

EXPOSURE DRAFT

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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Tax Laws Amendment (Investment Manager Regime) Bill 2015

No. , 2015

(Treasury)

**A Bill for an Act to amend the law relating to
taxation, and for related purposes**

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2 **A Bill for an Act to amend the law relating to**
3 **taxation, and for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Tax Laws Amendment (Investment*
7 *Manager Regime) Act 2015*.

8 **2 Commencement**

9 This Act commences on the day this Act receives the Royal
10 Assent.

11 **3 Schedules**

12 Legislation that is specified in a Schedule to this Act is amended or
13 repealed as set out in the applicable items in the Schedule
14 concerned, and any other item in a Schedule to this Act has effect
15 according to its terms.

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Schedule 1 Investment manager regime

Part 1 Main amendments

1 **Schedule 1—Investment manager regime**

2 **Part 1—Main amendments**

3 *Income Tax Assessment Act 1997*

4 **1 Subdivision 842-I**

5 Repeal the Subdivision, substitute:

6 **Subdivision 842-I—Investment manager regime**

7 **Guide to Subdivision 842-I**

8 **842-200 What this Subdivision is about**

9 This Subdivision sets out rules about the taxation of some foreign
10 residents (known as IMR entities) that invest into or through
11 Australia.

12 Income and capital gains from IMR financial arrangements are not
13 subject to Australian income tax. Deductions and capital losses
14 from IMR financial arrangements are disregarded for the purposes
15 of this Act.

16 **Table of sections**

17 **Object of this Subdivision**

18 842-205 Object of this Subdivision

19 **IMR concession**

20 842-220 IMR concession applies only to foreign residents etc.

21 842-225 IMR concession

22 842-230 Meaning of *IMR entity*

23 842-235 Meaning of *IMR financial arrangement*

24 **IMR widely held entities**

25 842-250 Meaning of *IMR widely held entity*

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Schedule 1 Investment manager regime

Part 1 Main amendments

1 **842-225 IMR concession**

- 2 (1) The following consequences apply to an *IMR entity for an income
3 year in relation to an *IMR financial arrangement if the
4 requirements of subsection (2) or (3) are met in relation to the year:
- 5 (a) what would otherwise be the entity's assessable income for
6 the year is *non-assessable non-exempt income of the entity,
7 to the extent that it is attributable to a return or gain:
- 8 (i) from the arrangement (if the arrangement is a
9 *derivative financial arrangement); or
- 10 (ii) from the entity disposing of, ceasing to own or
11 otherwise realising the arrangement;
- 12 (b) an amount is not deductible by the entity for the year, to the
13 extent that it is attributable to an outgoing or loss:
- 14 (i) from the arrangement (if the arrangement is a derivative
15 financial arrangement); or
- 16 (ii) from the entity disposing of, ceasing to own or
17 otherwise realising the arrangement;
- 18 (c) disregard a *capital gain or *capital loss that is from a *CGT
19 event that happens in the year in relation to the arrangement.

20 *Direct investment by IMR widely held entity*

- 21 (2) The requirements of this subsection in relation to the year are that:
- 22 (a) during the whole of the year, the *IMR entity is an *IMR
23 widely held entity; and
- 24 (b) during the whole of the year, the interest of the entity in the
25 issuer of, or counterparty to, the *IMR financial arrangement
26 does not pass the *non-portfolio interest test (see
27 section 960-195); and
- 28 (c) none of the returns, gains or losses for the year from the
29 arrangement are attributable to:
- 30 (i) if the entity is a resident of a country that has entered
31 into an *international tax agreement with Australia
32 containing a *permanent establishment article—a
33 permanent establishment (within the meaning of the
34 relevant international tax agreement) in Australia; or
- 35 (ii) otherwise—a *permanent establishment of the entity in
36 Australia.

