

EXPOSURE DRAFT

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Inserts for
**Treasury Laws Amendment (2017
Measures No. 9) Bill 2017: Consolidation**

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Schedule #, Parts 1, 2 and 3	The day this Act receives the Royal Assent.	
2. Schedule #, Part 4	Immediately after the commencement of the provision(s) covered by table item 1	
3. Schedule #, Parts 5 to 8	The day this Act receives the Royal Assent.	

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Schedule #—Consolidation

Part 1—Deductible liabilities

Income Tax Assessment Act 1997

1 Before subsection 705-70(2)

Insert:

Exclusion for deductible liability

(1AA) Subsection (1AB) applies if:

- (a) the accounting liability is covered by subsection (1AC); and
- (b) assuming that the head company had made a payment to discharge the accounting liability to the extent that it is covered under that subsection just after the joining time, that payment would result in an amount equal to all or part of the accounting liability being a deduction to the *head company of the group.

(1AB) An amount is not to be added for the accounting liability under subsection (1) to the extent of that deduction.

(1AC) A liability is covered by this subsection except to the extent that:

- (a) any of the following provisions apply in relation to the liability:
 - (i) section 713-520 (certain policy liabilities etc. of life insurance company that joins a consolidated group);
 - (ii) section 713-710 (certain liabilities and reserves of general insurance company that joins or leaves a consolidated group);
 - (iii) section 715-375 (accounting liabilities that are, or are part of, a Division 230 financial arrangement held by an entity that joins a consolidated group); or
 - (iv) if the liability is the outstanding claims liability of a private health insurer (within the meaning of the *Private Health Insurance (Prudential Supervision) Act 2015*)—section 8-1 (General deductions); or
- (b) the liability arises under any of the following:
 - (i) a *retirement village residence contract;
 - (ii) a *retirement village services contract.

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1 **2 Before subsection 705-75(1)**

2 Insert:

3 *Application*

4 (1A) This section applies to an accounting liability to the extent that it is
5 a liability of a kind described in paragraph 705-70(1AC)(a) or (b).

6 **3 Before subsection 705-80(1)**

7 Insert:

8 *Application*

9 (1A) This section applies to an accounting liability to the extent that it is
10 a liability of a kind described in subparagraph 705-70(1AC)(a)(i),
11 (ii) or (iv) or in paragraph 705-70(1AC)(b).

12 **4 Paragraph 705-80(1)(a) (example)**

13 Repeal the example.

14 **5 After subsection 705-90(2A)**

15 Insert:

16 (2B) Also, if an amount is not added under subsection 705-70(1) for an
17 accounting liability to an extent because of
18 subsection 705-70(1AB), the accounting liability is not to be taken
19 into account, to that extent, in working out the undistributed
20 profits.

21 **6 Application**

22 The amendments made by this Part apply in relation to an entity that
23 becomes a subsidiary member of a consolidated group or MEC group
24 under an arrangement that commences (see Part 8 of this Schedule) on
25 or after 1 July 2016.

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1 **Part 2—Deferred tax liabilities**

2 *Income Tax Assessment Act 1997*

3 **7 Subsection 705-70(1A)**

4 Repeal the subsection, substitute:

5 *Exclusion for deferred tax liability*

- 6 (1B) An amount is not to be added for an accounting liability that is an
7 amount recorded in a deferred tax liability account in accordance
8 with the joining entity's *accounting principles for tax cost setting.

9 **8 After subsection 711-45(1A)**

10 Insert:

11 *Exclusion for deferred tax liability*

- 12 (1B) An amount is not to be added for an accounting liability that is an
13 amount recorded in a deferred tax liability account in accordance
14 with the leaving entity's *accounting principles for tax cost setting.

15 **9 Application**

- 16 (1) The amendment made by item 7 applies in relation to an accounting
17 liability of an entity that becomes a subsidiary member of a
18 consolidated group or MEC group under an arrangement that
19 commences (see Part 8 of this Schedule) on or after the start of the day
20 on which the Bill that became this Act was introduced into the House of
21 Representatives.
- 22 (2) The amendment made by item 8 applies in relation to an accounting
23 liability of an entity that ceases to be a subsidiary member of a
24 consolidated group or MEC group if the entity ceases to be a subsidiary
25 member of the group under an arrangement that commences on or after
26 the start of the day on which the Bill that became this Act was
27 introduced into the House of Representatives.
- 28 (3) Despite subitem (2), the amendment made by item 8 does *not* apply in
29 relation to an accounting liability of an entity that ceases to be a
30 subsidiary member of a consolidated group or MEC group if the

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1 amendment made by item 7 did not previously apply in relation to the
2 liability as a result of subitem (1).

