

# EXPOSURE-DRAFT

1 Inserts for  
2 **Tax Laws Amendment (2012 Measures**  
3 **No. 2) Bill 2012: Consolidation**  
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<b>EXPOSURE DRAFT</b>
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## Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Schedule 1, Part 1	The day this Act receives the Royal Assent.	
2. Schedule 1, Part 2	Immediately after the commencement of the provision(s) covered by table item 1.	
3. Schedule 1, Part 3	Immediately after the commencement of the provision(s) covered by table item 2.	
4. Schedule 1, Part 4	The day this Act receives the Royal Assent.	
5. Schedule 2	Immediately after the commencement of Parts 1, 2 and 3 of Schedule 1 to the <i>Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009</i>	26 March 2009

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## 2 **4 Amendment of assessments**

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Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment if:

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(a) the assessment was made before the commencement of this section; and

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(b) the amendment is made within 2 years after that commencement; and

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(c) the amendment is made for the purpose of giving effect to Schedule 1 to this Act.

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## Schedule 1—Consolidation

### Part 1—Pre rules

#### *Income Tax Assessment Act 1997*

#### **1 Section 12-5 (table item headed “consolidated groups and MEC groups”)**

Omit:

rights to future income ..... 716-405

#### **2 Subsection 701-55(5C)**

Repeal the subsection, substitute:

*WIP amount assets*

(5C) If:

(a) the asset’s tax cost is set because an entity becomes a \*subsidiary member of a \*consolidated group at a time (the *joining time*); and

(b) the asset is a \*WIP amount asset;

the expression means that section 25-95 applies as if the \*head company had paid a \*work in progress amount for the income year in which the joining time occurs equal to the \*tax cost setting amount of the asset.

*Consumable stores*

(5D) If:

(a) the asset’s tax cost is set because an entity becomes a \*subsidiary member of a \*consolidated group at a time (the *joining time*); and

(b) the asset is consumable stores;

the expression means that, for the purposes of section 8-1, the \*head company of the group is taken to have incurred an outgoing at the joining time in acquiring the asset equal to the asset’s \*tax cost setting amount.

#### **3 Subsection 701-55(6)**

Repeal the subsection, substitute:

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*Other provisions*

- (6) If any provision of this Act that is not mentioned above is to apply in relation to the asset, the expression means that the provision applies as if the asset's cost at that time were equal to its \*tax cost setting amount.

Note: For specific clarifications of the operation of this subsection in relation to bad debts, see Subdivision 716-S.

## **4 Section 701-56 (heading)**

Repeal the heading, substitute:

### **701-56 Non-application of subsection 701-55(6) to certain assets**

## **5 Subsections 701-56(1) and (2)**

Repeal the subsections.

## **6 Subsection 701-58(2)**

Omit “, (5C)”, substitute “, (5C), (5D)”.

## **7 After section 701-61**

Insert:

### **701-63 Asset forming part of goodwill, right to future income, etc.**

- (1) To avoid doubt, for the purposes of this Part:
- (a) treat goodwill of an entity as a single asset; and
  - (b) treat an asset of the entity that is an \*asset forming part of goodwill as being part of that single asset; and
  - (c) do not treat an asset of the entity that is an asset forming part of goodwill as a separate asset.
- (2) An *asset forming part of goodwill* means any of the following:
- (a) an intangible asset, the value of which is attributable to expected future profits from \*life insurance policies or \*general insurance policies;
  - (b) a customer relationship asset, know-how asset or another accounting intangible asset, that:
    - (i) is not a \*CGT asset; and
    - (ii) is not goodwill;
  - (c) a \*non-deductible right to future income.

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- 1 (3) A *non-deductible right to future income* is a \*right to future  
2 income that is not a \*WIP amount asset.
- 3 (4) A *right to future income* is a valuable right (including a contingent  
4 right) to receive an amount for the performance of work or services  
5 or the provision of goods if:  
6 (a) the valuable right forms part of a contract or agreement; and  
7 (b) the \*market value of the valuable right (taking into account  
8 all the obligations and conditions relating to the right) is  
9 greater than nil; and  
10 (c) the valuable right is not a \*Division 230 financial  
11 arrangement.
- 12 (5) *WIP amount asset* means an asset that is in respect of work (but  
13 not goods) that has been partially performed by a recipient  
14 mentioned in paragraph 25-95(3)(b) for a third entity but not yet  
15 completed to the stage where a recoverable debt has arisen in  
16 respect of the completion or partial completion of the work.

