

# EXPOSURE-DRAFT

1 Inserts for  
2 **Tax Laws Amendment (2013 Measures**  
3 **No. 1) Bill 2013: Tax loss incentives for**  
4 **designated infrastructure projects**  
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## Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Schedule 1, Parts 1 to 3	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
2. Schedule 1, Part 4	The day this Act receives the Royal Assent.	

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## Schedule 1—Tax loss incentives for designated infrastructure projects

### Part 1—Main amendments

#### *Income Tax Assessment Act 1936*

##### **1 At the end of section 272-100 in Schedule 2F**

Add:

; or (f) it is a designated infrastructure project entity at the particular time.

#### *Income Tax Assessment Act 1997*

##### **2 Paragraph 165-35(b)**

Omit “*period*.”, substitute “*period*); or”.

##### **3 After paragraph 165-35(b)**

Insert:

(c) the company was a \*designated infrastructure project entity during the whole of the income year.

Note: See subsection 415-30(7) if there is only part of the income year during which the company was a designated infrastructure project entity.

##### **4 At the end of Part 3-45**

Add:

## Division 415—Designated infrastructure projects

### Table of Subdivisions

Guide to Division 415

415-A Tax losses and bad debts

415-B Designating infrastructure projects

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## 1 Guide to Division 415

### 2 415-1 What this Division is about

3 This Division provides for special treatment for tax losses and bad  
4 debts for an entity (called a “designated infrastructure project  
5 entity”) that engages in activities solely for the purposes of  
6 carrying on an infrastructure project that the Infrastructure  
7 Coordinator designates under Subdivision 415-B.

### 8 Subdivision 415-A—Tax losses and bad debts

## 9 Guide to Subdivision 415-A

### 10 415-5 What this Subdivision is about

11 The unutilised amounts of a designated infrastructure project  
12 entity’s tax losses are increased each year by the long term bond  
13 rate. A *designated infrastructure project entity* is a fixed trust or  
14 company that only engages, and has only ever engaged, in  
15 activities for the purposes of carrying on an infrastructure project  
16 designated under Subdivision 415-B.

17 The tests that apply in relation to tax losses and bad debts if there is  
18 a change of ownership of an entity are modified so that periods  
19 during which the entity is a designated infrastructure project entity  
20 are not tested.

21 Note: The transfer rules in subsection 707-120(1A) do not  
22 apply if a designated infrastructure project entity joins a  
23 consolidated group: see subsection 707-120(5).

## 24 Table of sections

### 25 Uplift of tax losses

- 26 415-10 Uplift of tax losses of designated infrastructure project entities  
27 415-15 *Designated infrastructure project entity*

### 28 Change of ownership of trusts and companies

- 29 415-20 Tax losses of trusts  
30 415-25 Bad debts written off etc. by trusts  
31 415-30 Tax losses of companies  
32 415-35 Bad debts written off by companies

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## Uplift of tax losses

### 415-10 Uplift of tax losses of designated infrastructure project entities

- (1) The amount of a \*tax loss of a \*loss year of an entity is increased, at the end of each later income year (and before any \*utilisation of the tax loss in the later income year) by the amount worked out using the following formula:

Amount of the \*tax loss, to the extent it has not been \*utilised in income years occurring before the later income year  $\times$  Uplift factor

where:

*uplift factor* means the amount worked out using the following formula:

$$*\text{Long term bond rate for the later income year} \times \left( \frac{\text{Number of days in the later income year on which subsection (2) applies to the entity}}{\text{Number of days in the later income year}} \right)$$

- (2) This subsection applies to the entity on a day in the later income year if:

- (a) the entity is a \*designated infrastructure project entity on that day; and
- (b) on the day mentioned in subsection (3), the entity has notified the Commissioner (whether before, during or after the later income year) in the \*approved form that the entity was, at any time, a designated infrastructure project entity.

- (3) For the purposes of paragraph (2)(b), the day is the day after the latest of the following days:

- (a) the day the entity is required to lodge with the Commissioner its \*income tax return for the later income year;
- (b) the 28th day after the first day the entity \*carries on the infrastructure project mentioned in paragraph 415-15(b);
- (c) the 28th day after the day the Infrastructure Coordinator designates the infrastructure project under section 415-60;
- (d) a later day allowed by the Commissioner.

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## 1 415-15 *Designated infrastructure project entity*

2 An entity is a *designated infrastructure project entity* at a time  
3 (the *relevant time*) if:

- 4 (a) at the relevant time, the entity is:  
5 (i) a \*fixed trust or a company; and  
6 (ii) not a \*member of a \*consolidated group; and  
7 (b) the entity \*carries on a single investment in, or enhancement  
8 to, infrastructure (the *infrastructure project*) at the relevant  
9 time or a later time; and  
10 (c) the only activities in which the entity engages at the relevant  
11 time, or engaged before the relevant time, are or were for the  
12 purposes of the entity carrying on the infrastructure project;  
13 and  
14 (d) the infrastructure project:  
15 (i) is a \*designated infrastructure project at the relevant  
16 time; or  
17 (ii) becomes a designated infrastructure project at a later  
18 time.

