

EXPOSURE DRAFT

2013-2014-2015

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Tax Laws Amendment (New Tax System for Managed Investment Trusts) Bill 2015

No. , 2015

(Treasury)

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

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedules.....	2
Schedule 1—Managed investment trusts		3
	<i>Income Tax Assessment Act 1997</i>	3
	<i>Taxation Administration Act 1953</i>	15
Schedule 2—Attribution managed investment trusts		16
	<i>Income Tax Assessment Act 1936</i>	16
	<i>Income Tax Assessment Act 1997</i>	16
	<i>Taxation Administration Act 1953</i>	65
Schedule 3—Withholding MITs and fund payments		68
	<i>Income Tax Assessment Act 1936</i>	68
	<i>Taxation Administration Act 1953</i>	68
Schedule 4—Annual cost base adjustment for member’s unit or interest in AMIT		86
	<i>Income Tax Assessment Act 1997</i>	86
Schedule 5—20% tracing rule		93
	<i>Income Tax Assessment Act 1936</i>	93
	<i>Income Tax Assessment Act 1997</i>	93
Schedule 6—Consequential amendments		94
	<i>Income Tax Assessment Act 1936</i>	94
Schedule 7—Widely-held requirements		96
	<i>Taxation Administration Act 1953</i>	96
Schedule 8—Application		97
	<i>Income Tax (Transitional Provisions) Act 1997</i>	97
Schedule 9—Definitions		100
	<i>Income Tax Assessment Act 1997</i>	100

EXPOSURE DRAFT

ii *Tax Laws Amendment (New Tax System for Managed Investment
Trusts) Bill 2015* No. , 2015

B14GT106.v10.docx 18/12/2014 1:54 PM

EXPOSURE DRAFT

EXPOSURE DRAFT

1

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 (New Tax*
7 *System for Managed Investment Trusts) Act 2015*.

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with
11 column 2 of the table. Any other statement in column 2 has effect
12 according to its terms.

13

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details

1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
---	---	--

2. Schedules 1 to 6	The day this Act receives the Royal Assent.	
---------------------	---	--

3. Schedule 7	1 July 2014.	1 July 2014
---------------	--------------	-------------

4. Schedules 8 and 9	The day this Act receives the Royal Assent.	
----------------------	---	--

14 Note: This table relates only to the provisions of this Act as originally
15 enacted. It will not be amended to deal with any later amendments of
16 this Act.

No. , 2015 *Tax Laws Amendment (New Tax System for Managed Investment* 1
Trusts) Bill 2015

EXPOSURE DRAFT

EXPOSURE DRAFT

1 (2) Any information in column 3 of the table is not part of this Act.
2 Information may be inserted in this column, or information in it
3 may be edited, in any published version of this Act.

4 **3 Schedules**

5 Legislation that is specified in a Schedule to this Act is amended or
6 repealed as set out in the applicable items in the Schedule
7 concerned, and any other item in a Schedule to this Act has effect
8 according to its terms.

2 *Tax Laws Amendment (New Tax System for Managed Investment
Trusts) Bill 2015* No. , 2015

EXPOSURE DRAFT

Schedule 1—Managed investment trusts

Income Tax Assessment Act 1997

1 Division 275 (heading)

Repeal the heading, substitute:

Division 275—Australian managed investment trusts: general

2 Section 275-1

After “are or were certain Australian managed investment trusts”, insert
“(or certain other trusts)”.

3 Subdivision 275-A

Repeal the Subdivision, substitute:

Subdivision 275-A—Meaning of managed investment trust

275-5 Meaning of *managed investment trust*

- (1) A trust is a *managed investment trust* in relation to an income year if any of the following requirements are met:
- (a) the trust is covered under subsection (3) of this section in relation to the income year (ordinary case);
 - (b) the trust is covered under 275-40 in relation to the income year (only member of trust is a managed investment trust etc.).
- (2) A trust is also a *managed investment trust* in relation to an income year if any of the following requirements are met:
- (a) the trust is covered under section 275-45 in relation to the income year (no fund payment made in relation to the income year);

EXPOSURE DRAFT

Schedule 1 Managed investment trusts

- 1 (b) the trust is covered under section 275-50 in relation to the
2 income year (temporary circumstances outside the control of
3 the trustee).
- 4 (3) A trust is covered under this subsection in relation to an income
5 year if:
- 6 (a) at the time the trustee of the trust makes the first *fund
7 payment in relation to the income year, or at an earlier time
8 in the income year:
- 9 (i) the trustee of the trust was an Australian resident; or
10 (ii) the central management and control of the trust was in
11 Australia; and
- 12 (b) the trust is not a trust covered by subsection (4) (trading trust
13 etc.) in relation to the income year; and
- 14 (c) at the time the payment is made, the trust is a managed
15 investment scheme (within the meaning of section 9 of the
16 *Corporations Act 2001*); and
- 17 (d) at the time the payment is made:
- 18 (i) the trust is covered by section 275-10 (trusts with
19 wholesale membership); or
- 20 (ii) if the trust is *not* covered by section 275-10—the trust is
21 registered under section 601EB of the *Corporations Act*
22 *2001*; and
- 23 (e) the trust satisfies, in relation to the income year:
- 24 (i) if, at the time the payment is made, the trust is
25 registered under section 601EB of the *Corporations Act*
26 *2001* and is covered by section 275-10—either or both
27 of the widely-held requirements in
28 subsections 275-15(1) and 275-20(1); or
- 29 (ii) if, at the time the payment is made, the trust is so
30 registered and is *not* covered by section 275-10—either
31 or both of the widely-held requirements in
32 subsections 275-15(2) and 275-20(1); or
- 33 (iii) if, at the time the payment is made, the trust is *not* so
34 registered and is covered by section 275-10—the
35 widely-held requirements in subsection 275-15(1); and
- 36 (f) the trust satisfies the closely-held restrictions in
37 subsection 275-25(1) in relation to the income year; and
-

EXPOSURE DRAFT

Managed investment trusts **Schedule 1**

- 1 (g) if the trust is covered by section 275-10 at the time the
2 payment is made—it satisfies the licensing requirements in
3 section 275-30 in relation to the income year.

4 *Trading unit trust or other trust carrying on trading business etc.*
5 *cannot be managed investment trust*

- 6 (4) A trust is covered by this subsection in relation to an income year
7 if:

- 8 (a) in the case of a unit trust—the trust is a trading trust for the
9 purposes of Division 6C in Part III of the *Income Tax*
10 *Assessment Act 1936* in relation to the income year; or
11 (b) in any other case—the trust at any time in the income year:
12 (i) carried on a trading business (within the meaning of that
13 Division); or
14 (ii) controlled, or was able to control, directly or indirectly,
15 the affairs or operations of another person in respect of
16 the carrying on by that other person of a trading
17 business (within the meaning of that Division).

18 *Crown entities, etc.*

- 19 (5) For the purposes of paragraphs (3)(d) and (e), treat an entity as
20 registered under section 601EB of the *Corporations Act 2001* at the
21 time the payment is made if at that time the trust is operated by:

- 22 (a) an entity that would, but for subsection 5A(4) of that Act
23 (about the Crown not being bound by Chapter 6CA or 7 of
24 that Act), be required under that Act to be a financial services
25 licensee (within the meaning of section 761A of that Act)
26 whose licence would cover operating such a managed
27 investment scheme; or
28 (b) an entity that:
29 (i) is a *wholly-owned subsidiary of an entity of a kind
30 mentioned in paragraph (a); and
31 (ii) would, but for any instrument issued by ASIC under
32 that Act that has effect in relation to the entity and
33 operation of the scheme mentioned in paragraph (3)(c),
34 be required under that Act to be a financial services
35 licensee (within the meaning of section 761A of that
-

EXPOSURE DRAFT

Schedule 1 Managed investment trusts

1 Act) whose licence would cover operating such a
2 managed investment scheme.

3 *Start-up and wind-down phases*

- 4 (6) Treat the requirements in paragraphs (3)(e) and (f) as being
5 satisfied if:
- 6 (a) the trust is created during the period:
 - 7 (i) starting 12 months before the start of the income year;
 - 8 and
 - 9 (ii) ending at the end of the income year; or
 - 10 (b) the trust ceases to exist during the income year, and was a
11 *managed investment trust (disregarding paragraph (a)) in
12 relation to the previous income year.

13 **275-10 Trusts with wholesale membership**

14 A trust is covered by this section at a time if, at that time:

- 15 (a) the trust is not required to be registered in accordance with
16 section 601ED of the *Corporations Act 2001* (whether or not
17 it is actually so registered) because of subsection 601ED(2)
18 of that Act (no product disclosure statement required) or
19 because it is operated or managed by an entity covered by
20 subsection 275-30(2) (Crown entities); and
- 21 (b) the total number of entities that had become a *member of the
22 trust because a financial product or a financial service was
23 provided to, or acquired by, the entity as a retail client
24 (within the meaning of sections 761G and 761GA of the
25 *Corporations Act 2001*) is no more than 20; and
- 26 (c) the entities mentioned in paragraph (b) have a total *MIT
27 participation interest in the trust of no more than 10%.

28 **275-15 Widely-held requirements—ordinary case**

- 29 (1) The trust satisfies the requirements in this subsection in relation to
30 the income year if, at the time the payment mentioned in
31 paragraph 275-5(3)(a) is made, the trust has at least 25 *members.

EXPOSURE DRAFT

Managed investment trusts **Schedule 1**

- 1 (2) The trust satisfies the requirements in this subsection in relation to
2 the income year if, at the time the payment mentioned in
3 paragraph 275-5(3)(a) is made:
4 (a) units in the trust are listed for quotation in the official list of
5 an *approved stock exchange in Australia; or
6 (b) the trust has at least 50 *members (ignoring objects of a
7 trust).
- 8 (3) For the purposes of subsection (1) and paragraph (2)(b), determine
9 the number of *members of the trust as follows:
10 (a) first, by applying the rules in subsection (5), identify:
11 (i) the members of the trust that are not entities covered by
12 subsection (4); and
13 (ii) the members of the trust that are entities covered by
14 subsection (4);
15 (b) next, work out the number of members mentioned in
16 subparagraph (a)(i);
17 (c) next:
18 (i) work out the *MIT participation interest in the trust of
19 each entity mentioned in subparagraph (a)(ii); and
20 (ii) for each of those entities, multiply the total of its MIT
21 participation interest in the trust by 50 and round the
22 result upwards to the nearest whole number; and
23 (iii) work out the total of the results of subparagraph (ii) for
24 all of those entities;
25 (d) next, work out the total of the results of paragraphs (b) and
26 (c).
- 27 (4) This subsection covers the following kinds of entity:
28 (a) a *life insurance company;
29 (b) a *foreign life insurance company that is regulated under a
30 *foreign law;
31 (c) a *complying superannuation fund, a *complying approved
32 deposit fund or a *foreign superannuation fund, being a fund
33 that has at least 50 *members;

EXPOSURE DRAFT

EXPOSURE DRAFT

Schedule 1 Managed investment trusts

- 1 (d) a *pooled superannuation trust that has at least one member
2 that is a complying superannuation fund that has at least 50
3 members;
- 4 (e) a *managed investment trust in relation to the income year;
- 5 (f) an entity:
- 6 (i) that is recognised under a *foreign law as being used for
7 collective investment by pooling the contributions of its
8 members as consideration to acquire rights to benefits
9 produced by the entity; and
- 10 (ii) that has at least 50 members; and
- 11 (iii) the contributing members of which do not have
12 day-to-day control over the entity's operation;
- 13 (g) an entity, the principal purpose of which is to fund pensions
14 (including disability and similar benefits) for the citizens or
15 other contributors of a foreign country, if:
- 16 (i) the entity is a fund established by an *exempt foreign
17 government agency; or
- 18 (ii) the entity is established under a foreign law for an
19 exempt foreign government agency; or
- 20 (iii) the entity is a *wholly-owned subsidiary of an entity
21 mentioned in subparagraph (i) or (ii);
- 22 (h) an investment entity that satisfies all of these requirements:
- 23 (i) the entity is wholly-owned by one or more *foreign
24 government agencies, or is a wholly-owned subsidiary
25 of one or more foreign government agencies;
- 26 (ii) the entity is established using only the public money or
27 public property of the foreign government concerned;
- 28 (iii) all economic benefits obtained by the entity have
29 passed, or are expected to pass, to the foreign
30 government concerned;
- 31 (i) an entity established and wholly-owned by an *Australian
32 government agency, if the capital of the entity, and returns
33 from the investment of that capital, are used for the primary
34 purpose of meeting statutory government liabilities or
35 obligations (such as superannuation liabilities and liabilities
36 arising from compensation or workcover claims);
-

EXPOSURE DRAFT

Managed investment trusts Schedule 1

- 1 (j) an entity of a kind similar to an entity mentioned in the
2 preceding paragraphs of this subsection as specified in the
3 regulations;
- 4 (k) an entity, all the * membership interests in which are
5 beneficially owned by any of the following:
- 6 (i) entities mentioned in the preceding paragraphs of this
7 subsection;
- 8 (ii) *wholly-owned subsidiaries of such entities.
- 9 (5) The rules are as follows:
- 10 (a) if an entity that is not a trust holds interests in the trust
11 indirectly, through a *chain of trusts:
- 12 (i) treat the entity as a member of the trust; and
13 (ii) do not treat a trust in the chain of trusts as a member of
14 the trust;
- 15 (b) do not treat an object of the trust as a member of the trust;
- 16 (c) if the trust is mentioned in subparagraph 275-5(3)(d)(i)
17 (trusts with wholesale membership)—do not treat an
18 individual as a member of the trust (other than an individual
19 who became a member of the trust because a financial
20 product or a financial service was provided to, or acquired
21 by, the individual as a wholesale client (within the meaning
22 of section 761G of the *Corporations Act 2001*));
- 23 (d) the rules in subsection (7).
- 24 (6) For the purposes of paragraph (5)(a), treat an entity covered by
25 subsection (4) as an entity that is not a trust.
- 26 (7) The rules are as follows:
- 27 (a) treat the following entities as together being one entity:
- 28 (i) an individual;
29 (ii) each of his or her relatives;
30 (iii) each entity acting in the capacity of nominee of an
31 individual mentioned in subparagraph (i) or (ii);
- 32 (b) treat the following entities as together being one entity (the
33 **notional entity**):
- 34 (i) an entity that is not an individual;
-

EXPOSURE DRAFT

EXPOSURE DRAFT

Schedule 1 Managed investment trusts

- 1 (ii) each entity acting in the capacity of nominee of the
2 entity mentioned in subparagraph (i).
- 3 (8) For the purposes of subsection (5), if the entity mentioned in
4 subparagraph (7)(b)(i) is an entity covered by subsection (4), treat
5 the notional entity as an entity covered by subsection (4).

6 **275-20 Widely-held requirements for registered MIT—special case** 7 **for entities covered by subsection 275-15(4)**

- 8 (1) The trust satisfies the requirements in this subsection in relation to
9 the income year if:
- 10 (a) one or more entities covered by subsection 275-15(4) have a
11 total *MIT participation interest in the trust of more than 25%
12 at the time the payment mentioned in paragraph 275-5(3)(a)
13 is made; and
- 14 (b) at no time in the income year does an entity (other than an
15 entity covered by subsection 275-15(4)) have a MIT
16 participation interest in the trust of more than 60%.
- 17 (2) For the purposes of paragraphs (1)(a) and (b):
- 18 (a) if:
- 19 (i) an entity covered by subsection 275-15(4) has a *MIT
20 participation interest (the *first interest*) in the trust; and
- 21 (ii) another entity covered by subsection 275-15(4) also has
22 a MIT participation interest (the *second interest*) in the
23 trust;
- 24 disregard the second interest to the extent that it arises
25 through the existence of the first interest; and
- 26 (b) if an entity that is not a trust has a MIT participation interest
27 in the trust because it holds interests in the trust indirectly,
28 through a *chain of trusts—do not treat a trust in the chain of
29 trusts as having a MIT participation interest in the trust.
- 30 (3) For the purposes of paragraph (2)(b), treat an entity covered by
31 subsection 275-15(4) as an entity that is not a trust.
- 32 (4) For the purposes of paragraphs (1)(a) and (b), apply the rules in
33 subsection 275-15(7).

EXPOSURE DRAFT

Managed investment trusts **Schedule 1**

275-25 Closely-held restrictions

- 1
- 2 (1) The trust satisfies the requirements in this subsection in relation to
- 3 the income year unless, at any time in the income year, any of the
- 4 following situations exist:
- 5 (a) for a trust mentioned in subparagraph 275-5(3)(d)(i) (trusts
- 6 with wholesale membership)—10 or fewer persons have a
- 7 total *MIT participation interest in the trust of 75% or more;
- 8 (b) if paragraph (a) does not apply—20 or fewer persons have a
- 9 total MIT participation interest in the trust of 75% or more;
- 10 (c) a foreign resident individual has a MIT participation interest
- 11 in the trust of 10% or more.
- 12 (2) For the purposes of paragraphs (1)(a) and (b):
- 13 (a) if an entity covered by subsection 275-15(4) has a *MIT
- 14 participation interest in the trust—treat that entity as *not*
- 15 having a MIT participation interest in the trust; and
- 16 (b) if an entity that is not a trust has a MIT participation interest
- 17 in the trust because it holds interests in the trust indirectly,
- 18 through a *chain of trusts:
- 19 (i) if the entity is covered by subsection 275-15(4)—do not
- 20 treat it as having a MIT participation interest in the
- 21 trust; and
- 22 (ii) do not treat a trust in the chain of trusts as having a MIT
- 23 participation interest in the trust.
- 24 (3) For the purposes of paragraph (2)(b), treat an entity covered by
- 25 subsection 275-15(4) as an entity that is not a trust.
- 26 (4) For the purposes of paragraphs (1)(a) and (b), apply the rules in
- 27 subsection 275-15(7).