## 17 8 Section 701-90

18 Repeal the section.

## 19 9 Paragraph 705-25(5)(d)

20 Omit “a right that is an asset covered by section 716-410 (rights to  
21 future amounts that are expected to be included in assessable income)”,  
22 substitute “a right that is a \*WIP amount asset”.

## 23 10 Section 716-405

24 Repeal the section.

## 25 11 Section 716-410

26 Repeal the section.

## 27 12 Subsection 995-1(1)

28 Insert:

29 *asset forming part of goodwill* has the meaning given by  
30 subsection 701-63(2).

## 31 13 Subsection 995-1(1)

32 Insert:

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1 *non-deductible right to future income* has the meaning given by  
2 subsection 701-63(3).

3 **14 Subsection 995-1(1)**

4 Insert:

5 *right to future income* has the meaning given by subsection  
6 701-63(4).

7 **15 Subsection 995-1(1) (definition of *unexpended tax cost***  
8 ***setting amount*)**

9 Repeal the definition.

10 **16 Subsection 995-1(1)**

11 Insert:

12 *WIP amount asset* has the meaning given by subsection 701-63(5).  
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## Part 2—Interim rules

### *Income Tax Assessment Act 1997*

#### **17 Section 12-5 (table item headed “consolidated groups and MEC groups”)**

Repeal the item, substitute:

##### **consolidated groups and MEC groups**

assets in relation to Division 230 financial arrangement ...	701-61(4)
rights to future income .....	716-405

#### **18 Subsection 701-55(5C)**

Repeal the subsection, substitute:

*Rights to future amounts to be included in assessable income of head company*

(5C) If:

- (a) the asset’s tax cost is set because an entity becomes a \*subsidiary member of a \*consolidated group; and
- (b) the asset is a \*right to future income (other than a \*non-deductible right to future income in relation to the entity);

the expression means that section 716-405 may apply in relation to the asset after the particular time.

#### **19 Subsection 701-55(6)**

Repeal the subsection, substitute:

*Other provisions*

(6) If any provision of this Act that is not mentioned above is to apply in relation to the asset by including an amount in assessable income, or by allowing an amount as a deduction, in a way that brings into account (directly or indirectly) any of the following amounts:

- (a) the cost of the asset;
- (b) outgoings incurred, or amounts paid, in respect of the asset;
- (c) expenditure in respect of the asset;



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(d) an amount of a similar kind in respect of the asset;  
the expression means that the provision applies, for the purpose of determining the amount included in assessable income or the amount of the deduction, as if the cost, outgoing, expenditure or other amount had been incurred or paid to acquire the asset at the particular time for an amount equal to its \*tax cost setting amount.

Note 1: This subsection modifies the application of the provision only for the purpose of determining the amount included in assessable income or the amount of the deduction. Therefore:

- (a) the acquisition mentioned in this subsection is recognised only for that purpose; and
- (b) apart from the things mentioned in subsection 701-56(1), that acquisition does not affect the operation of section 701-5 (the entry history rule) in relation to the asset for other purposes.

Note 2: For specific clarifications of the operation of this subsection in relation to bad debts, see Subdivision 716-S.

## 20 Section 701-56 (heading)

Repeal the heading, substitute:

### 701-56 Setting the tax cost of an asset—subsection 701-55(6)

#### 21 Before subsection 701-56(3)

Insert:

##### *Entry history rule*

- (1) To avoid doubt, if subsection 701-55(6) applies in relation to an asset at the time (the *joining time*) an entity (the *joining entity*) became a \*subsidiary member of a \*consolidated group, the things that are taken to have happened in relation to the \*head company of the group under section 701-5 (the entry history rule) do not include:
  - (a) the cost, outgoing, expenditure or other amount incurred or paid to acquire the asset by the joining entity; and
  - (b) whether the cost, outgoing, expenditure or other amount incurred or paid by the joining entity to acquire the asset has been deducted by the joining entity before the joining time.