## 19 **Change of ownership of trusts and companies**

### 20 **415-20 Tax losses of trusts**

#### 21 *Scope*

- 22 (1) This section applies to a \*tax loss of a \*trust if the trust is a  
23 \*designated infrastructure project entity at a time (the *status time*)  
24 in the \*loss year.

#### 25 *Modifications of Divisions 266 and 268 in Schedule 2F to the* 26 *Income Tax Assessment Act 1936*

- 27 (2) Despite paragraph 266-25(1)(b), 266-30(a), 266-75(1)(b) or (2)(b),  
28 266-80(1)(a) or (2)(a), 266-110(1)(b), 266-115(a), 266-150(2)(a) or  
29 266-155(2)(a) in Schedule 2F to the *Income Tax Assessment Act*  
30 *1936*, for the purposes of sections 266-40 and 266-45,  
31 section 266-90, subsections 266-125(1) and (2) or  
32 subsections 266-165(1) and (2) in that Schedule (whichever are  
33 applicable), the test period starts at the first time:  
34 (a) that occurs after the status time; and  
35 (b) at which the trust is not a \*designated infrastructure project  
36 entity;
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1 if, apart from this subsection, the test period would start earlier.

- 2 (3) For the purposes of working out, under subsection 268-10(3),  
3 268-15(3) or 268-20(3) in that Schedule, the end of the first period,  
4 disregard any part of the income year mentioned in that subsection  
5 during which the trust is a \*designated infrastructure project entity.

6 Note: A trust does not calculate its net income and tax loss under  
7 Division 268 in that Schedule if the trust was a designated  
8 infrastructure project entity during the whole of the income year: see  
9 paragraphs 266-30(c), 266-80(1)(d) and (2)(c), 266-115(b),  
10 266-155(2)(b) and 272-100(f) in that Schedule.

- 11 (4) For the purposes paragraph 268-20(4)(b) in that Schedule,  
12 disregard any part of the first of the successive periods during  
13 which the trust is a \*designated infrastructure project entity.

## 14 **415-25 Bad debts written off etc. by trusts**

### 15 *Scope*

- 16 (1) This section applies to a debt to which paragraph 266-35(1)(a),  
17 266-85(1)(a) or (2)(a), 266-120(1)(a) or 266-160(1)(a) or (b) in  
18 Schedule 2F to the *Income Tax Assessment Act 1936* applies, if the  
19 trust is a \*designated infrastructure project entity at a time (the  
20 *status time*) in the income year in which the debt was incurred.

### 21 *Modifications of Division 266 in Schedule 2F to the Income Tax* 22 *Assessment Act 1936*

- 23 (2) Despite paragraph 266-35(1)(b), 266-85(1)(b) or (2)(b),  
24 266-120(1)(b) or 266-160(2)(a) in that Schedule, for the purposes  
25 of sections 266-40 and 266-45, section 266-90,  
26 subsections 266-125(1) and (2) or subsections 266-165(1) and (2)  
27 in that Schedule (whichever are applicable), the test period starts at  
28 the first time:  
29 (a) that occurs after the status time; and  
30 (b) at which the trust is not a \*designated infrastructure project  
31 entity.

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## 1 415-30 Tax losses of companies

### 2 *Scope*

- 3 (1) This section applies to a \*tax loss of a company if the company is a  
4 \*designated infrastructure project entity at a time (the *status time*)  
5 in the \*loss year.

### 6 *Modifications of Divisions 165 and 166*

- 7 (2) Despite subsection 165-12(1), 166-5(2) or 166-20(1), the  
8 \*ownership test period or \*test period under that subsection starts at  
9 the earlier of:  
10 (a) the first time:  
11 (i) that occurs after the status time; and  
12 (ii) at which the company is not a \*designated infrastructure  
13 project entity; and  
14 (b) the end of the income year referred to in that subsection as  
15 the income year.
- 16 (3) In a case to which paragraph (2)(b) applies, the company is treated  
17 as meeting the conditions in section 165-12.
- 18 (4) Despite subsection 165-13(2), 166-5(5) or 166-20(4), the \*same  
19 business test period under that subsection starts at the start of the  
20 \*ownership test period or \*test period (whichever is applicable) if,  
21 apart from this subsection, the same business test period would  
22 start earlier.
- 23 (5) Despite subsection 165-13(2), 165-15(3), 166-5(6) or 166-20(4),  
24 the \*test time under that subsection occurs just after the start of the  
25 \*ownership test period or \*test period (whichever is applicable) if,  
26 apart from this subsection, the test time would occur earlier.
- 27 (6) Disregard subsection 165-15(1) if the \*ownership test period starts  
28 after the end of the \*loss year.
- 29 (7) For the purposes of working out, under paragraph 165-45(3)(a) or  
30 (b) or subsection 165-45(4), the end of the first period, disregard  
31 any part of the income year mentioned in section 165-45 during  
32 which the company is a \*designated infrastructure project entity.

