EXPOSURE DRAFT

Inserts for

Tax and Superannuation Laws Amendment (2014 Measures No. 3) Bill 2014: Thin capitalisation and 23AJ

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
1. Schedule #—Thin capitalisation	The day after this Act receives the Royal Assent.	
2. Schedule #—Foreign dividends	The day after this Act receives the Royal Assent.	

Contents

Schedule #—Thin capitalisation

Part 1—Safe harbour debt amount

Income Tax Assessment Act 1997

1 Section 820-95 (method statement, step 7)

Omit "$^{3}/_{4}$", substitute "$^{3}/_{5}$".

2 Subsection 820-100(2) (method statement, step 8)

Omit "$^{20}/_{21}$", substitute "$^{15}/_{16}$".

3 Section 820-195 (method statement, step 5)

Omit "$^{3}/_{4}$", substitute "$^{3}/_{5}$".

4 Subsection 820-200(2) (method statement, step 6)

Omit "$^{20}/_{21}$", substitute "$^{15}/_{16}$".

5 Section 820-205 (method statement, step 5)

Omit "$^{3}/_{4}$", substitute "$^{3}/_{5}$".

6 Subsection 820-210(2) (method statement, step 6)

Omit "$^{20}/_{21}$", substitute "$^{15}/_{16}$".

Part 2—Worldwide gearing debt amount for outward investing entities (non-ADI)

Income Tax Assessment Act 1997

7 Subsection 820-90(1) (note)

Repeal the note, substitute:

Note 1: The safe harbour debt amount differs depending on whether the entity is an outward investor (general) or an outward investor (financial), see sections 820-95 and 820-100.

Note 2: The worldwide gearing debt amount for an entity that is not also an inward investment vehicle (general) or an inward investment vehicle (financial) differs depending on whether the entity is an outward investor (general) or an outward investor (financial), see section 820-110.

8 Subsection 820-90(2)

Repeal the subsection, substitute:

Entity is also an inward investment vehicle (general) or inward investment vehicle (financial)

(2) The entity's ***maximum allowable debt*** for an income year is the greatest of the following amounts:

(a) the *safe harbour debt amount;

(b) the *arm's length debt amount;

(c) the *worldwide gearing debt amount, unless:

(i) the entity has *worldwide equity of a negative amount; or

(ii) financial statements meeting the requirements in subsection 820-933(4) for the entity for the income year do not exist; or

(iii) 2 or more sets of financial statements meeting the requirements in subsection 820-933(4) for the entity for the income year exist, and the entities in relation to which each set of financial statements have been prepared are not identical.

Note 1: The safe harbour debt amount differs depending on whether the entity is an outward investor (general) or an outward investor (financial), see sections 820-95 and 820-100.

Note 2: The worldwide gearing debt amount for an entity that is also an inward investment vehicle (general) or an inward investment vehicle (financial) is in Subdivision 820-C, see sections 820-216 and 820-217.

9 Subsection 820-110(1) (method statement, steps 2, 3 and 4)

Repeal the steps, substitute:

Step 3.	Add 1 to the result of step 1.
Step 4.	Divide the result of step 1 by the result of step 3.

10 Subsection 820-110(2) (method statement, steps 2, 3 and 4)

Repeal the steps, substitute:

Step 3.	Add 1 to the result of step 1.
Step 4.	Divide the result of step 1 by the result of step 3.

Part 3—Worldwide capital amount

Income Tax Assessment Act 1997

11 Subsection 820-320(2) (method statement, steps 2 and 3)

Repeal the steps, substitute:

Step 3.	Multiply the result of step 1 by the entity's worldwide group capital ratio for that year (see subsection (3)).

Part 4—Safe harbour capital amount

Income Tax Assessment Act 1997

12 Subsection 820-310(1) (method statement, step 2)

Omit “4%”, substitute “6%”.

13 Section 820-405 (method statement, step 2)

Omit “4%”, substitute “6%”.

14 Subsection 820-615(3) (method statement, step 2)

Omit “4%”, substitute “6%”.

Part 5—De minimis threshold

Income Tax Assessment Act 1997

15 Section 820-35

Repeal the section, substitute:

820-35 Application—$2 million threshold

Subdivision 820-B, 820-C, 820-D or 820-E does not apply to disallow any *debt deduction of an entity for an income year if the total debt deductions of that entity and all its *associate entities for that year are $2 million or less.

