

EXPOSURE DRAFT

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Inserts for
Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No. 2) Bill 2017: additional CGT discount and providing affordable housing through MITs

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details

- | | | |
|---------------|--|--|
| 1. | | |
| 2. Schedule 1 | The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent. | |
| 3. Schedule 2 | Immediately after the provisions covered by table item 2. | |
| 4. | | |
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Schedule 1—Additional CGT discount for affordable housing

Income Tax Assessment Act 1997

1 At the end of section 115-100

Add:

; or (e) the percentage resulting from section 115-125 if that section applies to the gain.

2 At the end of Subdivision 115-B

Add:

115-125 Investors disposing of property used for affordable housing

Object

- (1) The object of this section is to increase the discount percentage to the extent that the *discount capital gain relates to a *dwelling used to *provide affordable housing.

When this section applies

- (2) This section applies to a *discount capital gain if:
- (a) you are an individual; and
 - (b) either:
 - (i) you make the discount capital gain from a *CGT event happening in relation to a *CGT asset that is your *ownership interest in a *dwelling; or
 - (ii) because of section 115-215, Division 102 applies to you as if you had made the discount capital gain for a *capital gain of a trust covered by subsection (3); and
 - (c) where subparagraph (b)(ii) applies—the trust’s capital gain was made directly, or indirectly through one or more entities that are all covered by subsection (3), from a CGT event happening in relation to a CGT asset that is an ownership interest in a dwelling; and
 - (d) the dwelling was used to *provide affordable housing on at least 1095 days:

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- 1 (i) before the CGT event; and
2 (ii) during your, or the relevant trustee's or partner's,
3 *ownership period of that dwelling; and
4 (iii) on or after 1 January 2018.

5 The days mentioned in paragraph (d) need not be consecutive.

6 Note: 1095 days is the same as 3 years.

- 7 (3) This subsection covers the following:
- 8 (a) a trust, other than a *superannuation fund or a public unit
 - 9 trust (within the meaning of section 102P of the *Income Tax*
 - 10 *Assessment Act 1936*);
 - 11 (b) a *managed investment trust;
 - 12 (c) a partnership.

13 *Discount percentage*

- 14 (4) The percentage resulting from this section is the sum of:
- 15 (a) the *discount percentage that would apply to the *discount
 - 16 capital gain apart from this section; and
 - 17 (b) the result (expressed as a percentage) of subsection (5).

18 (5) Work out the following:

19
$$\frac{\text{*Discount percentage that would apply to the *discount capital gain apart from this section}}{5} \times \frac{\text{Affordable housing days}}{\text{Total ownership days}}$$

20 where:

21 *affordable housing days* means the number of days during that
22 *ownership period (see paragraph (2)(d)) of the *dwelling, and on
23 or after 1 January 2018, on which:

- 24 (a) the dwelling was used to *provide affordable housing; and
- 25 (b) you were neither a foreign resident nor a *temporary resident.

26 *total ownership days* means the number of days during that
27 *ownership period (see paragraph (2)(d)) of the *dwelling, less the
28 number of days after 8 May 2012 during that ownership period that
29 you were a foreign resident or a *temporary resident.

30 **3 At the end of Part 6-1**

31 Add:

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1 Division 980—Affordable housing

2 Table of Subdivisions

3 980-A Providing affordable housing

4 Subdivision 980-A—Providing affordable housing

5 Guide to Subdivision 980-A

6 980-1 What this Subdivision is about

7 A dwelling is used to provide affordable housing if certain
8 conditions are met, including that the dwelling is tenanted or
9 available to be tenanted, and that tenancies of the dwelling are
10 exclusively managed by a community housing provider.

