

EXPOSURE DRAFT

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Inserts for
**Tax and Superannuation Laws
Amendment (2015 Measures No. 2) Bill
2015: Instalment warrants**

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1.	The day this Act receives the Royal Assent.	
2.		
3.		

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4 Amendment of assessments

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

- (a) the assessment was made before the commencement of this section; and
- (b) the amendment is made within 2 years after that commencement; and
- (c) the amendment is made for the purpose of giving effect to Schedule #.

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Schedule #—Instalment trusts

Income Tax Assessment Act 1997

1 After Division 230

Insert:

Division 235—Particular financial transactions

Table of Subdivisions

Guide to Division 235

235-I Instalment trusts

Guide to Division 235

235-1 What this Division is about

This Division is about the tax treatment of particular kinds of financial transactions.

Subdivision 235-I—Instalment trusts

Guide to Subdivision 235-I

235-805 What this Subdivision is about

An entity that invests in an asset through an instalment warrant or instalment receipt is treated for most income tax purposes as if it had invested in the asset directly.

A regulated superannuation fund that invests in an asset through a limited recourse borrowing is treated in the same way.

Table of sections

Operative provisions

235-810 Object of this Subdivision

235-815 Application of Subdivision

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1	235-820	Look-through treatment for instalment trusts
2	235-825	Meaning of <i>instalment trust</i> and <i>instalment trust asset</i>
3	235-830	What trusts are covered—instalment warrants
4	235-835	What trusts are covered—instalment receipts
5	235-840	What trusts are covered—limited recourse borrowings by certain superannuation funds
6		
7	235-845	Interactions with other provisions

8 **Operative provisions**

9 **235-810 Object of this Subdivision**

10 The object of this Subdivision is to ensure that, for most income
11 tax purposes, the consequences of ownership of an *instalment
12 trust asset flow to the entity that has the beneficial interest in the
13 asset, instead of to the trustee.

14 **235-815 Application of Subdivision**

- 15 (1) This Subdivision applies to:
- 16 (a) the entity that has the beneficial interest in an *instalment
17 trust asset under an *instalment trust; and
18 (b) the trustee of the instalment trust.
- 19 (2) This Subdivision applies for the purposes of the *income tax law,
20 apart from:
- 21 (a) Part VA of the *Income Tax Assessment Act 1936* (which is
22 about tax file numbers); and
23 (b) Subdivisions 12-E, 12-F and 12-H in Schedule 1 to the
24 *Taxation Administration Act 1953* (which are about PAYG
25 withholding).

26 **235-820 Look-through treatment for instalment trusts**

- 27 (1) If an entity (the *investor*) has a beneficial interest in an *instalment
28 trust asset under an *instalment trust, the asset is treated as being
29 the investor's asset (instead of being an asset of the trust).

30 Example: A dividend in respect of the asset is made to the trustee. It is treated
31 (but not for the purposes of the PAYG withholding provisions
32 mentioned in paragraph 235-815(2)(b)) as if it had been made directly
33 to the investor.

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- 1 (2) An act done in relation to an *instalment trust asset of an
2 *instalment trust by the trustee of the trust is treated as if the act
3 had been done by the investor (instead of by the trustee).
- 4 Example: A trustee disposes of the asset. Any capital gain or loss is made by the
5 investor, not by the trustee.
- 6 (3) The investor is treated as having the *instalment trust asset in the
7 same circumstances as the investor actually has the interest in the
8 *instalment trust.
- 9 (4) Without limiting subsection (3), the circumstances include:
10 (a) whether the interest is held on capital account or on revenue
11 account; and
12 (b) whether the interest is held as a joint tenant or tenant in
13 common.

14 **235-825 Meaning of *instalment trust* and *instalment trust asset***

- 15 (1) A trust is an *instalment trust* if:
16 (a) the trust is covered by:
17 (i) section 235-830 (about instalment warrants); or
18 (ii) section 235-835 (about instalment receipts); or
19 (iii) section 235-840 (about limited recourse borrowings by
20 certain superannuation funds); and
21 (b) for trusts covered by section 235-830 or 235-835—the trust
22 satisfies the requirement in subsection (2).

23 *Requirement for underlying investments to be listed or widely held*

- 24 (2) A trust covered by section 235-830 or 235-835 satisfies the
25 requirement in this subsection if:
26 (a) each asset that is, or is part of, the underlying investment of
27 the trust as mentioned in the relevant section is:
28 (i) a *share, a unit in a unit trust or a stapled security; or
29 (ii) an interest in a trust that holds an interest in a share, a
30 unit in a unit trust or a stapled security either directly, or
31 indirectly through one or more interposed trusts; and
32 (b) each such share, unit or stapled security:
33 (i) is listed for quotation in the official list of an *approved
34 stock exchange; or

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1 (ii) meets the widely held requirement set out in the
2 applicable item of the following table.
3

Item	Type of asset	Widely held requirement
1	A *share	The share is in a *widely held company
2	A unit in a unit trust	The unit is in a widely held unit trust as defined in section 272-105 in Schedule 2F to the <i>Income Tax Assessment Act 1936</i>
3	A stapled security	All companies involved are *widely held companies and all trusts involved are such widely held unit trusts

4

5 (3) However, a trust does not satisfy the requirement in subsection (2)
6 if an asset that is, or is part of, the underlying investment is an
7 *ESS interest to which Subdivision 83A-B or 83A-C (about
8 employee share schemes) applies.

