

# EXPOSURE-DRAFT

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Inserts for  
**Tax Laws Amendment Bill 2012: tax  
treatment of native title benefits**

EXPOSURE DRAFT
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**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.		

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**Schedule ??—Tax treatment of native title  
benefits**

**Part 1—Main amendments**

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*Income Tax Assessment Act 1936*

**1 Subsection 128U(1) (definition of *mining payment*)**

Omit all the words after “but does not”, substitute:

include:

- (d) a payment made by a distributing body; or
- (e) a native title benefit (within the meaning of the *Income Tax Assessment Act 1997*).

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*Income Tax Assessment Act 1997*

**2 Section 11-55 (after table item headed “National Rental  
Affordability Scheme”)**

Insert:

native title benefits

native title benefits..... 59-50

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## 3 After section 59-45

Insert:

### 59-50 Native title benefits

- (1) These are not assessable income and are not \*exempt income:
- (a) a \*native title benefit provided to an \*Indigenous holding entity;
  - (b) a native title benefit provided to one or more \*Indigenous persons, or applied for their benefit.
- (2) A payment or other benefit:
- (a) provided to an \*Indigenous holding entity; or
  - (b) provided to one or more \*Indigenous persons, or applied for their benefit;
- is not assessable income and is not \*exempt income if the payment or benefit is provided by an Indigenous holding entity out of a \*native title benefit it has received.
- (3) Subsection (2) does not apply to a payment or other benefit to the extent that the payment or benefit:
- (a) is for the purposes of meeting the administrative costs of the provider of the payment or benefit; or
  - (b) is remuneration or consideration for goods or services provided by another entity.
- (4) A payment or other benefit that:
- (a) is provided to an \*Indigenous holding entity as described in paragraph (2)(a); and
  - (b) is a payment or benefit to which subsection (2) applies;
- is taken to be a *native title benefit* for the purposes of any further applications of subsection (2).
- (5) A *native title benefit* is a payment or \*non-cash benefit provided:
- (a) under an agreement made under:
    - (i) an Act of the Commonwealth, a State or a Territory; or
    - (ii) an instrument made under such an Act;to the extent that the payment or benefit relates to an act affecting native title; or
  - (b) as compensation determined in accordance with Division 5 of Part 2 of the *Native Title Act 1993*.

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1 In paragraph (a), *act*, *affecting* and *native title* have the same  
2 meaning in that paragraph as they have in the *Native Title Act*  
3 *1993*.

4 Note: Examples of agreements that can be covered by paragraph (a) include:  
5 (a) indigenous land use agreements (within the meaning of the  
6 *Native Title Act 1993*); and  
7 (b) recognition and settlement agreements (within the meaning of the  
8 *Traditional Owner Settlement Act 2010* of Victoria).

9 (6) An *Indigenous holding entity* means:

- 10 (a) a \*distributing body; or  
11 (b) a trust, if the beneficiaries of the trust can only be:  
12 (i) \*Indigenous persons; or  
13 (ii) distributing bodies; or  
14 (iii) Indigenous persons and distributing bodies.

## 15 4 Subsection 995-1(1)

16 Insert:

17 *Indigenous holding entity* has the meaning given by subsection  
18 59-50(6).

## 19 5 Subsection 995-1(1)

20 Insert:

21 *Indigenous person* means a person who is:

- 22 (a) a member of the Aboriginal race of Australia; or  
23 (b) a descendant of an Indigenous inhabitant of the Torres Strait  
24 Islands.

## 25 6 Subsection 995-1(1)

26 Insert:

27 *native title benefit* has the meaning given by subsections 59-50(4)  
28 and (5).

## 29 7 Application of amendments

30 The amendments made by this Part apply in relation to native title  
31 benefits provided on or after 1 July 2008.  
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## 1 Part 2—Other amendments

### 2 *Income Tax Assessment Act 1936*

#### 3 8 Division 11C of Part III (heading)

4 Repeal the heading, substitute:

#### 5 **Division 11C—Payments in respect of mining operations** 6 **on Indigenous land**

#### 7 9 Subsection 128U(1) (definition of *Aboriginal*)

8 Repeal the definition.

#### 9 10 Subsection 128U(1) (definition of *Aboriginal land*)

10 Repeal the definition.

#### 11 11 Subsection 128U(1) (subparagraphs (d)(i) and (ii) of the 12 definition of *distributing body*)

13 Omit “Aboriginals” (wherever occurring), substitute “Indigenous  
14 persons”.

#### 15 12 Subsection 128U(1)

16 Insert:

17 *Indigenous land* means any estate or interest in land that, under a  
18 law of the Commonwealth or of a State or Territory that relates to  
19 Indigenous persons, is held for the use or benefit of Indigenous  
20 persons.

#### 21 13 Subsection 128U(1)

22 Insert:

23 *Indigenous person* means a person who is:

- 24 (a) a member of the Aboriginal race of Australia; or  
25 (b) a descendant of an Indigenous inhabitant of the Torres Strait  
26 Islands.

#### 27 14 Subsection 128U(1) (definition of *mining payment*)

28 Omit “Aboriginal or Aboriginals”, substitute “Indigenous person or  
29 persons”.

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1 **15 Subsection 128U(1) (paragraph (c) of the definition of**  
2 ***mining payment*)**

3 Omit "Aboriginals", substitute "Indigenous persons".

4 **16 Subsection 128U(1) (subparagraphs (c)(i), (ii) and (iii) of**  
5 **the definition of *mining payment*)**

6 Omit "Aboriginal land" (wherever occurring), substitute "Indigenous  
7 land".

8 ***Income Tax Assessment Act 1997***

9 **17 Section 11-55 (table item headed "mining")**

10 Omit "Aboriginals", substitute "Indigenous persons".

11 **18 Subsection 30-300(2)**

12 Omit "Aboriginal arts", substitute "arts of \*Indigenous persons".

13 **19 Paragraphs 59-15(1)(b) and (2)(b)**

14 Omit "Aboriginals", substitute "Indigenous persons".

15 **20 Subsection 995-1(1) (definition of *Aboriginal*)**

16 Repeal the definition.

17