

# EXPOSURE-DRAFT

1 Y1 Inserts for  
2 **Tax Laws Amendment (2013 Measures**  
3 **No. 2) Bill 2013: Investment Manager**  
4 **Regime**

5 **EXPOSURE DRAFT**

6 **Commencement information**

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

7 **Schedule 00—Investment Manager Regime**

8  
9 *Income Tax Assessment Act 1997*

10 **1 Section 842-200**

11 Omit:

12 This Subdivision includes rules about the taxation of certain  
13 foreign funds with investment income or losses which are treated  
14 as being attributable to a permanent establishment in Australia  
15 solely because the fund retains the services of an Australian based  
16 agent, manager or service provider.

17 substitute:

18 This Subdivision includes rules about the taxation of certain  
19 foreign funds.

20 **2 Section 842-200**

21 Omit “financial arrangements” (wherever occurring), substitute “certain  
22 financial arrangements”.

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## 3 Subsection 842-205(1)

Repeal the subsection, substitute:

(1) The objects of this Subdivision are:

(a) to remove uncertainty from Australia's income taxation laws that may impede:

(i) certain international investment into Australia; and

(ii) the use of Australian agents, managers and service providers by widely held (and not closely held) foreign managed funds that are residents of \*information exchange countries; and

(b) to ensure that Australia continues to tax resident taxpayers on their worldwide income and continues to tax foreign resident taxpayers on their returns and gains from most \*taxable Australian property.

## 4 Paragraph 842-205(2)(d)

Omit "concentration test", substitute "closely held test".

## 5 Paragraph 842-215(2)(a)

Omit "a resident of Australia", substitute "an Australian resident".

## 6 After paragraph 842-230(a)

Insert:

(aa) the entity is a resident of an \*information exchange country (as determined in accordance with subsection 12-390(7) in Schedule 1 to the *Taxation Administration Act 1953*) at all times during the income year; and

## 7 Paragraph 842-230(b)

Repeal the paragraph, substitute:

(b) the entity:

(i) does not carry on a trading business (within the meaning of section 102M of the *Income Tax Assessment Act 1936*) in Australia at any time during the income year; and

(ii) does not control, and is not able to control, directly or indirectly, the affairs or operations of such a trading business in Australia at any time during the income year; and

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## 8 Subparagraph 842-230(c)(ii)

Omit “concentration test”, substitute “closely held test”.

## 9 Subparagraph 842-230(c)(ii)

Omit “during the income year.”, substitute “during the income year; and”.

## 10 At the end of section 842-230

Add:

- (d) the entity gives the Commissioner a statement for that year in accordance with section 395-5 (Annual information statement) in Schedule 1 to the *Taxation Administration Act 1953*.

## 11 Section 842-235

Repeal the section, substitute:

### 842-235 Start-up and wind-down phases

(1) Subsection (2) applies if:

- (a) the entity is created on or after the start of the income year (but before the end of the income year); or
- (b) the entity ceases to exist during the income year, and was an \*IMR foreign fund (disregarding paragraph (a)) in relation to the previous income year.

(2) Apply the following rules:

- (a) in determining whether the requirement in paragraph 842-230(aa) is satisfied, treat the period in the income year during which the entity was in existence as the whole income year;
- (b) treat the requirement in paragraph 842-230(c) as being satisfied in relation to the income year.

(3) If the entity is created within 6 months before the end of the income year, treat the requirement in paragraph 842-230(c) as being satisfied also in relation to the *next* income year

(4) Subsection (5) applies if:

- (a) apart from subsection (5), an entity was an IMR foreign fund in relation to an income year (the *start-up year*) as a result of satisfying the requirement in paragraph (1)(a); and

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- 1 (b) the entity is not in existence throughout, or is *not* an \*IMR  
2 foreign fund in relation to:  
3 (i) the *next* income year; or  
4 (ii) if subsection (3) applies—the year after the *next* income  
5 year.
- 6 (5) Despite subsections (1) and (3), treat the entity as not having been  
7 an \*IMR foreign fund in relation to:  
8 (a) the start-up year; and  
9 (b) if subsection (3) applies—the *next* income year.