Part 6—Worldwide gearing debt amount for inward investing entities (non-ADI)

Income Tax Assessment Act 1997

16 Section 820-190

Omit "greater", substitute "greatest".

17 After paragraph 820-190(b)

Insert:

; (c) the *worldwide gearing debt amount, unless:

(i) the entity has *worldwide equity of a negative amount; or

(ii) financial statements meeting the requirements in subsection 820-933(4) for the entity for the income year do not exist; or

(iii) 2 or more sets of financial statements meeting the requirements in subsection 820-933(4) for the entity for the income year exist, and the entities in relation to which each set of financial statements have been prepared are not identical.

18 Section 820-190 (note)

Omit "Note", substitute "Note 1".

19 At the end of section 820-190

Add:

Note 2: The worldwide gearing debt amount differs depending on whether the entity is an inward investment vehicle (general), inward investment vehicle (financial), inward investor (general) or an inward investor (financial), see sections 820-216 to 820-219.

20 After section 820-215

Insert:

EXPOSURE DRAFT

820-216 Worldwide gearing debt amount—inward investment vehicle (general)

If the entity is an *inward investment vehicle (general) for the income year, the ***worldwide gearing debt amount*** is the result of applying the method statement in this section.

Method statement

Step 1. Divide the entity's *worldwide debt for the income year by the entity's *worldwide equity for that year.

Step 2. Add 1 to the result of step 1.

Step 3. Divide the result of step 1 by the result of step 2.

Step 4. Multiply the result of step 3 in this method statement by the result of:

(a) if the entity is not also an *outward investing entity (non-ADI)—step 4 in the method statement in section 820-195; or

(b) if the entity is also an *outward investing entity (non-ADI)—step 6 in the method statement in section 820-95.

Step 5. Add to the result of step 4 the average value, for that year, of the entity's *associate entity excess amount. The result of this step is the ***worldwide gearing debt amount***.

Example: SJP Limited, a company that is not an Australian entity, has a worldwide debt of $120 million and worldwide equity of $40 million. The result of applying step 1 is therefore 3. Dividing 3 by 4 (through applying steps 2 and 3) and multiplying the result by $75 million (which is the result of step 4 of the method statement in section 820-195) equals $56.25 million. As the average value of the company's associate entity excess amount is $4 million, the worldwide gearing debt amount is therefore $60.25 million.

820-217 Worldwide gearing debt amount—inward investment vehicle (financial)

If the entity is an *inward investment vehicle (financial) for the income year, the ***worldwide gearing debt amount*** is the result of applying the method statement in this section.

Method statement

Step 1. Divide the entity's *worldwide debt for the income year by the entity's *worldwide equity for that year.

Step 2. Add 1 to the result of step 1.

Step 3. Divide the result of step 1 by the result of step 2.

Step 4. Multiply the result of step 3 in this method statement by the result of:

(a) if the entity is not also an *outward investing entity (non-ADI)—step 5 in the method statement in subsection 820-200(2); or

(b) if the entity is also an *outward investing entity (non-ADI)—step 7 in the method statement in subsection 820-100(2).

Step 5. Add to the result of step 4 the average value, for that year, of the entity's *zero-capital amount (other than any zero-capital amount that is attributable to the entity's *overseas permanent establishments).

Step 6. Add to the result of step 5 the average value, for that year, of the entity's *associate entity excess amount. The result of this step is the ***worldwide gearing debt amount***.

Example: RGR Limited, a company that is not an Australian entity, has a worldwide debt of $90 million and worldwide equity of $30 million. The result of applying step 1 is therefore 3. Dividing 3 by 4 (through applying steps 2 and 3) and multiplying the result by $100 million (which is the result of step 5 of the method statement in subsection 820-200(2)) equals $75 million. The zero capital amount is $5 million. Adding that amount to $75 million results in $80 million.

As the company does not have any associate entity excess amount, the worldwide gearing debt amount is therefore $80 million.

820-218 Worldwide gearing debt amount—inward investor (general)

If the entity is an *inward investor (general) for the income year, the ***worldwide gearing debt amount*** is the result of applying the method statement in this section.