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1 Part 3—Securitised assets: 2014 Budget

2 *Income Tax Assessment Act 1997*

3 **10 At the end of section 705-70**

4 Add:

5 *Exclusion of amounts for certain securitisation liabilities*

- 6 (4) An amount is not to be added for an accounting liability of the
7 joining entity under subsection (1) if the accounting liability is
8 covered under section 705-76 (securitisation liabilities).

9 **11 After section 705-75**

10 Insert:

11 **705-76 Liability arising from transfer or assignment of securitised** 12 **assets**

13 This section covers an accounting liability (the *securitisation*
14 *liability*) if the following circumstances exist:

- 15 (a) at the joining time, a *member of the joined group is an *ADI
16 or a *financial entity;
- 17 (b) in working out the step 2 amount mentioned in
18 subsection 705-70(1) in relation to the joining entity, an
19 amount would be added under that subsection for the
20 securitisation liability (disregarding subsection 705-70(4));
- 21 (c) the joining entity transferred or equitably assigned one or
22 more assets (the *underlying securitised assets*) to another
23 entity before the joining time;
- 24 (d) the securitisation liability:
- 25 (i) arose from the transfer or equitable assignment of the
26 underlying securitised assets; and
- 27 (ii) is a liability of the joining entity at the joining time
28 (according to the joining entity's *accounting principles
29 for tax cost setting);
- 30 (e) the other entity was established for the purpose of
31 securitising assets;

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- 1 (f) the underlying securitised assets were securitised in
2 accordance with that purpose before the joining time;
3 (g) at the joining time the *market value of the joining entity's
4 interest in the underlying securitised assets was nil, or was
5 substantially less than the amount of the securitisation
6 liability.

7 **12 At the end of section 711-45**

8 Add:

9 *Exclusion of amounts for certain securitisation liabilities*

- 10 (11) An amount is not to be added for an accounting liability of the
11 leaving entity if the accounting liability is covered under
12 section 711-46 (securitisation liabilities).

13 **13 After section 711-45**

14 Insert:

15 **711-46 Liability arising from transfer or assignment of securitised** 16 **assets**

17 This section covers an accounting liability (the *securitisation*
18 *liability*) if the following circumstances exist:

- 19 (a) just before the leaving time, a *member of the old group is an
20 *ADI or a *financial entity;
- 21 (b) in working out the step 4 amount mentioned in
22 subsection 711-45(1) in relation to the leaving entity, an
23 amount would be added under that subsection for the
24 securitisation liability (disregarding subsection 711-45(11));
- 25 (c) a member of the old group transferred or equitably assigned
26 one or more assets (the *underlying securitised assets*) to
27 another entity before the leaving time;
- 28 (d) the securitisation liability:
29 (i) arose from the transfer or equitable assignment of the
30 underlying securitised assets; and
31 (ii) is a liability of the leaving entity at the leaving time
32 (according to the leaving entity's *accounting principles
33 for tax cost setting);
- 34 (e) the other entity was established for the purpose of
35 securitising assets;

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- 1 (f) the underlying securitised assets were securitised in
2 accordance with that purpose before the leaving time;
3 (g) at the leaving time the *market value of the leaving entity's
4 interest in the underlying securitised assets was nil, or was
5 substantially less than the amount of the securitisation
6 liability.

