

# EXPOSURE DRAFT

2016-2017-2018

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT
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## **Treasury Laws Amendment (Stapled Structures and Other Measures) Bill 2018**

**No.     , 2018**

*(Treasury)*

**A Bill for an Act to amend the law relating to  
taxation, and for related purposes**

**EXPOSURE DRAFT**



# EXPOSURE DRAFT

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## Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedules.....	2
<b>Schedule 1—Non-concessional MIT income</b>		3
Part 1—Main amendments		3
<i>Taxation Administration Act 1953</i>		3
Part 2—Definitions		12
<i>Income Tax Assessment Act 1997</i>		12
Part 3—Application and transitional provisions		13
<b>Schedule 2—Thin capitalisation</b>		17
<i>Income Tax Assessment Act 1997</i>		17
<b>Schedule 3—Superannuation funds for foreign residents withholding tax exemption</b>		18
Part 1—Amendments		18
<i>Income Tax Assessment Act 1936</i>		18
Part 2—Application provisions		20
<b>Schedule 4—Sovereign immunity</b>		21
Part 1—Amendments		21
<i>Income Tax Assessment Act 1936</i>		21
<i>Income Tax Assessment Act 1997</i>		21
Part 2—Application and transitional provisions		25
Part 3—Definitions		27
<i>Income Tax Assessment Act 1997</i>		27



1 **A Bill for an Act to amend the law relating to**  
2 **taxation, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Treasury Laws Amendment (Stapled Structures and*  
6 *Other Measures) Act 2018.*

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table  
9 commences, or is taken to have commenced, in accordance with  
10 column 2 of the table. Any other statement in column 2 has effect  
11 according to its terms.

# EXPOSURE DRAFT

1

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## Commencement information

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**Column 1**

**Column 2**

**Column 3**

**Provisions**

**Commencement**

**Date/Details**

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1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table

The day this Act receives the Royal Assent.

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2. Schedules 1 to 4

The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.

2

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

3

4

5

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

6

7

8

## 3 Schedules

9

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

10

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12

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2

*Treasury Laws Amendment (Stapled Structures and Other Measures)*

No. , 2018

*Bill 2018*

EXPOSURE DRAFT

# EXPOSURE DRAFT

Non-concessional MIT income **Schedule 1**  
Main amendments **Part 1**

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## 1 **Schedule 1—Non-concessional MIT income**

### 2 **Part 1—Main amendments**

#### 3 *Taxation Administration Act 1953*

#### 4 **1 Paragraph 12-385(3)(a) in Schedule 1**

5 Repeal the paragraph, substitute:

- 6 (a) if the address or place for payment of the recipient is in an  
7 \*information exchange country:
- 8 (i) 15% for \*fund payments, except to the extent mentioned  
9 in subparagraph (ii) or (iii); or
  - 10 (ii) the highest corporate tax rate for fund payments, to the  
11 extent that they are attributable to \*non-concessional  
12 MIT income (see section 12-435); or
  - 13 (iii) 10% for fund payments, to the extent that they are, or  
14 are attributable to, fund payments from a clean building  
15 managed investment trust; or

#### 16 **2 Paragraph 12-390(3)(a) in Schedule 1**

17 Repeal the paragraph, substitute:

- 18 (a) if the address or place for payment of the recipient is in an  
19 \*information exchange country:
- 20 (i) 15% for \*fund payments, except to the extent mentioned  
21 in subparagraph (ii) or (iii); or
  - 22 (ii) the highest corporate tax rate for fund payments, to the  
23 extent that they are attributable to \*non-concessional  
24 MIT income (see section 12-435); or
  - 25 (iii) 10% for fund payments, to the extent that they are, or  
26 are attributable to, fund payments from a clean building  
27 managed investment trust; or

#### 28 **3 Paragraph 12-390(6)(a) in Schedule 1**

29 Repeal the paragraph, substitute:

- 30 (a) if the recipient is a resident of an \*information exchange  
31 country:

# EXPOSURE DRAFT

## Schedule 1 Non-concessional MIT income

### Part 1 Main amendments

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- 1 (i) 15% for fund payments, except to the extent mentioned  
2 in subparagraph (ii) or (iii); or  
3 (ii) the highest corporate tax rate for fund payments, to the  
4 extent that they are attributable to \*non-concessional  
5 MIT income (see section 12-435); or  
6 (iii) 10% for fund payments to the extent that they are, or are  
7 attributable to, fund payments from a clean building  
8 managed investment trust; or