33 Note: A company does not calculate its taxable income and tax loss under  
34 Subdivision 165-B if the company was a designated infrastructure  
35 project entity during the whole of the income year: see  
36 paragraph 165-35(c).

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*Exceptions*

- (8) Disregard this section for the purposes of Subdivisions 165-CA and 165-CB (about net capital losses).

## **415-35 Bad debts written off by companies**

*Scope*

- (1) This section applies to a debt that a company writes off as bad, if the company is a \*designated infrastructure project entity at a time (the *status time*) in the income year in which the debt was incurred.

*Modifications of Divisions 165 and 166*

- (2) Despite subsection 165-123(1) or 166-40(2), the \*ownership test period or \*test period under that subsection starts at the earlier of:
- (a) the first time that occurs after the status time and on or after:
    - (i) in the case of subsection 165-123(1)—the start of the \*first continuity period; or
    - (ii) in the case of subsection 166-40(2)—the time the company chooses under that subsection; and at which the company is not a \*designated infrastructure project entity; and
  - (b) the end of the \*second continuity period.
- (3) In a case to which paragraph (2)(b) applies, the company is treated as meeting the conditions in section 165-123.
- (4) Despite subsection 165-126(2), 165-129(2), 165-132(1) or 166-40(5), the \*same business test period under that subsection starts at the start of the \*ownership test period or \*test period (whichever is applicable) if, apart from this subsection, the same business test period would start earlier.
- (5) Despite subsection 165-126(2), 165-129(3) or 166-40(6), the \*test time under that subsection occurs just after the start of the \*ownership test period or \*test period (whichever is applicable) if, apart from this subsection, the test time would occur earlier.
- (6) Disregard section 165-129 if the \*ownership test period starts after the end of the \*first continuity period.



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(7) For the purposes of section 165-129, the \*first continuity period is treated as starting at the start of the \*ownership test period, if the ownership test period starts during the first continuity period.

## **Subdivision 415-B—Designating infrastructure projects**

### **Guide to Subdivision 415-B**

#### **415-40 What this Subdivision is about**

To receive the special treatment for tax losses and bad debts under Subdivision 415-A, an entity must only engage in activities for the purposes of an infrastructure project designated by the Infrastructure Coordinator under this Subdivision.

Designation is dependent on:

- (a) criteria prescribed by the Minister; and
- (b) a cap on the total estimated private capital expenditure that would be incurred for all provisionally designated and designated infrastructure projects.

#### **Table of sections**

##### **Designating infrastructure projects**

- 415-45 Applications for designation
- 415-50 Dealing with applications
- 415-55 Provisional designation
- 415-60 Designation

##### **Capital expenditure cap**

- 415-65 Capital expenditure cap
- 415-70 Acceptance of estimates of capital expenditure

##### **Miscellaneous**

- 415-75 Review of decisions
- 415-80 Information to be made public
- 415-85 Delegation
- 415-90 Infrastructure project designation rules

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## 1 Designating infrastructure projects

### 2 415-45 Applications for designation

- 3 (1) An entity may apply to the Infrastructure Coordinator to have the  
4 Infrastructure Coordinator designate a proposed investment in, or  
5 enhancement to, infrastructure (the *infrastructure project*) as being  
6 an infrastructure project in relation to which Subdivision 415-A  
7 applies.

8 Note: The Infrastructure Coordinator holds office under the *Infrastructure*  
9 *Australia Act 2008*.

- 10 (2) The application must include an estimate of the capital expenditure  
11 that would be incurred for the purpose of the infrastructure project.
- 12 (3) Subsection (2) does not apply to capital expenditure to the extent  
13 that the capital expenditure would be:  
14 (a) incurred by an \*Australian government agency; or  
15 (b) funded by a grant from an Australian government agency.
- 16 (4) The application must:  
17 (a) be in a form (if any) approved by the Infrastructure  
18 Coordinator; and  
19 (b) be accompanied by the fee (if any) prescribed by the  
20 \*infrastructure project designation rules.