11 Table of sections

12 Operative provisions

13 980-5 Providing affordable housing

14 980-10 Eligible community housing providers

15 980-15 Affordable housing certificates

16 Operative provisions

17 980-5 Providing affordable housing

18 A *dwelling is used to *provide affordable housing* on a particular
19 day (the *test day*) if:

- 20 (a) on the test day, the dwelling is *residential premises that:
21 (i) are tenanted or available to be tenanted; and
22 (ii) are not *commercial residential premises; and
23 (b) on the test day, the tenancy or prospective tenancy of the
24 dwelling is exclusively managed by an *eligible community
25 housing provider; and
26 (c) the eligible community housing provider has given each
27 entity that holds an *ownership interest in the dwelling a
28 certificate under section 980-15 that covers the dwelling for
29 the test day; and

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- 1 (d) no entity is entitled to receive an incentive, under the Scheme
2 prescribed for the purposes of Part 2 of the *National Rental*
3 *Affordability Scheme Act 2008*, for the dwelling for the
4 NRAS year (within the meaning of that Scheme) that
5 includes the test day; and
6 (e) in the case of a *managed investment trust holding an
7 *ownership interest in the dwelling on the test day—none of
8 the tenants or occupants of the dwelling on that day holds an
9 interest in the trust that passes the *non-portfolio interest test
10 at any time during that day.

11 **980-10 Eligible community housing providers**

- 12 (1) An *eligible community housing provider* is:
13 (a) an entity registered (however described) under an *Australian
14 law as a provider of community housing services; or
15 (b) an entity registered (however described) by an *Australian
16 government agency as a provider of community housing
17 services.
18 (2) However, an entity that ceases to be covered by subsection (1)
19 continues to be an *eligible community housing provider* for the
20 90-day period starting on the day of the cessation.

21 **980-15 Affordable housing certificates**

- 22 For the purposes of paragraph 980-5(c), a certificate must:
23 (a) include a declaration that the *eligible community housing
24 provider reasonably believes paragraphs 980-5(a) and (b) to
25 be satisfied for the *dwelling for the test day; and
26 (b) be given in the *approved form on or before the 31st day after
27 the end of the income year that contains the test day.

28 **4 Subsection 995-1(1)**

29 Insert:

30 *commercial residential premises* has the same meaning as in the
31 *GST Act.

32 *eligible community housing provider* has the meaning given by
33 section 980-10.

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provide affordable housing has the meaning given by section 980-5.

Taxation Administration Act 1953

5 Subsection 355-65(8) in Schedule 1 (at the end of the table)

Add:

- | | | |
|----|---|---|
| 9 | an *Australian government agency that administers an *Australian law referred to in paragraph 980-10(1)(a) of the <i>Income Tax Assessment Act 1997</i> | is for the purpose of administering that *Australian law in relation to whether an entity should be, or should continue to be, covered by that Australian law in the way described in that paragraph. |
| 10 | an *Australian government agency that registers entities as described in paragraph 980-10(1)(b) of the <i>Income Tax Assessment Act 1997</i> | is for the purpose of determining whether an entity should be, or should continue to be, registered as described in that paragraph. |

6 Section 396-55 in Schedule 1 (at the end of the table)

Add:

- | | | |
|----|---|--|
| 11 | an *eligible community housing provider | the issuing by the provider of a certificate under section 980-15 of the <i>Income Tax Assessment Act 1997</i> |
|----|---|--|

7 Application of amendments

- (1) Section 115-125 of the *Income Tax Assessment Act 1997* (as added by this Schedule) applies in relation to CGT events happening on or after 1 January 2018.
- (2) Subdivision 980-A of the *Income Tax Assessment Act 1997* (as added by this Schedule) applies in relation to tenancies starting before, at or after 1 July 2017.
- (3) The amendment of subsection 355-65(8) in Schedule 1 to the *Taxation Administration Act 1953* made by this Schedule applies in relation to records and disclosures of information made at or after the commencement of this Schedule, whether the information was obtained before, at or after the commencement of this Schedule.

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Schedule 2—Affordable housing through managed investment trusts

Income Tax Assessment Act 1936

1 At the end of section 102R

Add:

- (5) In determining whether a unit trust is a public trading trust under this section, disregard any activities referred to in subsection 275-10(4D) of the *Income Tax Assessment Act 1997*.

Income Tax Assessment Act 1997

2 Paragraph 275-10(3)(b)

Repeal the paragraph, substitute:

- (b) the trust is neither a trust covered by subsection (4) (trading trust etc.), nor a trust covered by subsection (4C) (investing in certain residential premises), in relation to the income year; and

3 At the end of subsection 275-10(4)

Add:

For the purposes of this subsection, disregard any activities referred to in subsection (4D).