7 **14 Application—joining case**

- 8 (1) The amendments made by items 10 and 11 of this Schedule apply in
9 relation to an entity that becomes a subsidiary member of a consolidated
10 group or MEC group under an arrangement that commences (see Part 8
11 of this Schedule) after the 2014 budget time.
- 12 (2) Subject to subitems (3) and (6), the amendments made by items 10 and
13 11 of this Schedule also apply in relation to an entity (the *joining entity*)
14 that becomes a subsidiary member of a consolidated group or MEC
15 group under an arrangement that commences (see Part 8 of this
16 Schedule) on or before the 2014 budget time.
- 17 (3) Subitem (2) does not apply if the Commissioner considers that it is
18 reasonable to conclude that:
- 19 (a) the circumstances mentioned in section 705-76 of the *Income*
20 *Tax Assessment Act 1997* (as inserted by this Schedule)
21 existed in respect of the joining entity; and
- 22 (b) before the 2014 budget time, the head company of the group:
- 23 (i) worked out the group's allocable cost amount for the
24 joining entity; and
- 25 (ii) for the purposes of working out that allocable cost
26 amount, worked out the step 2 amount mentioned in
27 subsection 705-70(1) of that Act; and
- 28 (c) in working out that step 2 amount before the 2014 budget
29 time, the head company added the amount mentioned in
30 paragraph 705-76(b) of that Act (as inserted by this
31 Schedule).
- 32 (4) Subitem (5) applies if:
- 33 (a) subitem (2) does not apply because of subitem (3); and
- 34 (b) the Commissioner considers that it is reasonable to conclude
35 that, before the 2014 budget time, the head company of the
36 group worked out a tax cost setting amount for the joining
37 entity's interest in the underlying securitised assets
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1 mentioned in paragraph 705-76(c) of that Act (as inserted by
2 this Schedule).

- 3 (5) Reduce the group's allocable cost amount for the joining entity by the
4 tax cost setting amount mentioned in paragraph (4)(b).
- 5 (6) Subitem (2) does not apply if the Commissioner considers that it is
6 reasonable to conclude that:
- 7 (a) the circumstances mentioned in section 705-76 of the *Income*
8 *Tax Assessment Act 1997* (as inserted by this Schedule)
9 existed in respect of the joining entity; and
- 10 (b) the head company of the group first worked out the group's
11 allocable cost amount for the joining entity:
- 12 (i) after the 2014 budget time; and
13 (ii) before the commencement of this item.

14 (7) In this item:

15 *2014 budget time* means 7.30 pm, by legal time in the Australian
16 Capital Territory, on 13 May 2014.

17 **15 Application—leaving case**

- 18 (1) The amendments made by items 12 and 13 of this Schedule apply in
19 relation to an entity that ceases to be a subsidiary member of a
20 consolidated group or MEC group under an arrangement that
21 commences (see Part 8 of this Schedule) after the 2014 budget time.
- 22 (2) Subject to subitem (3), the amendments made by items 12 and 13 of this
23 Schedule also apply in relation to an entity (the *leaving entity*) that
24 ceases to be a subsidiary member of a consolidated group or MEC
25 group under an arrangement that commences (see Part 8 of this
26 Schedule) on or before the 2014 budget time.
- 27 (3) Subitem (2) does not apply if the Commissioner considers that it is
28 reasonable to conclude that:
- 29 (a) the circumstances mentioned in section 711-46 of the *Income*
30 *Tax Assessment Act 1997* (as inserted by this Schedule)
31 existed in respect of the leaving entity; and
- 32 (b) before the 2014 budget time, the head company of the group
33 (the *old group*):
- 34 (i) worked out the old group's allocable cost amount for
35 the leaving entity; and

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- 1 (ii) for the purposes of working out that allocable cost
2 amount, worked out the step 4 amount mentioned in
3 subsection 711-45(1) of that Act; and
- 4 (c) in working out that step 4 amount before the 2014 budget
5 time, the head company added the amount mentioned in
6 paragraph 711-46(b) of that Act (as inserted by this
7 Schedule).
- 8 (4) Subitem (5) applies if:
- 9 (a) subitem (2) does not apply because of subitem (3); and
- 10 (b) the Commissioner considers that it is reasonable to conclude
11 that, in working out that allocable cost amount before the
12 2014 budget time, the head company of the old group
13 included in the step 1 amount mentioned in
14 subsection 711-25(1) of that Act an amount (the *addition to*
15 *step 1*) in respect of the leaving entity's interest in the
16 underlying securitised assets mentioned in
17 paragraph 711-46(c) of that Act (as inserted by this
18 Schedule).
- 19 (5) Increase the old group's allocable cost amount for the leaving entity by
20 the addition to step 1.
- 21 (6) In this item:
- 22 *2014 budget time* means 7.30 pm, by legal time in the Australian
23 Capital Territory, on 13 May 2014.