### 21 415-50 Dealing with applications

#### 22 *Dealing with applications*

- 23 (1) The Infrastructure Coordinator must deal with applications made  
24 under this Division:  
25 (a) in accordance with the requirements prescribed by the  
26 \*infrastructure project designation rules; or  
27 (b) if the infrastructure project designation rules do not prescribe  
28 any requirements—in the order in which the applications are  
29 made.
- 30 (2) Without limiting paragraph (1)(a), the requirements the  
31 \*infrastructure project designation rules may prescribe for the  
32 purposes of that paragraph include:  
33 (a) requirements relating to the time at which or by which the  
34 Infrastructure Coordinator must deal with an application; and

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- 1 (b) requirements relating to applications that, in the opinion of  
2 the Infrastructure Coordinator, are incomplete or do not  
3 contain sufficient information for the Infrastructure  
4 Coordinator to deal with the applications.
- 5 (3) For the purposes of subsection (1), the Infrastructure Coordinator  
6 deals with an application by:
- 7 (a) designating the infrastructure project provisionally under  
8 section 415-55, or deciding not to designate the infrastructure  
9 project provisionally under that section; or
- 10 (b) designating the infrastructure project under section 415-60 or  
11 deciding not to designate the infrastructure project under that  
12 section (whether or not the Infrastructure Coordinator has  
13 previously dealt with the application by designating the  
14 infrastructure project provisionally under section 415-55).
- 15 (4) Paragraph (1)(b) does not apply to the Infrastructure Coordinator  
16 deciding whether to designate a \*provisionally designated  
17 infrastructure project under section 415-60.
- 18 *No designation after 30 June 2017 or later prescribed day*
- 19 (5) Despite anything else in this Subdivision, the Infrastructure  
20 Coordinator must not provisionally designate the infrastructure  
21 project under section 415-55, or designate the infrastructure project  
22 under section 415-60, after:
- 23 (a) 30 June 2017; or  
24 (b) a later day (if any) prescribed by the \*infrastructure project  
25 designation rules.

## 26 **415-55 Provisional designation**

### 27 *Provisional designation*

- 28 (1) The Infrastructure Coordinator must, by instrument in writing,  
29 designate the infrastructure project provisionally for the purposes  
30 of this Division if:
- 31 (a) the entity applies to have the Infrastructure Coordinator  
32 designate the infrastructure project in accordance with  
33 section 415-45; and
- 34 (b) the Infrastructure Coordinator accepts the estimate of the  
35 capital expenditure under section 415-70; and
- 36 (c) the provisional designation would not breach the capital  
37 expenditure cap under section 415-65; and

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- 1 (d) the following conditions are satisfied:  
2 (i) the conditions prescribed by the \*infrastructure project  
3 designation rules;  
4 (ii) if the infrastructure project designation rules do not  
5 prescribe any conditions—in the opinion of the  
6 Infrastructure Coordinator, the infrastructure is  
7 nationally significant infrastructure (within the meaning  
8 of the *Infrastructure Australia Act 2008*); and  
9 (e) the infrastructure project is not a \*designated infrastructure  
10 project.

11 *Revocation of provisional designation*

- 12 (2) The Infrastructure Coordinator must, by instrument in writing,  
13 revoke the provisional designation:  
14 (a) if the Infrastructure Coordinator has designated the project  
15 under section 415-60, or decides not to designate the project;  
16 or  
17 (b) if the Infrastructure Coordinator has revoked the acceptance  
18 of the estimate under section 415-70; or  
19 (c) in the circumstances (if any) prescribed by the \*infrastructure  
20 project designation rules.

21 The Infrastructure Coordinator must not revoke the provisional  
22 designation in any other circumstances.

- 23 (3) Without limiting paragraph (2)(c), the circumstances the  
24 \*infrastructure project designation rules may prescribe for the  
25 purposes of that paragraph include:  
26 (a) circumstances involving a failure by a prescribed entity to  
27 give prescribed information to the Infrastructure Coordinator;  
28 and  
29 (b) circumstances involving a breach of conditions set by the  
30 Infrastructure Coordinator for the \*provisionally designated  
31 infrastructure project to remain provisionally designated.
- 32 (4) The \*infrastructure project designation rules must prescribe matters  
33 to which the Infrastructure Coordinator must have regard in setting  
34 conditions for a \*provisionally designated infrastructure project to  
35 remain provisionally designated, if the infrastructure project  
36 designation rules provide for the Infrastructure Coordinator to set  
37 such conditions as mentioned in paragraph (3)(b).

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## 1 415-60 Designation

### 2 *Designation*

- 3 (1) The Infrastructure Coordinator must, by instrument in writing,  
4 designate the infrastructure project for the purposes of this  
5 Division if:
- 6 (a) the entity applies to have the Infrastructure Coordinator  
7 designate the infrastructure project in accordance with  
8 section 415-45; and
  - 9 (b) the Infrastructure Coordinator accepts the estimate of the  
10 capital expenditure under section 415-70; and
  - 11 (c) the designation would not breach the capital expenditure cap  
12 under section 415-65; and
  - 13 (d) the following conditions are satisfied:
    - 14 (i) the conditions prescribed by the \*infrastructure project  
15 designation rules;
    - 16 (ii) if the infrastructure project designation rules do not  
17 prescribe any conditions—the conditions mentioned in  
18 subsection (2);
- 19 (whether or not the infrastructure project is a \*provisionally  
20 designated infrastructure project).
- 21 (2) For the purposes of subparagraph (1)(d)(ii), the following are the  
22 conditions:
- 23 (a) in the opinion of the Infrastructure Coordinator, the  
24 infrastructure is nationally significant infrastructure (within  
25 the meaning of the *Infrastructure Australia Act 2008*);
  - 26 (b) in the opinion of the Infrastructure Coordinator, financial  
27 close on the infrastructure project has occurred or is  
28 imminent.

