit of participating in the making of financial, operating and policy decisions, these measures may have implications for FSF investors who sit on the Investment & Advisory committee of a fund or have a co-investment structures. The drafting in respect of these proposed laws needs further clarity from Treasury. Also, clarification is needed for situations where ownership rights have been relinquished (or ignored) as part of an agreement and the subsequent impact on the withholding tax exemption qualification. The DEM mentions at 3.16 taking rights arising from side letters and ancillary agreements into account but does not elaborate as to whether this can constitute or eliminate perceived influence. We highlight that, on the drafting, unlisted infrastructure assets will have significant influence problems simply because the FSFs will be permitted to have representation and participation even if not significant influence. Additionally, the rules should not be applicable if an entity has purely debt interest with no equity, and has dividend stopper documentation clauses in place to prevent equity holders from withdrawing funds by way of dividends. In some situations such dividend stoppers would impact policy decisions and thus the owner of the debt would not receive the 0% withholding rate - this is broader than ss128B(3CC) and the announcement which said influence over entity key decision-making.
Interest requirements (DEM paragraph 3.13-3.15)	The drafting raises issues where a FSF has multiple small interests in multiple interposed entities. DEM 3.13 states: *"if it has a membership interest, debt interest or non-share equity interest in the entity that paid it the income costing [consisting?] of interest or dividends."* Assume a FSF, as part of its portfolio diversification invests through a number of fund manager intermediaries. The FSF might have say a 15% interest in one Australian infrastructure fund and a series of unconnected under-10% interests in Australian infrastructure funds. It may be that the unconnected funds' investments might result in the FSF holdings amounting to more than 10% in one particular project. We recognise there needs to be a look through multiple funds to maintain integrity, but submit that the look-through should not involve widely held infrastructure fund MITs or trusts.
12 month look back rule (Para 128B(3CA)(b))	The proposed requirement to look back to a previous 12 month period within the previous 24 months in order to determine the withholding tax implications creates unnecessary additional complexity and compliance costs. For example, if a superannuation fund for foreign residents reduces its interest from 15% to 5%, the 10% withholding tax will continue to apply until the relevant 12 month period post sell down has elapsed. Many custodians (who will be the withholding agent) will not have systems set up that could track and administer this.

	There should be no requirement to look at prior percentage holdings. Alternatively the DEM could recognise a best endeavours approach to looking back in time to determine withholding application for current year.

Schedule 4 – Sovereign immunity

Application and transitional - ATO ruling requirement (Schedule 4 – Part 2)	The application and transitional measures at Part 2 state that a sovereign entity is not excluded unless it has a private ruling at March 2018. This mandatory requirement for the base 7 year transition period (sub-item 2) was not in the Treasurer's announcement and policy paper. The ATO ruling requirement is onerous and does not cover transitional situations fully. We note that sovereign entity investors will not have received private rulings in relation to each and every investment if they had previously received indicative or general or rulings which established the relevant principles as between the ATO and themselves. We submit the ED should allow for a sovereign entity which does not have a private binding ruling, but where the entity has previously obtained private rulings which have been consistent with the relevant investment assets. The DEM if not the law should recognise rulings issued after 27 March 2018 that relate to facts/actions that took place before 27 March 2018 are also valid. We note also that sovereign wealth funds rulings issued to custodians would not specifically refer to particular project investments.
Grouping (Para 880-105(1)(d))	The measures look to aggregate the interests of all sovereign entities of a country such that the 10% requirement cannot be breached on a 'whole of country' basis. Given that many countries have a number of sovereign entities (including at a State and Federal level), the unintended consequences of this drafting requires consideration and clarification by Treasury. We submit that such grouping is not appropriate where the respective sovereign entities operate independently in respect of the relevant investment. For such entities, mere grouping sovereign entities by grouping their jurisdiction of origin are not appropriate. The proposed changes can restrict the availability of sovereign immunity for sovereign entities that have a number of investing vehicles into a fund, sit on the Investment & Advisory committee of a fund and/or have co-investment structures. Grouping of sovereign wealth funds may also not be appropriate given transparency arrangements in some jurisdictions between different levels of governments
Interaction issues – CGT exemptions	For completeness, a comment on CGT interaction (or lack thereof) with sovereign wealth fund measures would be appreciated. This could be in the law or EM.

Influence (ss880-105(2))	As set out in our submission on schedule 3, in respect of debt investments, we submit that the influence relevant for these purposes should be restricted to exclude the types of influence ordinarily exercised by arm's length debt financiers.
Schedule interactions	The law should clarify, or at minimum the EM should clarify, the treatment of circumstances where entities not eligible for the sovereign wealth concessions per the law (for example due to a participation interest exceeding the required level), are eligible for the infrastructure concessions under Schedule 1. We understand that cross staple payments for the 15 years of the new infrastructure concession (because the cross staple income isn't non-concessional MIT income during that time) are eligible for the 15% rate applies in the concessional period, but not sovereign immunity. Similarly for an existing economic infrastructure investment in transition – once the 7 year sovereign immunity concession has run out the tax rate will go up to 15% for the remaining 8 years of transition.