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1 **Part 4—Securitised assets: 2016 Budget**

2 *Income Tax Assessment Act 1997*

3 **16 Paragraph 705-76(a)**

4 Repeal the paragraph.

5 **17 Paragraph 711-46(a)**

6 Repeal the paragraph.

7 **18 Application—joining case**

8 (1) The amendment made by item 16 of this Schedule applies in relation to
9 an entity that becomes a subsidiary member of a consolidated group or
10 MEC group under an arrangement that commences (see Part 8 of this
11 Schedule) after the 2016 budget time.

12 (2) In this item:

13 *2016 budget time* means 7.30 pm, by legal time in the Australian
14 Capital Territory, on 3 May 2016.

15 **19 Application—leaving case**

16 (1) The amendment made by item 17 of this Schedule applies in relation to
17 an entity that ceases to be a subsidiary member of a consolidated group
18 or MEC group under an arrangement that commences (see Part 8 of this
19 Schedule) after the 2016 budget time.

20 (2) In this item:

21 *2016 budget time* means 7.30 pm, by legal time in the Australian
22 Capital Territory, on 3 May 2016.

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Part 5—Churning

Income Tax Assessment Act 1997

20 At the end of Subdivision 716-S (after section 716-420)

Add:

716-440 Membership interests in joining entity not subject to CGT under Division 855— foreign entity ceasing to hold interests

(1) Subsection (2) applies if:

- (a) an entity (the *joining entity*) becomes a *subsidiary member of a *consolidated group at a time (the *joining time*); and
- (b) another entity (the *disposing entity*) ceased to hold *membership interests in the joining entity during the period that:
 - (i) started 12 months before the joining time; and
 - (ii) ended immediately after the joining time; and
- (c) a *CGT event happened because the disposing entity ceased to hold the membership interests; and
- (d) a *capital gain or *capital loss of the disposing entity from the CGT event was disregarded because of the operation of Division 855; and
- (e) section 701-10 (cost to head company of assets of joining entity) applies to the joining entity's assets in respect of the joining entity becoming a subsidiary member of the group (disregarding subsection (2)); and
- (f) it is reasonable to conclude that, throughout the period mentioned in paragraph (b), the sum of the *total participation interests held by an entity (the *control entity*) and its *associates in the joining entity was 50% or more; and
- (g) if the control entity is *not* the disposing entity—it is reasonable to conclude that the sum of the total participation interests held by the control entity and its associates in the disposing entity was 50% or more at the time the CGT event happened.

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- 1 (2) The following provisions do not apply to the joining entity's assets
2 in respect of the joining entity becoming a *subsidiary member of
3 the group:
4 (a) section 701-10 (cost to head company of assets of joining
5 entity);
6 (b) subsection 701-35(4) (setting value of trading stock at
7 tax-neutral amount);
8 (c) subsection 701-35(5) (setting value of registered emissions
9 unit at tax-neutral amount).
- 10 Note: This subsection does not affect the application of subsection 701-1(1)
11 (the single entity rule).
- 12 (3) Subsection (4) applies if:
13 (a) an entity (the *higher level entity*) holds *membership
14 interests in the joining entity (whether directly or through one
15 or more interposed entities) at a time during the period
16 mentioned in paragraph (1)(b); and
17 (b) the higher level entity becomes a *subsidiary member of the
18 *consolidated group at the joining time; and
19 (c) the requirement in paragraph (1)(b) is not satisfied
20 (disregarding subsection (4)); and
21 (d) the requirement in paragraph (1)(b) would be satisfied if the
22 reference in paragraph (1)(b) to membership interests in the
23 joining entity included a reference to membership interests in
24 the higher level entity.
- 25 (4) Treat the reference in paragraph (1)(b) to *membership interests in
26 the joining entity as including a reference to membership interests
27 in the higher level entity.