### 29 *Revocation of designation*

- 30 (3) The Infrastructure Coordinator must, by instrument in writing,  
31 revoke the designation in the circumstances prescribed by the  
32 \*infrastructure project designation rules. The Infrastructure  
33 Coordinator must not revoke the designation in any other  
34 circumstances.
- 35 (4) Without limiting subsection (3), the circumstances the  
36 \*infrastructure project designation rules may prescribe for the  
37 purposes of that subsection include:

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- 1 (a) circumstances involving a failure by a prescribed entity to  
2 give prescribed information to the Infrastructure Coordinator;  
3 and  
4 (b) circumstances involving a breach of conditions set by the  
5 Infrastructure Coordinator for the \*designated infrastructure  
6 project to remain designated.
- 7 (5) The \*infrastructure project designation rules must prescribe matters  
8 to which the Infrastructure Coordinator must have regard in setting  
9 conditions for a \*designated infrastructure project to remain  
10 designated, if the infrastructure project designation rules provide  
11 for the Infrastructure Coordinator to set such conditions as  
12 mentioned in paragraph (4)(b).
- 13 *Infrastructure Coordinator must notify Commissioner*
- 14 (6) The Infrastructure Coordinator must notify the Commissioner of a  
15 decision made by the Infrastructure Coordinator:  
16 (a) to designate the infrastructure project; or  
17 (b) to revoke the designation;  
18 within 28 days after making the decision.

## 19 **Capital expenditure cap**

### 20 **415-65 Capital expenditure cap**

- 21 (1) Provisional designation, or designation, of the infrastructure  
22 project would breach the capital expenditure cap under this section  
23 if, were the provisional designation or designation to occur, the  
24 total of the estimates accepted under section 415-70 for each  
25 infrastructure project that, just after the provisional designation or  
26 designation, would be:  
27 (a) a \*provisionally designated infrastructure project; or  
28 (b) a \*designated infrastructure project;  
29 would exceed the amount mentioned in subsection (2).
- 30 (2) The amount is:  
31 (a) \$25 billion; or  
32 (b) if the \*infrastructure project designation rules prescribe a  
33 greater amount—that prescribed amount.

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## 1 415-70 Acceptance of estimates of capital expenditure

### 2 *Acceptance of estimates*

- 3 (1) The Infrastructure Coordinator must, by instrument in writing,  
4 accept the estimate of capital expenditure if the following  
5 conditions are satisfied:
- 6 (a) the conditions prescribed by the \*infrastructure project  
7 designation rules;
  - 8 (b) if the infrastructure project designation rules do not prescribe  
9 any conditions—in the opinion of the Infrastructure  
10 Coordinator, the estimate is acceptable.

### 11 *Revocation of estimates*

- 12 (2) The Infrastructure Coordinator must not revoke the acceptance if  
13 the infrastructure project is a \*designated infrastructure project.
- 14 (3) Subject to subsection (2), the Infrastructure Coordinator must, by  
15 instrument in writing, revoke the acceptance in the circumstances  
16 prescribed by the \*infrastructure project designation rules. The  
17 Infrastructure Coordinator must not revoke the acceptance in any  
18 other circumstances.
- 19 (4) Without limiting subsection (3), the circumstances the  
20 \*infrastructure project designation rules may prescribe for the  
21 purposes of that subsection include:
- 22 (a) circumstances involving a failure by a prescribed entity to  
23 give prescribed information to the Infrastructure Coordinator;  
24 and
  - 25 (b) circumstances involving a failure by the applicant to amend  
26 the estimate in accordance with a request made by the  
27 Infrastructure Coordinator.
- 28 (5) The \*infrastructure project designation rules must prescribe matters  
29 to which the Infrastructure Coordinator must have regard in  
30 requesting the applicant to amend the estimate, if the infrastructure  
31 project designation rules provide for the Infrastructure Coordinator  
32 to make such requests as mentioned in paragraph (4)(b).
- 33 (6) If:
- 34 (a) the \*infrastructure project designation rules provide for the  
35 Infrastructure Coordinator to request the applicant to amend  
36 the estimate; and

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- 1 (b) the applicant amends the estimate in accordance with such a  
2 request;  
3 the acceptance is treated, from the time the amendment is made, as  
4 being an acceptance of the amended estimate.