Method statement

Step 1. Divide the entity's *worldwide debt for the income year by the entity's *worldwide equity for that year.

Step 2. Add 1 to the result of step 1.

Step 3. Divide the result of step 1 by the result of step 2.

Step 4. Multiply the result of step 3 in this method statement by the result of step 4 in the method statement in section 820-205.

Step 5. Add to the result of step 4 the average value, for that year, of the entity's *associate entity excess amount. The result of this step is the ***worldwide gearing debt amount***.

Example: MLO Corporation, a company that is not an Australian entity, has a worldwide debt of $120 million and worldwide equity of $40 million.

The result of applying step 1 is therefore 3. Dividing 3 by 4 (through applying steps 2 and 3) and multiplying the result by $75 million (which is the result of step 4 of the method statement in section 820-205) equals $56.25 million. As the average value of the company's associate entity excess amount is $4 million, the worldwide gearing debt amount is therefore $60.25 million.

820-219 Worldwide gearing debt amount—inward investor (financial)

If the entity is an *inward investor (financial) for the income year, the ***worldwide gearing debt amount*** is the result of applying the method statement in this section.

EXPOSURE DRAFT

Method statement

Step 1. Divide the entity's *worldwide debt for the income year by the entity's *worldwide equity for that year.

Step 2. Add 1 to the result of step 1.

Step 3. Divide the result of step 1 by the result of step 2.

Step 4. Multiply the result of step 3 in this method statement by the result of step 5 in the method statement in subsection 820-210(2).

Step 5. Add to the result of step 4 the average value, for that year, of the entity's *zero-capital amount that has arisen because of the Australian investments mentioned in step 1 of the method statement in subsection 820-210(2).

Step 6. Add to the result of step 5 the average value, for that year, of the entity's *associate entity excess amount. The result of this step is the ***worldwide gearing debt amount***.

Example: MSR Limited, a company that is not an Australian entity, has a worldwide debt of $90 million and worldwide equity of $30 million. The result of applying step 1 is therefore 3. Dividing 3 by 4 (through applying steps 2 and 3) and multiplying the result by $105 million (which is the result of step 5 of the method statement in subsection 820-210(2)) equals $78.75 million. The zero-capital amount is $5 million. Adding that amount to $78.75 million results in $83.75 million. As the company does not have any associate entity excess amount, the worldwide gearing debt amount is therefore $83.75 million.

21 After Subdivision 820-J

Insert:

Subdivision 820-JA—Worldwide debt and worldwide equity

Guide to Subdivision 820-JA

820-931 What this Subdivision is about

> This Subdivision provides for the meanings of worldwide debt and worldwide equity for the purposes of this Division.

820-932 Worldwide debt and worldwide equity—outward investing entities

(1) This section applies to an *outward investing entity (non-ADI) that is not also an *inward investment vehicle (general) or an *inward investment vehicle (financial) for all or any part of the relevant year.

Worldwide debt

(2) For the purposes of this Division, the entity's ***worldwide debt*** at a particular time, means the total of the following amounts:

(a) all the *debt interests issued by the entity:

(i) to entities other than any *Australian controlled foreign entities (the ***controlled entities***) of which the entity is an *Australian controller at that time; and

(ii) that are still *on issue at that time;

(b) all the debt interests issued by the controlled entities:

(i) to entities other than the entity or other controlled entities; and

(ii) that are still on issue at that time.

Worldwide equity

(3) For the purposes of this Division, the entity's ***worldwide equity*** at a particular time, means the total of the following amounts:

(a) all the *equity capital of the entity as at that time, but worked out disregarding *equity interests in the entity held at that time by *Australian controlled foreign entities (the ***controlled entities***) of which the entity is an *Australian controller at that time;

(b) all the equity capital of the controlled entities as at that time, but worked out disregarding equity interests in the controlled entities held at that time by:

(i) the entity; or

(ii) other controlled entities.

820-933 Worldwide debt and worldwide equity—inward investing entities

(1) This section applies to an *inward investing entity (non-ADI).

Worldwide debt

(2) The entity's ***worldwide debt*** for an income year is the result of applying the method statement in this subsection. In applying the method statement, use the amounts shown as mentioned in paragraph 820-933(4)(b) in the audited consolidated financial statements for the entity for the income year.

