EXPOSURE DRAFT

Inserts for

Treasury Laws Amendment (Measures for a later sitting) Bill 2018: Tax Treatment of Concessional Loans Involving Tax Exempt Entities

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

Schedule 1—Tax treatment of concessional loans involving tax exempt entities

Part 1—Main amendments

Income Tax Assessment Act 1936

1 At the end of subsection 57-25(3) in Schedule 2D

Add:

Note: If the asset is, or is part of, a Division 230 financial arrangement, section 57-32 may affect how the market value of the asset is worked out.

2 At the end of subsection 57-30(2) in Schedule 2D

Add:

Note: If the liability is, or is part of, a Division 230 financial arrangement, section 57-32 may affect how the market value of the corresponding right or other asset is worked out.

3 After section 57-30 in Schedule 2D

Insert:

57-32 Division 230 financial arrangements—market value of assets and rights

(1) This section applies in relation to an asset (the ***subject asset***) held by an entity (the ***holder***) if:

(a) the subject asset is:

(i) covered by subsection 57-25(1); or

(ii) a right, or other asset, corresponding to a liability covered by subsection 57-30(1); and

(b) the subject asset, or the corresponding liability for the subject asset, is or is part of a Division 230 financial arrangement at the transition time; and

(c) when the arrangement was entered into:

(i) the parties to the arrangement were not dealing at arm's length (within the meaning of the *Income Tax Assessment Act 1997*) in relation to the subject asset; or

(ii) if the subject asset gives rise to an interest that is not an equity interest in an entity—the return on the interest would reasonably be expected to be less than the benchmark rate of return (within the meaning of that Act) for the interest.

(2) For the purposes mentioned in subsection (3), assume at the transition time that the market value of the subject asset is the total amount (the ***initial amount***) of the financial benefits (within the meaning of the *Income Tax Assessment Act 1997*) that the holder provided in relation to the subject asset before the transition time:

(a) reduced by:

(i) repayments of principal made in relation to the subject asset before the transition time; and

(ii) the amount of any impairment (within the meaning of the accounting principles (within the meaning of that Act)) of the subject asset at the transition time; and

(b) increased by the amount of the cumulative amortisation (worked out using the effective interest method recognised by the accounting principles (within the meaning of that Act)) of any difference at the transition time between:

(i) the initial amount; and

(ii) the amount payable on the maturity of the subject asset.

(3) Subsection (2) has effect for the purposes of working out the subject asset's adjusted market value under section 57-25 or 57-30 for use when applying Division 230 of the *Income Tax Assessment Act 1997* to the subject asset or the corresponding liability for the subject asset.

57-33 Division 230 financial arrangements—transition taxpayer's right to receive or obligation to provide payment

(1) This section applies in relation to the following:

(a) an asset covered by subsection 57-25(1) to which section 57-32 applies;

(b) the corresponding liability for a right, or other asset, covered by subsection 57-30(1) to which section 57-32 applies.

Note: Section 57-32 applies if the asset or liability is or is part of a Division 230 financial arrangement.

(2) For the purposes of section 230-60 of the *Income Tax Assessment Act 1997*, assume the following:

(a) in the case of an asset—that the transition taxpayer acquired the asset at the transition time in return for the transition taxpayer starting to have an obligation to provide one or more financial benefits in relation to the Division 230 financial arrangement;

(b) in the case of a liability—that the transition taxpayer started to have the liability at the transition time in return for the transition taxpayer starting to have a right to receive one or more financial benefits under the Division 230 financial arrangement.

4 At the end of Division 57 in Schedule 2D

Add:

Subdivision 57-P—Balancing adjustment on ceasing to have a Division 230 financial arrangement

57-135 Balancing adjustment on ceasing to have a Division 230 financial arrangement referred to in section 57-32

(1) This section applies if:

(a) section 57-32 was applied to work out the market value of an asset (the ***subject asset***) held by an entity (the ***holder***) at the transition time; and

(b) a balancing adjustment is made under Subdivision 230-G of the *Income Tax Assessment Act 1997*, after the transition time, in relation to the Division 230 financial arrangement referred to in section 57-32.

(2) For the purposes of making the balancing adjustment under Subdivision 230-G of the *Income Tax Assessment Act 1997* in relation to the Division 230 financial arrangement:

(a) if when applying the method statement in subsection 230-445(1) of that Act the holder is taken to have made a gain from the Division 230 financial arrangement—increase the amount of that gain by the amount worked out under subsection (3) of this section; or

(b) if when applying the method statement in subsection 230-445(1) of that Act the holder is taken to have made a loss from the Division 230 financial arrangement—

reduce the amount of that loss by the amount worked out under subsection (3) of this section; or

(c) if when applying the method statement in subsection 230-445(1) of that Act no balancing adjustment is made in relation to the Division 230 financial arrangement—the amount worked out under subsection (3) of this section is the balancing adjustment to be made.

(3) For the purposes of subsection (2), the amount is the difference between:

(a) the amount that the holder would need to receive in relation to the subject asset without an amount being assessable income of, or deductible to, the holder if the subject asset were disposed of at the time the balancing adjustment is made; and

(b) the amount that the holder would need to receive in relation to the subject asset without an amount being assessable income of, or deductible to, the holder, if:

(i) the subject asset were disposed of at the time the balancing adjustment is made; and

(ii) the assumptions in subsection (4) were made.

(4) The assumptions referred to in subparagraph (3)(b)(ii) are that, when the Division 230 financial arrangement was entered into:

(a) the parties to the arrangement were dealing with each other at arm's length (within the meaning of the *Income Tax Assessment Act 1997*) in relation to the subject asset; and

(b) if the arrangement gives rise to an interest that is not an equity interest in an entity—the return on the interest would reasonably be expected to be equal to the benchmark rate of return (within the meaning of the *Income Tax Assessment Act 1997*) for the interest.

(5) This section applies despite section 230-510 of the *Income Tax Assessment Act 1997*.

Part 2—Application of amendments

5 Application of amendments

The amendments made by this Schedule apply if the transition time is at or after 7.30 pm, by legal time in the Australian Capital Territory, on 8 May 2018.