## 5 **Miscellaneous**

### 6 **415-75 Review of decisions**

7 Applications may be made to the \*AAT for review of the following  
8 decisions of the Infrastructure Coordinator:

- 9 (a) a decision not to designate the infrastructure project  
10 provisionally under section 415-55;  
11 (b) a decision to revoke the provisional designation under  
12 section 415-55;  
13 (c) a decision not to designate the infrastructure project under  
14 section 415-60;  
15 (d) a decision to revoke the designation under section 415-60.

### 16 **415-80 Information to be made public**

17 The Infrastructure Coordinator must comply with any requirements  
18 prescribed by the \*infrastructure project designation rules in  
19 relation to the publication of information about:

- 20 (a) \*provisionally designated infrastructure projects and  
21 \*designated infrastructure projects; and  
22 (b) the capital expenditure cap under section 415-65.

### 23 **415-85 Delegation**

24 The Infrastructure Coordinator may, by instrument in writing,  
25 delegate any of the Infrastructure Coordinator's powers or  
26 functions under this Subdivision to an SES employee, or acting  
27 SES employee, who is a member of the staff assisting the  
28 Infrastructure Coordinator as mentioned in section 39 of the  
29 *Infrastructure Australia Act 2008*.

### 30 **415-90 Infrastructure project designation rules**

- 31 (1) The Minister may, by legislative instrument, make rules (the  
32 *infrastructure project designation rules*) prescribing matters:  
33 (a) required or permitted by this Subdivision to be prescribed by  
34 the rules; or
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(b) necessary or convenient to be prescribed for carrying out or giving effect to this Subdivision.

(2) Despite subsection 14(2) of the *Legislative Instruments Act 2003*, the \*infrastructure project designation rules may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument, or other writing, made by Infrastructure Australia as in force or existing from time to time.

## 5 At the end of section 707-120

Add:

*Designated infrastructure project entities*

(5) Despite subsection (1A), the loss is transferred under subsection (1) to the full extent if:

(a) the loss is a \*tax loss; and

(b) the joining entity is a \*designated infrastructure project entity:

(i) at a time in the \*loss year; and

(ii) just before the joining time.

Note: An entity ceases to be a designated infrastructure project entity if it joins a consolidated group: see subparagraph 415-15(a)(ii).

## 6 After subsection 719-265(3)

Insert:

*Transfer of tax loss from designated infrastructure project entity*

(3A) If:

(a) the focal company made the loss because the loss was transferred under Subdivision 707-A to the focal company as the \*head company of a \*MEC group; and

(b) subsection 707-120(5) (about designated infrastructure project entities joining consolidated groups) applies to the transfer;

the test company for the focal company is the company that was the \*top company for the MEC group at the time of a transfer.

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1 **Part 2—Consequential amendments**

2 *Income Tax Assessment Act 1936*

3 **7 At the end of section 266-15 in Schedule 2F**

4 Add:

5 Note: The exceptions mentioned in this section apply  
6 differently in relation to designated infrastructure project  
7 entities: see sections 415-20 and 415-25 of the *Income*  
8 *Tax Assessment Act 1997*.

9 **8 At the end of section 266-30 in Schedule 2F**

10 Add:

11 Note: See section 415-20 of the *Income Tax Assessment Act 1997* if the trust  
12 was a designated infrastructure project entity during part, but not the  
13 whole, of the test period.

14 **9 At the end of section 266-65 in Schedule 2F**

15 Add:

16 Note: The exception mentioned in this section applies  
17 differently in relation to designated infrastructure project  
18 entities: see sections 415-20 and 415-25 of the *Income*  
19 *Tax Assessment Act 1997*.

20 **10 At the end of section 266-80 in Schedule 2F**

21 Add:

22 Note: See section 415-20 of the *Income Tax Assessment Act 1997* if the trust  
23 was a designated infrastructure project entity during part, but not the  
24 whole, of the test period.

25 **11 At the end of section 266-100 in Schedule 2F**

26 Add:

27 Note: The exceptions mentioned in this section apply  
28 differently in relation to designated infrastructure project  
29 entities: see sections 415-20 and 415-25 of the *Income*  
30 *Tax Assessment Act 1997*.

31 **12 At the end of section 266-115 in Schedule 2F**

32 Add:

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# EXPOSURE-DRAFT

1 Note: See section 415-20 of the *Income Tax Assessment Act 1997* if the trust  
2 was a designated infrastructure project entity during part, but not the  
3 whole, of the test period.

## 4 **13 At the end of section 266-140 in Schedule 2F**

5 Add:

6 Note: The exceptions mentioned in this section apply  
7 differently in relation to designated infrastructure project  
8 entities: see sections 415-20 and 415-25 of the *Income*  
9 *Tax Assessment Act 1997*.

## 10 **14 At the end of section 266-155 in Schedule 2F**

11 Add:

12 Note: See section 415-20 of the *Income Tax Assessment Act 1997* if the trust  
13 was a designated infrastructure project entity during part, but not the  
14 whole, of the test period.

