

EXPOSURE DRAFT

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Inserts for
**Treasury Laws Amendment (2017
Measures No. 12) Bill 2017: TSY/45/253
Non arm's length income**

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule ??	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	

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Schedule ??—Non arm’s length income of complying superannuation entities

Income Tax Assessment Act 1997

1 Subsection 295-550(1)

Repeal the subsection, substitute:

(1) An amount of *ordinary income or *statutory income is ***non-arm’s length income*** of a *complying superannuation fund, a *complying approved deposit fund or a *pooled superannuation trust if, as a result of a *scheme the parties to which were not dealing with each other at *arm’s length in relation to the scheme, one or more of the following applies:

(a) the amount of the income is more than the amount that the entity might have been expected to derive if those parties had been dealing with each other at arm’s length in relation to the scheme;

(b) in gaining or producing the income, the entity incurs a loss, outgoing or expenditure of an amount that is less than the amount of a loss, outgoing or expenditure that the entity might have been expected to incur if those parties had been dealing with each other at arm’s length in relation to the scheme;

(c) in gaining or producing the income, the entity does not incur a loss, outgoing or expenditure that the entity might have been expected to incur if those parties had been dealing with each other at arm’s length in relation to the scheme.

This subsection does not apply to an amount to which subsection (2) applies or an amount *derived by the entity in the capacity of beneficiary of a trust.

2 Subsection 295-550(5)

Repeal the subsection, substitute:

(5) Other income *derived by the entity as a beneficiary of a trust through holding a fixed entitlement to the income of the trust is ***non-arm’s length income*** of the entity if, as a result of a *scheme the parties to which were not dealing with each other at *arm’s

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1 length in relation to the scheme, one or more of the following
2 applies:

- 3 (a) the amount of the income is more than the amount that the
4 entity might have been expected to derive if those parties had
5 been dealing with each other at arm's length in relation to the
6 scheme;
- 7 (b) in acquiring the entitlement or in gaining or producing the
8 income, the entity incurs a loss, outgoing or expenditure of
9 an amount that is less than the amount of a loss, outgoing or
10 expenditure that the entity might have been expected to incur
11 if those parties had been dealing with each other at arm's
12 length in relation to the scheme;
- 13 (c) in acquiring the entitlement or in gaining or producing the
14 income, the entity does not incur a loss, outgoing or
15 expenditure that the entity might have been expected to incur
16 if those parties had been dealing with each other at arm's
17 length in relation to the scheme.

18 **3 After subsection 295-550(6)**

19 Insert:

- 20 (7) Paragraphs (1)(b) and (c) and (5)(b) and (c) apply to a loss,
21 outgoing or expenditure whether or not it is of capital or of a
22 capital nature.

23 **4 Application of amendments**

24 The amendments made by this Schedule apply in relation to income
25 derived in the 2018-19 income year and later income years.