275-30 Licensing requirements for unregistered MIS

- 28
- 29 (1) The trust satisfies the requirements in this section in relation to the
- 30 income year if, at the time the payment mentioned in
- 31 paragraph 275-5(3)(a) is made (the time of the first fund payment
- 32 for the income year):
- 33 (a) the trust is operated or managed by:
-

EXPOSURE DRAFT

Schedule 1 Managed investment trusts

- 1 (i) a financial services licensee (within the meaning of
2 section 761A of the *Corporations Act 2001*) holding an
3 Australian financial services licence whose licence
4 covers it providing financial services (within the
5 meaning of section 766A of that Act) to wholesale
6 clients (within the meaning of section 761G of that
7 Act); or
8 (ii) an authorised representative (within the meaning of
9 section 761A of that Act) of such a financial services
10 licensee; or
11 (b) the trust is operated or managed by an entity covered by
12 subsection (2); or
13 (c) the trust is operated or managed by an entity that:
14 (i) is a *wholly-owned subsidiary of an entity covered by
15 subsection (2); and
16 (ii) is an entity covered by subsection (3).
- 17 (2) An entity is covered by this subsection if it would, but for
18 subsection 5A(4) of that Act (about the Crown not being bound by
19 Chapter 6CA or 7 of that Act), be required under the *Corporations*
20 *Act 2001* to be a financial services licensee (within the meaning of
21 section 761A of that Act).
- 22 (3) An entity is covered by this subsection if it would, but for any
23 instrument issued by ASIC under that Act that has effect in relation
24 to the entity and the operation of the scheme mentioned in
25 paragraph 275-5(3)(c), be required under the *Corporations Act*
26 *2001* to be a financial services licensee (within the meaning of
27 section 761A of that Act).

28 **275-35 MIT participation interest**

- 29 (1) An entity has a ***MIT participation interest*** in a trust if the entity,
30 directly or indirectly:
31 (a) holds, or has the right to *acquire, interests representing a
32 percentage of the value of the interests in the trust; or
33 (b) has the control of, or the ability to control, a percentage of
34 the rights attaching to *membership interests in the trust; or

EXPOSURE DRAFT

Managed investment trusts **Schedule 1**

1 (c) has the right to receive a percentage of any distribution of
2 income that the trust may make.

3 (2) The *MIT participation interest* of the entity in the trust is the
4 greatest of the percentages mentioned in paragraphs (1)(a), (b) and
5 (c).

6 **275-40 Meaning of *managed investment trust*—only member of trust**
7 **is a managed investment trust etc.**

8 (1) A trust is covered under this section in relation to an income year
9 if:

10 (a) the condition in paragraph 275-5(3)(a) is satisfied; and

11 (b) the condition in paragraph 275-5(3)(b) is satisfied; and

12 (c) either:

13 (i) the only *member of the trust is an entity covered by
14 subsection 275-15(4) (other than an entity mentioned in
15 paragraph 275-15(4)(f)); or

16 (ii) the only member of the trust is an entity that is a
17 *managed investment trust in relation to the income year
18 because of subsection 275-5(2); and

19 (d) the trust satisfies the licensing requirements in section 275-30
20 in relation to the income year.

21 (2) A requirement in paragraph (1)(a) is satisfied if, and only if, it is
22 satisfied:

23 (a) at the time the trustee of the trust makes the first *fund
24 payment in relation to the income year; or

25 (b) if the trustee does not make such a payment in relation to the
26 income year—at both the start and the end of the income
27 year.

28 **275-45 Extended definition of *managed investment trust*—no fund**
29 **payment made in relation to the income year**

30 A trust is covered under this section in relation to an income year
31 if:

32 (a) the trustee of the trust does not make a *fund payment in
33 relation to the income year; and

EXPOSURE DRAFT

Schedule 1 Managed investment trusts

- 1 (b) the trust would be a managed investment trust in relation to
2 the income year if the trustee of the trust had made the first
3 fund payment in relation to the income year on the first day
4 of the income year; and
5 (c) the trust would be a managed investment trust in relation to
6 the income year if the trustee of the trust had made the first
7 fund payment in relation to the income year on the last day of
8 the income year.

9 **275-50 Extended definition of *managed investment trust*—temporary**
10 **circumstances outside the control of the trustee**

- 11 A trust is covered under this section in relation to an income year
12 if:
13 (a) apart from a particular circumstance, the trust would be a
14 *managed investment trust in relation to the income year; and
15 (b) the circumstance is temporary; and
16 (c) the circumstance arose outside the control of the trustee of
17 the trust; and
18 (d) it is fair and reasonable to treat the trust as a managed
19 investment trust in relation to the income year, having regard
20 to the following matters:
21 (i) the matters in paragraphs (a) and (b);
22 (ii) the nature of the circumstance;
23 (iii) the actions (if any) taken by the trustee of the trust to
24 address or remove the circumstance, and the speed with
25 which such actions are taken;
26 (iv) the extent to which treating the trust as a managed
27 investment trust in relation to the income year would
28 increase or reduce the amount of tax otherwise payable
29 by the trustee, the *members of the trust or any other
30 entity;
31 (v) any other relevant matter.

32 **4 After subsection 275-200(1)**

33 Insert:

EXPOSURE DRAFT

Managed investment trusts **Schedule 1**

- 1 (1A) For the purposes of paragraph (1)(c), in determining whether the
2 entity satisfies any of the requirements mentioned in that
3 paragraph:
4 (a) disregard paragraph 275-5(3)(b) (requirement of not being a
5 trading trust etc.); and
6 (b) disregard subsection 102T(16) of the *Income Tax Assessment*
7 *Act 1936* (exclusion of public trading trust etc.).

8 ***Taxation Administration Act 1953***

9 **5 Sections 12-400, 12-401, 12-402, 12-402A, 12-402B, 12-403**
10 **and 12-404 in Schedule 1**

11 Repeal the sections.

EXPOSURE DRAFT

Schedule 2 Attribution managed investment trusts

1 **Schedule 2—Attribution managed investment**
2 **trusts**
3

4 ***Income Tax Assessment Act 1936***

5 **1 Before subparagraph 98B(2)(a)(i)**

6 Insert:

7 (ia) section 276-80 of the *Income Tax Assessment Act 1997*;

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

9 **2 At the end of Part 3-25**

10 Add:

11 **Division 276—Australian managed investment trusts:**
12 **attribution managed investment trusts**

13 **Table of Subdivisions**

14 Guide to Division 276

15 276-A What is an attribution managed investment trust?

16 276-B Fixed trust treatment

17 276-C Taxation of member components

18 276-D AMIT characters

19 276-E Member components

20 276-F Trust components

21 276-G Unders and overs

22 276-H Uplifts for unders and overs

23 276-J Shortfall taxation

24 276-K AMMA statements

25 276-L Modification for non-arm's length income

26 276-M Debt-like AMIT instruments

EXPOSURE DRAFT

Attribution managed investment trusts **Schedule 2**

1 276-N Ceasing to be an AMIT

2 **Guide to Division 276**

3 **276-1 What this Division is about**

4 A managed investment trust in relation to an income year is an
5 ***attribution managed investment trust*** (or ***AMIT***) for the income
6 year if certain criteria are satisfied. In particular, the interests of the
7 members of the trust need to be clearly defined (in accordance with
8 section 276-15) at all times during which the trust is in existence in
9 the income year (see Subdivision 276-A).

10 The main features of this Division are as follows:

11 An AMIT in relation to an income year is treated in the same
12 way as a fixed trust throughout the income year (see
13 Subdivision 276-B).

14 Amounts related to income and tax offsets of an AMIT,
15 determined by the trustee to be of a particular character, are
16 attributed to members, generally retaining that character (see
17 Subdivision 276-C).

18 Under- and over-estimations of amounts at the trust level are
19 carried forward and dealt with in later years. This is done on a
20 character-by-character basis. An under-estimation in an
21 income year of a particular character results in an “under” of
22 that character. An over-estimation results in an “over” of that
23 character. “Unders” and “overs” arise, and are dealt with, in
24 the income year in which they are discovered (see
25 Subdivision 276-G).

EXPOSURE DRAFT

Attribution managed investment trusts **Schedule 2**

276-15 Clearly defined interests

- 1
- 2 (1) For the purposes of paragraph 276-10(b), treat the interests of
- 3 *members in the trust as being clearly defined at a particular time
- 4 if, and only if:
- 5 (a) if the trust is registered under section 601EB of the
- 6 *Corporations Act 2001* at that time—the requirement in
- 7 subsection (2) is satisfied at that time; or
- 8 (b) if the trust is *not* registered under section 601EB of the
- 9 *Corporations Act 2001* at that time—the requirements in
- 10 subsections (2) and (3) are satisfied at that time; or
- 11 (c) the requirement in subsection (4) is satisfied at that time.
- 12 (2) The requirement in this subsection is satisfied if:
- 13 (a) assuming that the trust is an *AMIT for the income year in
- 14 which the time occurs, the amount of each *member
- 15 component for the income year of each *member of the trust
- 16 can be worked out on a fair and reasonable basis; and
- 17 (b) the right of each member of the trust to the income and
- 18 capital of the trust cannot be materially diminished through
- 19 the exercise of a power or right.
- 20 (3) The requirement in this subsection is satisfied if:
- 21 (a) the trustee is under an obligation to treat the *members who
- 22 hold interests of the same class equally and members who
- 23 hold interests of different classes fairly; and
- 24 (b) the constituent documents of the trust can only be modified,
- 25 or repealed or replaced with new constituent documents:
- 26 (i) by the trustee, if the trustee reasonably considers that
- 27 the change will not adversely affect members' rights; or
- 28 (ii) by a resolution that has been passed by at least 75% of
- 29 the votes cast by members entitled to vote on the
- 30 resolution; or
- 31 (iii) by a resolution that has been passed by at least 50% of
- 32 the total votes that may be cast by members entitled to
- 33 vote on the resolution (including members who are not
- 34 present in person or by proxy).

EXPOSURE DRAFT

Schedule 2 Attribution managed investment trusts

- 1 (4) The requirement in this subsection is satisfied if the Commissioner
2 considers that it is reasonable to conclude that the right of each
3 member of the trust to the income and capital of the trust are
4 clearly defined at that time.
- 5 (5) In making a decision under subsection (4), the Commissioner must
6 consider:
7 (a) the constituent documents of the trust; and
8 (b) any other matter that the Commissioner considers relevant.

9 **276-20 Trust with classes of interests—each class treated as separate** 10 **AMIT**

- 11 (1) Subsection (2) applies if:
12 (a) the interests in the income and capital of an *AMIT for an
13 income year are divided into classes; and
14 (b) the rights arising from each of those interests in a particular
15 class are the same as the rights arising from every other of
16 those interests in that class; and
17 (c) each of those interests in a particular class are distinct from
18 each of those interests in another class; and
19 (d) the trustee of the AMIT has made a choice in accordance
20 with this section that applies to the income year.
- 21 (2) For the purposes of this Division (other than this Subdivision),
22 treat each class of those interests in the *AMIT as being a separate
23 AMIT for that income year.
- 24 Note: The operation of the section is modified in relation to section 276-420
25 (substantial overall base year shortfall): see section 276-425.
- 26 (3) The trustee of a trust may make a choice for the purposes of
27 paragraph (1)(d) in writing.
- 28 (4) The way the trust's *income tax return is prepared for an income
29 year is sufficient evidence of the making of the choice in that
30 income year.
- 31 (5) The choice cannot be revoked.

EXPOSURE DRAFT

Attribution managed investment trusts **Schedule 2**

- 1 (6) The choice applies to the income year in which it is made and
2 every subsequent income year.

3 **Guide to Subdivision 276-B**

4 **276-50 What this Subdivision is about**

5 A member of an AMIT for an income year has a vested and
6 indefeasible interest in a share of income and capital of the AMIT
7 throughout the income year.

8 **Table of sections**

9 **Operative provisions**

10 276-55 Member of AMIT taken to have vested and indefeasible interest in income
11 and capital

12 **Operative provisions**

13 **276-55 Member of AMIT taken to have vested and indefeasible**
14 **interest in income and capital**

15 For the purposes of this Act, treat a *member of an *AMIT for an
16 income year as having a vested and indefeasible interest in a share
17 of the income and capital of the AMIT throughout the income year.

18 **Subdivision 276-C—Taxation of member components**

19 **Guide to Subdivision 276-C**

20 **276-75 What this Subdivision is about**

21 This Subdivision implements an attribution model for the taxation
22 of AMITs.

EXPOSURE DRAFT

Schedule 2 Attribution managed investment trusts

Amounts related to income and tax offsets of an AMIT, determined by the trustee to be of a particular AMIT character, are attributed to members, generally retaining that character.

Table of sections

Taxation of member on taxable member components

- 276-80 Member taxed on taxable member components
- 276-85 Relationship between section 276-80 and withholding rules
- 276-90 Relationship between section 276-80 and other charging provisions in this Act

Taxation of trustee on taxable member components

- 276-95 Trustee taxed on foreign resident member's components—non-trustee beneficiary
- 276-100 Refundable tax offset for foreign resident member
- 276-105 Trustee taxed on foreign resident member's components—trustee beneficiary
- 276-110 Deduction from beneficiary's tax

Taxation of member on taxable member components

276-80 Member taxed on taxable member components

Components of income, exempt or NANE AMIT character

- (1) Subsection (2) applies if a *member of an *AMIT for an income year has, for the income year, a *taxable member component of:
 - (a) an *income AMIT character; or
 - (b) an *exempt AMIT character; or
 - (c) the *NANE AMIT character.
- (2) The *taxable member component has an effect mentioned in subsection (3) for the *member in the same way as an amount of that *AMIT character would have that effect if the member had derived, received or made the amount reflected in the taxable member component:
 - (a) in the member's own right (rather than as a member of a trust); and

EXPOSURE DRAFT

Attribution managed investment trusts **Schedule 2**

1 (b) in the same circumstances as the *AMIT derived, received or
2 made the amount that is reflected in that taxable member
3 component, to the extent that those circumstances gave rise
4 to the particular AMIT character of that component.

5 (3) The effects are as follows:

6 (a) including an amount in the assessable income of the
7 *member;

8 (b) including an amount in the *exempt income of the member;

9 (c) including an amount in the *non-assessable non-exempt
10 income of the member;

11 (d) determining whether the member has made a *capital gain
12 from a *CGT event;

13 (e) determining the extent to which the member's *net capital
14 loss has been *utilised.

15 Example: The taxable member component has the AMIT character of foreign
16 source income. It is included in the member's assessable income in the
17 same way as foreign source income would be included in the
18 member's assessable income had the member derived or made it in the
19 member's own right. If the member is a foreign resident, this inclusion
20 is limited by the rules in subsection 6-10(5).

21 (4) If the *taxable member component is of the *AMIT character
22 mentioned in item 1 or 2 of the table in subsection 276-150(2)
23 (discount capital gain), for the purposes of this section, treat the
24 amount of the component as being double what it would be apart
25 from this subsection.

26 *Components of offset AMIT character*

27 (5) Subsection (6) applies if a *member of an *AMIT for an income
28 year has, for the income year, a *taxable member component of an
29 *offset AMIT character.

30 (6) The *taxable member component has an effect mentioned in
31 subsection (7) for the *member in the same way as an amount of
32 that *AMIT character would have that effect if the member had
33 paid or received the amount reflected in the taxable member
34 component:

EXPOSURE DRAFT

Schedule 2 Attribution managed investment trusts

- 1 (a) in the member's own right (rather than as a member of a
2 trust); and
3 (b) in the same circumstances as the *AMIT paid or received the
4 amount that is reflected in that taxable member component.

- 5 (7) The effects are as follows:
6 (a) entitling the member to a *tax offset;
7 (b) entitling the member to a credit under Division 18 of
8 Schedule 1 to the *Taxation Administration Act 1953*.

9 *Exceptions*

- 10 (8) The circumstances mentioned in paragraph (2)(b) or (6)(b) do not
11 include the following:
12 (a) the residence of the trustee of the *AMIT;
13 (b) the place of the central management and control of the
14 AMIT;
15 (c) the status of the trustee of the AMIT as a qualified person (or
16 as not a qualified person) in relation to a distribution, for the
17 purposes of Division 1A of former Part IIIAA of the *Income*
18 *Tax Assessment Act 1936*.
- 19 (9) Paragraphs (2)(a) and (6)(a) do not apply for the purpose of
20 determining the status of the *member as a qualified person (or as
21 not a qualified person) in relation to a distribution, for the purposes
22 of Division 1A of former Part IIIAA of the *Income Tax Assessment*
23 *Act 1936*.