#### 9 **4 After paragraph 12-395(3)(a) in Schedule 1**

10 Insert:

- 11 (aaa) must specify the extent (if any) to which the payment is, or is  
12 attributable to, \*non-concessional MIT income (see  
13 section 12-435); and

#### 14 **5 After paragraph 12-395(6)(a) in Schedule 1**

15 Insert:

- 16 (aaa) must specify the extent (if any) to which the payment is, or is  
17 attributable to, \*non-concessional MIT income (see  
18 section 12-435); and

#### 19 **6 At the end of Subdivision 12-H of Part 2-5 in Schedule 1**

20 Add:

#### 21 **12-435 Extent of fund payment attributable to non-concessional** 22 **MIT income**

23 For the purposes of this Part, the extent to which a \*fund payment  
24 made in an income year by a \*managed investment trust in relation  
25 to that income year is attributable to \*non-concessional MIT  
26 income is:

- 27 (a) in the case of a managed investment trust that is *not* an  
28 \*AMIT in relation to that income year—so much of the \*net  
29 income of the managed investment trust for that income year  
30 as is attributable to non-concessional MIT income; or  
31 (b) in the case of a managed investment trust that is an AMIT in  
32 relation to that income year—the amount of the AMIT's



# EXPOSURE DRAFT

## Schedule 1 Non-concessional MIT income

### Part 1 Main amendments

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- 1 (i) if subparagraph (a)(i) applies—derived, received or  
2 made by the managed investment trust from the second  
3 entity; or  
4 (ii) if subparagraph (a)(ii) applies—attributable to an  
5 amount derived, received or made by the second entity  
6 from the third entity.

- 7 (3) The amount is *not non-concessional MIT income* of the \*managed  
8 investment trust under subsection (2) to the extent that it is  
9 attributable to an amount that satisfies the following requirements:  
10 (a) the amount is derived, received or made by a \*stapled entity  
11 in relation to the \*cross staple arrangement from an entity that  
12 is not a stapled entity in relation to the cross staple  
13 arrangement; and  
14 (b) the amount mentioned in paragraph (a) is rent.

15 Note: The amount may still be non-concessional MIT income under  
16 subsection (7).

- 17 (4) The amount is *not non-concessional MIT income* of the \*managed  
18 investment trust under subsection (2) if:  
19 (a) if subparagraph (2)(a)(i) applies—subsection 12-445(1)  
20 applies for the income year to the managed investment trust;  
21 or  
22 (b) if subparagraph (2)(a)(ii) applies—subsection 12-445(4)  
23 applies for the income year to the second entity mentioned in  
24 that subparagraph.

25 Note: The amount may still be non-concessional MIT income under  
26 subsection (7).

- 27 (5) If the amount is rent, it is *not non-concessional MIT income* of the  
28 \*managed investment trust under subsection (2) to the extent that it  
29 is attributable to an asset covered by section 12-450 throughout the  
30 income year.

31 Note: The amount may still be non-concessional MIT income under  
32 subsection (7).

- 33 (6) The amount is *not non-concessional MIT income* of the \*managed  
34 investment trust under subsection (2) to the extent that it is

# EXPOSURE DRAFT

Non-concessional MIT income **Schedule 1**  
Main amendments **Part 1**

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1 non-concessional MIT income of the managed investment trust  
2 under subsection (7).

3 (7) The amount is *non-concessional MIT income* of the \*managed  
4 investment trust if:

5 (a) the managed investment trust holds a \*total participation  
6 interest in the second entity of greater than nil; and

7 (b) the second entity:

8 (i) is a trading trust for the purposes of Division 6C of  
9 Part III of the *Income Tax Assessment Act 1936*) in  
10 relation to the income year; or

11 (ii) is a partnership or a trust that is not a unit trust, but  
12 would be such a trading trust in relation to the income  
13 year if it were a unit trust throughout the income year.