##### *Trading stock*

- (2) Subsection 701-55(6) does not apply in relation to an asset if it is \*trading stock.

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## 22 Paragraph 701-63(2)(a)

Repeal the paragraph.

## 23 Subsection 701-63(3)

Repeal the subsection, substitute:

- (3) A *non-deductible right to future income*, in relation to an entity, is a \*right to future income that is:
- (a) a right of the entity under a contract or \*arrangement, to the extent that the value of the right is contingent on the renewal of the contract or arrangement; or
  - (b) a right of the entity under a contract or arrangement entered into by the entity with another entity, to the extent that the other entity can unilaterally cancel the contract or arrangement without paying compensation or a penalty.

## 24 Subsection 701-63(4)

After “or the provision of goods”, insert “(other than \*trading stock)”.

## 25 Subsection 701-63(5)

Repeal the subsection.

## 26 At the end of Division 701

Add:

### 701-90 Right to future income treated as separate asset

- (2) Subject to subsection 701-63(1), for the purposes of this Part, treat a \*right to future income as a separate asset.
- (3) For the purposes of this Part, if:
- (a) a \*right to future income is treated as a separate asset under subsection (2); and
  - (b) the contract or agreement mentioned in subsection 701-63(4) in respect of the right to future income also includes one or more other rights;
- for the purposes of this Part, treat the contract or agreement (excluding the right to future income) as a separate asset.
- (4) For the purposes of this Part:
- (a) take into account all the obligations and conditions relating to a \*right to future income treated as a separate asset under

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1 subsection (2) in working out the \*market value of that  
2 separate asset; and

- 3 (b) if a contract or agreement (excluding the right to future  
4 income) is treated as a separate asset under subsection (3)—  
5 take into account all the obligations and conditions relating to  
6 each right (other than the right to future income) that forms  
7 part of the contract or agreement in working out the market  
8 value of that separate asset.

## 9 **27 Paragraph 705-25(5)(d)**

10 Omit “a right that is a \*WIP amount asset”, substitute “a right that is an  
11 asset covered by section 716-410 (rights to future amounts that are  
12 expected to be included in assessable income)”.

## 13 **28 After section 705-56**

14 Insert:

### 15 **705-56A Modification for tax cost setting in relation to certain rights** 16 **to future income**

- 17 (1) This section applies if, just before the joining time:  
18 (a) the joining entity \*holds an asset; and  
19 (b) under the terms of a contract or arrangement, the joining  
20 entity holds a \*right to future income arising from the asset;  
21 and  
22 (c) the right to future income is not a \*non-deductible right to  
23 future income in relation to the joining entity.
- 24 (2) Subsection (3) applies if the sum of:  
25 (a) the \*market value of the asset at the joining time; and  
26 (b) the market value of the \*right to future income at the joining  
27 time;  
28 exceeds the market value of the asset at the joining time  
29 (disregarding any encumbrances or claims on the asset at the  
30 joining time).
- 31 (3) For the purposes of paragraph 705-35(1)(c), treat the \*market value  
32 of the \*right to future income as the excess mentioned in  
33 subsection (2).
- 34 (4) If subsection (3) does not apply:  
35 (a) the \*right to future income is not taken into account under  
36 paragraph 705-35(1)(b) or (c); and

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(b) the right to future income's \*tax cost setting amount is taken to be nil.

## 29 After section 716-400

Insert:

### 716-405 Tax cost setting and rights to future income—deduction

(1) This section applies if:

- (a) an entity (the *joining entity*) became a subsidiary member of a \*consolidated group at a time (the *joining time*); and
- (b) subsection 701-55(5C) applies in relation to the asset at the joining time.

Note: Subsection 701-55(5C) deals with assets covered by section 716-410 (Rights to amounts that are expected to be included in assessable income after joining time).

(2) An entity qualified for a deduction under subsection (5) for the asset for an income year ending after the joining time can deduct, for that income year:

- (a) unless paragraph (b) applies—the amount determined under subsection (3A); or
- (b) if it is reasonable to expect that no amount will be included in the assessable income of an entity qualified for a deduction under subsection (5) for the asset for any later income year—the \*unexpended tax cost setting amount for the asset for that income year.