21 Application

- 28
- 29 (1) The amendments made by this Part apply in relation to an income year
30 in respect of an entity that becomes a subsidiary member of a
31 consolidated group or MEC group under an arrangement that
32 commences (see Part 8 of this Schedule) on or after the 2013 budget
33 time.
- 34 (2) In this item:
- 35 *2013 budget time* means 7.30 pm, by legal time in the Australian
36 Capital Territory, on 14 May 2013.

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1 **Part 6—TOFA**

2 *Income Tax Assessment Act 1997*

3 **22 Section 715-375 (heading)**

4 Repeal the heading, substitute:

5 **715-375 Cost setting on joining—amount of liability that is**
6 **Division 230 financial arrangement**

7 **23 Section 715-378 (heading)**

8 Repeal the heading, substitute:

9 **715-378 Cost setting on joining—head company’s right to receive or**
10 **obligation to provide payment**

11 **24 After section 715-378**

12 Insert:

13 **715-379 Cost setting on leaving—amount of intragroup liability that**
14 **is Division 230 financial arrangement**

15 (1) Subsection (2) applies if:

- 16 (a) an entity (the *leaving entity*) ceases to be a *subsidiary
17 member of a *consolidated group at a time (the *leaving time*);
18 and
19 (b) a thing (the *accounting liability*) is, in accordance with
20 *accounting standards, or statements of accounting concepts
21 made by the Australian Accounting Standards Board:
22 (i) a liability of the leaving entity at the leaving time that
23 can or must be recognised in the entity’s statement of
24 financial position; or
25 (ii) a liability of the *head company of the group at the
26 leaving time that can or must be recognised in the head
27 company’s statement of financial position; and
28 (c) because subsection 701-1(1) (the single entity rule) ceases to
29 apply to the leaving entity at the leaving time:
30 (i) if subparagraph (b)(i) applies—the accounting liability
31 becomes a liability of the leaving entity, and an asset
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- 1 (the *corresponding asset*) that consists of the liability
2 becomes an asset of the head company; or
3 (ii) if subparagraph (b)(ii) applies—the accounting liability
4 becomes a liability of the head company, and an asset
5 (the *corresponding asset*) that consists of the liability
6 becomes an asset of the leaving entity; and
7 (d) the corresponding asset’s *tax cost is set at the leaving time
8 under:
9 (i) if subparagraph (b)(i) applies—section 701-20; or
10 (ii) if subparagraph (b)(ii) applies—section 701-45; and
11 (e) the accounting liability is or is part of a *Division 230
12 financial arrangement.
- 13 (2) For the purposes of Division 230 and Schedule 1 to the *Tax Laws*
14 *Amendment (Taxation of Financial Arrangements) Act 2009*:
15 (a) if subparagraph (1)(b)(i) applies—treat the leaving entity as
16 starting to have the accounting liability at the leaving time for
17 receiving a payment equal to the *tax cost setting amount of
18 the corresponding asset; or
19 (b) if subparagraph (1)(b)(ii) applies—treat the *head company
20 as starting to have the accounting liability at the leaving time
21 for receiving a payment equal to the tax cost setting amount
22 of the corresponding asset.
- 23 Note: The tax cost setting amount of the corresponding asset is determined
24 under sections 701-60 and 701-60A.

25 **715-379A Cost setting on leaving—head company’s or leaving** 26 **entity’s right to receive or obligation to provide payment**