24 **276-85 Relationship between section 276-80 and withholding rules**

- 25 (1) Subsection 276-80(2) does apply to the extent that the *taxable
26 member component is reflected in an *AMIT DIR payment or a
27 *fund payment.
- 28 (2) Subsection 276-80(2) does not affect the operation of the
29 following:
30 (a) Division 11A of Part IIIA of the *Income Tax Assessment Act*
31 *1936*;
32 (b) Subdivision 840-M of this Act;

EXPOSURE DRAFT

Attribution managed investment trusts **Schedule 2**

1 (c) Division 12 of Schedule 1 to the *Taxation Administration Act*
2 1953.

3 Note See Division 12A of Schedule 1 to the *Taxation Administration Act*
4 1953 for provisions about withholding tax that apply specifically to
5 AMITs.

6 **276-90 Relationship between section 276-80 and other charging** 7 **provisions in this Act**

- 8 (1) This section applies if:
- 9 (a) an amount is included in the assessable income of a *member
10 of an *AMIT for an income year in respect of the member's
11 interest in the AMIT; and
 - 12 (b) that amount is so included otherwise than because of the
13 operation of subsection 276-80(2).
- 14 (2) Reduce the amount included in the assessable income of the
15 *member as mentioned in subsection (1) to the extent (if any) that a
16 corresponding amount is included in the assessable income of the
17 member in respect of the member's interest in the *AMIT because
18 of the operation of subsection 276-80(2).
- 19 (3) To avoid doubt, this section is subject to section 230-20 (financial
20 arrangements).

21 **Foreign resident members—taxation of trustee and** 22 **corresponding tax offset or deduction for members**

23 **276-95 Trustee taxed on foreign resident member's components—** 24 **non-trustee beneficiary**

- 25 (1) This section applies if:
- 26 (a) a *member of an *AMIT for an income year has a *taxable
27 member component of an *income AMIT character in respect
28 of the AMIT, in relation to the income year; and
 - 29 (b) the member is *not*, in respect of that taxable member
30 component, a beneficiary in the capacity of a trustee of
31 another trust; and

EXPOSURE DRAFT

Schedule 2 Attribution managed investment trusts

- 1 (c) the member is a foreign resident at the end of the income
2 year.
- 3 (2) The trustee of the *AMIT is to be assessed and is liable to pay
4 income tax:
- 5 (a) if the *member is not a company—in respect of the amount
6 mentioned in subsection (3) as if it were the income of an
7 individual and were not subject to any deduction; or
- 8 (b) if the member is a company—in respect of the amount
9 mentioned in subsection (3) at the rate declared by the
10 Parliament for the purposes of this paragraph.
- 11 (3) The amount is the *taxable member component, to the extent that
12 the component is either of the following:
- 13 (a) attributable to a period when the member was a resident;
- 14 (b) attributable to a period when the member was not a resident
15 and attributable to sources in Australia.
- 16 (4) Subsection (2) does apply to the extent that the *taxable member
17 component is reflected in an *AMIT DIR payment or a *fund
18 payment.
- 19 *Gross-up for discount capital gain*
- 20 (5) Subsection (6) applies if a *taxable member component is of the
21 *AMIT character mentioned in item 1 or 2 of the table in
22 subsection 276-150(2) (discount capital gain).
- 23 (6) For the purposes of this section, treat the amount of the component
24 as being double what it would be apart from this subsection.

276-100 Refundable tax offset for foreign resident member

- 26 (1) This section applies if a trustee is assessed and liable to pay income
27 tax under section 276-95 (about foreign resident members) in
28 respect of a *member.
- 29 (2) The *member is entitled to a *tax offset for the income year equal
30 to the tax paid by the trustee in accordance with
31 subsection 276-95(2).

EXPOSURE DRAFT

Attribution managed investment trusts **Schedule 2**

1 (3) The *tax offset is subject to the refundable tax offset rules.

2 **276-105 Trustee taxed on foreign resident member's components—**
3 **trustee beneficiary**

4 (1) This section applies if:

- 5 (a) a *member of an *AMIT for an income year has a *taxable
6 member component of an *income AMIT character in respect
7 of the AMIT, in relation to the income year; and
8 (b) the member is, in respect of that taxable member component,
9 a beneficiary in the capacity of a trustee of another trust; and
10 (c) a trustee of the other trust is a foreign resident at the end of
11 the income year.

12 (2) The trustee of the *AMIT is to be assessed and is liable to pay
13 income tax in respect of the amount mentioned in subsection (3) at
14 the rate declared by the Parliament for the purposes of this
15 paragraph.

16 (3) Subsection (2) does apply to the extent that the *taxable member
17 component is reflected in an *AMIT DIR payment or a *fund
18 payment.

19 (4) This section does not apply to a *taxable member component of an
20 *AMIT character of a kind mentioned in:

- 21 (a) item 2 or 4 of the table in subsection 276-150(2) (capital gain
22 on non-taxable Australian property); or
23 (b) item 9 of the table in subsection 276-150(2) (foreign source
24 income).

25 *Gross-up for discount capital gain*

26 (5) Subsection (6) applies if a *taxable member component is of the
27 *AMIT character mentioned in item 1 of the table in
28 subsection 276-150(2) (discount capital gain).

29 (6) For the purposes of this section, treat the amount of the component
30 as being double what it would be apart from this subsection.

EXPOSURE DRAFT

Schedule 2 Attribution managed investment trusts

276-110 Deduction from beneficiary's tax

(1) This section applies to a beneficiary of a trust for an income year if the assessable income of the beneficiary for the year includes an amount covered by subsection (2).

(2) This subsection covers an amount (the *assessable amount*) if:

(a) the amount is included in the assessable income of the beneficiary under one of the following:

(i) section 276-80;

(ii) section 97 of the *Income Tax Assessment Act 1936*;

(iii) subsection 98A(3) of that Act;

(iv) section 100 of that Act; and

(b) the amount does not represent income of the trust attributed to the beneficiary under section 276-80 or to which the beneficiary is presently entitled in the capacity of a trustee of another trust; and

(c) the amount is reasonably attributable to an amount (the *taxed component*) in respect of which the trustee of an *AMIT is assessed and liable to pay tax (the *subsection 276-105(2) tax*) under subsection 276-105(2).

(3) A proportion of the subsection 276-105(2) tax is to be deducted from the income tax assessed against the beneficiary for the income year. That proportion is the same as the proportion of the taxed component that gave rise to the assessable amount.

Note: To work out the proportion of the taxed component that gives rise to the assessable amount, you would have regard to the share of the income of each trust interposed between the AMIT and the trust first mentioned in subsection (1) to which a beneficiary (including a beneficiary in the capacity of a trustee) is presently entitled.

(4) If the amount to be deducted under subsection (3) is greater than the amount of the income tax assessed against the beneficiary, the Commissioner must pay to the beneficiary an amount equal to the difference between those 2 amounts.

Note: See Division 3A of Part IIB of the *Taxation Administration Act 1953* for the rules about how the Commissioner must pay the entity. Division 3A of Part IIB allows the Commissioner to apply the amount

EXPOSURE DRAFT

Attribution managed investment trusts Schedule 2

1 owing as a credit against tax debts that the entity owes to the
2 Commonwealth.

3 Subdivision 276-D—AMIT characters

4 Guide to Subdivision 276-D

5 276-145 What this Subdivision is about

6 An amount may be a certain specified *AMIT character*. There are
7 4 broad types of AMIT character: *income AMIT character*,
8 *exempt AMIT character*, *NANE AMIT character* and *offset*
9 *AMIT character*. Some of these types are divided into particular
10 kinds of amount of the relevant AMIT character.

11 Table of sections

12 **AMIT character**
13 276-150 The *AMIT characters*

14 **AMIT character**

15 **276-150 The *AMIT characters***

16 (1) Each kind of amount set out in an item of a table in this section
17 (including each kind of amount specified in a legislative instrument
18 made under subsection (7)) is an *AMIT character*.

19 *Income AMIT character*

20 (2) Each *AMIT character set out in this table (including each kind of
21 amount specified in a legislative instrument mentioned in item 10)
22 is an *income AMIT character*.

23

Income AMIT characters

Item	Kind of amount
-------------	-----------------------

1	*Discount capital gain from a *CGT asset that is *taxable Australian property
---	---

EXPOSURE DRAFT

Schedule 2 Attribution managed investment trusts

Income AMIT characters

Item	Kind of amount
-------------	-----------------------

2	*Discount capital gain from a *CGT asset that is <i>not</i> *taxable Australian property
3	*Capital gain (other than a *discount capital gain) from a *CGT asset that is *taxable Australian property
4	*Capital gain (other than a *discount capital gain) from a *CGT asset that is <i>not</i> *taxable Australian property
5	Amount included in assessable income under subsection 207-20(1) (franking credit gross-up)
6	Amount on which *income tax would be payable under subsection 128B(4) of the <i>Income Tax Assessment Act 1936</i> if it had been derived by an entity that was not an *Australian resident (dividend)
7	Amount on which *income tax would be payable under subsection 128B(5) of the <i>Income Tax Assessment Act 1936</i> if it had been derived by an entity that was not an *Australian resident (interest)
8	Amount on which *income tax would be payable under subsection 128B(5A) of the <i>Income Tax Assessment Act 1936</i> if it had been derived by an entity that was not an *Australian resident (royalty)
9	*Ordinary income or *statutory income from a source <i>other than</i> an *Australian source
10	*Ordinary income or *statutory income of a kind specified in a legislative instrument as mentioned in paragraph (7)(a)
11	*Ordinary income or *statutory income not covered by another item of this table

1 *Exempt AMIT character*

2 (3) Each *AMIT character set out in this table (including each kind of
3 amount specified in a legislative instrument mentioned in item 2) is
4 an *exempt AMIT character*.

5

Exempt AMIT characters

Item	Kind of amount
-------------	-----------------------

1	*Net exempt income:
---	---------------------

EXPOSURE DRAFT

Attribution managed investment trusts **Schedule 2**

Exempt AMIT characters

Item	Kind of amount
-------------	-----------------------

(a) worked out under subsection 36-20(2) (about net exempt income for foreign residents); and

(b) not covered by another item of this table

2 *Net exempt income of a kind specified in a legislative instrument as mentioned in paragraph (7)(b)

3 *Net exempt income not covered by another item of this table

1 *NANE AMIT character*

2 (4) The *AMIT character set out in this table is the *NANE AMIT*
3 *character*.

NANE AMIT character

Item	Kind of amount
-------------	-----------------------

1 *Non-assessable non-exempt income of a kind covered by subsection (5)

5 (5) This subsection covers *non-assessable non-exempt income from
6 all sources, to the extent that it exceeds the total of:

7 (a) the losses and outgoings (except capital losses and outgoings)
8 incurred in deriving that non-assessable non-exempt income;
9 and

10 (b) any taxes payable outside Australia on that non-assessable
11 non-exempt income.

12 *Offset AMIT character*

13 (6) Each *AMIT character set out in this table (including each kind of
14 amount specified in a legislative instrument mentioned in item 3) is
15 an *offset AMIT character*.

Offset AMIT characters

Item	Kind of amount
-------------	-----------------------

1 *Franking credit

2 *Foreign income tax paid by the trust

EXPOSURE DRAFT

Attribution managed investment trusts **Schedule 2**

1 **Member-level concepts**

2 **276-205 Meaning of *taxable member component***

3 (1) The *taxable member component* of a particular *AMIT character
4 for an income year of a *member of an *AMIT for the income year
5 is the member's *determined member component of that character
6 for the income year.

7 (2) Subsection (6) applies if:

- 8 (a) the *member makes a choice for the purposes of this
9 paragraph in accordance with subsection (3); and
10 (b) the member gives a notice of the choice to the trustee of the
11 *AMIT in accordance with subsection (5).

12 (3) The choice must:

- 13 (a) be in writing, and
14 (b) state the following matters:
15 (i) the income year to which the choice relates;
16 (ii) what the *member considers to be the member's *member
17 component of that character for the income year;
18 (iii) the reason why the member considers that the
19 *determined member component of that character for
20 the income year does *not* accord with
21 subsections 276-215(2), (3) and (4); and
22 (c) be given to the Commissioner within 4 months after the end
23 of the member's income year.

24 (4) The way the *member's *income tax return is prepared is sufficient
25 evidence of the making of the choice.

26 (5) The notice must:

- 27 (a) be in writing, and
28 (b) state the following matters:
29 (i) the income year to which the notice relates;
30 (ii) what the *member considers to be the member's *member
31 component of that character for the income year;
-

EXPOSURE DRAFT

Schedule 2 Attribution managed investment trusts

- 1 (iii) the reason why the member considers that the
2 *determined member component of that character for
3 the income year does *not* accord with
4 subsections 276-215(2), (3) and (4); and
5 (c) be given to the trustee within 4 months after the end of the
6 member's income year.
- 7 (6) Despite subsection (1), if the *determined member component of
8 that character for the income year does *not* accord with
9 subsections 276-215(2), (3) and (4), the *member's ***taxable***
10 ***member component*** of that character for the income year is the
11 member's *member component of that character for the income
12 year.
- 13 (7) For the purposes of subsection (6), in working out the member's
14 *member component of that character for the income year, treat the
15 references in section 276-215 to *determined trust component to be
16 instead references to *trust component.

276-210 Meaning of *determined member component*

- 17
- 18 (1) The ***determined member component*** of a particular *AMIT
19 character for an income year of a *member of an *AMIT for the
20 income year is the amount stated to be the member's *member
21 component of that AMIT character in the AMIT's latest *AMMA
22 statement for the member for the income year.
- 23 (2) A *member cannot have more than one *determined member
24 component of a particular *AMIT character for the trust for the
25 income year (although a member may have several determined
26 member components for the trust for the income year, each of a
27 separate AMIT character).

276-215 Meaning of *member component*

- 28
- 29 (1) This section applies to a *member of an *AMIT for an income year
30 and sets out how to work out the member's *member components
31 of each *AMIT character of which the AMIT has a *determined
32 trust component for the year.

EXPOSURE DRAFT

Attribution managed investment trusts **Schedule 2**

1 *Meaning of member component*

2 (2) The *member's *member component* of an *AMIT character is so
3 much of the *determined trust component of that character as is
4 attributable to the *membership interests in the *AMIT held by the
5 member, worked out in accordance with the requirements in
6 subsections (3) and (4).

7 *Attribution must be fair and reasonable and accord with*
8 *constituent documents*

9 (3) The attribution must be worked out on a fair and reasonable basis,
10 in accordance with the constituent documents of the *AMIT. This
11 requirement is subject to the requirement in subsection (4).

12 *Attribution must not involve streaming of character amounts*

13 (4) The attribution must not, to any extent, attribute any part of a
14 *determined trust component of a particular *AMIT character to a
15 *member's *membership interests because of the tax characteristics
16 of the member.

17 (5) Without limiting the scope of the requirements in subsection (3)
18 and (4), an amount does not fail to be worked out in accordance
19 with those requirements as mentioned in subsection (2) merely
20 because the amount reflects the fact that:

21 (a) the constituent documents of the *AMIT give the trustee of
22 the AMIT the power to direct an amount arising from the sale
23 of an asset to a particular *member, if:

24 (i) the member redeems one or more *membership interests
25 in the AMIT; and

26 (ii) the direction of the amount is made to fund the
27 redemption; and

28 (b) the trustee exercises that power.

29 (6) Without limiting the scope of the requirements in subsection (3)
30 and (4), an amount does not fail to be worked out in accordance
31 with those requirements as mentioned in subsection (2) merely
32 because the amount reflects that fact that:

EXPOSURE DRAFT

Schedule 2 Attribution managed investment trusts

- 1 (a) the activities of the *AMIT give rise to an economic benefit
2 or economic detriment for its *members at a time (the *activity*
3 *time*); and
4 (b) the amount of the *trust components of the AMIT for an
5 income year ending after the activity time are affected by
6 those activities; and
7 (c) an entity is a member of the AMIT at a time in that income
8 year, but was *not* a member of the AMIT at the activity time.
- 9 (7) Without limiting the scope of the requirements in subsection (3)
10 and (4), an amount does not fail to be worked out in accordance
11 with those requirements as mentioned in subsection (2) merely
12 because the amount reflects the fact that:
13 (a) either:
14 (i) an amount of an *under, relating to a base year (as
15 mentioned in subsection 276-355(1)) increases a *trust
16 component of the *AMIT for a later income year under
17 section 276-345; or
18 (ii) an amount of an *over, relating to a base year (as
19 mentioned in subsection 276-355(1)) decreases a trust
20 component of the AMIT for a later income year under
21 section 276-345; and
22 (b) an entity is a *member of the AMIT at a time in the later
23 income year, but was *not* a member of the AMIT at a time in
24 the base year.

Subdivision 276-F—Trust components

Guide to Subdivision 276-F

276-265 What this Subdivision is about

This Subdivision sets out how an AMIT works out its *trust component* and *determined trust component* of a particular AMIT character.

Table of sections

EXPOSURE DRAFT

Attribution managed investment trusts Schedule 2

1	Trust-level concepts
2	276-270 Meaning of <i>determined trust component</i>
3	276-275 Document that determines amounts
4	276-280 Meaning of <i>trust component</i>
5	276-285 Rules for working out trust components—general rules
6	276-290 Rules for working out trust components—allocation of deductions

7 **Trust-level concepts**

8 **276-270 Meaning of *determined trust component***

9 A trust's *determined trust component* of a particular *AMIT
10 character for an income year is the amount stated to be its *trust
11 component of that AMIT character in a document that meets the
12 requirements in section 276-275 in respect of the amount for the
13 income year.