(3) Paragraph (2)(b) does not apply in relation to an entity qualified for a deduction under subsection (5) for the asset for that income year if:

- (a) the entity is the \*head company of the group; and
- (b) another entity ceased to be a \*subsidiary member of the group in that income year; and
- (c) the other entity can deduct an amount under subsection (2) for that income year because it is also qualified for a deduction under subsection (5) for the asset for that income year.

(3A) For the purposes of paragraph (2)(a), the amount is the lesser of the following:

- (a) the \*unexpended tax cost setting amount for the asset for that income year;

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- 1 (b) the unexpended tax cost setting amount for the asset for the  
2 first income year ending after the joining time, divided by the  
3 lesser of:  
4 (i) 10; or  
5 (ii) if the contract or agreement giving rise to the \*right to  
6 future income mentioned in paragraph 716-410(a) is for  
7 a specified period—the number of days in that period  
8 that end after the joining time, divided by 365 and  
9 rounded upwards to the nearest whole number.
- 10 (4) The ***unexpended tax cost setting amount*** for the asset for an  
11 income year is the \*tax cost setting amount for the asset, reduced  
12 by:  
13 (a) the amounts (if any) of all deductions under this section in  
14 respect of the asset for previous income years ending after  
15 the joining time; and  
16 (b) in determining the amount of a deduction under this section  
17 in respect of the asset for that income year for an entity that  
18 ceased to be a \*subsidiary member of the group in that  
19 income year—the amount (if any) that the \*head company of  
20 the group can deduct under this section in respect of the asset  
21 for that income year.
- 22 (5) An entity is qualified for a deduction under this subsection for an  
23 income year for the asset if:  
24 (a) the entity:  
25 (i) is the \*head company of the group; and  
26 (ii) held the asset at a time in that income year (whether or  
27 not because of the operation of subsection 701-1(1) (the  
28 single entity rule)); or  
29 (b) the entity:  
30 (i) held the asset at a time in that income year; and  
31 (ii) ceased to be a \*subsidiary member of the group in that  
32 income year or an earlier income year.
- 33 (6) An amount deducted under this section:  
34 (a) is not to be deducted under any other provision of this Act;  
35 and  
36 (b) is not to be taken into account in determining an amount that  
37 is included in the assessable income of any entity qualified  
38 for a deduction under subsection (5) for any income year for  
39 the asset; and
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- 1 (c) is not to be taken into account in determining an amount of a  
2 deduction of any entity qualified for a deduction under  
3 subsection (5) for any income year for the asset; and  
4 (d) despite paragraphs (b) and (c), is taken never to have been  
5 included in any of the elements of the \*cost base of the asset.

## 6 **716-410 Rights to amounts that are expected to be included in** 7 **assessable income after joining time**

8 This section covers an asset at a time if:

- 9 (a) the asset is a \*right to future income; and

10 *Note: Such a valuable right is treated as a separate asset for the*  
11 *purposes of this Part (see subsection 701-90(2)).*

- 12 (b) the asset is held by an entity just before the time (the **joining**  
13 **time**) it became a \*subsidiary member of a \*consolidated  
14 group; and

- 15 (c) it is reasonable to expect that an amount attributable to the  
16 asset will be included in the assessable income of the entity  
17 or any other entity after the joining time; and

- 18 (d) Division 230 does not apply in relation to the asset  
19 (disregarding section 230-455).

## 20 **30 Subsection 995-1(1)**

21 Insert:

22 ***unexpended tax cost setting amount*** has the meaning given by  
23 section 716-405.

## 24 **31 Subsection 995-1(1) (definition of *WIP amount asset*)**

25 Repeal the definition.  
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## Part 3—Prospective rules

### *Income Tax Assessment Act 1997*

#### **32 Section 12-5 (table item headed “consolidated groups and MEC groups”)**

Omit:

rights to future income ..... 716-405

#### **33 Subsection 701-55(5C)**

Repeal the subsection, substitute:

*WIP amount assets*

(5C) If:

(a) the asset’s tax cost is set because an entity becomes a \*subsidiary member of a \*consolidated group at a time (the *joining time*); and

(b) the asset is a \*WIP amount asset;

the expression means that section 25-95 applies as if the \*head company had paid a \*work in progress amount for the year in which the joining time occurs equal to the \*tax cost setting amount of the asset.