## 10 **12 Section 842-240**

11 Repeal the section, substitute:

### 12 **842-240 Widely held test and closely held test**

- 13 (1) The entity satisfies the widely held test for the purposes of  
14 subparagraph 842-230(c)(i) if:  
15 (a) units or shares in the entity are listed for quotation in the  
16 official list of an \*approved stock exchange; or  
17 (b) the entity has at least 25 \*members (as determined in  
18 accordance with section 842-242); or  
19 (c) the entity is an entity of a kind specified in the regulations  
20 made for the purposes of this paragraph.
- 21 (2) The entity breaches the closely held test for the purposes of  
22 subparagraph 842-230(c)(ii) if any of the following requirements  
23 are satisfied:  
24 (a) a \*member of the entity has a \*total participation interest in  
25 the entity of 10% or more (as determined in accordance with  
26 section 842-242);  
27 (b) the sum of the total participation interests in the entity of 10  
28 or fewer members of the entity is 50% or more (as  
29 determined in accordance with section 842-242).
- 30 (3) However, treat the entity as *not* breaching the closely held test for  
31 the purposes of subparagraph 842-230(c)(ii) if:  
32 (a) the regulations specify a kind of entity for the purposes of  
33 this subsection; and  
34 (b) the entity is an entity of that kind.
- 35 (4) Despite subsections (1) and (2), an entity satisfies the widely held  
36 test for the purposes of subparagraph 842-230(c)(i) and does not

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1 breach the closely held test for the purposes of  
2 subparagraph 842-230(c)(ii) if:

- 3 (a) it is a \*foreign life insurance company at all times during the  
4 income year; or  
5 (b) it is a \*foreign superannuation fund, being a fund that has at  
6 least 50 \*members; or  
7 (c) it is an entity that is a fund established by an \*exempt foreign  
8 government agency for the principal purpose of funding  
9 pensions (including disability and similar benefits) for the  
10 citizens or other contributors of a foreign country.

## 11 **842-242 Determining members and total participation interests for** 12 **purposes of widely held test and closely held test**

- 13 (1) Apply the rules in this section in determining:  
14 (a) the \*members of the entity (the *test entity*), for the purposes  
15 of subsections 842-240(1) and (2); and  
16 (b) the \*total participation interest in the test entity of each of  
17 those members, for the purposes of subsection 842-240(2).
- 18 (2) If an individual holds interests in the test entity indirectly, through  
19 one or more interposed entities:  
20 (a) treat the individual as a \*member of the test entity; and  
21 (b) do not treat any of those interposed entities as a member of  
22 the test entity.
- 23 (3) For the purposes of subsection (2):  
24 (a) assume that all the \*membership interests in an entity  
25 described in paragraph 842-240(4)(a), (b) or (c) (the *foreign*  
26 *widely held entity*) are held by a number of individuals (the  
27 *notional members*); and  
28 (b) work out the number of those notional members as follows:  
29 (i) work out the foreign widely held entity's \*total  
30 participation interest in the test entity;  
31 (ii) multiply that \*total participation interest by 50 and  
32 round the result upwards to the nearest whole number;  
33 and  
34 (c) treat the \*total participation interest in the test entity of each  
35 of those notional members as follows:  
36 (i) work out the foreign widely held entity's \*total  
37 participation interest in the test entity;

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- 1 (ii) divide the result of subparagraph (i) by the number of  
2 those notional members worked out under  
3 paragraph (b).
- 4 (5) If the test entity is a trust, do not treat an object of the trust as a  
5 member of the trust.
- 6 (6) Treat the following entities as together being one individual:  
7 (a) an individual;  
8 (b) each of his or her relatives.
- 9 (7) If two or more individuals are treated as one individual (the  
10 *notional individual*) under subsection (6), treat the notional  
11 individual as having a \*total participation interest in the test entity  
12 equal to the sum of each of the individual's total participation  
13 interest in the test entity.
- 14 (8) If an entity (the *nominee*) has a \*total participation interest in the  
15 test entity in the capacity of nominee of another entity:  
16 (a) treat the nominee as *not* having that total participation  
17 interest in the test entity; and  
18 (b) instead, treat the other entity as having that total participation  
19 interest in the test entity (in addition to the other entity's total  
20 participation interest in the test entity (if any) apart from this  
21 subsection); and  
22 (c) disregard the nominee, in its capacity as nominee of the other  
23 entity, for the purposes of subsection (2).
- 24 (9) In determining a \*direct participation interest of one entity in  
25 another entity, disregard paragraph 350(1)(b) of the *Income Tax*  
26 *Assessment Act 1936*.