## 14 **12-445 Non-concessional MIT income—de minimis exception for** 15 **cross staple arrangements**

16 (1) For the purposes of subparagraph 12-440(4)(a), this subsection  
17 applies for the income year to the \*managed investment trust if:

18 (a) the \*non-concessional MIT income of the managed  
19 investment trust for the previous income year does not  
20 exceed 5% of the amount mentioned in subsection (2); and

21 (b) if the non-concessional MIT income of the managed  
22 investment trust for the previous income year was wholly or  
23 partly attributable to one or more amounts derived from,  
24 received from or paid by another trust—the sum of those  
25 amounts does not exceed 5% of the amount mentioned in  
26 subsection (2).

27 (2) The amount is:

28 (a) if the \*managed investment trust is not an \*AMIT for the  
29 income year—the assessable income of the managed  
30 investment trust for the previous income year (worked out for  
31 the purposes of determining the \*net income of the managed  
32 investment trust for the income year); or

33 (b) where the managed investment trust is an AMIT for the  
34 income year—the total assessable income (as mentioned in

# EXPOSURE DRAFT

## Schedule 1 Non-concessional MIT income

### Part 1 Main amendments

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- 1 subsection 276-265(2)) of the managed investment trust for  
2 the previous income year.
- 3 (3) For the purposes of subsection (2), in working out the assessable  
4 income, or the total assessable income, of the \*managed investment  
5 trust for the previous income year, disregard any \*net capital gain  
6 of the managed investment trust for that year.
- 7 (4) For the purposes of paragraph 12-440(4)(b), this subsection applies  
8 for the income year to the second entity mentioned in that  
9 paragraph if, assuming that the second entity were a \*managed  
10 investment trust, the requirements in subsection (1) would be  
11 satisfied in relation to it.

### 12 **12-450 Non-concessional MIT income—approved economic** 13 **infrastructure asset exception**

- 14 (1) This section covers an asset at a time if:  
15 (a) the asset is covered by approval of the Treasurer under this  
16 section that is in force at that time; and  
17 (b) that time is no later than the end of the period of 15 years  
18 beginning on the day on which the asset is first put to use.
- 19 (2) An \*Australian government agency (other than the  
20 Commonwealth) may make an application to the Treasurer in  
21 respect of an asset specified in the application.
- 22 (3) The Treasurer may approve the asset specified in an application  
23 under subsection (2) if the Treasurer is satisfied that the following  
24 criteria are met:  
25 (a) the asset is an \*economic infrastructure asset;  
26 (b) the estimated capital expenditure on the asset is \$500 million  
27 or more;  
28 (c) the asset is yet to be constructed, or the asset is an existing  
29 asset that will be substantially improved;  
30 (d) the asset will significantly enhance the long-term productive  
31 capacity of the economy;  
32 (e) approving the asset is in the national interest.

# EXPOSURE DRAFT

Non-concessional MIT income **Schedule 1**  
Main amendments **Part 1**

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- 1 (4) An *economic infrastructure asset* is an asset that is any of the  
2 following:  
3 (a) transport infrastructure for public purposes;  
4 (b) energy infrastructure for public purposes;  
5 (c) communications infrastructure for public purposes;  
6 (d) water infrastructure for public purposes.
- 7 (5) An approval under subsection (3):  
8 (a) must be in writing; and  
9 (b) must specify the asset that is approved; and  
10 (c) must specify the date on which the approval comes into  
11 force; and  
12 (d) may contain any other information that the Treasurer  
13 considers appropriate.
- 14 (6) The Treasurer may publish an approval under subsection (3) in any  
15 way that he or she considers appropriate.
- 16 (7) If the Treasurer decides not to approve the asset specified in an  
17 application under subsection (2), the Treasurer must notify the  
18 applicant of the decision, in writing, as soon as practicable after  
19 making the decision.

## 20 **12-453 Deduction for payment of rent by operating entity to asset** 21 **entity in relation to approved economic infrastructure** 22 **asset**

- 23 (1) An entity that is an \*operating entity in relation to a \*cross staple  
24 arrangement is entitled to a deduction for an income year for an  
25 amount of rent if:  
26 (a) another entity derives or receives the amount of rent from the  
27 operating entity in the income year; and  
28 (b) the derivation or receipt is on or after 27 March 2018; and  
29 (c) the other entity is an \*asset entity in relation to the cross  
30 staple arrangement; and  
31 (d) the operating entity is entitled to a general deduction for the  
32 amount (disregarding this subsection) under section 8-1 of  
33 the *Income Tax Assessment Act 1997*; and