14 **276-275 Document that determines amounts**

- 15 (1) A document meets the requirements in this section in respect of an
16 amount for an income year if the following requirements are met:
- 17 (a) the document is created by an *AMIT for an income year;
 - 18 (b) the document states the amount expressly;
 - 19 (c) at a time after the document was created, the AMIT sends an
20 *AMMA statement for the income year to an entity that was a
21 *member of the AMIT at any time during the income year.
- 22 (2) If, apart from this subsection, there are 2 or more documents that
23 meet the requirements in this section in respect of the amount for
24 the income year, treat the most recently created of those documents
25 as being the only document that meets the requirements in this
26 section in respect of the amount for the income year.

27 Example: The income year for the AMIT ends on 30 June. The trustee creates a
28 document stating the amount for the income year on 1 July. It sends
29 all AMMA statements on 10 July. The trustee creates another
30 document stating a different amount for the income year on
31 1 September. It sends revised AMMA statements reflecting that
32 amount on 10 September. The document created on 1 September is the
33 only document that meets the requirements in this section in respect of
34 the amount for the income year.

EXPOSURE DRAFT

Schedule 2 Attribution managed investment trusts

1 **276-280 Meaning of *trust component***

2 (1) A trust has a ***trust component*** of a particular *AMIT character for
3 an income year equal to the amount of that AMIT character for the
4 income year worked out in relation to the trust in accordance with
5 the rules in sections 276-285 and 276-290.

6 Note: See Subdivision 276-G for the effect of unders and overs on the
7 amount of a trust component.

8 (2) The rules in sections 276-285 and 276-290 apply only for the
9 purposes of determining the amount of a *trust component of a
10 particular *AMIT character a trust has for an income year.

11 **276-285 Rules for working out trust components—general rules**

12 *General residence assumption to be made*

13 (1) Work out the amount of the *trust component of each *AMIT
14 character in relation to the trust assuming that the trust's trustee:
15 (a) was liable to pay *tax; and
16 (b) was an Australian resident.

17 *Withholding tax provisions to be disregarded*

18 (2) Despite section 840-815 of this Act and section 128D of the
19 *Income Tax Assessment Act 1936*, an amount on which
20 *withholding tax is payable is *not* *non-assessable non-exempt
21 income of the trust.

22 *Amount cannot have more than one AMIT character*

23 (3) An amount cannot have more than one *AMIT character.

24 *Trust components of income AMIT character are net of deductions*

25 (4) The sum of all of the trust components of the trust for the income
26 year must equal the total assessable income of the trust for the
27 income year (worked out making the assumptions in subsection (1)
28 and applying subsections (2) and (3)), less all allowable
29 deductions.

EXPOSURE DRAFT

Attribution managed investment trusts **Schedule 2**

- 1 (5) However, if that total assessable income does not exceed those
2 deductions, the sum of all of the trust components of the trust for
3 the income year must equal zero.

4 *Disregard unders and overs from previous years*

- 5 (6) Disregard an *under or *over that the *AMIT had in a previous
6 income year.

7 Note: An under or over that the AMIT had in a previous income year will be
8 reflected in the AMIT's trust component for that previous year in
9 accordance with section 276-345. Sections 276-520 and 276-525
10 provide for taxation of the trustee in respect of amounts of the under
11 or over not so reflected.

12 **276-290 Rules for working out trust components—allocation of** 13 **deductions**

- 14 (1) An amount of a deduction that relates directly only to one or more
15 amounts of assessable income can be deducted only against that
16 amount or those amounts of assessable income. If there are 2 or
17 more such amounts of assessable income, the amount of the
18 deduction is allocated against those amounts on a reasonable basis.
- 19 (2) If an amount of a deduction remains after applying the rules in
20 subsection (1), the remainder can be deducted against other
21 amounts of assessable income. The amount of the remainder is
22 allocated against those amounts on a reasonable basis.
- 23 (3) For the purposes of this section, determine whether a deduction
24 relates directly to an amount of assessable income on a reasonable
25 basis.

26 **Subdivision 276-G—Unders and overs**

27 **Guide to Subdivision 276-G**

28 **276-335 What this Subdivision is about**

29 This Subdivision sets out how under-estimations and
30 over-estimations of amounts at the trust level are carried forward

EXPOSURE DRAFT

Schedule 2 Attribution managed investment trusts

1
2
3
4
5
6
7

and dealt with in later years. This is done on a character-by-character basis.

An under-estimation in an income year of a particular character results in an “under” of that character. An over-estimation results in an “over” of that character.

“Unders” and “overs” arise, and are dealt with, in the income year in which they are discovered.

8

Table of sections

9
10
11
12
13
14
15
16
17

Modified calculation of trust component for unders, overs and uplifts

276-340 Application

276-345 Modified calculation of trust component for unders, overs and uplifts

276-350 Trustee taxed on negative result for offset characters

Unders and overs

276-355 Meaning of *under* and *over* of an AMIT character

276-360 Reduction in over of income AMIT character and of under of offset AMIT character due to choice under paragraph 276-205(2)(a)

276-365 Limited discovery period for unders and overs

18
19

Modified calculation of trust component for unders, overs and uplifts

20

276-340 Application

21

This Subdivision applies if a trust is an *AMIT for an income year.

22
23
24

276-345 Modified calculation of trust component for unders, overs and uplifts—*income, exempt and NANE AMIT characters*

25

Calculation for AMIT characters other than offsets

26
27
28

(1) The trust’s *trust component* of an *AMIT character (other than an *offset AMIT character) for the income year is the amount worked out as follows:

40

EXPOSURE DRAFT

Schedule 2 Attribution managed investment trusts

- 1 (a) the trust's *trust component* of that character for the income
2 year is nil; and
- 3 (b) the negative amount (expressed as a positive amount) is the
4 trust's *trust component deficit* of that character for the
5 income year; and
- 6 (c) if that character is an income AMIT character—allocate that
7 trust component deficit against the trust's trust components
8 of other income AMIT characters for that income year in
9 accordance with subsection (3); and
- 10 (d) if there is any amount of that trust component deficit
11 remaining after applying it in accordance with
12 subsection (3)—that remaining amount is the trust's
13 *carry-forward trust component deficit* for the next income
14 year.

15 *Trust component deficit allocated between trust components of*
16 *other characters*

- 17 (3) In allocating that *trust component deficit against the trust's *trust
18 components of other *income AMIT characters for that income
19 year as mentioned in paragraph (2)(c), apply the following rules:
- 20 (a) allocate that trust component deficit between the trust
21 components of other characters on a reasonable basis;
- 22 (b) the maximum amount that can be allocated to a trust
23 component of another character is the amount of that trust
24 component (disregarding this subsection).

25 **276-350 Modified calculation of trust component for unders, overs** 26 **and uplifts—offset AMIT characters**

27 *Calculation for offset AMIT characters*

- 28 (1) The trust's *trust component* of an *offset AMIT character for the
29 income year is the amount worked out as follows:

$$\text{Basic character amount} + \left(\text{Total unders} - \text{Total overs} \right) - \text{Total uplifts}$$

30
31 where:

EXPOSURE DRAFT

Schedule 2 Attribution managed investment trusts

- 1 (foreign source income) for the income year mentioned in
2 subsection (1), increase the cross-character allocation amount
3 mentioned in that subsection by the sum of:
4 (a) the *trust component deficit mentioned in paragraph (2)(b);
5 and
6 (b) the product of:
7 (i) that trust component deficit; and
8 (ii) the *corporate tax gross-up rate.

9 Unders and overs

10 276-355 Meaning of *under* and *over* of an AMIT character

- 11 (1) This section sets out how to work out whether a trust has an *under
12 or an *over of a particular *AMIT character in an income year (the
13 *discovery year*) relating to an earlier income year (the *base year*).
14 (2) The time (the *discovery time*) at which this is worked out for a
15 particular discovery year is just before the trustee works out the
16 *determined trust component of that *AMIT character for the
17 discovery year.
18 Note: This allows unders and overs to be included in the determined trust
19 component for the discovery year: see section 276-345.
20 (3) For each *AMIT character for a particular base year, compare:
21 (a) the trust's *trust component, worked out on the basis of the
22 trustee's knowledge at the discovery time (the *discovery year*
23 *amount*); and
24 (b) the trust's *determined trust component (the *previous year*
25 *amount*).

26 *A shortfall is an under*

- 27 (4) If the previous year amount *falls short* of the discovery year
28 amount, the amount of the shortfall is an *under* of that *AMIT
29 character, relating to the base year, that the trust has in the
30 discovery year.

EXPOSURE DRAFT

Attribution managed investment trusts Schedule 2

1

An excess is an over

2

- (5) If the previous year amount *exceeds* the discovery year amount, the amount of the excess is an *over* of that *AMIT character, relating to the base year, that the trust has in the discovery year.

3

4

5

Running balance for determined trust component

6

- (6) However, if the discovery year is not the first income year after the base year, the previous year amount in paragraph (3)(b):

7

8

(a) is not the trust's *determined trust component; and

9

(b) is instead the discovery year amount worked out under this section for the most recent income year before the discovery year.

10

11

12

Nil amounts

13

- (7) For the purposes of this section:

14

(a) if a trust has no *trust component of a particular *AMIT character, treat the trust as having a trust component of nil of that AMIT character; and

15

16

17

(b) if a trust has no *determined trust component of a particular AMIT character, treat the trust as having a determined trust component of nil of that AMIT character.

18

19

20

276-360 Reduction in over of income AMIT character and of under of offset AMIT character due to choice under paragraph 276-205(2)(a)

21

22

23

- (1) If:

24

(a) a *member of an *AMIT makes a choice for the purposes of paragraph 276-205(2)(a) in relation to its *taxable member component of a particular *income AMIT character or *exempt AMIT character for an income year (the *base year*); and

25

26

27

28

29

(b) as a result of the choice that taxable member component falls short of the member's *member component of that character for the base year; and

30

31

EXPOSURE DRAFT

Schedule 2 Attribution managed investment trusts

- 1 (c) the AMIT has an *over of that character for a later income
2 year, relating to the base year;
3 decrease the amount of the *over by the amount of the shortfall.

4 Note: The member's taxable member component for the base year may not
5 equal the member's member component for the base year if the
6 AMIT's determined trust component for the base year does not equal
7 its trust component for the base year (see subsection 276-205(7)).

8 (2) If:

- 9 (a) a *member of an *AMIT makes a choice for the purposes of
10 paragraph 276-205(2)(a) in relation to its *taxable member
11 component of a particular *NAME AMIT character or *offset
12 AMIT character for an income year (the *base year*); and
13 (b) as a result of the choice that taxable member component
14 exceeds the member's *member component of that character
15 for the base year; and
16 (c) the AMIT has an *under of that character for a later income
17 year, relating to the base year;
18 decrease the amount of the *under by the amount of the excess.

19 Note: The member's taxable member component for the base year may not
20 equal the member's member component for the base year if the
21 AMIT's determined trust component for the base year does not equal
22 its trust component for the base year (see subsection 276-205(7)).

23 **276-365 Limited discovery period for unders and overs**

24 Despite section 276-355, a trust does not have an *under or an
25 *over of a particular *AMIT character relating to a base year if:
26 (a) assuming the Commissioner made an assessment of the *trust
27 component of that character on the day on which the
28 document stating the trust's *determined trust component of
29 that character relating to the base year was created; and
30 (b) assuming the assessment had not been amended at the
31 discovery time for the under or over;
32 section 170 of the *Income Tax Assessment Act 1936* would prevent
33 the assessment from being amended to take account of the under or
34 over.

35 Note: Section 170 of the *Income Tax Assessment Act 1936* specifies the
36 usual period within which assessments may be amended.

EXPOSURE DRAFT

Attribution managed investment trusts **Schedule 2**

1 **Subdivision 276-H—Uplifts for unders and overs**

2 **Guide to Subdivision 276-H**

3 **276-410 What this Subdivision is about**

4 This Subdivision increases (uplifts) under- and over-estimations in
5 amounts at the trust level, if these are likely to be substantially
6 revenue-negative in relation to any particular base year.

7 Whether the Subdivision applies to a particular base year is worked
8 out by comparing the overall net variance for that base year (across
9 all discovery years) with the net variance threshold.

10 If the Subdivision does apply to a particular base year,
11 section 276-430 identifies the discovery years, and AMIT
12 characters, for that base year for which unders and overs are
13 required to be uplifted.

14 The uplifts are calculated under section 276-435 using the rate for
15 shortfall interest charge for the period from the standard return
16 lodgement date for the base year to the end of the discovery year
17 for the under or over.

18 Uplifts for a particular AMIT character are included in the first
19 trust component of that character that is available, in the sense that
20 the trustee has not yet determined that trust component at the time
21 the uplift is calculated (which is when the net variance threshold is
22 exceeded).

23 **Table of sections**

24 **Operative provisions**

25	276-415	Application
26	276-420	Affected base years—substantial overall base year shortfall
27	276-425	Unders/overs for which an uplift must be calculated—modification for trust 28 with classes of interests
29	276-430	Unders/overs for which an uplift must be calculated

EXPOSURE DRAFT

Attribution managed investment trusts **Schedule 2**

1 Note: No uplift needs to be calculated for a substantial overall base year
2 excess. However, an administrative penalty may apply: see
3 section 288-115 in Schedule 1 to the *Taxation Administration Act*
4 *1953*.

5 *Meaning of net variance threshold*

- 6 (5) A trust's *net variance threshold* for a base year is the greater of:
7 (a) 5% of the sum of the trust's *trust components for the base
8 year; and
9 (b) 0.4% of the value (determined in accordance with the
10 *accounting principles) at the end of the base year of the net
11 assets of the trust.
- 12 (6) For the purposes of this section, disregard a *trust component of
13 the *income AMIT character mentioned in item 5 of the table in
14 subsection 276-150(2) (franking credit gross-up amount).

15 **276-425 Unders/overs for which an uplift must be calculated—**
16 **modification for trust with classes of interests**

- 17 (1) This section applies if subsection 276-20(2) applies to the trust
18 mentioned in subsection 276-420(2).

19 Note: Under subsection 276-20(2), each class of those interests in the trust is
20 treated as being a separate AMIT.

- 21 (2) For the purposes of subsections 276-20(2) and (5):
22 (a) subsection 276-20(2) applies in working out the amount of
23 the *unders, *overs and *trust components mentioned in those
24 subsections; and
25 (b) subsection 276-20(2) does not apply in working out:
26 (i) the totals mentioned in paragraphs 276-420(2)(a) and
27 (b); and
28 (ii) the sum mentioned in paragraph 276-420(5)(a); and
29 (iii) the value mentioned in paragraph 276-420(5)(b).

EXPOSURE DRAFT

Schedule 2 Attribution managed investment trusts

1 **276-430 Unders/overs for which an uplift must be calculated**

2 *Uplifting an under of an income AMIT character*

- 3 (1) Calculate an uplift for an *under of an *income AMIT character a
4 trust has in a discovery year if:
- 5 (a) the trust has the under in relation to a base year to which this
6 Subdivision applies; and
 - 7 (b) if the trust also has one or more *overs of an income AMIT
8 character in the discovery year in relation to that base year—
9 a positive amount of the under remains after applying each
10 such over to reduce each such under in proportion to the
11 amount of the under.

12 *Uplifting an over of an offset AMIT character*

- 13 (2) Calculate an uplift for an *over of an *offset AMIT character a trust
14 has in a discovery year if:
- 15 (a) the trust has the over in relation to a base year to which this
16 Subdivision applies; and
 - 17 (b) if the trust also has one or more *unders of an offset AMIT
18 character in the discovery year in relation to that base year—
19 a positive amount of the over remains after applying each
20 such under to reduce each such over in proportion to the
21 amount of the over.

22 **276-435 Amount of the uplift**

- 23 (1) The uplift is the amount of *shortfall interest charge that, if the
24 assumptions in subsection (2) were made, would be payable on this
25 amount (the *upliftable amount*):
- 26 (a) the *under or *over, unless paragraph (b) applies; or
 - 27 (b) if paragraph 276-430(1)(b) or (2)(b) applies—the positive
28 remaining amount mentioned in that paragraph.

29 *Assumptions for calculation of notional charge*

- 30 (2) For the purpose of calculating the notional charge mentioned in
31 subsection (1) on the upliftable amount, assume:
-

EXPOSURE DRAFT

Attribution managed investment trusts **Schedule 2**

- 1 (a) a provision specified that the amount was an additional
2 amount of income tax on which *shortfall interest charge was
3 payable; and
4 (b) the liability to the charge was for each day in the period:
5 (i) beginning 4 months after the end of the base year; and
6 (ii) ending 4 months after the end of the discovery year for
7 the *under or *over; and
8 (c) the charge remained unpaid throughout that period; and
9 (d) the rate of the charge (as worked out under
10 subsection 280-105(2) in Schedule 1 to the *Taxation*
11 *Administration Act 1953*) for each day in that period was that
12 rate for the last day of the discovery year.

13 **276-440 Uplift takes effect in first available income year**

- 14 (1) An uplift for a discovery year in relation to a base year takes effect
15 in the discovery year.
16 (2) However, the uplift takes effect in the threshold year for the base
17 year, if the threshold year is a later year than the discovery year.
18 (3) For the purposes of subsection (2), the threshold year for a base
19 year is the first year the trust's *net variance threshold is exceeded
20 by the *overall base year shortfall worked out having regard only to
21 *unders and *overs the trust has in the year or an earlier year.