Method statement

Step 1. Start with the total amount of liabilities.

Step 2. Reduce the result of step 1 by the amount of provisions and contingent liabilities.

Step 3. Reduce the result of step 2 by the amount of liabilities in relation to distributions to equity participants.

Step 4. Reduce the result of step 3 by the amount of liabilities relating to employee benefits. The result of this step is the entity's ***worldwide debt*** for the income year.

Example: MLO Corporation is a company that is not an Australian entity, and has a subsidiary that is an Australian entity. MLO Corporation prepares audited consolidated financial statements in accordance with International Financial Reporting Standards. The financial statements state that MLO Corporation's total liabilities are $150 million.

The amount of provisions, contingent liabilities, liabilities relating to distributions to equity participants and liabilities relating to employee benefits are $5 million, $5 million, $10 million and $10 million respectively. Deducting these amounts from the result of step 1 (through applying steps 2 to 4) equals $120 million, which is the worldwide debt.

Worldwide equity

(3) The entity's ***worldwide equity*** for an income year means the amount of net assets shown as mentioned in paragraph 820-933(4)(b) in the audited consolidated financial statements for the entity for the income year.

Audited consolidated financial statements

(4) Financial statements meet the requirements in this subsection for an entity and an income year if:

(a) the statements have been prepared on a consolidated basis in relation to the entity and one or more other entities in accordance with standards covered by subsection 820-219E(1); and

(b) the statements show each of the following amounts (however described) on that consolidated basis and in accordance with those standards:

(i) liabilities;

(ii) provisions and contingent liabilities;

(iii) liabilities in relation to distributions to equity participants;

(iv) liabilities relating to employee benefits;

(v) net assets; and

(c) the statements have been audited in accordance with a requirement in a *foreign law and the auditor's report is unqualified; and

(d) the statements are for an annual period that ends no later than 12 months before the start of the income year; and

(e) if statements for more than one period meet the other requirements in this subsection—the statements are for the most recent such period.

Recognised overseas accounting standards

(5) This subsection covers the following standards:

(a) the standards (however described) that apply to the preparation of financial statements and are made, or adopted, by the responsible body in:

(i) the European Union; or

(ii) the United States of America; or

(iii) Canada; or

(iv) Japan; or

(v) a jurisdiction specified in an instrument under subsection (6);

(b) the international financial reporting standards that are made or adopted by the International Accounting Standards Board.

(6) The Minister may, by legislative instrument, specify one or more jurisdictions for the purposes of subparagraph (5)(a)(v).

Part 7—Consequential amendments

Income Tax Assessment Act 1997

22 Section 820-10 (after table item 7)

Insert:

7A	Subdivision 820-JA	the meaning of worldwide debt and worldwide equity for the purposes of this Division.

23 Subsection 820-85 (note 1)

Omit “$250,000”, substitute “$2 million”.

24 Section 820-95 (example)

Repeal the example, substitute:

Example: AK Pty Ltd, a company that is an Australian entity, has an average value of assets (other than assets attributable to its overseas permanent establishments) of $100 million.

The average values of its excluded equity interests, associate entity debt, associate entity equity, controlled foreign entity debt, controlled foreign entity equity and non-debt liabilities are $5 million, $10 million, $8 million, $5 million, $2 million and $5 million respectively. Deducting these amounts from the result of step 1 (through applying steps 1A to 6) leaves $65 million. Multiplying $65 million by $^{3}/_{5}$ results in $39 million. As the average value of the company’s associate entity excess amount is $4.5 million, the safe harbour debt amount is therefore $43.5 million.

25 Subsection 820-100(2) (example)

Repeal the example, substitute:

Example: GLM Limited, a company that is an Australian entity, has an average value of assets (other than assets attributable to its overseas permanent establishments) of $160 million.

The average values of its relevant excluded equity interests, associate entity debt, associate entity equity, controlled foreign entity debt, controlled foreign entity equity, non-debt liabilities and zero-capital amount are $5 million, $5 million, $5 million, $9 million, $6 million, $5 million and $4 million respectively. Deducting these amounts from the result of step 1 (through applying steps 1A to 7) leaves $121 million. Multiplying $121 million by $^{15}/_{16}$ results in $113.4375 million. Adding the average zero-capital amount of $4 million results in $117.4375 million. As the company does not have any associate entity excess amount, the total debt amount is therefore $117.4375 million.

