

EXPOSURE-DRAFT

1 Inserts for
2 **Tax Laws Amendment (2012**
3 **Miscellaneous Measures No. 1) Bill 2012:**
4 **Removing tax impediments to certain**
5 **business restructures**

6 **EXPOSURE DRAFT**

7

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1.		
2. Schedule ??	The day this Act receives the Royal Assent.	
3.		

8 **4 Amendment of assessments**

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

- 11 (a) the assessment was made before the commencement of
12 Schedule ?? (about removing tax impediments to certain
13 business restructures) to this Act; and
14 (b) the amendment is made for the purpose of giving effect to
15 items 14 and 19, and subitem 16(4), of that Schedule; and
16 (c) the amendment is made within 2 years after the day that
17 Schedule commences.

18 **Schedule ??—Removing tax impediments to**
19 **certain business restructures**

20 **Part 1—Amendments**

21 *Income Tax Assessment Act 1997*

22 **1 At the end of section 124-355**

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Add:

- (6) There are additional consequences if some or all of your shares involved in the roll-over are your trading stock or revenue assets: see section 124-390.

2 Subsection 124-360(1) (note)

Omit “Note”, substitute “Note 1”.

3 At the end of subsection 124-360(1)

Add:

- Note 2: Section 118-25 (which gives a CGT exemption for trading stock) does not prevent you from choosing to obtain the roll-over.

4 Subsection 124-370(1) (note)

Omit “Note”, substitute “Note 1”.

5 At the end of subsection 124-370(1)

Add:

- Note 2: Section 118-25 (which gives a CGT exemption for trading stock) does not prevent you from choosing to obtain the roll-over.

6 Section 124-390

Repeal the section, substitute:

124-390 Deferral of profit or loss on shares

- (1) The additional consequences in this section apply if:
- (a) under this Subdivision:
 - (i) you are taken to have chosen to obtain the roll-over; or
 - (ii) you otherwise choose to obtain the roll-over; and
 - (b) if subparagraph (a)(ii) applies to you, you choose for these additional consequences to apply; and
 - (c) some or all of your *shares in the original company were of a character described in the following table:
 - (i) at the time immediately before you disposed of them as described in paragraph 124-360(1)(c); or
 - (ii) at the time immediately before the original company redeemed or cancelled them as described in paragraph 124-370(1)(d); and
 - (d) the shares in the interposed company that you acquired in return for those shares have the same character.

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Corresponding shares must have the same character for the additional consequences in this section to apply

Item Character

1 your *trading stock

2 *revenue assets

2 Note: Apply this section twice if some of your corresponding shares are
3 trading stock and others are revenue assets.

4 *Trading stock*

5 (2) The amount included in your assessable income because of the
6 disposal, redemption or cancellation of each of your *shares
7 described in paragraph (1)(c) that was your *trading stock at the
8 time mentioned in that paragraph is equal to:

9 (a) if the share had been your trading stock ever since the start of
10 the income year that included that time—the total of:

11 (i) its *value as trading stock at the start of the income year;
12 and

13 (ii) the amount (if any) by which its cost had increased
14 since the start of the income year; or

15 (b) otherwise—its cost at that time.

16 (3) For each of the *shares that you acquired as described in
17 paragraph (1)(d) that is your *trading stock, you are taken to have
18 paid:

19
$$\frac{\text{Total of the amounts included in your assessable income under subsection (2) for your corresponding *shares in the original company}}{\text{Number of your shares acquired as described in paragraph (1)(d) that are your *trading stock}}$$

20 (4) For the purposes of Division 70 (about trading stock), you, the
21 original company and the interposed company are taken to have
22 dealt with each other in the ordinary course of *business and at
23 *arm's length for each of the transactions referred to in paragraph
24 124-360(1)(c) or 124-370(1)(d) or (e).

25 *Revenue assets*

26 (5) For each of your *shares that:

27 (a) is described in paragraph (1)(c); and

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1 (b) was a *revenue asset immediately before its disposal,
2 redemption or cancellation;
3 your gross proceeds for that disposal, redemption or cancellation
4 are taken to be the amount you would have needed to have
5 received in order to have a nil profit and nil loss for that disposal,
6 redemption or cancellation.

7 (6) For the purpose of calculating any profit or loss on a future
8 disposal of, cessation of ownership, or other realisation of a *share
9 that:

10 (a) you acquired as described in paragraph (1)(d); and

11 (b) is a *revenue asset;

12 you are taken to paid the following for your acquisition of that
13 share:

14
$$\frac{\text{Total of the amounts worked out under subsection (5)} \\ \text{for your corresponding *shares in the original company}}{\text{Number of your shares acquired as described}} \\ \text{in paragraph (1)(d) that are *revenue assets}$$

15 **7 At the end of section 124-440**

16 Add:

17 (6) There are additional consequences if some or all of your units and
18 shares involved in the roll-over are your trading stock or revenue
19 assets: see section 124-475.

20 **8 Section 124-445 (note)**

21 Omit “Note”, substitute “Note 1”.

22 **9 At the end of section 124-445**

23 Add:

24 Note 2: Section 118-25 (which gives a CGT exemption for trading stock) does
25 not prevent you from choosing to obtain the roll-over.