22 **Subdivision 276-J—Shortfall taxation**

23 **Guide to Subdivision 276-J**

24 **276-495 What this Subdivision is about**

25

To be drafted.

26 **Table of sections**

27 **Operative provisions**

EXPOSURE DRAFT

Attribution managed investment trusts **Schedule 2**

1 (b) the *member component of that character of the member for
2 the income year.

3 *NANE character excess*

4 (3) An *AMIT has an excess under this subsection for an income year
5 equal to the amount (if any) by which:

6 (a) the *determined member component of the *NANE AMIT
7 character of a *member of the AMIT for the income year;

8 exceeds:

9 (b) the *member component of that character of the member for
10 the income year.

11 *Liability to tax*

12 (4) The trustee is liable to pay income tax at the rate declared by the
13 Parliament on each of the following amounts:

14 (a) the amount that is the sum of each shortfall of the *AMIT
15 under subsection (1) for the income year;

16 (b) the amount that is the sum of each shortfall of the *AMIT
17 under subsection (2) for the income year;

18 (c) the amount that is the sum of each excess of the *AMIT
19 under subsection (3) for the income year.

20 **276-505 Trustee taxed on excess in single determined member**
21 **component (offset)**

22 (1) An *AMIT has an excess under this subsection for an income year
23 equal to the amount (if any) by which:

24 (a) the *determined member component of an *offset AMIT
25 character of a *member of the AMIT for the income year;

26 exceeds:

27 (b) the *member component of that character of the member for
28 the income year.

EXPOSURE DRAFT

Schedule 2 Attribution managed investment trusts

1 *Liability to tax*

2 (2) The trustee is liable to pay income tax at the rate declared by the
3 Parliament on the amount that is the sum of each excess of the
4 *AMIT under subsection (1) for the income year.

5 Note: The tax is imposed by the *Income Tax (Managed Investment Trust*
6 *(Excess Offsets)) Act 2015* and the rate of the tax is set out in that Act.

7 **276-510 No shortfall in relation to franking credit gross-up amount**

8 For the purposes of section 276-500, disregard any of the
9 following:

10 (a) a *member component of the *income AMIT character
11 mentioned in item 5 of the table in subsection 276-150(2)
12 (franking credit gross-up amount);

13 (b) a *determined member component of that character;

14 (c) a *taxable member component of that character.

15 Note: A member component with the character of a franking credit gross-up
16 amount may be included in a member's assessable income as a result
17 of subsection 276-80(2), while the corresponding member component
18 with the character of a franking credit may give rise to a
19 corresponding tax offset for the member as a result of
20 subsection 276-80(6).

21 **276-515 Trustee taxed on amounts of determined trust component** 22 **that are not reflected in determined member components**

23 (1) An *AMIT has a shortfall under this subsection for an income year
24 equal to the amount (if any) by which:

25 (a) the sum of all the *determined member components of a
26 particular *income AMIT character of all the *members of the
27 AMIT for the income year;

28 falls short of:

29 (b) the determined *trust component of that character of the
30 AMIT for the income year.

EXPOSURE DRAFT

Schedule 2 Attribution managed investment trusts

1 increase the amount mentioned in paragraph 276-355(6)(b)
2 (previous discovery year amount) by the amount of the shortfall.

3 (4) Subsection (5) applies if:

4 (a) there is a shortfall under subsection (1) of a particular *AMIT
5 character for an income year; and

6 (b) the *AMIT has an *under of that character in a later income
7 year relating to the base year mentioned in subsection (1);
8 and

9 (c) the amount mentioned in paragraph (1)(b) is reflected (in
10 whole or in part) in the amount of the under.

11 (5) Reduce the shortfall by the extent to which the *under in the later
12 income year reflects the amount mentioned in paragraph (1)(b).

13 **276-525 Trustee taxed on amounts of over of offset character not** 14 **properly carried forward**

15 (1) An *AMIT for an income year has a shortfall under this subsection
16 for the income year equal to the amount (if any) by which:

17 (a) an *over of the AMIT of an *offset AMIT character in the
18 income year relating to an earlier income year (the *base year*)
19 (worked out on the basis of the trustee's knowledge at the
20 discovery time mentioned in subsection 276-355(2));

21 exceeds:

22 (b) what the over would have been if it had been worked out on
23 the basis of what the trustee should have known at that time.

24 *Liability to tax*

25 (2) The trustee is liable to pay income tax at the rate declared by the
26 Parliament on the amount that is the sum of each excess of the
27 *AMIT under subsection (1) for the income year.

28 *Adjustment for later overs relating to the same base year*

29 (3) For the purposes of applying subsection 276-355(6) (Running
30 balance for determined trust component) to a later income year,
31 decrease the amount mentioned in paragraph 276-355(6)(b)
32 (previous discovery year amount) by the amount of the shortfall.

EXPOSURE DRAFT

Attribution managed investment trusts **Schedule 2**

- 1 (4) Subsection (5) applies if:
- 2 (a) there is an excess under subsection (1) of a particular *AMIT
- 3 character for an income year; and
- 4 (b) the *AMIT has an *over of that character in a later income
- 5 year relating to the base year mentioned in subsection (1);
- 6 and
- 7 (c) the amount mentioned in paragraph (1)(b) is reflected (in
- 8 whole or in part) in the amount of the over.
- 9 (5) Reduce the excess by the extent to which the *over in the later
- 10 income year reflects the amount mentioned in paragraph (1)(b).

11 **Subdivision 276-K—AMMA statements**

12 **Guide to Subdivision 276-K**

13 **276-600 What this Subdivision is about**

14 An AMIT for an income year must give each member of the AMIT

15 an *AMIT member annual statement* (or *AMMA statement*) for the

16 income year.

17 **Table of sections**

18	Operative provisions
19	276-605 Obligation to give an AMMA statement
20	276-610 <i>AMIT member annual statement</i> (or <i>AMMA statement</i>)

21 **Operative provisions**

22 **276-605 Obligation to give an AMMA statement**

- 23 (1) An *AMIT for an income year must give each entity that was a
- 24 *member of the AMIT at any time in the income year an *AMMA
- 25 statement for the income year.
- 26 (2) The statement must be given no later than 3 months after the end of
- 27 the income year.

EXPOSURE DRAFT

Schedule 2 Attribution managed investment trusts

- 1 (3) However, the *AMIT need not give an *AMMA statement under
2 subsection (1) to an entity if:
3 (a) all of the entity's *determined member components for the
4 AMIT for the income year are nil; and
5 (b) all of the entity's *membership interests in the AMIT have an
6 *AMIT cost base net amount for the income year of nil.
- 7 (4) To avoid doubt, the *AMIT does not fail to comply with
8 subsection (1) merely because:
9 (a) the AMIT gives *AMMA statements for the income year to
10 entities in accordance with subsection (1) by the time
11 required under subsection (2); and
12 (b) after that time, the AMIT gives those entities further AMMA
13 statements for the income year that replace the AMMA
14 statements mentioned in paragraph (a).

15 **276-610 AMIT member annual statement (or AMMA statement)**

- 16 (1) An *AMIT member annual statement* (or *AMMA statement*) is a
17 statement in writing made by an *AMIT for an income year in
18 accordance with this section.
- 19 (2) The statement must be in the *approved form.
- 20 (3) The statement must:
21 (a) identify the *AMIT and the income year; and
22 (b) state the date on which the statement is made; and
23 (c) be addressed to an entity that is or was a *member of the
24 AMIT at a time during the income year; and
25 (d) if an amount referable to that income year is to be distributed
26 by the AMIT to the member, identify:
27 (i) that amount; and
28 (ii) the extent to which that amount is a distribution of the
29 capital of the AMIT.
- 30 (4) The statement must also:
31 (a) include information that reflects the amount and *AMIT
32 character of each *determined member component of the
33 *member for the income year; and

EXPOSURE DRAFT

Attribution managed investment trusts **Schedule 2**

1 (b) state the amount of the excess or shortfall mentioned in
2 section 104-107C (AMIT cost base net amount) for the
3 income year in respect of the *CGT asset that is the
4 member's unit or interest in the AMIT.

5 (5) The statement must be given, no later than 3 years after the end of
6 the income year, to each entity that was a *member of the *AMIT
7 at any time in the income year.

8 Note: The AMIT must give each of those entities an AMMA statement for
9 the income year no later than 3 months after the end of the income
10 year (see section 276-605).

11 **Subdivision 276-L—Modification for non-arm's length income**

12 **Guide to Subdivision 276-L**

13 **276-665 What this Subdivision is about**

14 The trustee of an AMIT in relation to an income year is taxed on
15 amounts related to the AMIT's non-arm's length income for the
16 income year.

17 **Table of sections**

18 **Operative provisions**

19 276-670 Trustee taxed on amount of non-arm's length income of AMIT

20 **Operative provisions**

21 **276-670 Trustee taxed on amount of non-arm's length income of** 22 **AMIT**

23 (1) Subsection (2) applies if:

24 (a) an amount of *non-arm's length income for an *AMIT in
25 relation to an income year is reflected in one or more of the
26 *AMIT's *trust components for the income year (disregarding
27 subsection (3)); and

EXPOSURE DRAFT

Schedule 2 Attribution managed investment trusts

- 1 (b) the *AMIT is a party to the *scheme mentioned in
2 paragraph (5)(a) at a time in the income year in which the
3 amount is derived; and
4 (c) at least one the parties to that scheme is *not* an *AMIT for the
5 income year.
- 6 (2) The trustee is liable to pay income tax at the rate declared by the
7 Parliament on the amount mentioned in subsection (4).
- 8 (3) Reduce each *trust component of the *AMIT for the income year
9 by the amount mentioned in subsection (4), to the extent that the
10 component is attributable to that amount.
- 11 (4) The amount is the excess mentioned in paragraph (5)(b) in respect
12 of the *non-arm's length income, reduced by deductions (if any)
13 that:
14 (a) are reflected in the amounts of the *AMIT's *trust
15 components for the income year (disregarding
16 subsection (3)); and
17 (b) are attributable only to the amount of non-arm's length
18 income.
- 19 (5) An amount of *ordinary income or *statutory income is *non-arm's*
20 *length income* of an *AMIT for an income year if:
21 (a) it is derived from a *scheme the parties to which were not
22 dealing with each other at *arm's length in relation to the
23 scheme; and
24 (b) that amount exceeds the amount that the entity might have
25 been expected to derive if those parties had been dealing with
26 each other at arm's length in relation to the scheme; and
27 (c) the amount is none of the following:
28 (i) a distribution from a *corporate tax entity;
29 (ii) a distribution from a trust that is *not* a party to the
30 scheme mentioned in paragraph (a);
31 (iii) a *return covered by subsection (6).
- 32 (6) This subsection covers a *return that an entity pays or provides on
33 a *debt interest, if the rate (expressed on an annual basis) of the
34 return does not exceed the greater of:
-

EXPOSURE DRAFT

Attribution managed investment trusts **Schedule 2**

- 1 (a) the ^{*}benchmark rate of return for the interest; and
2 (b) the ^{*}base interest rate for the day on which the return is paid
3 or provided, plus 3 percentage points.

4 **Subdivision 276-M—Debt-like AMIT instruments**

5 **Guide to Subdivision 276-M**

6 **276-690 What this Subdivision is about**

7 A debt-like AMIT instrument in an AMIT is treated as a debt
8 interest in the AMIT. A distribution in relation to the instrument is
9 treated as interest for the purposes of provisions relating to interest
10 withholding tax, and may be treated as a deduction in working out the
11 trust components of the AMIT.

12 **Table of sections**

13	Operative provisions	
14	276-695	Meaning of <i>debt-like AMIT instrument</i>
15	276-700	Debt-like AMIT instruments treated as debt interests etc.
16	276-710	Distribution on debt-like AMIT instrument is deductible in working out
17		trust components

18 **Operative provisions**

19 **276-695 Meaning of *debt-like AMIT instrument***

20 An instrument that gives rise to an interest in an ^{*}AMIT is a
21 *debt-like AMIT instrument* in relation to the AMIT if:

- 22 (a) any distribution relating to the interest:
23 (i) is fixed, at the time the interest was created, by
24 reference to the amount subscribed for the interest; but
25 (ii) is solely at the discretion of the trustee of the AMIT;
26 and
27

EXPOSURE DRAFT

Schedule 2 Attribution managed investment trusts

- 1 (b) the interest, and any other interest in the AMIT that is in the
2 same *class as the interest, would rank above all
3 *membership interests in the AMIT if:
4 (i) the trust ceases to exist; or
5 (ii) where the AMIT is a *managed investment scheme—the
6 scheme is under administration or is being wound up;
7 and
8 (c) in a case where, in relation to a particular period, the trustee
9 of the AMIT does not make a distribution relating to the
10 interest—making another distribution of any of the following
11 kinds, in relation to that period, is prohibited by the
12 constituent documents of the AMIT:
13 (i) a distribution relating to any membership interest in the
14 AMIT;
15 (ii) a distribution relating to a membership interest in
16 another entity, if that interest is stapled together with a
17 membership interest in the AMIT.

276-700 Debt-like AMIT instruments treated as debt interests etc.

- 18 (1) For the purposes of this Act (other than Subdivisions 275-A and
19 276-A (meaning of MIT and AMIT)):
20 (a) treat a *debt-like AMIT instrument in relation to an *AMIT
21 as a *debt interest in the AMIT; and
22 (b) treat a distribution on a debt-like AMIT instrument in relation
23 to an AMIT as a cost incurred by the AMIT in relation to a
24 debt interest issued by the AMIT.
25 (2) For the purposes of Division 11A of Part III of the *Income Tax
26 Assessment Act 1936*, if an entity is the holder of a *debt-like
27 AMIT instrument in an *AMIT, treat a distribution to the entity in
28 accordance with the instrument as interest.
29

276-710 Distribution on debt-like AMIT instrument is deductible in working out trust components

- 30 (1) If an entity is the holder of a *debt-like AMIT instrument in an
31 *AMIT, subsection 276-285(4) or (5) applies as if a distribution to
32
33

EXPOSURE DRAFT

Attribution managed investment trusts **Schedule 2**

1 the entity in accordance with the instrument were an allowable
2 deduction.

3 (2) For the purposes of subsection (1), disregard the distribution to the
4 extent (if any) that it is attributable to any of the following:

5 (a) *exempt income of the *AMIT;

6 (b) *non-assessable non-exempt income of the AMIT.

7 **Subdivision 276-N—Ceasing to be an AMIT**

8 **Guide to Subdivision 276-N**

9 **276-750 What this Subdivision is about**

10

To be drafted.

11

Table of sections

12

Operative provisions

13

276-755 Application of Subdivision to former AMIT

14

276-760 Continue to work out trust components, unders, overs, etc.

15

276-765 Effect of increase

16

276-770 Effect of decrease

17

Operative provisions

18

276-755 Application of Subdivision to former AMIT

19

(1) This Subdivision applies if:

20

(a) a trust was an *AMIT for an income year; and

21

(a) the trust is *not* an *AMIT for a later income year (the
22 *discovery year*).

23

276-760 Continue to work out trust components, unders, overs, etc.

24

(1) For the purposes of this section, assume that the trust is an *AMIT
25 for the discovery year.

EXPOSURE DRAFT

Schedule 2 Attribution managed investment trusts

- 1 (2) If the trust has an *under or *over of an *AMIT character in the
2 discovery year relating to an earlier income year when the trust
3 was an *AMIT, work out the extent to which section 276-345 has
4 the effect of:
- 5 (a) increasing the amount of that AMIT character worked out in
6 relation to the trust under section 276-280 for the discovery
7 year (basic character amount); or
8 (b) decreasing that amount.

9 **276-765 Effect of increase**

- 10 (1) This section applies if there is an increase as mentioned in
11 paragraph 276-760(2)(a).
- 12 (2) If the *AMIT character mentioned in subsection 276-760(2) is an
13 *income AMIT character, treat the amount of the increase as
14 assessable income of the trust for the discovery year.
- 15 (3) If that *AMIT character is an *exempt AMIT character, treat the
16 amount of the increase as *exempt income of the trust for the
17 discovery year.
- 18 (4) If that *AMIT character is a *NANE AMIT character, treat the
19 amount of the increase as *non-assessable non-exempt income of
20 the trust for the discovery year.
- 21 (5) If that *AMIT character is an *offset AMIT character, treat the
22 amount of the increase as a *tax offset of the trust for the discovery
23 year of a kind corresponding to that character (in addition to any
24 other tax offsets of that kind that the trust may have for the
25 discovery year).

26 **276-770 Effect of decrease**

- 27 (1) This section applies if there is a decrease as mentioned in
28 paragraph 276-760(2)(b).
- 29 (2) If the *AMIT character mentioned in subsection 276-760(2) is an
30 *income AMIT character:

EXPOSURE DRAFT

Attribution managed investment trusts **Schedule 2**

- 1 (a) where that character is of a kind mentioned in item 1 or 2 of
2 the table in subsection 276-150(2) (discount capital gain)—
3 treat half the amount of the decrease as a *capital loss of the
4 trust for the discovery year; or
- 5 (b) where that character is of a kind mentioned in item 3 or 4 of
6 the table in subsection 276-150(2) (non-discount capital
7 gain)—treat the amount of the decrease as a capital loss of
8 the trust for the discovery year; or
- 9 (c) in any other case—treat the amount of the decrease as a
10 deduction of the trust for the discovery year.
- 11 (3) If that *AMIT character is an *exempt AMIT character, treat the
12 amount of the decrease as reducing the *exempt income of the trust
13 for the discovery year.
- 14 (4) If that *AMIT character is an *NANE AMIT character, treat the
15 amount of the decrease as reducing the *non-assessable
16 non-exempt income of the trust for the discovery year.
- 17 (5) If that *AMIT character is an *offset AMIT character, treat the
18 amount of the decrease as reducing the *tax offset or offsets (the
19 **existing offset(s)**) of the trust for the discovery year of a kind
20 corresponding to that character.
- 21 (6) If that *AMIT character is an *offset AMIT character and exceeds
22 the total of the existing offset(s) (before the reduction under
23 subsection (5)), the trustee is liable to pay income tax at the rate
24 declared by the Parliament on the excess.
- 25 Note: The tax is imposed by the *Income Tax (Managed Investment Trust*
26 *(Offset Overs)) Act 2014* and the rate of the tax is set out in that Act.