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Investment manager regime **Schedule 1**
Main amendments **Part 1**

1 *Indirect investment through independent Australian fund manager*

- 2 (3) The requirements of this subsection in relation to the year are that:
- 3 (a) the *IMR financial arrangement was made, on the *IMR
- 4 entity's behalf, by an entity that is an *independent Australian
- 5 fund manager for the IMR entity for the income year (see
- 6 section 842-270); and
- 7 (b) if the issuer of, or counterparty to, the IMR financial
- 8 arrangement is an Australian resident, or a *resident trust for
- 9 CGT purposes—during the whole of the year, the interest of
- 10 the entity in the issuer or counterparty does not pass the
- 11 *non-portfolio interest test (see section 960-195).

12 **842-230 Meaning of *IMR* entity**

13 An entity is an *IMR* entity for an income year if:

- 14 (a) the entity:
- 15 (i) is a foreign resident at all times during the income year;
- 16 and
- 17 (ii) is not a *resident trust for CGT purposes for the income
- 18 year; and
- 19 (b) the entity:
- 20 (i) does not carry on a trading business (within the meaning
- 21 of section 102M of the *Income Tax Assessment Act*
- 22 *1936*) in Australia at any time during the income year;
- 23 and
- 24 (ii) does not control, and is not able to control, directly or
- 25 indirectly, the affairs or operations of such a trading
- 26 business in Australia at any time during the income
- 27 year.

28 **842-235 Meaning of *IMR* financial arrangement**

29 A *financial arrangement is an *IMR* financial arrangement unless

30 it is or relates to a *CGT asset that is:

- 31 (a) *taxable Australian real property (see section 855-20); or
- 32 (b) an *indirect Australian real property interest (see
- 33 section 855-25).

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Schedule 1 Investment manager regime

Part 1 Main amendments

1 **IMR widely held entities**

2 **842-250 Meaning of *IMR widely held entity***

3 (1) An ***IMR widely held entity*** is any of the following:

- 4 (a) a *foreign life insurance company;
- 5 (b) an entity that is covered by paragraph 12-402(3)(a),(b), (c),
- 6 (d), (f), (g) or (h) in Schedule 1 to the *Taxation*
- 7 *Administration Act 1953*;
- 8 (c) an entity of a kind specified in regulations made for the
- 9 purposes of this paragraph.

10 (2) Without limiting subsection (1) of this section, an entity for which

11 there are *membership interests is an ***IMR widely held entity*** if:

- 12 (a) either:
- 13 (i) no *member of the entity has a *total participation
- 14 interest in the entity of 20% or more (see
- 15 section 842-260); or
- 16 (ii) there are no 5 or fewer members the sum of whose total
- 17 participation interests in the entity is 50% or more (see
- 18 section 842-260); or
- 19 (b) investment in the entity is being actively marketed with the
- 20 intention that the entity satisfies the requirements of
- 21 paragraph (a) within 18 months after the entity accepts its
- 22 first member; or
- 23 (c) both of the following apply:
- 24 (i) the reason for failing to satisfy the requirements of
- 25 paragraph (a) relates to the entity's activities and
- 26 investments being wound down;
- 27 (ii) the entity has sent notices to the entity's members
- 28 notifying them of the decision to wind down the entity's
- 29 activities and investments.

30 (3) However, if paragraph (2)(a) does not apply to the entity at the end

31 of the period referred to in paragraph (2)(b), paragraph (2)(b)

32 ceases to apply to the entity, and is taken never to have applied to

33 the entity.

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Investment manager regime **Schedule 1**
Main amendments **Part 1**

1 **842-260 Rules for determining members and total participation**
2 **interests for the purposes of the widely held test**

- 3 (1) For the purposes of subsection 842-250(2), apply the rules in this
4 section in determining:
5 (a) the *members of an entity (the *test entity*); and
6 (b) the *total participation interest in the test entity of each of
7 those members.