## 27 **13 Subsection 842-245(1)**

28 Omit "(2),".

## 29 **14 Subsection 842-245(2)**

30 Repeal the subsection.

## 31 **15 Paragraph 842-245(3)(a)**

32 Omit "is a \*derivative financial arrangement that relates to a \*CGT  
33 asset", substitute "is or relates to a \*CGT asset".

## 34 **16 Paragraph 842-250(1)(b)**

35 Repeal the paragraph.

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## 17 Paragraph 842-250(1)(c)

Omit “amounts are included in the assessable income of the fund only because”, substitute “if an interest of the \*IMR foreign fund in another entity passes the \*non-portfolio interest test (see section 960-195)— amounts are included in the assessable income of the fund only because”.

## 18 Subparagraph 842-250(1)(c)(i)

After “a permanent establishment of the fund in Australia”, insert “that is covered under subsection (1A)”.

## 19 After subsection 842-250(1)

Insert:

(1A) A \*permanent establishment of the fund in Australia is covered under this subsection if the fund has the permanent establishment in Australia solely as a result of engaging an entity that is a resident of Australia to habitually exercise a general authority to negotiate and conclude contracts on its behalf.

(1B) If subparagraph 842-250(1)(c)(i) applies, an amount is not *IMR income* for an income year of the \*IMR foreign fund in relation to the income year to the extent that, on the assumption in subsection (1C), the amount would have an \*Australian source.

(1C) The assumption is that that fund negotiated and concluded all contracts actually negotiated and concluded on behalf of the fund by the entity mentioned in subsection (1A).

## 20 Paragraph 842-255(1)(a)

Omit “a resident of Australia”, substitute “an Australian resident”.

## 21 Paragraph 842-255(2)(a)

Omit “a resident of Australia”, substitute “an Australian resident”.

## 22 Paragraph 842-255(1)(b)

Repeal the paragraph, substitute:

(b) each such capital gain is made in respect of a \*CGT asset that is a \*financial arrangement that is covered by section 842-245 and by subsection (3) of this section.

## 23 Paragraph 842-255(2)(a)

Omit “a resident of Australia”, substitute “an Australian resident”.

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## 24 Paragraph 842-255(2)(b)

Repeal the paragraph, substitute:

- (b) each such capital loss is made in respect of a \*CGT asset that is a \*financial arrangement that is covered by section 842-245 and by subsection (3) of this section.

## 25 Subsection 842-255(3)

Omit “A \*CGT asset of an \*IMR foreign fund is covered by this subsection if”, substitute “A \*financial arrangement of an \*IMR foreign fund is covered by this subsection if it is a \*CGT asset that”.

## 26 Paragraph 842-255(3)(a)

Omit “it is covered”, substitute “is covered”.

## 27 Paragraph 842-255(3)(b)

Omit “it is covered”, substitute “is covered”.

## 28 After subsection 842-270

Insert:

- (2A) For the purposes of subsection (1), in determining whether a \*financial arrangement is covered by section 842-245, disregard the repeal of subsection (2) of that section by the *Tax Laws Amendment (2013 Measures No. 2) Bill 2013*.

## 29 At the end of Division 842

Add:

### 842-275 Amendment of assessments

Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment of an entity for the purpose of giving effect to this Subdivision for an income year if:

- (a) the amendment is necessary because of the operation of subsection 842-235(3); and
- (b) the amendment is made within 7 years after the day on which the Commissioner gives notice of the assessment to the entity.