#### **34 Subsection 701-55(6) (note 1)**

Repeal the note.

#### **35 Section 701-56 (heading)**

Repeal the heading, substitute:

#### **701-56 Application of subsection 701-55(6)**

#### **36 Subsections 701-56(1) and (2)**

Repeal the subsections, substitute:

(1) Subsection (2) applies in relation to each asset that would be an asset of an entity at the time (the *joining time*) it becomes a \*subsidiary member of a \*consolidated group, assuming that subsection 701-1(1) (the single entity rule) did not apply.

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1 (1A) Subsection (2) applies only to the extent necessary for the purposes  
2 of subsection 701-55(6) to determine whether a provision of this  
3 Act is to apply in relation to each of those assets on and after the  
4 joining time.

5 (1B) Subsection (2) applies despite section 701-5 (the entry history  
6 rule).

7 (2) Treat the \*head company as having acquired each of those assets at  
8 the joining time as part of acquiring the business of the joining  
9 entity as a going concern.

## 10 **37 Paragraph 701-56(3)(d)**

11 Omit “, other than section 40-880 (Business related costs)”.

## 12 **38 Section 701-63 (heading)**

13 Repeal the heading, substitute:

### 14 **701-63 *Right to future income and WIP amount asset***

## 15 **39 Subsections 701-63(1), (2) and (3)**

16 Repeal the subsections.

## 17 **40 Subsection 701-63(4)**

18 Omit “(other than \*trading stock)”.

## 19 **41 At the end of section 701-63**

20 Add:

21 (5) *WIP amount asset* means an asset that is in respect of work (but  
22 not goods) that has been partially performed by a recipient  
23 mentioned in paragraph 25-95(3)(b) for a third entity but not yet  
24 completed to the stage where a recoverable debt has arisen in  
25 respect of the completion or partial completion of the work.

## 26 **42 After section 701-65**

27 Insert:

### 28 **701-67 Assets in this Part are CGT assets**

29 A reference in this Part to an asset does not include a thing that is  
30 not a \*CGT asset.



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1 **43 Section 701-90**

2 Repeal the section.

3 **44 Paragraph 705-25(5)(d)**

4 Repeal the paragraph, substitute:

5 (d) a \*right to future income (other than a \*WIP amount asset).

6 **45 Section 705-56A**

7 Repeal the section.

8 **46 Section 716-405**

9 Repeal the section.

10 **47 Section 716-410**

11 Repeal the section.

12 **48 Subsection 995-1(1) (definition of *asset forming part of***  
13 ***goodwill*)**

14 Repeal the definition.

15 **49 Subsection 995-1(1) (definition of *non-deductible right to***  
16 ***future income*)**

17 Repeal the definition.

18 **50 Subsection 995-1(1) (definition of *unexpended tax cost***  
19 ***setting amount*)**

20 Repeal the definition.

21 **51 Subsection 995-1(1)**

22 Insert:

23 *WIP amount asset* has the meaning given by subsection 701-63(5).  
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## 2 **Part 4—Application**

### 3 **52 Interpretation**

4 In this Part:

5 **2010 Act** means the *Tax Laws Amendment (2010 Measures No. 1) Act*  
6 *2010*.

7 **interim rules** means Part 3-90 of the *Income Tax Assessment Act 1997*  
8 as amended by Part 2 of this Schedule.

9 **original 2002 rules** means Part 3-90 of the *Income Tax Assessment Act*  
10 *1997* (disregarding amendments to that Part made by the 2010 Act and  
11 by this Schedule).

12 **original 2010 rules** means Part 3-90 of the *Income Tax Assessment Act*  
13 *1997* (as amended by the 2010 Act, but disregarding amendments to  
14 that Part made by this Schedule).

15 **pre rules** means Part 3-90 of the *Income Tax Assessment Act 1997* as  
16 amended by Part 1 of this Schedule.

