

EXPOSURE-DRAFT

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Inserts for
**Tax Laws Amendment (2012 Measures
No. 4) Bill 2012: FIN 48**

EXPOSURE-DRAFT (06/03/2012)

Commencement information

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

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Schedule—Investment manager regime

Income Tax (Transitional Provisions) Act 1997

1 After Division 840

Insert:

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

Subdivision 842-I—Investment manager regime

842-205 Commissioner to disregard certain amounts in respect of IMR foreign funds

- (1) This section applies to an IMR foreign fund that is a corporate tax entity in relation to an income year.
- (2) Subsections (3) and (4) apply in relation to an income year of the entity if:
 - (a) the income year is the 2010-11 income year or an earlier income year; and
 - (b) the IMR foreign fund has IMR income, an IMR deduction, an IMR capital gain or an IMR capital loss in relation to the 2010-11 income year or an earlier income year; and
 - (c) the fund has not lodged an income tax return in relation to the 2010-11 income year, or an earlier income year, before the day this Subdivision commences; and
 - (d) the Commissioner did not, before 18 December 2010, make an assessment of the taxable income of the fund for any income year.

Note: For the purpose of this Act, IMR income is defined in section 842-220, IMR capital gain is defined in section 842-225 and IMR capital loss is defined in section 842-230. IMR deduction has the meaning given to that term in subsection 842-235(2) of the *Income Tax Assessment Act 1997*.

Certain amounts disregarded

- (3) In working out the IMR foreign fund's taxable income, tax loss or net capital loss for the income year apply the following rules:

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- 1 (a) treat the fund's IMR income for the income year as
2 non-assessable non-exempt income of the fund;
3 (b) disregard the fund's IMR deduction for the income year;
4 (c) disregard the fund's IMR capital gain for the income year;
5 (d) disregard the fund's IMR capital loss for the income year.

6 *Certain losses disregarded*

- 7 (4) The IMR foreign fund cannot utilise a tax loss or net capital loss in
8 any future income year to the extent the loss is attributable to IMR
9 income, an IMR capital gain, an IMR deduction or an IMR capital
10 loss of the entity.

11 *Fraud*

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

14 *Audit or compliance review*

- 15 (6) Subsection (3) does not apply if before 18 December 2010 the
16 Commissioner notified the IMR foreign fund that an audit or
17 compliance review would be undertaken.

18 **842-213 Treatment of non-resident beneficiary that is not a trust or**
19 **partnership**

- 20 (1) This section applies in relation to an income year if:
21 (a) an entity is a beneficiary of a trust in relation to the income
22 year; and
23 (b) the entity is neither:
24 (i) a resident of Australia at any time during the income
25 year; nor
26 (ii) a trust or partnership at any time during the income
27 year; and
28 (c) the income year is the 2010-11 income year or an earlier
29 income year; and
30 (d) the entity has not lodged an income tax return in relation to
31 the 2010-11 income year, or an earlier income year, before
32 the day this Subdivision commences; and
33 (e) the Commissioner did not, before 18 December 2010, make
34 an assessment of the taxable income of the entity for any
35 income year.

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Note: A trust that is an IMR foreign fund is subject to the general tax rules that apply to trusts: see Division 6 of Part III of the *Income Tax Assessment Act 1936*.

- (2) In working out the entity's taxable income, tax loss or net capital loss for the income year:
- (a) calculate the trust's non-IMR net income in relation to the income year; and
 - (b) for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936*, replace the entity's share of the trust's net income in relation to the income year with that same share of the non-IMR net income of the trust for the income year; and
 - (c) for the purposes of subsection 98A(1) of that Act, replace the reference to the individual interest of the beneficiary in the net income of the trust with a reference to the individual interest of the beneficiary in the non-IMR net income of the trust.

Non-IMR net income

- (3) The trust's ***non-IMR net income*** in relation to the income year is determined by calculating the net income of the trust for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936* on the following assumptions:
- (a) disregard IMR income, IMR capital gains, IMR deductions and IMR capital losses of the trust in relation to the income year;
 - (b) if the trust is a partner in a partnership, or a beneficiary of another trust—assume that:
 - (i) its individual interest in the net income or partnership loss of the partnership (if any) is replaced with its individual interest in the non-IMR partnership net income or non-IMR partnership loss of the partnership; and
 - (ii) disregard the trust's capital gains and capital losses made in respect of financial arrangements covered by section 842-245 of the *Income Tax Assessment Act 1997* of an IMR foreign fund; and
 - (iii) its share of the net income of the trust (if any) is replaced with its share of the non-IMR net income of the trust.

Note: The non-IMR net income of the trust is used to determine the amount that is included in the assessable income of the entity referred to in

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1 subsection (1). The trust's non-IMR net income does not impact the
2 share of the net income of an entity that is not covered by
3 subsection (1). For example, this will be the case if the entity is an
4 Australian resident at any time in the income year.