26 Subsection 820-100(3) (method statement, step 7)

Omit "$^3/_4$", substitute "$^3/_5$".

27 Subsection 820-100(3) (example)

Repeal the example, substitute:

Example: GLM Limited, a company that is an Australian entity, has an average value of assets (other than assets attributable to its overseas permanent establishments) of $160 million.

The average values of its relevant excluded equity interests, associate entity equity, controlled foreign entity debt, controlled foreign entity equity, non-debt liabilities and on-lent amount are $5 million, $5 million, $9 million, $6 million, $5 million and $35 million respectively. Deducting these amounts from the result of step 1 (through applying steps 1A to 6) leaves $95 million. Multiplying $95 million by $^3/_5$ results in $57 million. Adding the average on-lent amount of $35 million results in $92 million. Reducing the result of step 8 by the associate entity debt amount of $5 million equals $87 million. As the company does not have any associate entity excess amount, the adjusted on-lent amount is therefore $87 million.

28 Subsection 820-110(1) (heading)

Repeal the heading, substitute:

Outward investor (general) that is not also an inward investment vehicle (general)

29 Subsection 820-110(1)

After "the income year,", insert "and not also an *inward investment vehicle (general) for all or any part of that year,".

30 Subsection 820-110(1) (example)

Repeal the example, substitute:

Example: AK Pty Ltd, a company that is an Australian entity, has an average value of worldwide debt of $90 million and an average value of worldwide equity of $30 million. The result of applying step 1 is therefore 3. Dividing 3 by 4 (through applying steps 3 and 4) and multiplying the result by $65 million (which is the result of step 6 in the method statement in section 820-95) equals $48.75 million. As the average value of the company's associate entity excess amount is $4.5 million, the worldwide gearing debt amount is therefore $53.25 million.

31 Subsection 820-110(2) (heading)

Repeal the heading, substitute:

Outward investor (financial) that is not also an inward investment vehicle (financial)

32 Subsection 820-110(2)

After "that year,", insert "and not also an *inward investment vehicle (financial) for all or any part of that year,".

33 Subsection 820-110(2) (example)

Repeal the example, substitute:

Example: GLM Limited, a company that is an Australian entity, has an average value of worldwide debt of $120 million and an average value of worldwide equity of $40 million. The result of applying step 1 is therefore 3. Dividing 3 by 4 (through applying steps 3 and 4) and multiplying the result by $121 million (which is the result of step 7 of the method statement in subsection 820-100(2)) equals $90.75 million. The average value of zero-capital amount (see step 7 of the method statement in subsection 820-100(2)) is $4 million. Adding that amount to $90.75 million results in $94.75 million. As the company does not have any associate entity excess amount, the worldwide gearing debt amount is therefore $94.75 million.

34 Subsection 820-185 (note 1)

Omit "$250,000", substitute "$2 million".

35 Section 820-195 (example)

Repeal the example, substitute:

Example: ALWZ Ltd, a company that is an Australian entity, has an average value of assets of $100 million.

The average values of its excluded equity interests, associate entity debt, associate entity equity and non-debt liabilities are $5 million, $10 million, $5 million and $5 million respectively. Deducting these amounts from the result of step 1 (through applying steps 1A to 4) leaves $75 million. Multiplying $75 million by $^{3}/5$ results in $45 million. As the average value of the company's associate entity excess amount is $2 million, the safe harbour debt amount is therefore $47 million.

36 Subsection 820-200(2) (example)

Repeal the example, substitute:

Example: KJW Finance Pty Ltd, a company that is an Australian entity, has an average value of assets of $120 million.

The average values of its excluded equity interests, associate entity debt, associate entity equity, its non-debt liabilities and its zero-capital amount are $5 million, $5 million, $3 million, $2 million and $5 million respectively. Deducting these amounts from the result of step 1 (through applying steps 1A to 5) leaves $100 million. Multiplying $100 million by $^{15}/_{16}$ results in $93.75 million. Adding the zero-capital amount of $5 million to $93.75 million results in $98.75 million. As the company does not have any associate entity excess amount, the total debt amount is therefore $98.75 million.

