

EXPOSURE-DRAFT

1 Inserts for
2 **Tax Laws Amendment (2012 Measures**
3 **No. 6) Bill 2012: limited recourse debt**
4

EXPOSURE DRAFT

5
Commencement information

| Column 1 | Column 2 | Column 3 |
|----------------|---|--------------|
| Provision(s) | Commencement | Date/Details |
| 1. | | |
| 2. Schedule ?? | The day this Act receives the Royal Assent. | |
| 3. | | |

6 **Schedule ??—Limited recourse debt**
7

8 *Income Tax Assessment Act 1997*

9 **1 Subsection 243-20(2)**

10 Repeal the subsection, substitute:

- 11 (2) An obligation imposed by law on an entity (the *debtor*) to pay an
12 amount to another entity (the *creditor*) is also a *limited recourse*
13 *debt* if it is reasonable to conclude that the rights of the creditor as
14 against the debtor in the event of default in payment of the debt or
15 of interest:
- 16 (a) are capable of being limited in the way mentioned in
17 subsection (1); or
 - 18 (b) are in substance or effect limited wholly or predominantly to
19 rights (including the right to money payable) in relation to
20 any or all of the following:
 - 21 (i) the *debt property or the use of the debt property;
 - 22 (ii) goods produced, supplied, carried, transmitted or
23 delivered, or services provided, by means of the debt
24 property;
 - 25 (iii) the loss or disposal of the whole or a part of the debt
26 property or of the debtor's interest in the debt property.

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1 Note: Paragraph (b) could apply to a special purpose entity. For example, an
2 entity's only asset is one that it financed by way of a bank loan. The
3 bank's rights to recover the debt (if the entity defaults) are not
4 contractually limited, however they are in effect limited to rights in
5 relation to the asset.

6 **2 Subsection 243-20(3)**

7 Omit the second sentence.

8 **3 After subsection 243-20(3)**

9 Insert:

10 (3A) In reaching a conclusion for the purposes of subsection (2) or (3),
11 have regard to the following:

- 12 (a) the debtor's assets (other than assets that are indemnities or
13 guarantees provided in relation to the debt);
14 (b) any *arrangement to which the debtor is a party;
15 (c) except for the purposes of paragraph (2)(b)—whether all of
16 the debtor's assets would be available for the purpose of
17 discharging the debt (other than assets that are security for
18 other debts of the debtor or any other entity);
19 (d) whether the debtor and creditor are dealing at *arm's length
20 in relation to the debt.

21 **4 Application of amendments**

22 The amendments made by this Schedule apply in relation to debt
23 arrangements terminated at or after 7.30 pm, by legal time in the
24 Australian Capital Territory, on 8 May 2012.

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