26 **10 Subsection 124-455(1) (note)**

27 Omit “Note”, substitute “Note 1”.

28 **11 At the end of subsection 124-455(1)**

29 Add:

30 Note 2: Section 118-25 (which gives a CGT exemption for trading stock) does
31 not prevent you from choosing to obtain the roll-over.

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1 **12 At the end of Subdivision 124-H**

2 Add:

3 **Additional consequences for member if units are trading stock**
4 **or revenue assets**

5 **124-475 Deferral of profit or loss on units**

6 (1) The additional consequences in this section apply if:

7 (a) under this Subdivision, you choose to obtain the roll-over;
8 and

9 (b) you choose for these additional consequences to apply; and

10 (c) some or all of your units in the unit trust were of a character
11 described in the following table:

12 (i) at the time immediately before you disposed of them as
13 described in paragraph 124-445(c); or

14 (ii) at the time immediately before the trustee redeemed or
15 cancelled them as described in paragraph 124-455(1)(d);
16 and

17 (d) the shares in the company that you acquired in return for
18 those units have the same character.

19

**Corresponding units and shares must have the same character for the additional
consequences in this section to apply**

Item Character

1 your *trading stock

2 *revenue assets

20 Note: Apply this section twice if some of your corresponding units and
21 shares are trading stock and others are revenue assets.

22 *Trading stock*

23 (2) The amount included in your assessable income because of the
24 disposal, redemption or cancellation of each of your units
25 described in paragraph (1)(c) that was your *trading stock at the
26 time mentioned in that paragraph is equal to:

27 (a) if the unit had been your trading stock ever since the start of
28 the income year that included that time—the total of:

29 (i) its *value as trading stock at the start of the income year;
30 and

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- 1 (ii) the amount (if any) by which its cost had increased
2 since the start of the income year; or
3 (b) otherwise—its cost at that time.

- 4 (3) For each of the *shares that you acquired as described in
5 paragraph (1)(d) that is your *trading stock, you are taken to have
6 paid:

7
$$\frac{\text{Total of the amounts included in your assessable income under subsection (2) for your corresponding units in the unit trust}}{\text{Number of your *shares acquired as described in paragraph (1)(d) that are your *trading stock}}$$

- 8 (4) For the purposes of Division 70 (about trading stock), you, the
9 trustee of the unit trust and the company are taken to have dealt
10 with each other in the ordinary course of *business and at *arm's
11 length for each of the transactions referred to in paragraph
12 124-445(c) or 124-455(1)(d) or (e).

13 *Revenue assets*

- 14 (5) For each of your units that:
15 (a) is described in paragraph (1)(c); and
16 (b) was a *revenue asset immediately before its disposal,
17 redemption or cancellation;
18 your gross proceeds for that disposal, redemption or cancellation
19 are taken to be the amount you would have needed to have
20 received in order to have a nil profit and nil loss for that disposal,
21 redemption or cancellation.

- 22 (6) For the purpose of calculating any profit or loss on a future
23 disposal of, cessation of ownership, or other realisation of a *share
24 that:
25 (a) you acquired as described in paragraph (1)(d); and
26 (b) is a *revenue asset;
27 you are taken to paid the following for your acquisition of that
28 share:

29
$$\frac{\text{Total of the amounts worked out under subsection (5) for your corresponding units in the unit trust}}{\text{Number of your *shares acquired as described in paragraph (1)(d) that are *revenue assets}}$$

30 **13 Paragraph 124-860(4)(b)**

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Repeal the paragraph, substitute:

- (b) has no *CGT assets, other than any or all of the following:
 - (i) small amounts of cash or debt;
 - (ii) its rights under an *arrangement, if (collectively) those rights only facilitate the transfer of assets to the transferee from the transferor; and

14 Paragraph 126-225(1)(b)

Repeal the paragraph, substitute:

- (b) if subparagraph (a)(ii) applies—the receiving trust has no CGT assets just before the transfer time, other than any or all of the following:
 - (i) small amounts of cash or debt;
 - (ii) its rights under an *arrangement, if (collectively) those rights only facilitate the transfer of assets to it from the transferring trust; and

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Part 2—Application and transitional provisions

15 Definitions

In this Part:

2011 Budget time means 7.30 pm, by legal time in the Australian Capital Territory, on 10 May 2011.

2012 Budget time means 7.30 pm, by legal time in the Australian Capital Territory, on 8 May 2012.

16 Application of amendments

- (1) The amendments made by items 1 to 6 apply in relation to shares disposed of, redeemed or cancelled at or after the 2012 Budget time.
- (2) The amendments made by items 7 to 12 apply in relation to units disposed of, redeemed or cancelled at or after the 2012 Budget time.
- (3) The amendment made by item 13 applies in relation to CGT events happening at or after the 2011 Budget time.
- (4) The amendment made by item 14 applies in relation to CGT events happening on or after 1 November 2008.

