

EXPOSURE DRAFT

EXPOSURE DRAFT

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Inserts for

Treasury Laws Amendment (Housing Tax Integrity) Bill 2017: Limiting deductions for plant and equipment in residential premises and travel expenditure for residential rental property

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Schedule 1	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	
2. Schedule 2	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	

EXPOSURE DRAFT

Schedule 1—Travel expenditure for residential rental property

Income Tax Assessment Act 1997

1 Section 12-5 (table item headed “travel expenses”)

Omit:

see also *substantiation*

substitute:

travel related to the use of residential premises as

residential accommodation 26-31

see also *substantiation*

2 After section 26-30

Insert:

26-31 Travel related to use of residential premises as residential accommodation

(1) You cannot deduct under this Act a loss or outgoing you incur, insofar as it is attributable to travel, if:

(a) it is incurred in gaining or producing your assessable income from the use of *residential premises as residential accommodation; and

(b) it is not necessarily incurred in carrying on a *business for the purpose of gaining or producing your assessable income.

Exception—kind of entity

(2) Subsection (1) does not stop you deducting a loss or outgoing if, at any time during the income year in which the loss or outgoing is incurred, you are:

(a) a *corporate tax entity; or

(b) a *superannuation plan that is not a *self managed superannuation fund; or

(c) a unit trust that has at least 300 unit holders and is not a trust that is covered by section 116-35 (about trusts that are not widely held).

EXPOSURE DRAFT

1 **3 After subsection 110-38(4)**

2 Insert:

3 (4A) Expenditure does *not* form part of any element of the *cost base* to
4 the extent that section 26-31 prevents it being deducted.

5 Note: Section 26-31 denies deductions for travel related to the use of
6 residential premises as residential accommodation.

7 **4 After subsection 110-55(9H)**

8 Insert:

9 (9J) Expenditure does *not* form part of the *reduced cost base* to the
10 extent that section 26-31 prevents it being deducted.

11 Note: Section 26-31 denies deductions for travel related to the use of
12 residential premises as residential accommodation.

13 **5 Application**

14 The amendments made by this Schedule apply to a loss or outgoing
15 incurred on or after 1 July 2017.

EXPOSURE DRAFT

Schedule 2— Limiting deductions for plant and equipment in residential premises

Income Tax Assessment Act 1997

1 Section 12-5 (table item headed “capital allowances”)

Omit:

reducing deductions 40-25, 40-290

substitute:

reducing deductions 40-25, 40-27, 40-290
and 40-291

2 After subsection 25-47(4)

Insert:

(4A) You must further reduce the amount you can deduct under this section if your deductions for the asset have been reduced under section 40-27 (about second-hand assets in residential property). The reduction is by the same proportion you reduce the balancing adjustment amount for the asset under section 40-291.

3 At the end of subsection 40-25(2)

Add:

Note: You may have to make a further reduction under subsections (3) and (4) or section 40-27.

4 After section 40-25

Insert:

40-27 Further reduction of deduction for second-hand assets in residential property

- (1) In addition to subsections 40-25(2) to (4), you may have to further reduce your deduction for a *depreciating asset for the income year.
- (2) Reduce your deduction by any part of the asset’s decline in value that is attributable to your use of it, or your having it *installed ready for use, for the *purpose of producing assessable income:

EXPOSURE DRAFT

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- 1 (a) from the use of *residential premises to provide residential
2 accommodation; but
3 (b) not in the course of carrying on a *business;
4 if:
5 (c) you did not *hold the asset when it was first used, or first
6 installed ready for use, (other than as trading stock) by any
7 entity; or
8 (d) in an earlier income year, you used the asset, or had it
9 installed ready for use, wholly for purposes that were not
10 *taxable purposes.

11 Note: Your deduction could be reduced to nil if the purpose to which
12 paragraphs (a) and (b) relate is your only taxable purpose for using the
13 asset or having the asset installed ready for use.

14 *Exception—kind of entity*

- 15 (3) Subsection (2) does not apply to you if, at any time during the
16 income year, you are:
17 (a) a *corporate tax entity; or
18 (b) a *superannuation plan that is not a *self managed
19 superannuation fund; or
20 (c) a unit trust that has at least 300 unit holders and is not a trust
21 that is covered by section 116-35 (about trusts that are not
22 widely held).

23 *Exception—certain assets in new residential premises*

- 24 (4) Subsection (2) does not apply to you if:
25 (a) when you first *hold the asset:
26 (i) the asset is used, or *installed ready for use, in the
27 *residential premises; and
28 (ii) the residential premises are new residential premises
29 (within the meaning of the *GST Act); and
30 (b) at all earlier times when the asset was used, or installed ready
31 for use, in residential premises, no entity was residing in
32 those premises; and
33 (c) no amount can be deducted under this Division, or under
34 Subdivision 328-D, for the asset for any income year by any
35 previous holder of the asset.