4 After subsection 275-10(4B)

Insert:

Limitation on investing in certain residential premises

(4C) A trust is covered by this subsection in relation to an income year if, on a day in the income year that is [*insert the day of the announcement*] or a later day:

- (a) the trustee of the trust holds an *ownership interest in a *dwelling that is *residential premises but not *commercial residential premises; or
- (b) the trust controls, directly or indirectly, the affairs or operations of another entity that holds an ownership interest

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1 in a dwelling that is residential premises but not commercial
2 residential premises;
3 unless one or more of the exceptions in subsection (4D) applies on
4 that day for the dwelling.

5 (4D) The exceptions for subsection (4C) are as follows:

- 6 (a) investing in land by using the *dwelling to *provide
7 affordable housing for the purpose, or primarily for the
8 purpose, of deriving rent (within the meaning of
9 paragraph (a) of the definition of *eligible investment*
10 *business* in section 102M of the *Income Tax Assessment Act*
11 *1936*);
12 (b) constructing, altering, improving or repairing the dwelling in
13 order to use the dwelling on later days in the way described
14 in paragraph (a);
15 (c) preparing the dwelling for disposal immediately after having
16 used the dwelling on earlier days in the way described in
17 paragraph (a);
18 (d) using the dwelling as *residential premises (but not
19 *commercial residential premises) in a way that is merely
20 incidental to the use of:
21 (i) the dwelling; or
22 (ii) a larger *CGT asset that includes the dwelling;
23 to earn other income.

24 **5 Paragraph 275-200(1A)(a)**

25 Omit “(requirement of not being a trading trust etc.)”, substitute
26 “(requirements about not being a trading trust etc., and investing in
27 certain residential premises)”.

28 **6 At the end of Division 980**

29 Add:

30 **Subdivision 980-B—Ineligible affordable housing gains**

31 **Table of sections**

32 980-100 Meaning of *ineligible affordable housing gain*

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1 980-100 Meaning of *ineligible affordable housing gain*

- 2 (1) An *ineligible affordable housing gain* means a gain from a *CGT
3 event happening in relation to a *CGT asset if:
4 (a) the CGT asset is an *ownership interest in a *dwelling that is
5 *residential premises but not *commercial residential
6 premises; and
7 (b) the dwelling was not used, on at least 3,650 days on or after
8 1 July 2017 and before the CGT event, as part of an
9 investment in land to *provide affordable housing:
10 (i) for the purpose; or
11 (ii) primarily for the purpose;
12 of deriving rent (within the meaning of paragraph (a) of the
13 definition of *eligible investment business* in section 102M of
14 the *Income Tax Assessment Act 1936*).

15 The days mentioned in paragraph (b) need not be consecutive.

16 Note: This subsection applies to the gain from the CGT event regardless of
17 whether it is a capital gain or a gain on revenue account.

- 18 (2) However, subsection (1) does not apply to the gain if before the
19 *CGT event the use of the *dwelling as *residential premises (but
20 not *commercial residential premises) was only ever merely
21 incidental to the use of:
22 (a) the dwelling; or
23 (b) a larger *CGT asset that includes the dwelling;
24 to earn other income.

25 7 Subsection 995-1(1)

26 Insert:

27 *ineligible affordable housing gain* has the meaning given by
28 section 980-100.

29 *Income Tax (Transitional Provisions) Act 1997*

30 8 At the end of Division 275

31 Add:

32 Subdivision 275-W—Other matters

33 Table of sections

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275-900 Affordable housing—meaning of *managed investment trust*

- (1) A trust is taken not to be covered by subsection 275-10(4C) of the *Income Tax Assessment Act 1997* in relation to a dwelling and an income year (the **current year**) if:
- (a) on [*insert the day before the day of the announcement*], the trust was a managed investment trust in relation to the income year that included that day; and
 - (b) subsection (2) or (3) of this section applies for each day in the current year that is:
 - (i) [*insert the day of the announcement*] or a later day; and
 - (ii) before 1 October 2027; and
 - (c) the current year starts on or after 1 July 2017, and before 1 October 2027.
- (2) This subsection applies for a day if, on that day, the trust holds the ownership interest in the dwelling as the result of acquiring it before [*insert the day of the announcement*].
- (3) This subsection applies for a day if, on that day, the trust controls, directly or indirectly, the affairs or operations of another entity that holds the ownership interest in the dwelling as the result of acquiring it before [*insert the day of the announcement*].
- (4) For the purposes of subsection 275-10(4) of the *Income Tax Assessment Act 1997*, disregard subparagraph (1)(b)(ii) of this section when determining whether the trust is covered by that subsection in relation to the current year.