- 27 (1) This section applies in relation to an asset or a liability if:
28 (a) an entity (the *leaving entity*) ceases to be a *subsidiary
29 member of a *consolidated group at a time (the *leaving time*);
30 and
31 (b) because subsection 701-1(1) (the single entity rule) ceases to
32 apply to the leaving entity at the leaving time, the asset or
33 liability becomes the asset or liability of:
34 (i) the leaving entity; or
35 (ii) the *head company of the group; and
36 (c) if subparagraph (b)(i) applies:
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- 1 (i) in the case of an asset—subsection 701-55(5A) applies
2 in relation to the asset at the leaving time because of
3 section 701-45; or
4 (ii) in the case of a liability—subsection 715-379(2) applies
5 in relation to the liability at the leaving time; or
6 (d) if subparagraph (b)(ii) applies:
7 (i) in the case of an asset—subsection 701-55(5A) applies
8 in relation to the asset at the leaving time because of
9 section 701-20; and
10 (ii) in the case of a liability—subsection 715-379(2) applies
11 in relation to the liability at the leaving time; and
12 (e) the asset or liability is or is part of a *Division 230 financial
13 arrangement.
- 14 (2) If subparagraph (1)(b)(i) applies:
15 (a) in the case of an asset—for the purposes of section 230-60,
16 assume that the leaving entity acquired the asset at the
17 leaving time (as mentioned in subsection 701-55(5A)) in
18 return for the leaving entity starting to have an obligation to
19 provide the payment mentioned in that subsection; and
20 (b) in the case of a liability—for the purposes of section 230-60,
21 assume that the leaving entity started to have the liability at
22 the leaving time in return for the leaving entity starting to
23 have a right to receive the payment mentioned in
24 subsection 715-379(2).
- 25 (3) If subparagraph (1)(b)(ii) applies:
26 (a) in the case of an asset—for the purposes of section 230-60,
27 assume that the head company acquired the asset at the
28 leaving time (as mentioned in subsection 701-55(5A)) in
29 return for the head company starting to have an obligation to
30 provide the payment mentioned in that subsection; and
31 (b) in the case of a liability—for the purposes of section 230-60,
32 assume that the head company started to have the liability at
33 the leaving time in return for the head company starting to
34 have a right to receive the payment mentioned in
35 subsection 715-379(2).
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1 **25 Application**

2 (1) The amendments made by this Part apply in the same way as Part 2 of
3 Schedule 1 to the *Tax Laws Amendment (Taxation of Financial*
4 *Arrangements) Act 2009* applies.

5 Note: The application of the amendments made by Part 2 of Schedule 1 to the *Tax Laws*
6 *Amendment (Taxation of Financial Arrangements) Act 2009* is set out in Part 3 of that
7 Schedule.

8 (2) The Commissioner cannot amend an assessment of an entity for an
9 income year in a particular way if:
10 (a) the entity lodged its income tax return for the income year
11 before the 2013 budget time; and
12 (b) the Commissioner could not amend the assessment in that
13 way if the amendments made by this Part and Part 7 were
14 disregarded; and
15 (c) the entity has not requested the Commissioner to amend the
16 assessment in that way.

17 (3) In this item:
18 ***2013 budget time*** means 7.30 pm, by legal time in the Australian
19 Capital Territory, on 14 May 2013.

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Part 7—Value shifting

Income Tax Assessment Act 1997

26 Section 701-60 (item 3 of the table)

Repeal the item, substitute:

3	section 701-20 (Cost to head company of assets consisting of certain liabilities owed by entity that leaves group)	the *market value of the asset
3A	section 701-45 (Cost of assets consisting of liabilities owed to entity by members of the group)	the amount worked out in accordance with section 701-60A

27 After section 701-60

Insert:

701-60A Tax cost setting amount for asset emerging when entity leaves group

- (1) This section applies for the purpose of working out the *tax cost setting amount of an asset if:
- (a) an entity (the *leaving entity*) ceases to be a *subsidiary member of a *consolidated group (the *old group*) at a time (the *leaving time*); and
 - (b) the asset's tax cost is set under section 701-45 because it consists of a liability (the *corresponding liability*) owed to the leaving entity.
- (2) The *tax cost setting amount is:
- (a) unless subsection (3) or (4) applies—the *market value of the asset at the leaving time; or
 - (b) if subsection (3) applies—nil; or
 - (c) if subsection (4) applies—the least of the following amounts:
 - (i) the tax cost setting amount mentioned in paragraph (4)(c);
 - (ii) if the *head company of the old group was entitled to a deduction in respect of the asset for an income year ending on or before the leaving time—the tax cost

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- 1 setting amount mentioned in paragraph (4)(c) reduced
2 by the amount of the deduction;
3 (iii) the market value of the asset at the leaving time.
- 4 (3) This subsection applies if:
5 (a) the corresponding liability is *not* a debt; and
6 (b) either:
7 (i) at the time the corresponding liability arose, the entity to
8 whom the corresponding liability was owed and the
9 entity owing the corresponding liability were both
10 *members of the old group; or
11 (ii) if subparagraph (i) does not apply—after the time the
12 corresponding liability arose, a member of the old group
13 *acquired the asset or started to have the corresponding
14 liability.
- 15 (4) This subsection applies if:
16 (a) the corresponding liability is *not* a debt; and
17 (b) at the time the corresponding liability arose, the entity to
18 whom the corresponding liability was owed and the entity
19 owing the corresponding liability were *not* both members of
20 the old group; and
21 (c) the tax cost of the asset was set under section 701-10 at the
22 time an entity became a *subsidiary member of the old group,
23 at the asset's *tax cost setting amount (whether or not
24 section 701-58 applied in relation to the setting of that tax
25 cost).