5 *Fraud*

- 6 (4) Subsection (2) does not apply if the Commissioner is of the
7 opinion there has been fraud by the entity or the IMR foreign fund.

8 *Audit or compliance review*

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

12 **842-216 Treatment of a non-resident partner that is not a trust or** 13 **partnership**

- 14 (1) This section applies in relation to an income year if:
15 (a) an entity is a partner in a partnership in relation to the income
16 year; and
17 (b) the entity is neither:
18 (i) an Australian resident at any time during the income
19 year; nor
20 (ii) a trust or a partnership at any time during the income
21 year; and
22 (c) the income year is the 2010-11 income year or an earlier
23 income year; and
24 (d) the entity has not lodged an income tax return in relation to
25 the 2010-11 income year, or an earlier income year, before
26 the day this Subdivision commences; and
27 (e) the Commissioner did not, before 18 December 2010, make
28 an assessment of the taxable income of the entity for any
29 income year.

30 Note: A partnership that is an IMR foreign fund is subject to the general tax
31 rules that apply to partnerships: see Division 5 of Part III of the
32 *Income Tax Assessment Act 1936*.

- 33 (2) In working out the entity's taxable income, tax loss or net capital
34 loss for the income year:
35 (a) calculate the partnership's non-IMR partnership net income
36 or non-IMR partnership loss in relation to the income year;
37 and

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- 1 (b) for the purposes of Division 5 of Part III of the *Income Tax*
2 *Assessment Act 1936*, replace the entity's individual interest
3 in the partnership's net income or partnership loss (as the
4 case may be) with that same interest in the non-IMR
5 partnership net income or non-IMR partnership loss of the
6 partnership (as the case may be); and
7 (c) disregard the entity's capital gains and capital losses made in
8 respect of financial arrangements covered by section 842-245
9 of the *Income Tax Assessment Act 1997* of an IMR foreign
10 fund.

11 *Non-IMR partnership net income and non-IMR partnership loss*

- 12 (3) The partnership's ***non-IMR partnership net income or non-IMR***
13 ***partnership loss*** in relation to the income year is determined by
14 calculating the net income or partnership loss of the partnership for
15 the purposes of Division 5 of Part III of the *Income Tax Assessment*
16 *Act 1936* as follows:
17 (a) disregard *IMR income and *IMR deductions of the
18 partnership in relation to the income year;
19 (b) if the partnership is a partner in another partnership, or a
20 beneficiary of a trust—assume that:
21 (i) its individual interest in the net income or partnership
22 loss of the partnership (if any) is replaced with its
23 individual interest in the non-IMR partnership net
24 income or non-IMR partnership loss of the partnership;
25 (ii) disregard the partner's capital gains and capital losses
26 made in respect of financial arrangements covered by
27 section 842-245 of the *Income Tax Assessment Act 1997*
28 of an IMR foreign fund; and
29 (iii) its share of the net income of the trust (if any) is
30 replaced with its share of the non-IMR net income of
31 the trust.

32 Note: The non-IMR partnership net income of the partnership is used to
33 determine the amount that is included in the assessable income of the
34 entity referred to in subsection (1). The partnership's non-IMR net
35 income does not impact an entity's individual interest in the net
36 income of a partnership if the entity is not covered by subsection (1).
37 For example, this will be the case if the entity is an Australian resident
38 at any time in the income year.

39 *Fraud*

- 40 (4) Subsection (2) does not apply if the Commissioner is of the
41 opinion there has been fraud by the entity or the IMR foreign fund.

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Audit or compliance review

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

842-220 IMR income

The *IMR income* of an IMR foreign fund for an income year is the amount of the fund's assessable income for the income year to the extent that it is attributable to a return or gain from a financial arrangement covered by section 842-245 of the *Income Tax Assessment Act 1997*.

842-225 IMR capital gain

The *IMR capital gain* of an IMR foreign fund for an income year is the sum of the fund's capital gains made in the income year in respect of a CGT asset that is a financial arrangement covered by section 842-245 of the *Income Tax Assessment Act 1997*.

842-230 IMR capital loss

The *IMR capital loss* of an IMR foreign fund for an income year is the sum of the fund's capital losses made in the income year in respect of a CGT asset that is a financial arrangement covered by section 842-245 of the *Income Tax Assessment Act 1997*.

Note: Provisions will be drafted to ensure that a trust that has a tax loss in respect of its non-IMR net income will only be able to claim a deduction in future years in respect of that loss to the extent that the loss offsets other non-IMR net income.

Note: Provisions will be drafted to ensure that subsections 98(2A), (3) and (4), and sections 99, 99A and 99E of Part III of the Income Tax Assessment Act 1936 do not give rise to tax in respect of IMR income or IMR capital gains.

Note: These provisions will be redrafted to ensure that this Subdivision interacts correctly with Division 6E of Part III of the Income Tax Assessment Act 1936 which deals with assessable amounts in relation to capital gains, franked distributions and franking credits.