37 Subsection 820-200(3) (method statement, step 5)

Omit "$^{3}/_{4}$", substitute "$^{3}/_{5}$".

38 Subsection 820-200(3) (example)

Repeal the example, substitute:

Example: KJW Finance Pty Ltd, a company that is an Australian entity, has an average value of assets of $120 million.

The average values of its excluded equity interests, associate entity equity, non-debt liabilities and on-lent amount are $5 million, $3 million, $2 million and $35 million respectively. Deducting these amounts from the result of step 1 (through applying steps 1A to 4) leaves $75 million. Multiplying $75 million by $^{3}/_{5}$ results in $45 million. Adding the average on-lent amount of $35 million results in $80 million. Reducing $80 million by the associate entity debt amount of $5 million results in $75 million. As the company does not have any associate entity excess amount, the adjusted on-lent amount is therefore $75 million.

39 Section 820-205 (example)

Repeal the example, substitute:

Example: RJ Corporation is a company that is not an Australian entity. The average value of its Australian investments is $100 million.

The average value of its relevant excluded equity interests, associate entity debt, associate entity equity and non-debt liabilities is $5 million, $10 million, $5 million and $5 million respectively. Deducting those amounts from the result of step 1 leaves $75 million. Multiplying $75 million by $^{3}/_{5}$ results in $45 million. As the company does not have any associate entity excess amount, the safe harbour debt amount is therefore $45 million.

40 Subsection 820-210(2) (example)

Repeal the example, substitute:

Example: FXS Financial SA is a company that is not an Australian entity. The average value of its Australian investments is $120 million.

The average value of its relevant excluded equity interests, associate entity debt, associate entity equity, non-debt liabilities and zero-capital amount are $5 million, $5 million, $2 million, $3 million and $5 million respectively. Deducting those amounts from the result of step 1 (through applying steps 1A to 5) leaves $100 million. Multiplying $100 million by $^{15}/_{16}$ results in $93.75 million. Adding the average zero-capital amount of $5 million results in $98.75 million. As the company does not have any associate entity excess amount, the total debt amount is therefore $98.75 million.

41 Subsection 820-210(3) (method statement, step 5)

Omit "$^{3}/_{4}$", substitute "$^{3}/_{5}$".

42 Subsection 820-210(3) (example)

Repeal the example, substitute:

Example: FXS Financial SA is a company that is not an Australian entity. The average value of its Australian investments is $120 million.

The average value of its relevant excluded equity interests, associate entity equity, non-debt liabilities and on-lent amount are $5 million, $2 million, $3 million and $35 million respectively. Deducting those amounts from the result of step 1 (through applying steps 1A to 4) leaves $75 million. Multiplying $75 million by $^{3}/_{5}$ results in $45 million. Adding the average on-lent amount of $35 million results in $80 million. Reducing the result of step 6 by the associate entity debt amount of $5 million results in $75 million. As the company does not have any associate entity excess amount, the adjusted on-lent amount is therefore $75 million.

43 Subsection 820-300(1) (note 1)

Omit "$250,000", substitute "$2 million".

44 Subsection 820-310(1) (example)

Repeal the example, substitute:

Example: The Southern Cross Bank is an Australian bank that carries on its banking business through its overseas permanent establishments and through foreign entities that it controls. For the income year, its average value of risk-weighted assets and intangible assets comprising capitalised software expenses is $150 million (having discounted those assets that are excluded by step 1) and the average value of its relevant tier 1 prudential capital deductions is $2 million. Multiplying $150 million by 6% equals $9 million, which is the result of step 2. Adding $2 million to $9 million equals $11 million, which is the safe harbour capital amount.

45 Subsection 820-320(2) (example)

Repeal the example, substitute:

Example: Southern Cross Bank has an average value of risk-weighted assets of $150 million (having discounted those risk-weighted assets that are excluded by step 1) and the average value of its relevant tier 1 prudential capital deductions is $2 million. The entity's worldwide group capital ratio is 0.0875. Multiplying $150 million by 0.0875 equals $13.125 million, which is the result of step 3. Adding that amount to the average value of the relevant tier 1 prudential capital deductions equals $15.125 million, which is the worldwide capital amount.

46 Subsection 820-395(1) (note 1)

Omit "$250,000", substitute "$2 million".