Taxation Administration Act 1953

3 Before subsection 286-75(2A) in Schedule 1

27 Insert:

- 28 (2AB) You are also liable to an administrative penalty if:
29
30 (a) you are required under section 276-605 of the *Income Tax*
31 *Assessment Act 1997* (AMMA statements) to give
32
-

EXPOSURE DRAFT

Schedule 2 Attribution managed investment trusts

- 1 information to an entity (other than the Commissioner) in a
2 particular form by a particular day; and
3 (b) you do not give the information to the entity in that form by
4 that day.

5 **4 Paragraph 286-80(2)(a) in Schedule 1**

6 Before “(2A),”, insert “(2AB),”.

7 **5 At the end of Division 288 in Schedule 1**

8 Add:

9 **288-115 Penalty for managed investment trust with substantial net** 10 **variance**

- 11 (1) An entity is liable to an administrative penalty if:
12 (a) the entity is a trustee of an *AMIT for an income year (the
13 *base year*); and
14 (b) the trust’s *overall base year shortfall or *overall base year
15 excess for the base year exceeds the trust’s *net variance
16 threshold for the base year; and
17 (c) at least one of the items in the table in subsection (2) applies.
18 (2) The amount of the penalty is 47% of the amount worked out using
19 this table:
20

Amount of penalty

Item	Column 1 In this situation ...	Column 2 ... in the case of an *overall base year shortfall, the amount is:	Column 3 ... in the case of an *overall base year excess, the amount is:
1	if the *overall base year shortfall or *overall base year excess resulted from intentional disregard of a *taxation law by the trustee (or any of the other trustees) of the *AMIT	75% of the overall base year shortfall	the greater of the following: (a) 30% of the overall base year excess; (b) 60 penalty units.

EXPOSURE DRAFT

Attribution managed investment trusts **Schedule 2**

Amount of penalty

Item	Column 1 In this situation ...	Column 2 ... in the case of an *overall base year shortfall, the amount is:	Column 3 ... in the case of an *overall base year excess, the amount is:
2	if the *overall base year shortfall or *overall base year excess resulted from recklessness by the trustee (or any of the other trustees) of the *AMIT as to the operation of a *taxation law	50% of the overall base year shortfall	the greater of the following: (a) 20% of the overall base year excess; (b) 40 penalty units.

1 (3) If 2 or more items in the table in subsection (2) apply and one of
2 them produces a greater amount of penalty than any of the others,
3 use that item.

4 (4) If the income year corresponds to a financial year that is a
5 temporary budget repair levy year (within the meaning of
6 section 4-11 of the *Income Tax (Transitional Provisions) Act*
7 *1997*), treat the reference in subsection (2) to 47% as instead being
8 a reference to 49%.

6 Subsection 298-30(1) in Schedule 1

9 After “Division 284”, insert “or section 288-115”.

10

EXPOSURE DRAFT

Schedule 3 Withholding MITs and fund payments

1 **Schedule 3—Withholding MITs and fund**
2 **payments**
3

4 ***Income Tax Assessment Act 1936***

5 **1 After subsection 128AF(1)**

6 Insert:

7 (1A) However, this section does not apply if one or more of the
8 interposed trusts is an AMIT for the year of income in which the
9 payment is received.

10 Note See Division 12A of Schedule 1 to the *Taxation Administration Act*
11 *1953* for provisions about withholding tax that apply specifically to
12 AMITs.

13 ***Taxation Administration Act 1953***

14 **2 Before section 12-385 in Schedule 1**

15 Insert:

16 **12-383 Meaning of *withholding MIT***

17 A trust is a ***withholding MIT*** in relation to an income year if:

- 18 (a) it is a *managed investment trust in relation to that income
19 year; and
20 (b) it is covered under subsection 275-5(3) of the *Income Tax*
21 *Assessment Act 1997* in relation to that income year; and
22 (c) a substantial proportion of the investment management
23 activities carried out in relation to the trust in respect of all of
24 the following assets of the trust are carried out in Australia
25 throughout the income year:
26 (i) assets that are situated in Australia at any time in the
27 income year;
28 (ii) assets that are *taxable Australian property at any time
29 in the income year;

EXPOSURE DRAFT

Withholding MITs and fund payments **Schedule 3**

- 1 (iii) assets that are *shares, units or interests listed for
2 quotation in the official list of an *approved stock
3 exchange in Australia at any time in the income year.

4 **3 Subsection 12-385(1)**

5 Omit “*managed investment trust”, substitute “*withholding MIT”.

6 **4 Section 12-405 in Schedule 1 (heading)**

7 Repeal the heading, substitute:

8 **12-405 Meaning of *fund payment*—general case**

9 **5 After subsection 12-405(1) in Schedule 1**

10 Insert:

- 11 (1A) This section applies to a trust that is *not* an *AMIT for an income
12 year.

13 Note: For the definition of *fund payment* in respect of a trust that is an
14 AMIT for an income year, see section 12A-115.

15 **6 After Division 12**

16 Insert:

17 **Division 12A Distributions by AMITs (including deemed** 18 **payments)**

19 **Table of Subdivisions**

20 **Subdivision 12A-A—Modifications in relation to dividend,** 21 **interest and royalty distributions by AMITs**

22 **12A-5 What this Subdivision is about**

23 This Subdivision modifies the operation of this Part and
24 Division 11A of Part III of the *Income Tax Assessment Act 1936* in
25 respect of a *withholding MIT that is an *AMIT.

EXPOSURE DRAFT

Schedule 3 Withholding MITs and fund payments

12A-10 Deemed payments—no obligation to withhold under Subdivision 12-F

- (1) If the entity that receives a payment as mentioned in subsection 12-215(1), 12-250(1) or 12-285(1) is the trustee of an *AMIT, the entity need not withhold an amount under that subsection from the payment mentioned in that subsection if the payment arises because of the operation of section 12A-200 (deemed payments).

Note: The trustee may have to pay the Commissioner an amount in respect of the deemed payment (see Subdivision 12A-C).

- (2) Subsection (3) applies if:
- (a) the entity that receives a payment as mentioned in subsection 12-215(1), 12-250(1) or 12-285(1) is a *custodian; and
 - (b) it received the payment from an *AMIT.
- (3) The entity need not withhold an amount under that subsection from the payment mentioned in subsection 12-215(1), 12-250(1) or 12-285(1) if:
- (a) the payment arises because of the operation of section 12A-200 (deemed payments); or
 - (b) the payment is a *parallel actual payment in respect of a payment of a kind mentioned in paragraph (a).

Note: The trustee of the AMIT concerned and/or the custodian may have to pay the Commissioner an amount in respect of the deemed payment (see Subdivision 12A-C).

12A-15 Deemed dividend, interest or royalty payments— requirement to give notice or make information available

- (1) An entity must comply with subsection (3) if:
- (a) the entity receives a payment that arises because of the operation of section 12A-200 (deemed payments); and
 - (b) another entity (the *subsequent recipient*) is or becomes entitled:
 - (i) to receive from the entity; or

EXPOSURE DRAFT

Withholding MITs and fund payments **Schedule 3**

- 1 (ii) to have the entity credit to the subsequent recipient, or
2 otherwise deal with on the subsequent recipient's behalf
3 or as the subsequent recipient directs;
4 an amount attributable to the payment; and
5 (c) the entity would have been required to withhold an amount
6 from the payment under subsection 12-215(1), 12-250(1) or
7 12-285(1) if the subsequent recipient had been a foreign
8 resident; and
9 (d) an amount is not required to be withheld from the payment
10 because the subsequent recipient is not a foreign resident.

11 (2) The entity must:

- 12 (a) give to the subsequent recipient a written notice containing
13 the details specified in subsection (3); or
14 (b) make those details available on a website in a way that the
15 details are readily accessible to the subsequent recipient for
16 not less than 5 continuous years.

17 (3) The notice must be given, or the details must be made available on
18 a website, before or at the time when the amount is paid or credited
19 to the subsequent recipient, or is dealt with on the subsequent
20 recipient's behalf or as the subsequent recipient directs, and:

- 21 (a) must specify the part of the payment referred to in
22 paragraph (1)(a) from which an amount would have been so
23 required to have been withheld; and
24 (b) must specify the income year of the *AMIT to which that part
25 relates.

26 *Failure to give notice or make information available:*
27 *administrative penalty*

28 (4) An entity that:

- 29 (a) is required to give a notice, or make details available on a
30 website, under this section in relation to:
31 (i) a payment made to another entity; or
32 (ii) an amount paid or credited to, or dealt with on behalf of
33 or as directed by, another entity; and
34 (b) fails to comply with this section;
-

EXPOSURE DRAFT

Schedule 3 Withholding MITs and fund payments

1 is liable to pay to the Commissioner a penalty equal to the amount
2 that would have been required to be withheld under this
3 Subdivision (disregarding section 12-300) in relation to amounts
4 attributable to the payment or amount if the notice had been given
5 or the details had been made available.

6 Note: Division 298 in this Schedule contains machinery provisions for
7 administrative penalties.

8 **12A-20 Meaning of *AMIT DIR* payment**

9 (1) This section applies to a trust that is an *AMIT for an income year.

10 (2) A payment that the trustee of a trust makes in relation to an income
11 year is an ***AMIT DIR payment*** in relation to that year if the
12 payment is of any of the following *AMIT characters:

- 13 (a) the AMIT character mentioned in item 6 of the table in
14 subsection 276-150(2) of the *Income Tax Assessment Act*
15 *1997* (dividend);
16 (b) the AMIT character mentioned in item 7 of that table
17 (interest);
18 (c) the AMIT character mentioned in item 8 of that table
19 (royalty).

20 Note: The payment by the trustee may be an actual payment, or a deemed
21 payment under section 12A-200.

22 (3) However, the payment is not an ***AMIT DIR payment*** in relation to
23 the income year if:

- 24 (a) the payment (the ***actual payment***) is a *parallel actual
25 payment in respect of another payment; and
26 (b) the other payment arises because of the operation of
27 section 12A-200; and
28 (c) the actual payment is made on or after the time the other
29 payment arises; and
30 (d) the other payment is an *AMIT DIR payment.

EXPOSURE DRAFT

Withholding MITs and fund payments **Schedule 3**

1 Subdivision 12A-B—Modifications of Subdivision 12-H for 2 AMITs

3 12A-100 What this Subdivision is about

4 This Subdivision modifies the operation of this Part and
5 Subdivision 840-M of the *Income Tax Assessment Act 1997* in
6 respect of a *withholding MIT that is an *AMIT.

7 12A-105 Deemed payments—no obligation to withhold under 8 Subdivision 12-H

- 9 (1) The trustee mentioned in subsection 12-385(1) need not withhold
10 an amount under that subsection from the payment mentioned in
11 that subsection if the payment arises because of the operation of
12 section 12A-200 (deemed payments).

13 Note: The trustee may have to pay the Commissioner an amount in respect
14 of the deemed payment (see Subdivision 12A-C).

- 15 (2) The *custodian mentioned in subsection 12-390(1) need not
16 withhold an amount under that subsection from the payment
17 mentioned in that subsection if:
18 (a) the later payment arises because of the operation of
19 section 12A-200 (deemed payments); or
20 (b) the later payment is a *parallel actual payment in respect of a
21 payment of a kind mentioned in paragraph (a).

22 Note: The trustee of the AMIT concerned and/or the custodian may have to
23 pay the Commissioner an amount in respect of the deemed payment
24 (see Subdivision 12A-C).

- 25 (3) The entity mentioned in subsection 12-390(4) need not withhold an
26 amount under that subsection from the payment mentioned in that
27 subsection if:
28 (a) the payment arises because of the operation of
29 section 12A-200 (deemed payments); or
30 (b) the payment is a *parallel actual payment in respect of a
31 payment of a kind mentioned in paragraph (a).

EXPOSURE DRAFT

Schedule 3 Withholding MITs and fund payments

1 Note: The entity may have to pay the Commissioner an amount in respect of
2 the deemed payment (see Subdivision 12A-C).

3 **12A-110 Deemed payments—requirement to give notice or make**
4 **information available**

5 Disregard section 12A-105 for the purposes of section 12-395.

6 **12A-115 Meaning of *fund payment*—AMITs**

7 (1) This section applies to a trust that is an *AMIT for an income year.

8 (2) The object of this section is to ensure that the total of the *fund
9 payments that the trustee of the *AMIT makes in relation to the
10 income year equals, as nearly as practicable, the amount mentioned
11 in subsection (3).

12 (3) The amount is the total of the *taxable member components for the
13 *AMIT for the income year of an *income AMIT character,
14 disregarding taxable member components (the *excluded*
15 *components*) of any of the following *AMIT characters:

16 (a) the AMIT character mentioned in item 2 of the table in
17 subsection 276-150(2) of the *Income Tax Assessment Act*
18 *1997* (discount capital gain from a CGT asset that is not
19 taxable Australian property);

20 (b) the AMIT character mentioned in item 4 of that table
21 (non-discount capital gain from a CGT asset that is not
22 taxable Australian property);

23 (c) the AMIT character mentioned in item 6 of the table in
24 subsection 276-150(2) of the *Income Tax Assessment Act*
25 *1997* (dividend);

26 (d) the AMIT character mentioned in item 7 of that table
27 (interest);

28 (e) the AMIT character mentioned in item 8 of that table
29 (royalty).

30 (f) the AMIT character mentioned in item 9 of that table (foreign
31 source income);

32 (g) if a legislative instrument under subsection (4) specifies an
33 AMIT character—that AMIT character.

EXPOSURE DRAFT

Withholding MITs and fund payments **Schedule 3**

1 (4) The Commissioner may, by legislative instrument, specify one or
2 more *AMIT characters for the purposes of paragraph (3)(g).

3 (5) A payment (the *actual or deemed payment*) that the trustee of a
4 trust makes in relation to an income year is a *fund payment* in
5 relation to that year. The amount of the fund payment is worked
6 out under the following method statement, and may be:

- 7 (a) the amount of the actual or deemed payment; or
8 (b) the amount of the actual or deemed payment, increased or
9 reduced as a result of the method statement.

10 Note: The payment by the trustee may be an actual payment, or a deemed
11 payment under section 12A-200.

12 *Method statement*

13 Step 1. Reduce the actual or deemed payment by so much of it
14 that is attributable to the excluded components.

15 Step 2. Work out what it is reasonable to expect will be the
16 amount mentioned in subsection (3).

17 Do so on the basis that a *capital gain from *taxable
18 Australian property of the trust that was or would be
19 reduced under step 3 of the method statement in
20 subsection 102-5(1) of the *Income Tax Assessment Act*
21 *1997* were double the amount it actually is.

22 Step 3. The *fund payment* is so much of the step 2 amount as is
23 reasonable having regard to:

- 24 (a) the object of this section; and
25 (b) the step 1 amount; and
26 (c) the amounts of any earlier fund payments made by
27 the trustee in relation to the income year; and

EXPOSURE DRAFT

Schedule 3 Withholding MITs and fund payments

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

(d) the expected amounts of any later fund payments the trustee expects to make in relation to the income year.

- (6) The amount mentioned in subsection (3) and the expected amounts of any later *fund payments are to be worked out on the basis of the trustee's knowledge when the payment is made.
- (7) Subsection (6) does not apply if the payment is a payment arising because of the operation of section 12A-200 (deemed payments).
- (8) However, the payment is not a *fund payment* in relation to the income year if:
- (a) the payment (the *actual payment*) is a *parallel actual payment in respect of another payment; and
 - (b) the other payment arises because of the operation of section 12A-200; and
 - (c) the actual payment is made on or after the time the other payment arises; and
 - (d) the other payment is a *fund payment.
- (9) An amount is also not a *fund payment* in relation to the income year unless it is paid:
- (a) during the income year; or
 - (b) within 3 months after the end of the income year; or
 - (c) within a longer period (starting at the end of the period referred to in paragraph (b) and not exceeding 3 years) allowed by the Commissioner.
- (10) The Commissioner may allow a longer period as mentioned in paragraph (9)(c) only if the Commissioner is of the opinion that:
- (a) if the other payment arises at a time because of the operation of section 12A-200 (deemed payments)—the *AMIT complied with subsection 276-605(1) of the *Income Tax Assessment Act 1997* in respect of the income year (requirement to give AMMA statements within 3 months); or
 - (b) otherwise—the trustee was unable to make the payment during the income year, or within 3 months after the end of

EXPOSURE DRAFT

Withholding MITs and fund payments **Schedule 3**

1 the income year, because of circumstances beyond the
2 influence or control of the trustee.