17 Transitional provision—Subdivision 124-G roll-overs between 2011 and 2012 Budget times

- (1) This item applies if section 124-390 of the *Income Tax Assessment Act 1997* (as in force before the commencement of item 6 of this Schedule) applies to you in relation to a roll-over involving shares that:
 - (a) were disposed of, redeemed or cancelled during the period:
 - (i) starting at the 2011 Budget time; and
 - (ii) ending just before the 2012 Budget time; and
 - (b) were your trading stock, or revenue assets, at the time immediately before that disposal, redemption or cancellation.
- (2) That section applies to you in relation to that roll-over as if the following were substituted for subsections (4) and (5) of that section:
 - (3A) For the purposes of Division 70 (about trading stock), you, the original company and the interposed company are taken to have dealt with each other in the ordinary course of *business and at *arm's length for each of the transactions referred to in paragraph 124-360(1)(c) or 124-370(1)(d) or (e).

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Revenue assets

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2 (4) For each of your *shares in the original company that is a *revenue
3 asset at that time, your gross proceeds for its disposal, redemption
4 or cancellation are taken to be the amount you would have needed
5 to have received in order to have a nil profit and nil loss for that
6 disposal, redemption or cancellation.

7 (5) For the purpose of calculating any profit or loss on a future
8 disposal of, cessation of ownership, or other realisation of a *share
9 in the interposed company that you acquired in return for those of
10 your shares in the original company that were *revenue assets at
11 that time, you are taken to paid the following for your acquisition
12 of that share:

Total of the amounts worked out under subsection (4) for those of
your *shares in the original company

Number of those shares you acquired in the interposed company

14 **18 Transitional provision—Subdivision 124-H roll-overs** 15 **between 2011 and 2012 Budget times**

- 16 (1) The additional consequences in this item apply if:
- 17 (a) under Subdivision 124-H of the *Income Tax Assessment Act*
18 *1997*, you choose to obtain a roll-over in relation to units
19 disposed of, redeemed or cancelled during the period:
 - 20 (i) starting at the 2011 Budget time; and
 - 21 (ii) ending just before the 2012 Budget time; and
 - 22 (b) you choose for these additional consequences to apply; and
 - 23 (c) some or all of those units were your trading stock or revenue
24 assets:
 - 25 (i) at the time immediately before you disposed of them as
26 described in paragraph 124-445(c) of that Act; or
 - 27 (ii) at the time immediately before the trustee redeemed or
28 cancelled them as described in paragraph 124-455(1)(d)
29 of that Act.

30 Note: Apply this item twice if some of your units were trading stock and others were revenue
31 assets.

32 *Trading stock*

- 33 (2) The amount included in your assessable income because of the disposal,
34 redemption or cancellation of each of your units in the unit trust that

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1 was your trading stock at the time mentioned in paragraph (1)(c) is
2 equal to:

- 3 (a) if the unit had been your trading stock ever since the start of
4 the income year that included that time—the total of:
5 (i) its value as trading stock at the start of the income year;
6 and
7 (ii) the amount (if any) by which its cost had increased
8 since the start of the income year; or
9 (b) otherwise—its cost at that time.

- 10 (3) For each of the shares in the company that you acquired in return for
11 those of your units in the unit trust that were your trading stock at that
12 time, you are taken to have paid:

$$13 \frac{\text{Total of the amounts included in your assessable income under} \\ \text{subitem (2) for those of your units in the unit trust}}{\text{Number of those shares you acquired in the company}}$$

- 14 (4) For the purposes of Division 70 (about trading stock) of that Act, you,
15 the trustee of the unit trust and the company are taken to have dealt with
16 each other in the ordinary course of business and at arm's length for
17 each of the transactions referred to in paragraph 124-445(c) or
18 124-455(1)(d) or (e) of that Act.

19 *Revenue assets*

- 20 (5) For each of your units in the unit trust that was a revenue asset at the
21 time mentioned in paragraph (1)(c), your gross proceeds for its disposal,
22 redemption or cancellation are taken to be the amount you would have
23 needed to have received in order to have a nil profit and nil loss for that
24 disposal, redemption or cancellation.

- 25 (6) For the purpose of calculating any profit or loss on a future disposal of,
26 cessation of ownership, or other realisation of a share in the company
27 that you acquired in return for those of your units in the unit trust that
28 were revenue assets at that time, you are taken to paid the following for
29 your acquisition of that share:

$$30 \frac{\text{Total of the amounts worked out under subitem (5) for those of} \\ \text{your units in the unit trust}}{\text{Number of those shares you acquired in the company}}$$

31 **19 Transitional provision—transfer of assets between certain** 32 **trusts**

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- (1) This item applies if:
- (a) a roll-over under Subdivision 126-G of the *Income Tax Assessment Act 1997* is chosen after the commencement of this Schedule; and
 - (b) the transfer time (within the meaning of paragraph 126-225(1)(a) of that Act) for the roll-over happens during an income year ending before the commencement of this Schedule.
- (2) Subsection 126-260(1) of that Act applies to the trustee of the transferring trust as if the reference in that subsection to “within 3 months after the end of the transfer year” were a reference to “within 3 months after the time the roll-over is chosen”.