9 *Meaning of instalment trust asset*

10 (4) Each asset that is, or is part of, the underlying investment of an
11 *instalment trust, as mentioned in paragraph 235-830(1)(a),
12 235-835(a) or 235-840(a), is an *instalment trust asset*.

13 235-830 What trusts are covered—instalment warrants

- 14 (1) This section covers a trust if, under an *arrangement:
- 15 (a) an asset or assets (the *underlying investment*) vests in the
16 trustee of the trust to secure a *borrowing; and
- 17 (b) an entity (the *investor*):
- 18 (i) makes the borrowing; and
- 19 (ii) has a beneficial interest in the underlying investment;
20 and
- 21 (iii) has a right to acquire legal ownership of the underlying
22 investment after discharging its obligations relating to
23 the borrowing; and
- 24 (iv) is entitled to receive the benefit of any *distribution or
25 *non-share distribution made in respect of the
26 underlying investment; and
- 27 (c) the requirements in subsections (2) and (3) (which are about
28 limited recourse) are met.

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Limited recourse requirements

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2 (2) The rights of the lender or any other entity against the investor for,
3 or in connection with, or as a result of, (whether directly or
4 indirectly) any of the following must be limited to rights relating to
5 the underlying investment:

6 (a) default on the *borrowing;

7 (b) default on the sum of the borrowing and charges related to
8 the borrowing;

9 (c) for an arrangement under which the investor has a right
10 relating to the underlying investment (other than a right
11 described in subparagraph (1)(b)(iii))—the exercise of the
12 investor’s right.

13 Example: Any right of an entity to be indemnified by the investor because of a
14 personal guarantee given by that entity in favour of the investor is
15 limited to rights relating to the underlying investment.

16 (3) The underlying investment must not be subject to any charge
17 (including a mortgage, lien or other encumbrance) except as
18 provided for in subsection (2).

235-835 What trusts are covered—instalment receipts

19
20 This section covers a trust if, under an *arrangement:

21 (a) an asset or assets (the *underlying investment*) vests in the
22 trustee of the trust to secure a provision of credit (other than a
23 *borrowing); and

24 (b) an entity:

25 (i) is provided with the credit; and

26 (ii) has a beneficial interest in the underlying investment;
27 and

28 (iii) has a right to acquire legal ownership of the underlying
29 investment after discharging its obligations relating to
30 the provision of credit; and

31 (iv) is entitled to receive the benefit of any *distribution or
32 *non-share distribution made in respect of the
33 underlying investment.

235-840 What trusts are covered—limited recourse borrowings by certain superannuation funds

34
35 This section covers a trust if:
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- 1 (a) under an *arrangement, an asset or assets (the *underlying*
2 *investment*) vests in the trustee of the trust for the benefit of a
3 trustee of a regulated superannuation fund (within the
4 meaning of the *Superannuation Industry (Supervision) Act*
5 *1993*); and
6 (b) the arrangement is covered by the exception in
7 subsection 67A(1) of that Act (which is about limited
8 recourse borrowing arrangements).

9 **235-845 Interactions with other provisions**

- 10 (1) Section 106-50 (about absolutely entitled beneficiaries) does not
11 apply to an *instalment trust asset.
- 12 (2) Section 106-60 (about securities, charges and encumbrances) does
13 not apply to an *instalment trust asset.
- 14 (3) Nothing in this Subdivision limits Division 247 (which is about
15 capital protected borrowings).
- 16 Note: Division 247 may apply to an arrangement to which this Subdivision
17 applies.

18 **2 Subsection 995-1(1)**

19 Insert:

20 *instalment trust* has the meaning given by section 235-825.

21 *instalment trust asset* has the meaning given by section 235-825.

22 ***Income Tax (Transitional Provisions) Act 1997***

23 **3 Before Division 242**

24 Insert:

25 **Division 235—Particular financial transactions**

26 **Table of Subdivisions**

27 235-I Instalment trusts

28 **Subdivision 235-I—Instalment trusts**

29 **Table of sections**

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1 235-810 Application of Subdivision 235-I of the *Income Tax Assessment Act 1997*
2 235-840 Former instalment warrants exception for certain superannuation funds

3 **235-810 Application of Subdivision 235-I of the *Income Tax***
4 ***Assessment Act 1997***

5 Subdivision 235-I of the *Income Tax Assessment Act 1997* applies
6 to assets that vest in the trustee of an instalment trust in:

- 7 (a) the 2007-08 income year; or
8 (b) a later income year.

9 **235-840 Former instalment warrants exception for certain**
10 **superannuation funds**

11 Section 235-840 of the *Income Tax Assessment Act 1997* also
12 covers a trust if:

- 13 (a) the trust satisfies paragraph (a) of that section; and
14 (b) the arrangement was covered by the exception in former
15 subsection 67(4A) of the *Superannuation Industry*
16 *(Supervision) Act 1993*.