EXPOSURE DRAFT

# EXPOSURE DRAFT

## Schedule 1 Non-concessional MIT income

### Part 1 Main amendments

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- 1 (e) the cross staple arrangement was entered into in relation to an  
2 asset; and  
3 (f) the amount mentioned in paragraph (a) relates to the asset;  
4 and  
5 (g) the asset is covered by section 12-450 throughout the income  
6 year in which the amount is derived or received; and  
7 (h) each entity that is a \*stapled entity in relation to the cross  
8 staple arrangement has made a choice in accordance with  
9 subsection (2).
- 10 (2) An entity may make a choice in accordance with this subsection if:  
11 (a) the choice is in writing; and  
12 (b) the entity makes the choice before the start of the income  
13 year in which the asset is first put to use.
- 14 (3) The choice cannot be revoked.

#### 15 **12-455 Meaning of *asset entity*, *operating entity*, *cross staple*** 16 ***arrangement* and *stapled entity***

- 17 (1) An ***asset entity*** in relation to an income year is a trust or  
18 partnership that is *not* covered by subsection 275-10(4) of the  
19 *Income Tax Assessment Act 1997* in relation to the income year.
- 20 (2) An ***operating entity*** in relation to an income year is a trust,  
21 partnership or company that is covered by subsection 275-10(4) of  
22 the *Income Tax Assessment Act 1997* in relation to the income year.
- 23 (3) For the purposes of this section, in determining whether a  
24 partnership or company is covered by subsection 275-10(4) of the  
25 *Income Tax Assessment Act 1997*, treat the partnership or company  
26 as a trust.
- 27 (4) A ***cross staple arrangement*** is an arrangement that is entered into  
28 by 2 or more entities (the ***arrangement entities***) if:  
29 (a) at least one of the arrangement entities is an asset entity; and  
30 (b) at least one of the arrangement entities is an operating entity;  
31 and  
32 (c) the following conditions are satisfied:

# EXPOSURE DRAFT

Non-concessional MIT income **Schedule 1**  
Main amendments **Part 1**

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- 1 (i) one or more other entities (the *external entities*) each  
2 have a \*total participation interest in each arrangement  
3 entity;  
4 (ii) the sum of the total participation interests of the external  
5 entities in each arrangement entity is 80% or more.
- 6 (5) Subsection (6) applies if:  
7 (a) an external entity has \*total participation interests in two or  
8 more arrangement entities; and  
9 (b) either:  
10 (i) the amount (the *lowest participation interest amount*)  
11 of one of those participation interests falls short of the  
12 amount of each of the other participation interests; or  
13 (ii) the amount (the *lowest participation interest amount*)  
14 of two or more of those participation interests is equal to  
15 but falls short of the amount of each of the other  
16 participation interests.
- 17 (6) For the purposes of paragraph (4)(c), treat the amount of the  
18 external entity's \*total participation interest in each of the  
19 arrangement entities as being equal to the lowest participation  
20 interest amount.
- 21 (7) Each of the entities that entered into the \*cross staple arrangement  
22 is a *stapled entity* in relation to the cross staple arrangement.

# EXPOSURE DRAFT

Schedule 1 Non-concessional MIT income

Part 2 Definitions

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1 **Part 2—Definitions**

2 ***Income Tax Assessment Act 1997***

3 **7 Subsection 995-1(1)**

4 Insert:

5 *asset entity* has the meaning given by section 12-455 in Schedule 1  
6 to the *Taxation Administration Act 1953*.

7 *cross staple arrangement* has the meaning given by section 12-455  
8 in Schedule 1 to the *Taxation Administration Act 1953*.

9 *economic infrastructure asset* has the meaning given by  
10 section 12-450 in Schedule 1 to the *Taxation Administration Act*  
11 *1953*.

12 *non-concessional MIT income* has the meaning given by  
13 section 12-440 in Schedule 1 to the *Taxation Administration Act*  
14 *1953*.

15 *operating entity* has the meaning given by section 12-455 in  
16 Schedule 1 to the *Taxation Administration Act 1953*.

17 *stapled entity* has the meaning given by section 12-455 in  
18 Schedule 1 to the *Taxation Administration Act 1953*.