8 *Membership of the test entity*

- 9 (2) If an individual has a *membership interest in the test entity
10 indirectly, through one or more interposed entities:
11 (a) treat the individual as a *member of the test entity; and
12 (b) do not treat any of those interposed entities as a member of
13 the test entity.
- 14 (3) If the test entity is a trust, do not treat an object of the trust as a
15 *member of the trust.
- 16 (4) Treat the following (the *affiliated entities*):
17 (a) an entity;
18 (b) each of the entity's *affiliates;
19 as together being one entity, that has all of the interests and rights
20 of the affiliated entities.

21 Note: Such interests and rights may give rise to a participation interest
22 and/or a membership interest in the test entity.

- 23 (5) If an entity (the *nominee*) has interests and rights in the capacity of
24 nominee of another entity:
25 (a) treat the nominee as *not* having those interests and rights; and
26 (b) instead, treat the other entity as having those interests and
27 rights (in addition to the other entity's interests and rights
28 apart from this subsection).

29 *Total participation interests of members*

- 30 (6) If a *member of the test entity is an entity covered by:
31 (a) subsection 842-250(1); or

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1 (b) paragraph 12-402(3)(e) in Schedule 1 to the *Taxation*
2 *Administration Act 1953* (foreign collective investment
3 vehicles with a wide membership);
4 treat the member's *total participation interest in the test entity as
5 nil.

6 (7) In determining a *direct participation interest of one entity in
7 another entity, disregard paragraph 350(1)(b) of the *Income Tax*
8 *Assessment Act 1936* (rights of shareholders to vote or participate
9 in certain decision-making).

10 **842-265 Extended definition of *IMR widely held entity*—temporary** 11 **circumstances outside entity's control**

12 Without limiting section 842-250, an entity is an *IMR widely held*
13 *entity* if:

- 14 (a) apart from a particular circumstance, the entity would be an
15 *IMR widely held entity because of section 842-250; and
16 (b) the circumstance is temporary; and
17 (c) the circumstance arose outside the entity's control; and
18 (d) it is fair and reasonable to treat the entity as an IMR widely
19 held entity, having regard to the following matters:
20 (i) the matters in paragraphs (b) and (c);
21 (ii) the nature of the circumstance;
22 (iii) the actions (if any) taken by the entity to address or
23 remove the circumstance, and the speed with which
24 such actions are taken;
25 (iv) any other relevant matter.

26 **Independent Australian fund managers**

27 **842-270 Meaning of *independent Australian fund manager***

- 28 (1) An entity (the *managing entity*) is an *independent Australian*
29 *fund manager* for an *IMR entity for an income year if:
30 (a) the managing entity is an Australian resident; and
31 (b) the managing entity carries out investment management
32 activities for the IMR entity in the ordinary course of
33 *business; and

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Main amendments **Part 1**

- 1 (c) the managing entity's remuneration for carrying out those
2 activities is what the remuneration would be between parties
3 dealing at *arm's length; and
4 (d) one or more of the following applies:
5 (i) the IMR entity is an *IMR widely held entity;
6 (ii) 70% or less of the managing entity's income, for the
7 income year, is income received from the IMR entity or
8 entities *connected with the IMR entity;
9 (iii) if the managing entity has been carrying out investment
10 management activities for 18 months or less—it is
11 taking all reasonable steps to ensure that the proportion
12 of its income, for the income year, received from the
13 IMR entity or entities connected with the IMR entity
14 will be reduced to 70% or less of that income.
- 15 (2) In applying paragraph (1)(c), have regard to the documents covered
16 by section 815-135.