47 Section 820-405 (example)

Repeal the example, substitute:

Example: The Global Bank is a foreign bank that carries on its banking business in Australia through a permanent establishment. The average value of its relevant risk-weighted assets is $140 million. Multiplying that amount by 6% results in $8.4 million, which is the safe harbour capital amount.

48 Paragraph 820-910(2)(b)

Omit "$250,000", substitute "$2 million".

49 Subsection 820-920(3) (method statement, step 4, paragraph (a))

Omit "$^{20}/_{21}$", substitute "$^{15}/_{16}$".

50 Subsection 820-920(3) (method statement, step 4, paragraphs (b) and (c))

Omit "$^{3}/_{4}$", substitute "$^{3}/_{5}$".

51 Paragraph 820-946(1)(c)

Omit "$250,000", substitute "$2 million".

52 Subsection 995-1(1) (definition of *worldwide debt*)

Repeal the definition, substitute:

worldwide debt:

(a) for an *outward investing entity (non-ADI) that is not also an *inward investment vehicle (general) or an *inward investment vehicle (financial) for all or any part of the relevant year—has the meaning given by subsection 820-932(2); and

(b) for an *inward investing entity (non-ADI)—has the meaning given by subsection 820-933(2).

53 Subsection 995-1(1) (definition of *worldwide equity*)

Repeal the definition, substitute:

worldwide equity:

(a) for an *outward investing entity (non-ADI) that is not also an *inward investment vehicle (general) or an *inward investment vehicle (financial) for all or any part of the relevant year—has the meaning given by subsection 820-932(3); and

(b) for an *inward investing entity (non-ADI)—has the meaning given by subsection 820-933(3).

54 Subsection 995-1(1) (definition of *worldwide gearing debt amount*)

Repeal the definition, substitute:

worldwide gearing debt amount:

(a) for an *outward investing entity (non-ADI) that is not also an *inward investment vehicle (general) or an *inward investment vehicle (financial) for all or any part of the relevant year—has the meaning given by section 820-110; and

(b) for an inward investment vehicle (general)—has the meaning given by section 820-216; and

(c) for an inward investment vehicle (financial)—has the meaning given by section 820-217; and

(d) for an *inward investor (general)—has the meaning given by section 820-218; and

(e) for an *inward investor (financial)—has the meaning given by section 820-219.

Part 8—Application

55 Application

The amendments made by this Schedule apply to assessments for income years starting on or after 1 July 2014.

Schedule #—Foreign dividends

Part 1—Foreign equity distributions on participation interests

Income Tax Assessment Act 1936

1 Section 23AJ

Repeal the section.

Income Tax Assessment Act 1997

2 Paragraph 25-90(b)

Repeal the paragraph, substitute:

(b) the income is *non-assessable non-exempt income under section 768-5, or section 23AI or 23AK of the *Income Tax Assessment Act 1936*; and

3 Division 768 (heading)

Repeal the heading, substitute:

Division 768—Foreign non-assessable income and gains

4 Before Subdivision 768-B

Insert:

Subdivision 768-A—Returns on foreign investment

Guide to Subdivision 768-A

768-1 What this Subdivision is about

If:

(a) an Australian corporate tax entity receives a foreign equity distribution from a foreign company, either directly or indirectly through one or more interposed trusts or partnerships; and

(b) the Australian corporate tax entity holds a participation interest of at least 10% in the foreign company;

the distribution is non-assessable non-exempt income for the Australian corporate tax entity.

Table of sections

Foreign equity distributions on participation interests

768-5 Foreign equity distributions on participation interests

Foreign equity distributions received directly

(1) A *foreign equity distribution is not assessable income, and is not *exempt income, of the entity to which it is made if:

(a) the entity is an Australian resident and a company; and

(b) at the time the distribution is made, the entity satisfies the participation test in section 768-15 in relation to the company that made the distribution; and

(c) the entity does not receive the distribution in the capacity of a trustee.