# EXPOSURE DRAFT

Non-concessional MIT income **Schedule 1**  
Application and transitional provisions **Part 3**

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1 **Part 3—Application and transitional provisions**

2 **8 Application**

3 The amendments made by this Schedule apply to a fund payment made  
4 by a managed investment trust in relation to an income year if the fund  
5 payment is made on or after 1 July 2019.

6 **9 Transitional—non-concessional MIT income under**  
7 **subsection 12-440(2) in Schedule 1 to the *Taxation***  
8 ***Administration Act 1953***

9 (1) This item applies if:

- 10 (a) before 27 March 2018, an Australian government agency:
- 11 (i) decided to approve the acquisition or creation of an  
12 asset; and
- 13 (ii) publicly announced that decision; and
- 14 (iii) took significant preparatory steps to implement that  
15 decision; and
- 16 (b) either:
- 17 (i) a cross staple arrangement was entered into in relation  
18 to the asset before 27 March 2018; or
- 19 (ii) it is reasonable to conclude that a cross staple  
20 arrangement will be entered into in relation to the asset;  
21 and
- 22 (c) it is reasonable to conclude that all the entities that will be  
23 stapled entities in relation to the cross staple arrangement  
24 already exist before 27 March 2018; and
- 25 (d) each entity that is a stapled entity in relation to the cross  
26 staple arrangement, or that will become a stapled entity in  
27 relation to the cross staple arrangement, has made a choice in  
28 accordance with subitem (6).

29 (2) This item also applies if:

- 30 (a) an entity entered into a contract before 27 March 2018 in  
31 respect of the acquisition or creation of an asset; and
- 32 (b) it is reasonable to conclude that a cross staple arrangement  
33 will be entered into in relation to the asset; and
-

# EXPOSURE DRAFT

**Schedule 1** Non-concessional MIT income  
**Part 3** Application and transitional provisions

---

- 1 (c) all the entities that will be stapled entities in relation to the  
2 cross staple arrangement already exist before 27 March 2018;  
3 and  
4 (d) each entity that is a stapled entity in relation to the cross  
5 staple arrangement, or that will become a stapled entity in  
6 relation to the cross staple arrangement, has made a choice in  
7 accordance with subitem (6).
- 8 (3) An amount included in the assessable income for an income year of a  
9 managed investment trust is *not* non-concessional MIT income of the  
10 managed investment trust under subsection 12-440(2) in Schedule 1 to  
11 the *Taxation Administration Act 1953* if:  
12 (a) the amount is derived, received or made from another entity  
13 (the *second entity*); and  
14 (b) the amount relates to the asset; and  
15 (c) the second entity is a stapled entity in relation to the cross  
16 staple arrangement; and  
17 (d) either:  
18 (i) if subparagraph 12-440(2)(a)(i) in that Schedule  
19 applies—the amount is rent paid from an operating  
20 entity in relation to the managed investment trust; or  
21 (ii) if subparagraph 12-440(2)(a)(ii) in that Schedule  
22 applies—the amount is attributable to rent paid from an  
23 operating entity in relation to the cross staple  
24 arrangement to an asset entity in relation to the cross  
25 staple arrangement; and  
26 (e) the time when the amount was derived, received or made by  
27 the managed investment trust meets the requirements in  
28 subitem (5).
- 29 (4) An entity that is an operating entity in relation to the cross staple  
30 arrangement is entitled to a deduction for an income year for an amount  
31 of rent if:  
32 (a) another entity derives or receives the amount of rent from the  
33 operating entity in the income year; and  
34 (b) the amount relates to the asset; and  
35 (c) the time when the other entity derived or received the  
36 amount:
-

# EXPOSURE DRAFT

Non-concessional MIT income **Schedule 1**  
Application and transitional provisions **Part 3**