17 **842-275 Reductions in IMR concession if independent Australian** 18 **fund manager entitled to share of IMR entity's profits**

- 19 (1) The application of section 842-225 to an *IMR entity for an income
20 year is modified, as provided by subsection (2) of this section, if:
21 (a) an entity is an *independent Australian fund manager for the
22 IMR entity; and
23 (b) that entity, or another entity *connected with the entity, has a
24 direct or indirect right to receive part of the profits of the
25 IMR entity for the year; and
26 (c) the sum of all those profits for the year that the entity and any
27 entities connected with that entity has a direct or indirect
28 right to receive would, if expressed as a right to a percentage
29 of the profits of the IMR entity for the year (the *entity's*
30 *profit percentage*), exceed 20% of those profits for the year;
31 and
32 (d) the requirements of subsection 842-225(2) in relation to the
33 year are not met.
- 34 (2) The following are reduced by the entity's profit percentage:
35 (a) the extent to which what would otherwise be the *IMR
36 entity's assessable income for the year is *non-assessable
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- 1 non-exempt income of the IMR entity because of
2 paragraph 842-225(1)(a);
3 (b) the extent to which any deduction of the IMR entity for the
4 year is disregarded because of paragraph 842-225(1)(b);
5 (c) the extent to which a *capital gain or *capital loss that is from
6 a *CGT event that happens in the year in relation to an *IMR
7 financial arrangement of the entity is disregarded because of
8 paragraph 842-225(1)(c).
- 9 (3) Without limiting the circumstances in which the requirements of
10 paragraph (1)(c) are not met, those requirements are taken not to be
11 met in relation to an entity if the Commissioner so determines
12 under subsection (4).
- 13 (4) If the entity applies to the Commissioner in the *approved form for
14 a determination under this subsection, the Commissioner must, by
15 notice in writing to the entity:
16 (a) determine that the requirements of paragraph (1)(c) are taken
17 not to be met in relation to the entity, if the Commissioner is
18 satisfied that:
19 (i) it is intended that the requirements will not be met in
20 relation to the entity at a time within 5 years after the
21 determination is made; and
22 (ii) with that intention, investment in the entity is being
23 actively marketed; or
24 (b) refuse to make such a determination, if the Commissioner is
25 not so satisfied.
- 26 (5) An entity that is dissatisfied with a decision of the Commissioner
27 refusing to make a determination under subsection (4) in relation to
28 the entity may object against the decision in the manner set out in
29 Part IVC of the *Taxation Administration Act 1953*.

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Investment manager regime **Schedule 1**
Other amendments **Part 2**

1 **Part 2—Other amendments**

2 ***Income Tax Assessment Act 1936***

3 **2 Section 94T**

4 Before “For”, insert “(1)”.

5 **3 At the end of section 94T**

6 Add:

- 7 (2) In determining whether the partnership carries on business in
8 Australia for the purposes of subparagraph (1)(f)(i), if, for the year
9 of income, the partnership is an IMR entity (within the meaning of
10 the *Income Tax Assessment Act 1997*, but disregarding
11 subparagraph 842-230(a)(i) of that Act), disregard business that:
- 12 (a) is carried on by the partnership (either by itself directly or by
13 another entity on its behalf); and
 - 14 (b) solely relates to IMR financial arrangements (within the
15 meaning of that Act).

16 ***Income Tax Assessment Act 1997***

17 **4 Section 11-55 (after table item headed “GST”)**

18 Insert:

investment manager regime

IMR concession..... 842-225

19 **5 Subsection 995-1(1)**

20 Repeal the following definitions:

- 21 (a) definition of ***IMR capital gain***;
- 22 (b) definition of ***IMR capital loss***;
- 23 (c) definition of ***IMR deduction***.

24 **6 Subsection 995-1(1)**

25 Insert:

26 ***IMR entity*** has the meaning given by section 842-230.

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Part 2 Other amendments

1 *IMR financial arrangement* has the meaning given by
2 section 842-235.

3 **8 Subsection 995-1(1)**

4 Repeal the following definitions:

- 5 (a) definition of *IMR foreign fund*;
6 (b) definition of *IMR income*.

7 **9 Subsection 995-1(1)**

8 Insert:

9 *IMR widely held entity* has the meaning given by sections 842-250
10 and 842-265.

11 *independent Australian fund manager* has the meaning given by
12 section 842-270.