Foreign equity distributions received through interposed trusts and partnerships

(2) An amount is not assessable income, and is not *exempt income, of an entity if:

(a) the entity is a beneficiary of a trust or a partner in a partnership, an Australian resident and a company; and

(b) the amount is all or part of the net income of the trust or partnership that would, apart from this subsection, be included in the entity's assessable income because of Division 5 or 6 of Part III of the *Income Tax Assessment Act 1936*; and

(c) the amount can be attributed (either directly or indirectly through one or more interposed trusts or partnerships that are not *corporate tax entities) to a *foreign equity distribution; and

(d) at the time the distribution is made, the entity satisfies the participation test in section 768-15 in relation to the company that made the distribution; and

(e) the entity does not receive the distribution in the capacity of a trustee.

(3) An amount that is *non-assessable non-exempt income under subsection (2) is taken, for the purpose of section 25-90 (about deductions relating to foreign non-assessable non-exempt income) to be derived from the same source as the *foreign equity distribution.

768-10 Meaning of *foreign equity distribution*

A ***foreign equity distribution*** is a *distribution or *non-share dividend made by a company that is a foreign resident in respect of an *equity interest in the company.

768-15 Participation test—minimum 10% participation

An entity satisfies the participation test in this section in relation to another entity at a time if, at that time, the sum of the following is at least 10%:

(a) the *direct participation interest the entity would have in the other entity if rights on winding-up were disregarded;

(b) the *indirect participation interest the entity would have in the other entity if:

(i) rights on winding-up were disregarded; and

(ii) section 960-185 only applied to intermediate entities that are not *corporate tax entities.

5 Subsection 995-1(1)

Insert:

foreign equity distribution has the meaning given by section 768-10.

Part 2—Repeal of portfolio dividend exemption for CFCs

Income Tax Assessment Act 1936

6 Section 404

Repeal the section.

Part 3—Consequential amendments

Income Tax Assessment Act 1936

7 Subsection 44(1) (note 1)

Repeal the note, substitute:

Note 1: Some other provisions that expressly deal with dividends are sections 23AI, 23AK and 128D of this Act and section 768-5 of the *Income Tax Assessment Act 1997*.

8 Subparagraph 47A(2)(a)(ii)

Omit "section 23AI or 23AJ", substitute "section 23AI or section 768-5 of the *Income Tax Assessment Act 1997*".

9 Paragraph 47A(7)(b)

Omit "section 23AJ", substitute "section 768-5 of the *Income Tax Assessment Act 1997*".

10 Subsection 320(1) (definition of *section 404 country*)

Repeal the definition.

11 Section 332A

Repeal the section.

12 Subsection 399(2) (definition of *excluded modifications*)

Omit "404 and".

Income Tax Assessment Act 1997

13 Section 11-15 (note)

Omit "sections 403 and 404", substitute "section 403".

14 Section 11-55 (table item headed "foreign aspects of income taxation")

Omit:

dividend from a foreign country, non-portfolio **23AJ**

EXPOSURE DRAFT

15 Section 11-55 (table item headed “foreign aspects of income taxation”)

After:

distributions of conduit foreign income 802-20

insert:

foreign equity distributions on participation interests 768-5

16 After subparagraph 118-12(2)(a)(via)

Insert:

(vib) section 768-5 (foreign equity distributions on participation interests);

17 Subparagraph 118-12(2)(b)(iii)

Repeal the subparagraph.

18 Subsection 118-20(6)

Omit “section 23AJ (about exempting certain non-portfolio dividends paid by non-resident companies) of the *Income Tax Assessment Act 1936* because a company pays a *dividend to you”, substitute “section 768-5 (about foreign equity distributions on participation interests) because a company pays a *foreign equity distribution”.

19 Paragraph 220-350(1)(c)

Omit “section 23AI, 23AJ or 23AK of the *Income Tax Assessment Act 1936*”, substitute “section 768-5, or section 23AI or 23AK of the *Income Tax Assessment Act 1936*”.

20 Paragraph 230-15(3)(c)

Repeal the paragraph, substitute:

(c) the income is *non-assessable non-exempt income under section 768-5, or section 23AI or 23AK of the *Income Tax Assessment Act 1936*; and

21 Paragraphs 230-335(4)(a) and (b)

Repeal the paragraphs, substitute:

(a) the *financial arrangement hedges a foreign currency risk in relation to an anticipated *foreign equity distribution from a *connected entity; and

(b) the distribution is *non-assessable non-exempt income under section 768-5.

22 Paragraph 802-30(3)(c)

Omit "section 23AJ of the *Income Tax Assessment Act 1936*", substitute "section 768-5".