## 15 **15 Subsection 268-20(4) in Schedule 2F**

16 Repeal the section, substitute:

- 17 (4) However, what would, apart from this subsection, be 2 or more  
18 successive periods are treated as a single period if:  
19 (a) the trust is a listed widely held trust; and  
20 (b) during all of the periods the trust passed the same business  
21 test in relation to the time immediately before the end of the  
22 first of the successive periods.

## 23 **16 Subsection 272-140(1) in Schedule 2F**

24 Insert:

25 *designated infrastructure project entity* has the meaning given by  
26 the *Income Tax Assessment Act 1997*.

## 27 **17 Subsection 272-140(1) in Schedule 2F (at the end of** 28 **paragraph (c) of the definition of *tax loss*)**

29 Add “(including such a tax loss as increased under section 415-10 of  
30 that Act)”.

## 31 *Income Tax Assessment Act 1997*

## 32 **18 Section 12-5 (table item headed “financial arrangements”)**

33 Omit “*borrowings*”.

# EXPOSURE-DRAFT

1 **19 Section 12-5 (table item headed “infrastructure**  
2 **borrowings”)**

3 Repeal the item, substitute:

**infrastructure**

infrastructure borrowings ..... **159GZZZZD to**  
**159GZZZZH**

see also *tax losses*

4 **20 Section 12-5 (table item headed “interest”)**

5 Omit “*borrowings*”.

6 **21 Section 12-5 (table item headed “tax losses”)**

7 After:

change of ownership or control of a company

generally ..... Division 165

for earlier income years ..... Subdivision 165-A

for income year of the change ..... Subdivision 165-B

8 insert:

designated infrastructure project entities ..... Division 415

9 **22 Section 36-25 (at the end of the table dealing with tax**  
10 **losses of companies)**

11 Add:

6. A company is a designated Subdivision 415-A  
infrastructure project entity.

12 **23 Section 36-25 (at the end of the table dealing with tax**  
13 **losses of trusts)**

14 Add:

3. A trust is a designated infrastructure Subdivision 415-A  
project entity.

15 **24 At the end of section 165-5**

16 Add:

17 Note: The exceptions mentioned in this section apply  
18 differently in relation to designated infrastructure project  
19 entities: see section 415-30.

20 **25 At the end of section 165-117**

21 Add:

# EXPOSURE-DRAFT

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Note: The exceptions mentioned in this section apply differently in relation to designated infrastructure project entities: see section 415-35.
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## 26 Subsection 707-120(1)

Repeal the subsection, substitute:

*Transfer of loss from joining entity to head company*

(1) Subject to subsection (1A), the loss is transferred at the joining time from the joining entity to the \*head company of the joined group (even if they are the same entity).

(1A) The loss is transferred under subsection (1) only to the extent (if any) that the loss could have been \*utilised by the joining entity for an income year consisting of the \*trial year if:

(a) at the joining time, the joining entity had not become a \*member of the joined group (but had been a \*wholly-owned subsidiary of the \*head company if the joining entity is not the head company); and

(b) the amount of the loss that could be utilised for the trial year were not limited by the joining entity's income or gains for the trial year.

## 27 Paragraph 707-125(1)(b)

Omit "subsection 707-120(1)", substitute "section 707-120".

## 28 Subsection 707-130(1)

Omit "subsection 707-120(1)", substitute "section 707-120".

## 29 Paragraph 719-265(1)(a)

After "(3),", insert "(3A),".

## 30 Subsection 719-265(7)

After "(3),", insert "(3A),".

## 31 Subsection 995-1(1)

Insert:

*designated infrastructure project* means an infrastructure project designated under section 415-60.

# EXPOSURE-DRAFT

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1 *designated infrastructure project entity* has the meaning given by  
2 section 415-15.

3 *infrastructure project designation rules* has the meaning given by  
4 section 415-90.

5 **32 Subsection 995-1(1) (at the end of the definition of**  
6 ***ownership test period*)**

7 Add “, and affected by sections 415-30 and 415-35”.

8 **33 Subsection 995-1(1)**

9 Insert:

10 *provisionally designated infrastructure project* means an  
11 infrastructure project designated provisionally under  
12 section 415-55.

13 **34 Subsection 995-1(1) (definition of *same business test***  
14 ***period*)**

15 Omit “section 707-400”, substitute “sections 415-30, 415-35 and  
16 707-400”.

17 **35 Subsection 995-1(1) (paragraph (a) of the definition of *tax***  
18 ***loss*)**

19 After “this Act”, insert “(including such a tax loss as increased under  
20 section 415-10)”.

21 **36 Subsection 995-1(1) (at the end of paragraph (d) of the**  
22 **definition of *tax loss*)**

23 Add “(including such a tax loss as increased under section 415-10 of  
24 this Act)”.

25 **37 Subsection 995-1(1) (at the end of the definition of *test***  
26 ***period*)**

27 Add “, and affected by sections 415-30 and 415-35”.

28 **38 Subsection 995-1(1) (at the end of the definition of *test***  
29 ***time*)**

30 Add “, and affected by sections 415-30 and 415-35”.

# EXPOSURE-DRAFT

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## *Infrastructure Australia Act 2008*

### **39 Subsection 28(2)**

Repeal the subsection, substitute:

(2) The Infrastructure Coordinator has the following additional functions:

- (a) any functions that the Minister, by writing, directs the Infrastructure Coordinator to perform;
- (b) any other functions conferred on the Infrastructure Coordinator by this Act or any other law.

