

# EXPOSURE DRAFT

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Inserts for  
**Exposure Draft Bill 2011: FIN 48**

<b>EXPOSURE DRAFT (16/08/2011)</b>
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**Commencement information**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Schedule	The day this Act receives the Royal Assent.	
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**Schedule—Investment management regime**

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*Income Tax (Transitional Provisions) Act 1997*

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**1 After Subdivision 840-M**

Insert:

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**Division 842—Exempt Australian source income and gains  
of foreign residents**

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**Subdivision 842-I—Investment management regime—foreign  
managed funds**

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**842-5 Commissioner to disregard certain amounts in respect of IMR  
foreign funds and trustees**

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- (1) Subsection (2) applies in relation to an income year of an IMR foreign fund if:
    - (a) the income year is the 2010-11 income year or an earlier income year; and
    - (b) the fund has IMR income or an IMR loss in relation to the income year; and
    - (c) the fund has not lodged an income tax return in relation to the income year or any previous income year; and
    - (d) the Commissioner did not, before 18 December 2010:
      - (i) in respect of a fund that is a corporate tax entity—make an assessment of the taxable income of the fund; or
      - (ii) in respect of a fund that is a trust—make an assessment of an amount in respect of which the trustee was assessed and liable to pay tax.
  - (2) In making an assessment for the income year the Commissioner must not take IMR income or an IMR loss into account in calculating:
    - (a) the taxable income of the IMR foreign fund; or
    - (b) the amount in respect of which the trustee is assessed and liable to pay tax (if any).
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*Fraud*

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2 (3) Subsection (2) does not apply if the Commissioner is of the  
3 opinion there has been fraud by the IMR foreign fund.

4 *Audit or compliance review*

- 5 (4) Subsection (2) does not apply if before 18 December 2010 the  
6 Commissioner notified the IMR foreign fund that an audit or  
7 compliance review would be undertaken.

8 **842-10 Commissioner to disregard certain amounts in respect of a**  
9 **beneficiary or partner of an IMR foreign fund**

- 10 (1) Subsection (2) applies in relation to the income year of an entity if:  
11 (a) the income year is the 2010-11 income year or an earlier  
12 income year; and  
13 (b) the entity is not a resident of Australia at any time during the  
14 income year; and  
15 (c) the entity is (whether directly or indirectly through one or  
16 more interposed trusts or partnerships) a beneficiary or a  
17 partner of an IMR foreign fund; and  
18 (d) the fund has IMR income or an IMR loss in relation to the  
19 income year; and  
20 (e) the entity has not lodged an income tax return in relation to  
21 the income year or any previous income year; and  
22 (f) the Commissioner did not, before 18 December 2010:  
23 (i) in respect of an entity that is a trust (or an interposed  
24 trust) referred to in paragraph (c)—make an assessment  
25 in respect of which the trustee of the trust is assessed  
26 and liable to pay tax; and  
27 (ii) in respect of an entity that is *not* a trust (or interposed  
28 trust) referred to in paragraph (c)—make an assessment  
29 of the taxable income of the entity.
- 30 (2) In making an assessment for the income year, the Commissioner  
31 must not take into account a share of, or an individual interest in,  
32 the net income of the IMR foreign fund to the extent that is  
33 attributable to IMR income or an IMR loss in calculating:  
34 (a) in respect of an entity that is a trust (or an interposed trust)  
35 referred to in paragraph (c)—the amount in respect of which  
36 the trustee of the trust is assessed and liable to pay tax (if  
37 any); and

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(b) in respect of an entity that is *not* a trust (or interposed trust) referred to in paragraph (c)—the taxable income of the entity.

*Fraud*

(3) Subsection (2) does not apply if the Commissioner is of the opinion there has been fraud by the IMR foreign fund or a beneficiary or partner of the IMR foreign fund.

*Audit or compliance review*

(4) Subsection (2) does not apply if before 18 December 2010 the Commissioner notified:

- (a) the IMR foreign fund that an audit or compliance review will be undertaken; or
- (b) the entity referred to in subsection (1) that an audit or compliance review will be undertaken.