3 **Subdivision 12A-C—Deemed payments by AMITs etc.**

4 **12A-200 Issue of AMMA statement etc. treated as deemed payment**

5 (1) This section applies if:

- 6 (a) an entity (the *first recipient*) is or was a *member of a
7 *withholding MIT in relation to an income year at any time in
8 the income year; and
9 (b) the withholding MIT is an *AMIT for the income year; and
10 (c) the AMIT gives the first recipient an *AMMA statement for
11 the income year.

12 (2) For the purposes of this Part, Subdivision 840-M of the *Income Tax*
13 *Assessment Act 1997* and Division 11A of Part III of the *Income*
14 *Tax Assessment Act 1936*:

- 15 (a) treat the trustee of the *AMIT as having made a payment (the
16 *first deemed payment*) of an amount to the first recipient at
17 the time the AMIT gave the first recipient the *AMMA
18 statement; and
19 (b) treat the amount of the first deemed payment as being the
20 total of the first recipient's *taxable member components for
21 the AMIT for the income year of an *income AMIT character
22 (as reflected in the AMMA statement).

23 (3) Also, for the purposes of Division 11A of Part III of the *Income*
24 *Tax Assessment Act 1936*, treat the first recipient as having derived
25 the first deemed payment at the time the trustee of the *AMIT gave
26 the first recipient the *AMMA statement.

27 (4) Subsection (5) applies if:

- 28 (a) the first recipient is a trust that is a *custodian; and
29 (b) another entity (the *subsequent recipient*):
30 (i) starts to have, at a time, a present entitlement to an
31 amount that is reasonably attributable to all or part of
32 the first deemed payment; or
-

EXPOSURE DRAFT

Schedule 3 Withholding MITs and fund payments

1 (ii) would start to have, at a time, such a present entitlement
2 if the first deemed payment were an actual payment of
3 an amount.

4 (5) For the purposes of this Part, Subdivision 840-M of the *Income Tax*
5 *Assessment Act 1997* and Division 11A of Part III of the *Income*
6 *Tax Assessment Act 1936*:

7 (a) treat the first recipient as having made a payment (the
8 *subsequent deemed payment*) of an amount to the
9 subsequent recipient at that time; and

10 (b) treat the amount of the subsequent deemed payment as being
11 the amount of the present entitlement mentioned in
12 subparagraph (4)(b)(i) or (ii).

13 (6) If:

14 (a) an entity is a subsequent recipient mentioned in
15 subsection (4), (including as a result of a previous operation
16 of this subsection); and

17 (b) subsection (5) applies with the result that a payment is treated
18 as having been made to the entity; and

19 (c) the entity is a trust that is a *custodian;

20 apply subsections (4) and (5) again as if the entity were the first
21 recipient mentioned in that subsection.

22 Note: This means that the entity is treated under subsection (4) as having
23 made a payment to another entity if the other entity has (or would
24 have) a present entitlement as mentioned in paragraph (3)(b).

25 **12A-205 Parallel actual payment in respect of deemed payment**

26 A payment is a *parallel actual payment* in respect of a payment
27 (the *deemed payment*) that arises because of the operation of
28 section 12A-200 if:

29 (a) the payment and the deemed payment are both attributable to
30 the same *member component for the *AMIT mentioned in
31 that section; and

32 (b) the payment does *not* arise because of the operation of
33 section 12A-200.

EXPOSURE DRAFT

Withholding MITs and fund payments **Schedule 3**

1 **12A-210 AMIT payment to the Commissioner in respect of deemed**
2 **payments to offshore entities etc.**

- 3 (1) A trustee of a trust that is an *AMIT in relation to an income year
4 must pay an amount to the Commissioner if:
5 (a) the trust is a *withholding MIT in relation to the income year;
6 and
7 (b) the trustee makes a payment (the *deemed payment*) that
8 arises because of the operation of section 12A-200 (deemed
9 payments); and
10 (c) if the deemed payment is a *fund payment in relation to that
11 income year—the payment is made to an entity covered by
12 section 12-410; and
13 (d) if the deemed payment is an *AMIT DIR payment in relation
14 to that income year—the payment is made to an entity that is
15 not an *Australian resident.

16 Note 1: Paragraph (c)—An entity may be covered by section 12-410 if the
17 entity has an address outside Australia or payment is authorised to be
18 made to a place outside Australia.

19 Note 2: Paragraph (c)—If the payment is made to a recipient not covered by
20 section 12-410, the trustee is required to give a notice to the recipient
21 or publish information on a website setting out certain details about
22 the payment: see section 12-395.

- 23 (2) The amount that the trustee must pay is equal to the amount that
24 the trustee would, if the assumptions in subsection (2A) were
25 made, have had to withhold:
26 (a) if the deemed payment is a *fund payment in relation to that
27 income year—under section 12-385; or
28 (b) if the deemed payment is an *AMIT DIR payment in relation
29 to that income year—under subsection 12-215(1), 12-250(1)
30 or 12-285(1).
31 (3) The assumptions are that the deemed payment:
32 (a) had *not* arisen because of the operation of section 12A-200;
33 and
34 (b) had instead been an actual payment.

EXPOSURE DRAFT

Schedule 3 Withholding MITs and fund payments

1 **12A-215 Custodian payment to the Commissioner in respect of**
2 **deemed payments to offshore entities etc.**

- 3 (1) A *custodian must pay an amount to the Commissioner if:
- 4 (a) the custodian makes a payment (the *subsequent deemed*
5 *payment*) that arises because of the operation of
6 section 12A-200 (deemed payments); and
- 7 (b) if the subsequent deemed payment is a *fund payment in
8 relation to that income year:
- 9 (i) all or some of the subsequent deemed payment (the
10 *covered part*) is reasonably attributable to the part of an
11 earlier payment received by the custodian that was
12 covered by a notice or information under
13 section 12-395; and
- 14 (ii) the subsequent deemed payment is made to an entity
15 covered by section 12-410; and
- 16 (c) if the subsequent deemed payment is an *AMIT DIR
17 payment in relation to that income year:
- 18 (i) all or some of the subsequent deemed payment (the
19 *covered part*) is reasonably attributable to the part of an
20 earlier payment received by the custodian that was an
21 AMIT DIR payment; and
- 22 (ii) the subsequent deemed payment is made to an entity
23 that is not an *Australian resident.

24 Note 1: Paragraph (b)—An entity may be covered by section 12-410 if the
25 entity has an address outside Australia or payment is authorised to be
26 made to a place outside Australia.

27 Note 2: Paragraph (b)—If the payment is made to a recipient not covered by
28 section 12-410, the trustee is required to give a notice to the recipient
29 or publish information on a website setting out certain details about
30 the payment: see section 12-395.

- 31 (2) The amount that the *custodian must pay is the amount that the
32 custodian would, if the assumptions in subsection (2A) were made,
33 have had to withhold:
- 34 (a) if the subsequent deemed payment is a *fund payment in
35 relation to that income year—under subsection 12-390(1); or

EXPOSURE DRAFT

Withholding MITs and fund payments **Schedule 3**

- 1 (b) if the subsequent deemed payment is an *AMIT DIR
2 payment in relation to that income year—under
3 subsection 12-215(1), 12-250(1) or 12-285(1).
- 4 (3) The assumptions are that the subsequent deemed payment:
5 (a) had *not* arisen because of the operation of section 12A-200;
6 and
7 (b) had instead been an actual payment.
- 8 (4) Subsection (5) applies if, on or within 30 days after the day on
9 which the subsequent deemed payment arises:
10 (a) the *custodian has *not* received a *parallel actual payment in
11 respect of the subsequent deemed payment; or
12 (b) if the custodian has received a parallel actual payment in
13 respect of the subsequent deemed payment—the amount of
14 that parallel actual payment falls short of the amount that the
15 custodian must pay under subsection (2) (disregarding
16 subsection (5)).
- 17 (5) Reduce the amount that the *custodian must pay:
18 (a) if paragraph (4)(a) applies—to nil; or
19 (b) if paragraph (4)(b) applies—to the amount of the *parallel
20 actual payment.
- 21 Note: The custodian must give the trustee of the AMIT notice of the
22 reduction in accordance with section 12A-220. If the custodian fails to
23 do so, it will be liable to pay the Commissioner a penalty equal to the
24 reduction (see subsection 12A-220(5)).

12A-220 Custodian must notify AMIT trustee of reduction under section 12A-215

- 25
26
- 27 (1) If the amount the *custodian must pay under section 12A-215
28 because of the subsequent deemed payment mentioned in that
29 section is reduced under subsection 12A-215(5), the custodian
30 must give the trustee of the *AMIT mentioned in subsection (2) a
31 notice in respect of the subsequent deemed payment in accordance
32 with this section.

EXPOSURE DRAFT

Schedule 3 Withholding MITs and fund payments

- 1 (2) The *AMIT is the AMIT that made the *fund payment (or *AMIT
2 DIR payment) that, due to one or more operations of
3 section 12A-200, gave rise to the subsequent deemed payment.
- 4 (3) The notice must specify:
5 (a) the amount of the reduction mentioned in
6 subsection 12A-215(5); and
7 (b) the income year of the *AMIT to which the subsequent
8 deemed payment relates.
- 9 (4) The *custodian must give the notice to the trustee of the *AMIT no
10 later than 30 days after the day on which the subsequent deemed
11 payment arises.
- 12 (5) If the *custodian fails to comply with subsection (1), it is liable to
13 pay to the Commissioner a penalty equal to the amount of the
14 reduction mentioned in subsection 12A-215(5).

15 Note: Division 298 in this Schedule contains machinery provisions for
16 administrative penalties.

17 **12A-225 AMIT given notice under section 12A-220 must pay** 18 **Commissioner amount of reduction**

- 19 (1) A trustee of a trust that is an *AMIT in relation to an income year
20 must pay an amount to the Commissioner if:
21 (a) the amount that a *custodian had to pay under
22 section 12A-215 is reduced under subsection 12A-215(5);
23 and
24 (b) the custodian gives the trustee of the AMIT a notice in
25 respect of the deemed payment in accordance with
26 section 12A-215.
- 27 (2) The amount that the trustee must pay is equal to the amount of the
28 reduction mentioned in subsection 12A-215(5).

29 **12A-230 Entity payment to the Commissioner in respect of deemed** 30 **payments to offshore entities etc.**

- 31 (1) An entity must pay an amount to the Commissioner if:
-

EXPOSURE DRAFT

Withholding MITs and fund payments **Schedule 3**

- 1 (a) the entity is not a *managed investment trust or a *custodian;
2 and
3 (b) the entity receives a payment (the *deemed payment*) that
4 arises because of the operation of section 12A-200 (deemed
5 payments); and
6 (c) the payment or part of it (the *covered part*) was covered by:
7 (i) if the deemed payment is a *fund payment in relation to
8 that income year—a notice or information under
9 section 12-395; or
10 (ii) if the deemed payment is an *AMIT DIR payment in
11 relation to that income year—a notice or information
12 under section 12A-15; and
13 (d) a foreign resident (the *recipient*) is or becomes entitled:
14 (i) to receive from the entity; or
15 (ii) to have the entity credit to the recipient, or otherwise
16 deal with on the recipient's behalf or as the recipient
17 directs;

18 an amount reasonably attributable to the covered part.

19 Note: If the recipient not a foreign resident, the entity is required to give a
20 notice to the recipient or publish information on a website setting out
21 certain details about the payment: see section 12-395.

- 22 (2) The amount that the entity must pay is equal to the amount that the
23 entity would have had to withhold under subsection 12-390(4) if:
24 (a) the deemed payment had *not* arisen because of the operation
25 of section 12A-200; and
26 (b) had instead been an actual payment.
- 27 (3) Subsection (4) applies if, within 30 days after the day on which the
28 deemed payment arises:
29 (a) the entity has *not* received a *parallel actual payment in
30 respect of the deemed payment; or
31 (b) if the entity has received a parallel actual payment in respect
32 of the deemed payment—the amount of that parallel actual
33 payment falls short of the amount that the entity must pay
34 under subsection (2) (disregarding subsection (4)).
- 35 (4) Reduce the amount that the entity must pay:
-

EXPOSURE DRAFT

Schedule 3 Withholding MITs and fund payments

- 1 (a) if paragraph (3)(a) applies—to nil; or
2 (b) if paragraph (3)(b) applies—to the amount of the *parallel
3 actual payment.

4 **7 Section 16-1 in Schedule 1**

5 Omit “Division 13 or 14”, substitute “Division 12A, 13 or 14”.

6 **8 After subsection 16-5 in Schedule 1**

7 Insert:

8 **16-7 Treat entity obliged to pay under Subdivision 12A-C as having** 9 **withheld amount under Division 12**

10 For the purposes of this Division:

- 11 (a) if an entity must pay an amount to the Commissioner under
12 Subdivision 12A-C, treat the entity as being obliged to
13 withhold the amount under Division 12; and
14 (b) if an entity has paid an amount to the Commissioner under
15 Subdivision 12A-C, treat the entity as having withheld the
16 amount under Division 12.

17 **9 Paragraph 16-20(b) in Schedule 1**

18 Omit “Division 13 or 14”, substitute “Division 12A, 13 or 14”.

19 **10 Subsection 16-25(2) in Schedule 1**

20 Omit “Division 13 or 14”, substitute “Division 12A, 13 or 14”.

21 **11 Paragraph 16-25(4)(b) in Schedule 1**

22 Omit “Division 13 or 14”, substitute “Division 12A, 13 or 14”.

23 **12 Paragraph 16-30(b) in Schedule 1**

24 Omit “Division 13 or 14”, substitute “Division 12A, 13 or 14”.

25 **13 After paragraph 16-140(1)(a) in Schedule 1**

26 Insert:

27 (aaa) Division 12A (about deemed payments by AMITs); or

EXPOSURE DRAFT

Withholding MITs and fund payments **Schedule 3**

1 **14 Paragraph 16-140(2)(b) in Schedule 1**

2 Omit “Division 13 or 14”, substitute “Division 12A, 13 or 14”.

3 **15 Paragraph 18-32(1)(b) in Schedule 1**

4 Repeal the paragraph, substitute:

5 (b) the entity has borne all or part of an *amount:

6 (i) withheld from the payment under Subdivision 12-H; or

7 (ii) paid under Division 12A.

8 **16 After subsection 18-65(1) in Schedule 1**

9 Insert:

10 (1A) For the purposes of this section, if an entity has paid an amount to
11 the Commissioner purportedly under Subdivision 12A-C (about
12 deemed payments by AMITs), treat the entity as having withheld
13 the amount purportedly under Division 12.
14

EXPOSURE DRAFT

Schedule 4 Annual cost base adjustment for member's unit or interest in AMIT

1 **Schedule 4—Annual cost base adjustment for**
2 **member's unit or interest in AMIT**
3

4 ***Income Tax Assessment Act 1997***

5 **1 Section 104-5 (after table item relating to CGT event E9)**

6 Insert:

E10 Annual cost base reduction exceeds cost base of interest in AMIT	when reduction happens	cost base reduction exceeds cost base	<i>no capital loss</i>
--	---------------------------	--	----------------------------

See section 104-107A

7 **2 After subsection 104-70(1)**

8 Insert:

9 (1A) However, ***CGT event E4*** does not happen if, as a result of the
10 payment mentioned in subsection (1), ***CGT event E10*** happens.

11 **3 At the end of Subdivision 104-E**

12 Add:

13 **104-107A AMIT—cost base reduction exceeds cost base: CGT event**
14 **E10**

15 (1) ***CGT event E10*** happens if:

- 16 (a) you are a *member of an *AMIT in relation to an income year
17 because you have a *CGT asset that is your unit or your
18 interest in the trust; and
19 (b) the *cost base of that asset is reduced under
20 subsection 104-107B(2) at a time; and
21 (c) the asset's *AMIT cost base net amount for the income year
22 in which the reduction occurs exceeds the cost base of the
23 asset.

24 (2) The time of the event is the time at which the reduction occurs
25 under section 104-107B.

EXPOSURE DRAFT

Annual cost base adjustment for member's unit or interest in AMIT **Schedule 4**

1 (3) You make a *capital gain* equal to the excess mentioned in
2 paragraph (1)(c).

3 Note 1: If you make a capital gain, the cost base and reduced cost base of the
4 CGT asset are reduced to nil (see paragraph 104-107B(2)(a)).

5 Note 2: You cannot make a capital loss.

6 *Exceptions*

7 (4) A *capital gain you make from *CGT event E10 is disregarded if
8 you *acquired the *CGT asset that is the unit or interest before
9 20 September 1985.

10 **104-107B Annual cost base adjustment for member's unit or interest** 11 **in AMIT**

12 (1) This section applies if you are a *member of an *AMIT in relation
13 to an income year because you have a *CGT asset that is a unit or
14 your interest in the trust.

15 (2) If the *CGT asset's *AMIT cost base net amount for the income
16 year is the excess mentioned in paragraph 104-107C(a):

17 (a) in a case where that AMIT cost base net amount exceeds the
18 *cost base of the asset—reduce the cost base *and* *reduced
19 cost base of the asset to nil; or

20 (b) otherwise—reduce the cost base *and* reduced cost base of the
21 asset by that AMIT cost base net amount.

22 Note: If that AMIT cost base net amount exceeds the cost base of the asset,
23 CGT event E10 will happen (see section 104-107).