### **40 Subsections 28(3) and (4)**

Omit “subsection (2)”, substitute “paragraph (2)(a)”.

### **41 Subsection 40(1)**

Omit “subsection 28(2)”, substitute “paragraph 28(2)(a)”.

### **42 Saving provision—directions**

A direction:

- (a) made under subsection 28(2) of the *Infrastructure Australia Act 2008*; and
- (b) in force just before the commencement of this item;

has effect, from that commencement, as if it had been made under paragraph 28(2)(a) of that Act, as amended by this Schedule.

# EXPOSURE-DRAFT

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1 **Part 3—Application of amendments**

2 *Income Tax (Transitional Provisions) Act 1997*

3 **43 At the end of Part 3-45**

4 Add:

5 **Division 415—Designated infrastructure projects**

6 **Table of Subdivisions**

7 415-A Application of Subdivision 415-A of the Income Tax  
8 Assessment Act 1997

9 **Subdivision 415-A—Application of Subdivision 415-A of the**  
10 **Income Tax Assessment Act 1997**

11 **Table of sections**

12 415-90 Application of Subdivision 415-A of the *Income Tax Assessment Act 1997*

13 **415-90 Application of Subdivision 415-A of the *Income Tax***  
14 ***Assessment Act 1997***

15 Subdivision 415-A of the *Income Tax Assessment Act 1997* applies  
16 to:

- 17 (a) a tax loss for the 2012-13 income year or a later income year;  
18 or  
19 (b) a debt incurred in the 2012-13 income year or a later income  
20 year.

21 **44 Application of amendments**

- 22 (1) The amendments made by items 1, 2 and 3 of this Schedule apply in  
23 relation to the 2012-13 income year and later income years.
- 24 (2) The amendments made by items 5 and 6 of this Schedule apply to a loss  
25 for the 2012-13 income year or a later income year.



# EXPOSURE-DRAFT

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1 **Part 4—Miscellaneous amendments**

2 *Income Tax Assessment Act 1936*

3 **45 Subsections 266-185(1) and 267-90(1) in Schedule 2F**

4 Omit “start”, substitute “beginning”.

5 **46 Subsection 268-10(2) in Schedule 2F**

6 Omit “starts at the start”, substitute “begins at the beginning”.

7 **47 Subsection 268-10(2) in Schedule 2F**

8 Omit “starts” (second occurring), substitute “begins”.

9 **48 Subsection 268-15(2) in Schedule 2F**

10 Omit “starts at the start”, substitute “begins at the beginning”.

11 **49 Subsection 268-15(2) in Schedule 2F**

12 Omit “starts” (second occurring), substitute “begins”.

13 **50 Subsection 268-20(2) in Schedule 2F**

14 Omit “starts at the start”, substitute “begins at the beginning”.

15 **51 Subsection 268-20(2) in Schedule 2F**

16 Omit “starts” (second occurring), substitute “begins”.

17 **52 Subsection 268-25(2) in Schedule 2F**

18 Omit “starts at the start”, substitute “begins at the beginning”.

19 **53 Subsection 268-25(2) in Schedule 2F**

20 Omit “starts” (second occurring), substitute “begins”.

21 **54 Subsections 268-75(1) and 268-80(1) in Schedule 2F**

22 Omit “starts” (wherever occurring), substitute “begins”.

23 **55 Subsection 268-85(5) in Schedule 2F**

24 Omit “start”, substitute “begin”.

25 **56 Subsection 269-65(1) in Schedule 2F**

26 Omit “start” (first occurring), substitute “begin”.

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# EXPOSURE-DRAFT

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1 **57 Subsection 269-65(1) in Schedule 2F**

2 Omit “start” (second occurring), substitute “beginning”.

3 **58 Paragraph 269-65(1)(a) in Schedule 2F**

4 Omit “start”, substitute “beginning”.

5 **59 Paragraphs 269-100(4)(a) and 271-80(a) in Schedule 2F**

6 Omit “started”, substitute “began”.

7 **60 Subparagraph 272-80(6A)(a)(i) in Schedule 2F**

8 Omit “starting”, substitute “beginning”.

9 **61 Paragraphs 272-80(6B)(a) and (b) and 272-85(5C)(a) and**  
10 **(b) in Schedule 2F**

11 Omit “starting”, substitute “beginning”.