---

- 1 (i) is on or after 27 March 2018; and  
2 (ii) meets the requirements in subitem (5); and  
3 (d) the other entity is an asset entity in relation to the cross staple  
4 arrangement; and  
5 (e) the operating entity is entitled to a general deduction for the  
6 amount (disregarding this subitem) under section 8-1 of the  
7 *Income Tax Assessment Act 1997*.
- 8 (5) The time mentioned in paragraph (3)(e) or (4)(c) meets the requirements  
9 in this subitem if:  
10 (a) where the asset to which the cross staple arrangement relates  
11 is *not* an economic infrastructure asset—the time is before  
12 1 July 2031 and before the later of:  
13 (i) 1 July 2026; and  
14 (ii) the end of the period of 7 years beginning on the day on  
15 which that asset is first put to use for the purpose of  
16 producing assessable income; or  
17 (b) where the asset to which the cross staple arrangement relates  
18 is an economic infrastructure asset—the time is before 1 July  
19 2039 and before the later of:  
20 (i) 1 July 2034; and  
21 (ii) the end of the period of 15 years beginning on the day  
22 on which that asset is first put to use for the purpose of  
23 producing assessable income.
- 24 (6) An entity may make a choice in accordance with this subitem if:  
25 (a) the choice is in writing; and  
26 (b) the entity makes the choice no later than 30 June 2020.
- 27 (7) The choice cannot be revoked.

## 10 Transitional—non-concessional MIT income under subsection 12-440(7) in Schedule 1 to the *Taxation Administration Act 1953*

- 31 (1) This item applies if:  
32 (a) an amount (the *relevant amount*) included in the assessable  
33 income for an income year of a managed investment trust is  
34 non-concessional MIT income of the managed investment
-

# EXPOSURE DRAFT

## Schedule 1 Non-concessional MIT income

### Part 3 Application and transitional provisions

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- 1 trust under subsection 12-440(7) in Schedule 1 to the  
2 *Taxation Administration Act 1953* (disregarding this item);  
3 and  
4 (b) immediately before 27 March 2018, the managed investment  
5 trust held a total participation interest in the second entity  
6 mentioned in that subsection (the *second entity*) of an amount  
7 (the *pre-announcement TPI amount*) greater than nil; and  
8 (c) the relevant amount was derived, received or made by the  
9 managed investment trust before 1 July 2026.
- 10 (2) Treat part of the relevant amount as not being non-concessional MIT  
11 income of the managed investment trust under subsection 12-440(7) in  
12 Schedule 1 to the *Taxation Administration Act 1953*.
- 13 (3) That part is equal to the relevant amount multiplied by the fraction  
14 worked out under subitems (4) and (5).
- 15 (4) If the amount (the *post-announcement TPI amount*) of the managed  
16 investment trust's total participation interest in the second entity at the  
17 end of the most recent income year ending before it derived, received or  
18 made the relevant amount exceeds the pre-announcement TPI amount,  
19 work out that fraction by dividing:  
20 (a) the pre-announcement TPI amount;  
21 by:  
22 (b) the post-announcement TPI amount.
- 23 (5) Otherwise, the fraction is 1.

# EXPOSURE DRAFT

Thin capitalisation **Schedule 2**  
Application and transitional provisions **Part 3**

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## Schedule 2—Thin capitalisation

### *Income Tax Assessment Act 1997*

#### **1 At the end of paragraph 820-105(3)(g)**

Add:

- (iv) each other entity in which the entity has a direct or indirect interest;

#### **2 At the end of paragraph 820-215(3)(g)**

Add:

- (iv) each other entity in which the entity has a direct or indirect interest;

#### **3 After subsection 820-905(2A)**

Insert:

(2B) For the purposes of sections 820-910, 820-915 and 820-920:

- (a) if the first entity mentioned in paragraph (1)(a) or (2A)(a) is a trust (other than a \*public trading trust) or a partnership, treat the reference in that paragraph to 50% as instead being a reference to 10%; and
- (b) disregard subsection 318(5) of the *Income Tax Assessment Act 1936*.

#### **4 Application**

The amendments made by this Schedule apply to income years starting on or after 1 July 2018.



# EXPOSURE DRAFT

Superannuation funds for foreign residents withholding tax exemption **Schedule 3**  
Amendments **Part 1**

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- 1 (iii) a non-share equity interest (within the meaning of the  
2 *Income Tax Assessment Act 1997*); and  
3 (b) that interest confers or those interests confer a right on the  
4 first entity:  
5 (i) to vote at a meeting of the Board of Directors (or other  
6 governing body) of the second entity; or  
7 (ii) to participate in making financial, operating and policy  
8 decisions in respect of the second entity; or  
9 (iii) to deal with assets of the second entity.
- 10 (3CC) For the purposes of subsection (3CB) disregard a right conferred  
11 by a debt interest if the right arises because of a breach of terms by  
12 the second entity of the debt interest.