24 (3) If the *CGT asset's *AMIT cost base net amount for the income
25 year is the shortfall mentioned in paragraph 104-107C(b), increase
26 the *cost base *and* *reduced cost base of the asset by that AMIT
27 cost base net amount.

28 (4) The time of the reduction or increase is:

29 (a) unless paragraph (b) applies—just before the end of the
30 income year; or

EXPOSURE DRAFT

Schedule 4 Annual cost base adjustment for member's unit or interest in AMIT

- 1 (b) if a *CGT event happens to the *CGT asset at a time when
2 you hold it before the end of the income year—just before the
3 time of that CGT event.

4 **104-107C AMIT cost base net amount**

5 The *CGT asset's *AMIT cost base net amount* for the income year
6 is:

- 7 (a) if the CGT asset's *AMIT cost base reduction amount for the
8 income year exceeds the CGT asset's *AMIT cost base
9 increase amount for the income year—the amount of the
10 excess; or
11 (b) if the CGT asset's AMIT cost base reduction amount for the
12 income year falls short of the CGT asset's AMIT cost base
13 increase amount for the income year—the amount of the
14 shortfall.

15 **104-107D AMIT cost base reduction amount**

16 (1) The *CGT asset's *AMIT cost base reduction amount* for the
17 income year is the total of:

- 18 (a) money, and the *market value of any property, if:
19 (i) you start have a right to receive the money or property
20 from the trustee of the *AMIT in the income year; and
21 (ii) that right is indefeasible (disregarding section 276-55)
22 or is reasonably likely not to be defeated; and
23 (b) all amounts of *tax offset that you have for the income year
24 in respect of the *AMIT because of the operation of
25 section 276-80;

26 to the extent that the total is reasonably attributable to the *CGT
27 asset.

28 (2) If:

- 29 (a) *CGT event A1, C2, E1, E2, E6 or E7 happens to the *CGT
30 asset before the end of the income year; and
31 (b) as a result, the time of the reduction or increase mentioned in
32 subsection 104-107B(4) is just before the time of that CGT
33 event;

EXPOSURE DRAFT

Annual cost base adjustment for member's unit or interest in AMIT **Schedule 4**

1 do not include in the CGT asset's **AMIT cost base reduction**
2 **amount** for the income year any *capital proceeds from that CGT
3 event.

4 **104-107E AMIT cost base increase amount**

5 (1) The *CGT asset's **AMIT cost base increase amount** for the income
6 year is the total of the 2 amounts set out in the following
7 subsections.

8 (2) The first amount is the total of all of the following amounts
9 included in your assessable income for the income year in respect
10 of the *AMIT, to the extent that they are reasonably attributable to
11 the *CGT asset:

12 (a) amounts so included because of the operation of
13 section 276-80;

14 (b) amounts so included otherwise than because of the operation
15 of section 276-80 (as reduced in accordance with
16 section 276-90-).

17 (3) For the purposes of working out amounts under subsection (2),
18 assume that you are an Australian resident.

19 (4) For the purposes of subsection (5), assume that *CGT event E4
20 happens because the trustee of the *AMIT makes a payment to you
21 in respect of your unit or your interest in the *AMIT.

22 (5) The second amount is the amount by which the non-assessable part
23 mentioned in section 104-70 is reduced by the operation of
24 section 104-71, to the extent that the amount of the reduction is
25 reasonably attributable to the *CGT asset.

26 **104-107F Receipt of money etc. increasing AMIT cost base** 27 **reduction amount not to be treated as income**

28 (1) Subsections (2) and (3) apply if:

29 (a) you start to have a right to receive any money or the *market
30 value of any property from the trustee of an *AMIT in an
31 income year; and

EXPOSURE DRAFT

Schedule 4 Annual cost base adjustment for member's unit or interest in AMIT

- 1 (b) the right is infeasible (disregarding section 276-55) or is
2 reasonably likely not to be defeated; and
- 3 (c) the right is *not* remuneration or consideration for you
4 providing finance, services, goods or property to the trustee
5 of the AMIT or to another person; and
- 6 (d) the right is reasonably attributable to a *CGT asset that is a
7 *membership interest in the AMIT; and
- 8 (e) the CGT asset is *not* *trading stock nor a *Division 230
9 financial arrangement; and
- 10 (f) as a result of you starting to have the right, the CGT asset's
11 *AMIT cost base reduction amount for the income year is
12 increased because of the operation of section 104-107D.
- 13 (2) These provisions do not apply to you starting to have the right:
- 14 (a) sections 6-5 (about *ordinary income), 8-1 (about amounts
15 you can deduct), 15-15 and 25-40 (about profit-making
16 undertakings or plans);
- 17 (b) sections 25A and 52 of the *Income Tax Assessment Act 1936*
18 (about profit-making undertakings or schemes).
- 19 (3) Section 6-10 (about *statutory income) does not apply to you
20 starting to have the right except so far as that section applies in
21 relation to section 102-5 (about net capital gains).

22 **104-107G Receipt of money etc. increasing or decreasing cost of** 23 **AMIT membership revenue asset**

- 24 (1) Subsections (2) and (3) apply if:
- 25 (a) you start to have a right to receive any money or the *market
26 value of any property from the trustee of an *AMIT in an
27 income year; and
- 28 (b) the right is infeasible (disregarding section 276-55) or is
29 reasonably likely not to be defeated; and
- 30 (c) the right is *not* remuneration or consideration for you
31 providing finance, services, goods or property to the trustee
32 of the AMIT or to another person; and
- 33 (d) the right is reasonably attributable to a *CGT asset that is a
34 *membership interest in the AMIT; and
-

EXPOSURE DRAFT

Annual cost base adjustment for member's unit or interest in AMIT **Schedule 4**

- 1 (e) the CGT asset is a *revenue asset; and
2 (f) the CGT asset is *not* *trading stock nor a *Division 230
3 financial arrangement; and
4 (g) as a result of you starting to have the right:
5 (i) the CGT asset's *AMIT cost base reduction amount for
6 the income year is increased by an amount (the ***cost***
7 ***reduction amount***) because of the operation of
8 section 104-107D; or
9 (ii) the CGT asset's *AMIT cost base increase amount for
10 the income year is increased by an amount (the ***cost***
11 ***increase amount***) because of the operation of
12 section 104-107E.
- 13 (2) For the purposes mentioned in subsection (3), make these
14 adjustments to the cost of the asset:
15 (a) if subparagraph (1)(g)(i) applies—treat the cost of the asset
16 as being reduced by the cost reduction amount at the time the
17 *CGT event happens (but not below zero); or
18 (b) if subparagraph (1)(g)(ii) applies—treat the cost of the asset
19 as being increased by the cost increase amount at the time the
20 CGT event happens.
- 21 (3) Make the adjustments in subsection (2) for the purposes of working
22 out an amount included in your assessable income as a result of the
23 circumstances giving rise to the *CGT event (or working out an
24 amount treated as a deduction as a result of those circumstances)
25 under any of these provisions:
26 (a) sections 6-5 (about *ordinary income), 8-1 (about amounts
27 you can deduct), 15-15 and 25-40 (about profit-making
28 undertakings or plans);
29 (b) sections 25A and 52 of the *Income Tax Assessment Act 1936*
30 (about profit-making undertakings or schemes).
- 31 (4) Subsection (5) applies if:
32 (a) subparagraph (1)(g)(i) applies; and
33 (b) the cost reduction amount exceeds the cost of the *CGT asset
34 just before the time the *CGT event happens.
-

EXPOSURE DRAFT

Schedule 4 Annual cost base adjustment for member's unit or interest in AMIT

- 1 (5) Include in your assessable income for the income year in which
2 that time occurs:
3 (a) if the cost of the *CGT asset was zero just before that time—
4 the cost reduction amount; or
5 (b) otherwise—the excess mentioned in paragraph (4)(b).
6 (6) Subsection (5) applies despite subsection 104-107F(3).
7 (7) For the purposes of section 118-20, treat this section as being
8 outside of this Part.
9 Note: Section 118-20 deals with reducing capital gains if an amount is
10 otherwise assessable.

11 **4 Section 977-5**

12 After “E4”, insert “, CGT event E10”.

1 **Schedule 5—20% tracing rule**
2

3 ***Income Tax Assessment Act 1936***

4 **1 Section 102MD**

5 Repeal the section, substitute:

6 **102MD Exempt institution that is eligible for a refund not treated as**
7 **exempt entity**

8 For the purposes of this Division, treat an exempt institution that is
9 eligible for a refund (within the meaning of the *Income Tax*
10 *Assessment Act 1997*) as not being an exempt entity.

11 ***Income Tax Assessment Act 1997***

12 **2 Section 295-173**

13 Repeal the section, substitute:

14 **295-173 Exception—trustee contributions**

15 Item 1 of the table in section 295-160 does not include in
16 assessable income:

- 17 (a) a contribution made by an entity that was, when the
18 contribution was made, the trustee of a *complying
19 superannuation fund, a *complying approved deposit fund or
20 a *pooled superannuation trust; or
21 (b) a contribution made out of the *complying
22 superannuation/FHSA assets, or out of the *segregated
23 exempt assets, of a *life insurance company.

EXPOSURE DRAFT

Schedule 6 Consequential amendments

1
2

Schedule 6—Consequential amendments

3

Income Tax Assessment Act 1936

4

1 Subsection 6(1) (after paragraph (h) of the definition of assessment)

5

6

Insert:

7

(ha) the ascertainment of the amount of tax payable (or that no tax is payable) under the following:

8

9

(i) subsections 276-95(2) and 276-105(2) of the *Income Tax Assessment Act 1997* (AMIT trustee taxed amounts attributed to foreign resident members);

10

11

12

(ii) the amount of tax payable under subsection 276-350(3) of that Act (AMIT trustee taxed on trust component deficit for offset characters);

13

14

15

(iii) paragraph 276-500(4)(a), (b) or (c) of that Act (AMIT trustee taxed on shortfall in single determined member component (income, exempt, NANE)); or

16

17

18

(iv) subsection 276-505(2) of that Act (AMIT trustee taxed on excess in single determined member component (offset));

19

20

21

(v) subsection 276-515(2) of that Act (AMIT trustee taxed on amounts of determined trust component that cannot be reflected in member components);

22

23

24

(vi) subsection 276-520(2) of that Act (AMIT trustee taxed on amounts of under of income character not properly carried forward);

25

26

27

(vii) subsection 276-525(2) of that Act (AMIT trustee taxed on amounts of over of offset character not properly carried forward);

28

29

30

(viii) the amount of tax payable under subsection 276-670(2) of that Act (AMIT trustee taxed on amount of non-arm's length income of AMIT); or

31

32

33

2 After section 95AAC

34

Insert:

EXPOSURE DRAFT

Consequential amendments **Schedule 6**

1 **95AAD Division does not apply in relation to AMIT**

2 This Division does not apply in relation to a trust estate that is an
3 AMIT (within the meaning of the *Income Tax Assessment Act*
4 *1997*).

5 **3 Division 6B of Part III**

6 Repeal the Division.

7 **4 Subsection 102T(16)**

8 Omit “Subdivision 840-M”, substitute “Division 275 or
9 Subdivision 840-M”.

EXPOSURE DRAFT

EXPOSURE DRAFT

Schedule 7 Widely-held requirements

1 **Schedule 7—Widely-held requirements**
2

3 *Taxation Administration Act 1953*

4 **1 After paragraph 12-402(3)(a) in Schedule 1**

5 Insert:

6 (aa) a *foreign life insurance company that is regulated under a
7 *foreign law;

8 **2 Paragraph 12-402(3)(i) in Schedule 1**

9 Omit “regulations.”, substitute “regulations;”.

10 **3 At the end of subsection 12-402(3)(a) in Schedule 1**

11 Add:

- 12 (j) an entity, all the *membership interests in which are
13 beneficially owned by any of the following:
14 (i) entities mentioned in the preceding paragraphs of this
15 subsection;
16 (ii) *wholly-owned subsidiaries of such entities.

Schedule 8—Application

1 Application provision

- (1) The amendments made by Schedules 1, 2, 3, 4, 5, 6 and 9 apply to assessments for income years starting on or after 1 July 2015.
- (2) The amendments made by Schedule 7 apply to assessments for income years starting on or after 1 July 2014.

Income Tax (Transitional Provisions) Act 1997

2 At the end of Part 3-25

Add:

Division 276—Attribution managed investment trusts

Table of Subdivisions

276-T Becoming an AMIT

Subdivision 276-L—Modification for non-arm's length income

Table of sections

276-670T Trustee taxed on amount of non-arm's length income of AMIT—not applicable for pre-introduction scheme where amount derived before 1 July 2017

276-670T Trustee taxed on amount of non-arm's length income of AMIT—not applicable for pre-introduction scheme where amount derived before 1 July 2017

- (1) This section applies if:
- (a) the requirements set out in paragraphs 276-670(1)(a), (b) and (c) of the *Income Tax Assessment Act 1997* are satisfied in respect of an amount of *non-arm's length income for an *AMIT in relation to an income year; and

EXPOSURE DRAFT

Schedule 8 Application

- 1 (b) the AMIT became a party to the scheme mentioned in
2 paragraph 276-670(5)(a) of that Act before the day on which
3 the Bill that became the *Tax Laws Amendment (New Tax*
4 *System for Managed Investment Trusts) Act 2015* was
5 introduced into the House of Representatives; and
6 (c) the amount was derived before 1 July 2017.
- 7 (2) Subsections 276-670(2) and (3) of that Act do not apply in respect
8 of the amount.

9 Subdivision 276-T—Becoming an AMIT

10 Table of sections

11	276-800	Application of Subdivision to former AMIT
12	276-805	Accounting for unders and overs for base years before becoming an AMIT

13 276-800 Application of Subdivision to former AMIT

- 14 (1) This Subdivision applies if:
- 15 (a) a trust becomes an *AMIT for the starting income year; and
16 (b) the trust existed in an earlier income year (the *base year*); and
17 (c) the trust is an AMIT for an income year (the *discovery year*)
18 that is the starting income year or a later income year.

19 276-805 Accounting for unders and overs for base years before 20 becoming an AMIT

- 21 (1) This section applies if the trust has an under or over of an AMIT
22 character in the discovery year relating to the base year.
- 23 (2) For the purposes of subsection (1):
- 24 (a) assume that the trust is an AMIT for the base year and every
25 later year prior to the starting income year; and
26 (b) if, at a time, the trust sent its members distribution statements
27 for an income year that is prior to the starting income year—
28 assume that the trust sent those members AMMA statements
29 for that income year at that time.

EXPOSURE DRAFT

Application **Schedule 8**

- 1 (3) For the purposes of Division 276 of the *Income Tax Assessment*
2 *Act 1997*, treat the under or over mentioned in subsection (1) as an
3 under or over of the AMIT, in the discovery year relating to the
4 base year, of the AMIT character mentioned in that subsection.
- 5 (4) However, disregard that under or over for the purposes of
6 Subdivision 276-H of that Act (uplifts for unders and overs).
- 7 (5) If:
8 (a) had the under or over mentioned in subsection (1) been
9 discovered before the starting income year, this Act would
10 have operated to produce a particular effect for the base year
11 in relation to the amount or amounts reflected in the under or
12 over; and
13 (b) subsection (3) accounts for that effect;
14 treat this Act as not operating to produce that effect for the base
15 year.
- 16 (6) In this section:
17 *starting income year* means the 2015-16 income year.

EXPOSURE DRAFT

Schedule 9 Definitions

1
2

Schedule 9—Definitions

3

Income Tax Assessment Act 1997

4

1 Subsection 995-1(1)

5

Insert:

6

AMIT: see *attribution managed investment trust*.

7

AMIT character has the meaning given by section 276-150.

8

AMIT cost base increase amount has the meaning given by section 104-107E.

9

10

AMIT cost base net amount has the meaning given by section 104-107C.

11

12

AMIT cost base reduction amount has the meaning given by section 104-107D.

13

14

AMIT DIR payment has the meaning given by section 12A-20 of Schedule 1 to the *Taxation Administration Act 1953*.

15

16

AMIT member annual statement (or *AMMA statement*) has the meaning given by section 276-610.

17

18

attribution managed investment trust (or *AMIT*) has the meaning given by section 276-10.

19

20

carry-forward trust component deficit, of a particular *AMIT character, has the meaning given by section 276-345.

21

22

corporate tax gross-up rate means the following amount:

$$\frac{1 - \text{*corporate tax rate}}{\text{corporate tax rate}}$$

23

24

determined member component has the meaning given by section 276-210.

25

100

Tax Laws Amendment (New Tax System for Managed Investment Trusts) Bill 2015

No. , 2015

EXPOSURE DRAFT

EXPOSURE DRAFT

Schedule 9 Definitions

1 **over**, of a particular *AMIT character, has the meaning given by
2 section 276-355.

3 **overall base year excess** has the meaning given by
4 section 276-420.

5 **overall base year shortfall** has the meaning given by
6 section 276-420.

7 **parallel actual payment** has the meaning given by
8 section 12A-205 of Schedule 1 to the *Taxation Administration Act*
9 1953.

10 **taxable member component** has the meaning given by
11 section 276-205.

12 **trust component**, of a particular *AMIT character, has the meaning
13 given by sections 276-280, 276-345 and 276-350.

14 **trust component deficit**, of a particular *AMIT character, has the
15 meaning given by sections 276-345 and 276-350.

16 **under**, of a particular *AMIT character, has the meaning given by
17 section 276-355.

18