17 **prospective rules** means Part 3-90 of the *Income Tax Assessment Act*  
18 *1997* as amended by Part 3 of this Schedule.

### 19 **53 Main application rules**

20 (1) The provisions specified in subitem (2), (3), (4) or (5) apply to an  
21 assessment of the head company of a consolidated group or MEC group  
22 for an income year in respect of an entity (the **joining entity**) that  
23 becomes a member of the group at a time (the **joining time**).

24 (2) Those provisions are the pre rules if:  
25 (a) the joining time is before 12 May 2010; or  
26 (b) the arrangement under which the joining entity joined the  
27 group commenced (see item 55) before 10 February 2010.

28 (3) Despite subitem (2), those provisions are the interim rules if:  
29 (a) both of these conditions are satisfied:  
30 (i) the joining time is before 12 May 2010;  
31 (ii) the head company's latest notice of assessment, for the  
32 income year, that relates to the application of subsection  
33 701-55(5C) or (6) of the original 2010 rules in respect  
34 of the joining entity, was served on the head company  
35 by the Commissioner on or after 12 May 2010 and on or  
36 before 30 March 2011; or

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- 1 (b) both of these conditions are satisfied:  
2 (i) the joining time is on or after 12 May 2010;  
3 (ii) the arrangement under which the joining entity joined  
4 the group commenced (see item 55) on or after  
5 10 February 2010 and on or before 30 March 2011.
- 6 (4) Those provisions are the prospective rules if:  
7 (a) the joining time is on or after 31 March 2011; and  
8 (b) neither subitem (2) nor (3) applies.
- 9 (5) Despite subitems (2), (3) and (4), those provisions are the original 2002  
10 rules if the head company's latest notice of assessment, for the income  
11 year, that relates to the application of subsection 701-55(6) of the  
12 original 2002 rules in respect of the joining entity, was served on the  
13 head company by the Commissioner before 12 May 2010.
- 14 (6) Subitem (5) does not apply if:  
15 (a) the head company of the group requests an amendment of the  
16 assessment and the amendment relates to the application of  
17 subsection 701-55(6) of the original 2002 rules in respect of  
18 the joining entity; or  
19 (b) the amendment of the assessment:  
20 (i) would relate to an asset of a kind mentioned in  
21 paragraph 701-63(2)(b) of the pre rules; and  
22 (ii) would not be consistent with the outcome that arises  
23 under the pre rules for assets of that kind.

## 54 Special rule for private rulings etc.

- 24
- 25 (1) This item applies to:  
26 (a) a private ruling issued before 31 March 2011; or  
27 (b) a written advice given by the Commissioner before 31 March  
28 2011 under an Annual Compliance Arrangement;  
29 to the extent that the ruling or advice has effect in relation to the  
30 application of subsection 701-55(5C) or (6) of the original 2010 rules in  
31 respect of the joining entity mentioned in item 53.
- 32 (2) Item 53 does not affect that effect of the ruling or advice.
- 33 (3) However, this item does not apply if the head company requests an  
34 amendment of the assessment after the issue of the ruling or the giving  
35 of the advice.

## 55 Commencement of arrangement

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- 1 (1) Subitems (2), (3) and (4) specify, for the purpose of this Part, the time  
2 of commencement of the arrangement under which the joining entity  
3 mentioned in item 53 joined the group.
- 4 (2) If the arrangement is or relates to a takeover bid (within the meaning of  
5 the *Corporations Act 2001*) the time is when:  
6 (a) for an off-market bid (within the meaning of that Act)—step  
7 4 of the table in subsection 633(1) of that Act is completed;  
8 or  
9 (b) for a market bid (within the meaning of that Act)—step 2 of  
10 the table in subsection 635(1) of that Act is completed.
- 11 (3) If a court orders, under subsection 411(1) of the *Corporations Act 2001*:  
12 (a) a meeting or meetings of a company’s members about the  
13 arrangement; or  
14 (b) a meeting or meetings of one or more classes of a company’s  
15 members about the arrangement;  
16 the time is when the application for the order was made.
- 17 (4) If subitem (2) or (3) does not apply, the time is when the decision to  
18 enter into the arrangement was made.  
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# EXPOSURE-DRAFT

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## Schedule 2—Consolidation and TOFA

### *Income Tax Assessment Act 1997*

#### **1 Paragraph 715-375(1)(b)**

After “of the joining entity at the joining time”, insert “(disregarding subsection 701-1(1) (the single entity rule))”.