# EXPOSURE DRAFT

**Schedule 3** Superannuation funds for foreign residents withholding tax exemption

**Part 2** Application provisions

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1 **Part 2—Application provisions**

2 **3 Application**

3 (1) The amendments made by this Schedule apply in relation to income that  
4 is derived on or after 1 July 2019.

5 (2) Despite subitem (1), the amendments made by this Schedule apply to  
6 income that is derived on or after 1 July 2026 if the asset to which the  
7 income relates was acquired by a superannuation fund on or before  
8 27 March 2018.

# EXPOSURE DRAFT

Sovereign immunity **Schedule 4**  
Amendments **Part 1**

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1 **Schedule 4—Sovereign immunity**

2 **Part 1—Amendments**

3 *Income Tax Assessment Act 1936*

4 **1 At the end of subsection 128B(3)**

5 Add:

6 ; or (n) income that is non-assessable non-exempt income because of  
7 Division 880 of the *Income Tax Assessment Act 1997*.

8 *Income Tax Assessment Act 1997*

9 **2 At the end of section 840-805**

10 Add:

11 (9) Subsections (2), (3) and (4) do not apply to you to the extent that  
12 the fund payment part relates to \*ordinary income or \*statutory  
13 income of yours that is not assessable income and is not \*exempt  
14 income because of Division 880.

15 **3 At the end of Part 4-5**

16 Add:

17 **Division 880—Sovereign entities**

18 **Subdivision 880-A—Sovereign entity liable to pay tax**

19 **880-50 What this Subdivision is about**

20 [To be drafted]

21 **880-55 Sovereign entity liable to pay tax on taxable income**

22 (1) A \*sovereign entity is liable to pay tax on its taxable income.

# EXPOSURE DRAFT

## Schedule 4 Sovereign immunity

### Part 1 Amendments

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- 1 (2) A *sovereign entity* is an entity that satisfies all of the following  
2 requirements:
- 3 (a) the entity is:
- 4 (i) an \*exempt foreign government agency; or
- 5 (ii) an entity in which an exempt foreign government  
6 agency holds a \*total participation interest of 100%;
- 7 (b) the entity is a foreign resident;
- 8 (c) all of the following requirements are satisfied:
- 9 (i) all of the entity's investments are funded by public  
10 monies;
- 11 (ii) all returns on those investments are public monies;
- 12 (d) the entity is *not* a \*superannuation fund for foreign residents;
- 13 (e) the entity is *not* any of the following:
- 14 (i) a public non-financial corporation;
- 15 (ii) a public financial corporation (other than a public  
16 financial corporation that only carries on central  
17 banking activities).
- 18 (3) For the purposes of paragraph (2)(e), work out whether an entity is  
19 a public non-financial corporation or a public financial corporation  
20 in accordance with GFS Australia (within the meaning of the *Clean*  
21 *Energy Finance Corporation Act 2012*).

### 22 **Subdivision 880-B—Certain income of sovereign entity is** 23 **NANE**

### 24 **Guide to Subdivision 880-B**

#### 25 **880-100 What this Subdivision is about**

26 [To be drafted]

#### 27 **880-105 Certain income of sovereign entity is NANE**

- 28 (1) An amount of \*ordinary income or \*statutory income of a  
29 \*sovereign entity is not assessable income and is not \*exempt  
30 income if:
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# EXPOSURE DRAFT