9 At the end of Part 6-1

Add:

Division 980—Affordable housing

Table of Subdivisions

980-B Ineligible affordable housing gains

Subdivision 980-B—Ineligible affordable housing gains

Table of sections

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1 980-100 Meaning of *ineligible affordable housing gain*

2 **980-100 Meaning of *ineligible affordable housing gain***

3 (1) The definition of *ineligible affordable housing gain* in
4 section 980-100 of the *Income Tax Assessment Act 1997* has effect
5 subject to this section.

6 (2) A gain from a CGT event happening:

7 (a) in relation to a CGT asset that is an ownership interest in a
8 dwelling that is residential premises but not commercial
9 residential premises; and

10 (b) on or after [*insert the day of the announcement*], and before
11 1 October 2027;

12 is not an ineligible affordable housing gain if the entity that held
13 the ownership interest just before the CGT event held it as the
14 result of acquiring it before [*insert the day of the announcement*].

15 ***Taxation Administration Act 1953***

16 **10 After subsections 12-385(3) and 12-390(3) in Schedule 1**

17 Insert:

18 (3A) However, if:

19 (a) the address or place for payment of the recipient is in an
20 *information exchange country; and

21 (b) the *fund payments are wholly or partly payments of, or
22 attributable to, *ineligible affordable housing gains;

23 a rate of 15% applies, in addition to the rate applying under
24 subsection (3), for so much of the fund payments as are payments
25 of, or attributable to, the ineligible affordable housing gains.

26 Note: A gain may not be an ineligible affordable housing gain if it arises in
27 relation to an ownership interest acquired before [*insert the day of the*
28 *announcement*] (see section 980-100 of the *Income Tax (Transitional*
29 *Provisions) Act 1997*).

30 **11 After subsection 12-390(6) in Schedule 1**

31 Insert:

32 (6A) However, if:

33 (a) the address or place for payment of the recipient is in an
34 *information exchange country; and

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1 (b) the *fund payments are wholly or partly payments of, or
2 attributable to, *ineligible affordable housing gains;
3 a rate of 15% applies, in addition to the rate applying under
4 subsection (6), for so much of the fund payments as are payments
5 of, or attributable to, the ineligible affordable housing gains.

6 Note: A gain may not be an ineligible affordable housing gain if it arises in
7 relation to an ownership interest acquired before [*insert the day of the*
8 *announcement*] (see section 980-100 of the *Income Tax (Transitional*
9 *Provisions) Act 1997*).

10 **12 Application of amendments**

- 11 (1) The amendment made by item 1 applies in relation to years of income
12 commencing on or after 1 July 2017.
- 13 (2) The amendments made by items 2, 3, 4 and 5 apply in relation to
14 income years commencing on or after 1 July 2017.
- 15 (3) The amendment made by item 6 applies in relation to CGT events
16 happening on or after [*insert the day of the announcement*].
- 17 (4) Subsection 12-385(3A) in Schedule 1 to the *Taxation Administration*
18 *Act 1953* (as inserted by this Schedule) applies in relation to income
19 years of withholding MITs that are income years commencing on or
20 after 1 July 2017.
- 21 (5) Subsection 12-390(3A) in Schedule 1 to the *Taxation Administration*
22 *Act 1953* (as inserted by this Schedule) applies in relation to income
23 years of custodians that are income years commencing on or after 1 July
24 2017.
- 25 (6) Subsection 12-390(6A) in Schedule 1 to the *Taxation Administration*
26 *Act 1953* (as inserted by this Schedule) applies in relation to income
27 years of entities covered by subsection 12-390(4) in that Schedule that
28 are income years commencing on or after 1 July 2017.