#### **2 Paragraph 715-375(1)(c)**

Repeal the paragraph, substitute:

- (c) the accounting liability is or is part of a \*Division 230 financial arrangement of the head company at the joining time (because of subsection 701-1(1) (the single entity rule)).

#### **3 Subsections 715-375(2), (3) and (4)**

Repeal the subsections, substitute:

- (2) For the purposes of Division 230 and Schedule 1 to the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009*, treat the \*head company of the group as starting to have the accounting liability at the joining time for receiving a payment equal to:
  - (a) if the liability is or is part of a \*Division 230 financial arrangement of the head company at the joining time (because of subsection 701-1(1) (the single entity rule)):
    - (i) to which Subdivision 230-B (accruals method or realisation method) applies; or
    - (ii) to which Subdivision 230-E (hedging financial arrangements method) applies;
  - the amount of the liability, as determined in accordance with:
    - (iii) the joining entity’s \*accounting principles for tax cost setting; or
    - (iv) if the amount of the liability cannot be determined in accordance with the joining entity’s accounting principles for tax cost setting—comparable standards for accounting made under a \*foreign law; and
  - (b) otherwise—the liability’s \*Division 230 starting value at the joining time.

# EXPOSURE-DRAFT

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1 *Tax Laws Amendment (Taxation of Financial Arrangements)*  
2 *Act 2009*

3 **4 After item 104A of Schedule 1**

4 Insert:

5 **104B Asset or liability of entity joining pre-TOFA**  
6 **consolidated group etc.**

- 7 (1) This item applies in relation to an asset or liability if:
- 8 (a) an entity (the *joining entity*) becomes a subsidiary member of  
9 a consolidated group or MEC group at a time (the *joining*  
10 *time*); and
  - 11 (b) the asset or liability becomes that of the head company of the  
12 group because subsection 701-1(1) (the single entity rule)  
13 applies when the joining entity becomes a subsidiary member  
14 of the group; and
  - 15 (c) the asset or liability is, or is part of, a financial arrangement  
16 at the start of the head company's first applicable income  
17 year; and
  - 18 (d) the head company's first applicable income year starts after  
19 the joining time; and
  - 20 (e) the head company has the asset or liability (whether or not  
21 because of subsection 701-1(1) (the single entity rule))  
22 throughout the period:
    - 23 (i) starting at the joining time; and
    - 24 (ii) ending at the start of the head company's first  
25 applicable income year; and
  - 26 (f) the head company elects to have subitem 104(2) apply to  
27 itself.
- 28 (2) For the purposes of subitem 104(13) and section 230-445 of the *Income*  
29 *Tax Assessment Act 1997*:
- 30 (a) assume that subsection 701-55(5A) of that Act applies in  
31 relation to the asset at the joining time; and
  - 32 (b) assume that section 715-375 of that Act applies as if the  
33 liability is, or is part of, a Division 230 financial arrangement  
34 at the joining time.
- 35 (3) Subitems 104(14) and (15) do not apply in relation to the asset or  
36 liability.

# EXPOSURE-DRAFT

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- 1 (4) In the case of an asset, subitems (5), (6) and (7) apply if, on the  
2 assumption that subsection 701-55(5A) of the *Income Tax Assessment*  
3 *Act 1997* applies in relation to the asset at the joining time, paragraph  
4 701-55(5A)(b) of that Act would apply in relation to the asset.
- 5 (5) Work out if the Division 230 starting value for the asset at the joining  
6 time exceeds or falls short of its tax cost setting amount.
- 7 (6) If there is an excess, an amount equal to 25% of that excess is included  
8 in the head company's assessable income for:  
9 (a) the head company's first applicable income year; and  
10 (b) each of the 3 subsequent income years.
- 11 (7) If there is a shortfall, the head company is entitled to a deduction equal  
12 to 25% of that shortfall for:  
13 (a) the head company's first applicable income year; and  
14 (b) each of the 3 subsequent income years.