Sovereign immunity **Schedule 4**  
Amendments **Part 1**

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- 1 (a) that amount is derived, received or made from a trust or  
2 company (the *paying entity*); and
- 3 (b) if the paying entity is a trust—it is a \*managed investment  
4 trust in relation to the income year in which that amount is  
5 derived, received or made; and
- 6 (c) the sovereign entity derives, receives or makes the amount  
7 from the paying entity because the sovereign entity holds any  
8 of the following kinds of interest in the paying entity:  
9 (i) a \*membership interest;  
10 (ii) a \*debt interest;  
11 (iii) a \*non-share equity interest; and
- 12 (d) the sum of the \*total participation interests of the sovereign  
13 entity, and of any other sovereign entity of the same foreign  
14 country as the sovereign entity, in the paying entity:  
15 (i) is less than 10% at the time that amount is derived,  
16 received or made; and  
17 (ii) is less than 10% throughout any 12 month period that  
18 began no earlier than 24 months before that time and  
19 ended no later than that time; and
- 20 (e) the sovereign entity did not acquire any interests in the  
21 paying entity of a kind mentioned in paragraph (c) in the  
22 course of carrying on a trading business (within the meaning  
23 of Division 6C of Part III of the *Income Tax Assessment Act*  
24 *1936*); and
- 25 (f) the amount of ordinary income or statutory income is not  
26 attributable to a \*fund payment made by a managed  
27 investment trust, to the extent that the fund payment is  
28 attributable to \*non-concessional MIT income (as worked out  
29 in accordance with section 12-435 in Schedule 1 to the *Tax*  
30 *Administration Act 1953*).
- 31 (2) For the purposes of paragraph (1)(d), treat one entity (the *first*  
32 *entity*) as holding a \*total participation interest in another entity  
33 (the *second entity*) of 10% at a time if, at that time:  
34 (a) the first entity holds any of the following kind of interest in  
35 the second entity:  
36 (i) a \*membership interest;  
37 (ii) a \*debt interest;
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EXPOSURE DRAFT

# EXPOSURE DRAFT

## Schedule 4 Sovereign immunity

### Part 1 Amendments

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- 1 (iii) a \*non-share equity interest; and  
2 (b) that interest confers or those interests confer a right on the  
3 first entity:  
4 (i) to vote at a meeting of the Board of Directors (or other  
5 governing body) of the second entity; or  
6 (ii) to participate in making financial, operating and policy  
7 decisions in respect of the second entity; or  
8 (iii) to deal with assets of the second entity.
- 9 (3) For the purposes of subsection (2) disregard a right conferred by a  
10 \*debt interest if the right arises because of a breach of terms by the  
11 second entity of the debt interest.

# EXPOSURE DRAFT

Sovereign immunity **Schedule 4**  
Application and transitional provisions **Part 2**

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## 1 **Part 2—Application and transitional provisions**

### 2 **4 Application**

3 (1) The amendments made by this Schedule apply on and after 1 July 2019.

4 (2) Despite subitem (1), the amendments made by this Schedule apply on  
5 and after 1 July 2026 in relation to an investment asset of a sovereign  
6 entity if:

7 (a) the sovereign entity acquired the asset on or before 27 March  
8 2018; and

9 (b) on or before 27 March 2018, the Commissioner gave the  
10 sovereign entity a private ruling to the effect that the  
11 investment asset qualifies for sovereign immunity; and

12 (c) the private ruling still applied on 27 March 2018.

13 (3) Despite subitems (1) and (2), the amendments made by this Schedule  
14 apply on and after a particular day after 1 July 2026 in relation to an  
15 investment asset of a sovereign entity if:

16 (a) the sovereign entity acquired the asset on or before 27 March  
17 2018; and

18 (b) on or before 27 March 2018, the Commissioner gave the  
19 sovereign entity a private ruling to the effect that the  
20 investment asset qualifies for sovereign immunity; and

21 (c) the particular day is the day before the private ruling ceases  
22 to apply.

### 23 **5 Transitional—deemed sale and purchase**

24 (1) This item applies if:

25 (a) a sovereign entity holds an asset (other than money) on 1 July  
26 2026; and

27 (b) on or before 27 March 2018, the Commissioner gave the  
28 sovereign entity a private ruling to the effect that the asset  
29 qualifies for sovereign immunity.

30 (2) For the purposes mentioned in subitem (3), the sovereign entity is taken:

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# EXPOSURE DRAFT

## Schedule 4 Sovereign immunity

### Part 2 Application and transitional provisions

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- 1 (a) to have sold the asset, immediately before the day mentioned  
2 in subitem (4), for a consideration equal to its market value;  
3 and  
4 (b) to have purchased the asset again, immediately after the sale  
5 mentioned in paragraph (a), for a consideration equal to its  
6 market value.
- 7 (3) The purposes are as follows:  
8 (a) the purposes of Parts 3-1 and 3-3 of the *Income Tax*  
9 *Assessment Act 1997*;  
10 (b) if the asset is a revenue asset (and is not a Division 230  
11 financial arrangement)—determining whether an amount is  
12 included in, or can be deducted from, the assessable income  
13 of the sovereign entity.
- 14 (4) For the purposes of paragraph (2)(a), the day is the later of:  
15 (a) 1 July 2026; and  
16 (b) the day before the private ruling ceases to apply.