EXPOSURE DRAFT

1 *Exception—low-value pools*

2 (5) Subsection (2) does not apply to *depreciating assets allocated to a
3 low-value pool.

4 Note: See Subdivision 40-E for low-value pools.

5 **5 After section 40-290**

6 Insert:

7 **40-291 Reduction for second-hand assets used in residential** 8 **property**

9 (1) In addition to section 40-290, you must reduce the amount (the
10 ***balancing adjustment amount***) included in your assessable
11 income, or that you can deduct, under section 40-285 for a
12 *depreciating asset if your deductions for the asset have been
13 reduced under section 40-27.

14 (2) The reduction is the following, as increased under subsection (3) if
15 applicable:

$$16 \frac{\text{Sum of section 40-27 reductions}}{\text{Total decline}} \times \text{Balancing adjustment amount}$$

17 where:

18 ***sum of section 40-27 reductions*** is the sum of:

- 19 (a) the reductions in your deductions for the asset under
20 section 40-27; and
21 (b) if there has been roll-over relief for the asset under
22 section 40-340—the reductions in deductions for the asset for
23 the transferor or an earlier successive transferor under
24 section 40-27; and
25 (c) if you *hold the asset as the *legal personal representative of
26 an individual—the reductions in deductions for the asset for
27 the individual under section 40-27.

28 ***total decline*** is the sum of:

- 29 (a) the decline in value of the *depreciating asset since you
30 started to *hold it; and
31 (b) if there has been roll-over relief for the asset under
32 section 40-340—the decline in value of the asset for the
33 transferor or an earlier successive transferor; and

EXPOSURE DRAFT

1 (c) if you hold the asset as the *legal personal representative of
2 an individual—the decline in value of the asset for the
3 individual.

4 (3) If:

5 (a) the *cost (for you) of the asset (the *current asset*) was
6 worked out under section 40-205 (Cost of a split depreciating
7 asset) or 40-210 (Cost of merged depreciating assets); and

8 (b) you used the *depreciating asset from which the current asset
9 was split, or a depreciating asset that was merged into the
10 current asset, or had it *installed ready for use, for the
11 purpose to which paragraphs 40-27(2)(a) and (b) relate;

12 the reduction includes an increase equal to such amount as is
13 reasonable having regard to the extent of the use referred to in
14 paragraph (b) of this subsection.

15 **6 Section 40-435**

16 Before “When”, insert “(1)”.

17 **7 At the end of section 40-435**

18 Add:

19 (2) For the purposes of subsection (1), disregard a *taxable purpose
20 that is the *purpose of producing assessable income:

21 (a) from the use of *residential premises to provide residential
22 accommodation; but

23 (b) not in the course of carrying on a *business;

24 if, apart from subsections 40-25(5) and 40-27(5), section 40-27
25 would reduce your deductions under subsection 40-25(1) for the
26 asset.

27 **8 Paragraph 104-235(1)(b)**

28 Repeal the paragraph, substitute:

29 (b) at some time when you held the asset, you used it, or had it
30 *installed ready for use, for:

31 (i) a purpose other than a *taxable purpose; or

32 (ii) the purpose to which paragraphs 40-27(2)(a) and (b)
33 relate (about second-hand assets in residential property).

EXPOSURE DRAFT

1 **9 Subsection 104-240(1) (paragraph (a) of the definition of**
2 ***sum of reductions*)**

3 Omit “section 40-25”, substitute “sections 40-25 and 40-27”.

4 **10 Paragraph 250-290(2)(c)**

5 After “40-290,”, insert “40-291,”.

6 **11 After subsection 328-175(9)**

7 Insert:

8 *Exception: second-hand assets used in residential property*

9 (9A) You cannot deduct amounts for a *depreciating asset under this
10 Subdivision to the extent that section 40-27 prevents you from
11 deducting amounts under subsection 40-25(1) for the asset.

12 **12 Application of amendments**

13 (1) The amendments made by this Schedule apply to an entity, for income
14 years commencing on or after 1 July 2017, for assets:

- 15 (a) acquired by the entity under contracts entered into; or
16 (b) otherwise acquired by the entity;

17 at or after 7.30 pm, by legal time in the Australian Capital Territory, on
18 9 May 2017.

19 (2) The amendments made by this Schedule also apply to the entity, for
20 income years commencing on or after 1 July 2017, for any other asset
21 acquired by the entity, if:

- 22 (a) the asset’s start time is during the income year that includes
23 9 May 2017 or during an earlier income year; and
24 (b) no amount can be deducted under Division 40, or
25 Subdivision 328-D, of the *Income Tax Assessment Act 1997*
26 by the entity for the asset for the income year that includes
27 9 May 2017.

28