13 **11 Subsection 995-1(1)**

14 Repeal the following definitions:

- 15 (a) definition of *non-IMR Division 6E net income*;
16 (b) definition of *non-IMR net capital gain*;
17 (c) definition of *non-IMR net income*;
18 (d) definition of *non-IMR partnership loss*;
19 (e) definition of *non-IMR partnership net income*;
20 (f) definition of *pre-2012 IMR capital gain*;
21 (g) definition of *pre-2012 IMR income*.

22 *Income Tax (Transitional Provisions) Act 1997*

23 **12 Before section 842-210**

24 Insert:

25 **842-207 Application of replacement version of Subdivision 842-I**

- 26 (1) The new Subdivision 842-I applies:
27 (a) to assessments for the 2015-16 income year and later income
28 years; and
-

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Other amendments **Part 2**

1 (b) if an entity chooses to apply the new Subdivision 842-I to
2 assessments for the 2011-12, 2012-13, 2013-14 and 2014-15
3 income years—to the entity's assessments for those income
4 years.

5 (2) However, in applying the new Subdivision 842-I under
6 paragraph (1)(b) of this section in relation to the entity, assume that
7 the requirements of subsection 842-225(2) are not met in relation
8 to any of the 2011-12, 2012-13, 2013-14 and 2014-15 income
9 years.

10 (3) The way the entity's income tax return is prepared is sufficient
11 evidence of the making of the choice.

12 (4) In this section:

13 ***new Subdivision 842-I*** means Subdivision 842-I (Investment
14 manager regime) of the *Income Tax Assessment Act 1997*, as
15 substituted by Schedule 1 to the *Tax Laws Amendment (Investment*
16 *Manager Regime) Act 2015*.

17 Note: The new Subdivision 842-I replaced a previous version of that
18 Subdivision, which applied in relation to assessments for the 2010-11
19 income year (see item 17 of Schedule 1 to the *Tax Laws Amendment*
20 *(Investment Manager Regime) Act 2012*).

21 **842-209 Modified definition of IMR foreign fund for the purposes of** 22 **earlier income years**

23 (1) This section applies for the purposes of:

- 24 (a) this Subdivision (apart from section 842-207); and
25 (b) Subdivision 842-I (Investment manager regime) of the
26 *Income Tax Assessment Act 1997*, as inserted by Schedule 1
27 to the *Tax Laws Amendment (Investment Manager Regime)*
28 *Act 2012*.

29 (2) For the purposes of subsection 842-210(2) of this Act, treat an
30 entity as an IMR foreign fund if, and only if:

- 31 (a) subject to subsection (4) of this section, it is an IMR entity
32 (within the meaning given by section 842-230 of the *Income*
33 *Tax Assessment Act 1997*, as inserted by the new IMR Act);
34 and

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- 1 (b) subject to subsection (5) of this section, it is an IMR widely
2 held entity (within the meaning given by sections 842-250
3 and 842-260 of the *Income Tax Assessment Act 1997*, as
4 inserted by the new IMR Act); and
- 5 (c) the entity chooses to be treated as an IMR foreign fund for
6 those purposes.
- 7 (3) Either of the following is sufficient evidence of the making of the
8 choice:
- 9 (a) the way the entity's income tax return is prepared;
- 10 (b) if the entity will not be required to lodge a tax return if the
11 entity makes the choice—not lodging a tax return.
- 12 (4) Treat the requirement in subparagraph 842-230(b)(ii) of the *Income*
13 *Tax Assessment Act 1997*, as inserted by the new IMR Act, as
14 being met.
- 15 (5) Treat subsection 842-250(1) of the *Income Tax Assessment Act*
16 *1997*, as inserted by the new IMR Act, as *not* applying to the
17 entity.
- 18 (6) In this section:
- 19 ***new IMR Act*** means the *Tax Laws Amendment (Investment*
20 *Manager Regime) Act 2015*.