26 **28 Section 711-40**

27 Repeal the section, substitute:

28 **711-40 Liabilities owed to the leaving entity by members of the old** 29 **group—step 3 in working out allocable cost amount**

30 For the purposes of step 3 in the table in subsection 711-20(1), the
31 step 3 amount is the total, for all liabilities owed by *members of
32 the old group to the leaving entity at the leaving time, of the *tax
33 cost setting amounts of the corresponding assets of the leaving
34 entity.

35 Note: The tax cost of a corresponding asset of the leaving entity is set under
36 section 701-45. The tax cost setting amount of the corresponding asset
37 is determined under section 701-60A.

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29 Section 711-45(4)

Omit “*market value”, substitute “*tax cost setting amount”.

30 Application

(1) The amendments made by this Part apply in relation to an entity that ceases to be a subsidiary member of a consolidated group or MEC group under an arrangement that commences on or after the 2013 budget time.

(2) If an asset mentioned in subsection 701-60A(1) of the *Income Tax Assessment Act 1997* (as inserted by this Schedule) is or is part of a Division 230 financial arrangement at the leaving time mentioned in that subsection, the amendments made by this Part also apply in relation to that asset in the same way as Part 2 of Schedule 1 to the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009* applies.

Note: The application of the amendments made by Part 2 of Schedule 1 to the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009* is set out in Part 3 of that Schedule.

(3) The following subitem applies if:

- (a) an entity ceases to be a subsidiary member of a consolidated group or MEC group under an arrangement that commences before the 2013 budget time; and
- (b) the amendments made by this Part apply because of subitem (2).

(4) The Commissioner cannot amend an assessment of an entity for an income year in a particular way if:

- (a) the entity lodged its income tax return for the income year before the 2013 budget time; and
- (b) the Commissioner could not amend the assessment in that way if the amendments made by Part 6 and this Part were disregarded; and
- (c) the entity has not requested the Commissioner to amend the assessment in that way.

Note: Subitems (2), (3) and (4) have the effect that the amendments made by this Part operate in relation to an asset that is or is part of a Division 230 financial arrangement in the same way that the amendments made by Part 6 of this Schedule operate.

(5) In this item:

2013 budget time means 7.30 pm, by legal time in the Australian Capital Territory, on 14 May 2013.

EXPOSURE DRAFT

1 **Part 8—Commencement of arrangements**

2 **31 Commencement of arrangements**

- 3 (1) Subitems (2), (3) and (4) specify, for the purpose of this Schedule, the
4 time of commencement of an arrangement under which:
- 5 (a) an entity becomes a subsidiary member of a consolidated
6 group or MEC group; or
 - 7 (b) an entity that ceases to be a subsidiary member of a
8 consolidated group or MEC group.
- 9 (2) If the arrangement is or relates to a takeover bid (within the meaning of
10 the *Corporations Act 2001*) the time is when:
- 11 (a) for an off-market bid (within the meaning of that Act)—step
12 4 of the table in subsection 633(1) of that Act is completed;
13 or
 - 14 (b) for a market bid (within the meaning of that Act)—step 2 of
15 the table in subsection 635(1) of that Act is completed.
- 16 (3) If a court orders, under subsection 411(1) of the *Corporations Act 2001*:
- 17 (a) a meeting or meetings of a company's members about the
18 arrangement; or
 - 19 (b) a meeting or meetings of one or more classes of a company's
20 members about the arrangement;
- 21 the time is when the application for the order was made.
- 22 (4) If subitem (2) or (3) does not apply, the time is when the decision to
23 enter into the arrangement was made.