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## *Taxation Administration Act 1953*

### **30 After subsection 286-75(2BA) in Schedule 1**

Insert:

(2BB) You are also liable to an administrative penalty if:

- (a) you have an obligation under section 395-10 (IMR foreign fund reporting) to give a written notice to an entity; and
- (b) you do not comply with that obligation.

### **31 After paragraph 286-80(2)(a) in Schedule 1**

Insert:

- (b) for non-compliance with an obligation to give a written notice to an entity as mentioned in subsection 286-75(2BB)—1 penalty unit for each period of 28 days or part of a period of 28 days starting on the day when you first fail to comply with the obligation and ending when you give the notice (up to a maximum of 5 penalty units); or

### **32 Paragraph 286-80(2)(a) in Schedule 1**

After “(2BA)”, insert “, (2BB)”.

### **33 After Division 394 in Schedule 1**

Insert:

## **Division 395—IMR foreign fund reporting**

### **Table of Subdivisions**

### **Guide to Division 395**

#### **395-1 What this Division is about**

IMR foreign funds must give the Commissioner an annual information statement about the fund.

IMR foreign funds are also required to notify foreign resident beneficiaries and foreign resident partners of the lodgment of the annual information statement.

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## Table of sections

### 395-5 Annual information statement

- (1) An \*IMR foreign fund in relation to an income year must give the Commissioner a statement for that year in relation the fund.

Note: Section 286-75 provides an administrative penalty for breach of this subsection.

- (2) A statement under subsection (1) must be in the \*approved form.

- (3) The statement must be given to the Commissioner no later than 3 months after the end of the income year.

Note: Section 388-55 allows the Commissioner to defer the time for giving an approved form.

- (4) The \*approved form may require the statement to contain the following information:

(a) the name and address of the fund;

(b) either:

(i) the country of which the fund is a resident throughout the income year; or

(ii) if subparagraph (i) does not apply—each country of which the fund is a resident at any time in the income year; and

(c) other information that is relevant to:

(i) the fund's status as an \*IMR foreign fund in relation to that income year; and

(ii) the application of Subdivision 842-I of the *Income Tax Assessment Act 1997* to the fund.

- (5) Subsection (4) does not limit the information that the \*approved form may require the statement to contain.

### 395-10 Notification to foreign resident beneficiaries and foreign resident partners

- (1) This section applies if an \*IMR foreign fund in relation to an income year is a trust or partnership.

- (2) The fund must give a written notice containing the information specified in subsection (6) in respect of the income year to an entity if the entity is covered by subsection (4).

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- 1 (3) Treat the fund as having given that written notice to the entity  
2 covered by subsection (4) if the fund makes that information  
3 available on a website in a way that it is readily accessible to that  
4 entity until the end of the last day on which the Commissioner  
5 could amend an assessment of an entity because of the operation of  
6 section 842-275 of the *Income Tax Assessment Act 1997*.
- 7 (4) An entity is covered by this subsection if it is:  
8 (a) if the fund is a trust—a beneficiary of the fund to which  
9 section 842-215 of the *Income Tax Assessment Act 1997*  
10 applies; or  
11 (b) if the fund is a partnership—a partner of the fund to which  
12 section 842-220 of the *Income Tax Assessment Act 1997*  
13 applies.
- 14 (5) The fund must comply with subsection (2) no later than the time at  
15 which it must give a statement under section 395-5 to the  
16 Commissioner for the income year.
- 17 (6) The information in respect of the income year is information that is  
18 relevant to the fund’s status as an \*IMR foreign fund in relation  
19 that income year
- 20 Note: Failure to give the notice or make the details available as required by  
21 this section incurs an administrative penalty: see section 286-75(2BB).

## 22 **395-15 Non-complying entity taken to be IMR foreign fund for the** 23 **purposes of this Division**

24 For the purposes of this Division, in determining whether an entity  
25 is an \*IMR foreign fund in relation to an income year, disregard  
26 paragraph 842-230(d) of the *Income Tax Assessment Act 1997*.