

# EXPOSURE DRAFT

2016-2017-2018

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT
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## **Treasury Laws Amendment (Making Sure Foreign Investors Pay Their Fair Share of Tax and Other Measures) Bill 2018**

**No.     , 2018**

*(Treasury)*

**A Bill for an Act to amend the law relating to  
taxation, and for related purposes**

**EXPOSURE DRAFT**



# EXPOSURE DRAFT

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## Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedules.....	2
<b>Schedule 1—Non-concessional MIT income</b>		<b>3</b>
Part 1—Main amendments		3
	<i>Income Tax Assessment Act 1997</i>	3
	<i>Taxation Administration Act 1953</i>	4
Part 2—Definitions		16
	<i>Income Tax Assessment Act 1997</i>	16
Part 3—Application and transitional provisions		18
<b>Schedule 2—Thin capitalisation</b>		<b>25</b>
	<i>Income Tax Assessment Act 1997</i>	25
<b>Schedule 3—Superannuation funds for foreign residents withholding tax exemption</b>		<b>27</b>
Part 1—Amendments		27
	<i>Income Tax Assessment Act 1936</i>	27
Part 2—Application provisions		29
<b>Schedule 4—Sovereign immunity</b>		<b>30</b>
Part 1—Amendments		30
	<i>Income Tax Assessment Act 1936</i>	30
	<i>Income Tax Assessment Act 1997</i>	30
Part 2—Application and transitional provisions		39
Part 3—Definitions		42
	<i>Income Tax Assessment Act 1997</i>	42





# EXPOSURE DRAFT

1 column 2 of the table. Any other statement in column 2 has effect  
2 according to its terms.

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## Commencement information

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Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedules 1 to 4	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	

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4 Note: This table relates only to the provisions of this Act as originally  
5 enacted. It will not be amended to deal with any later amendments of  
6 this Act.

7 (2) Any information in column 3 of the table is not part of this Act.  
8 Information may be inserted in this column, or information in it  
9 may be edited, in any published version of this Act.

## 3 Schedules

11 Legislation that is specified in a Schedule to this Act is amended or  
12 repealed as set out in the applicable items in the Schedule  
13 concerned, and any other item in a Schedule to this Act has effect  
14 according to its terms.

# EXPOSURE DRAFT

Non-concessional MIT income **Schedule 1**  
Main amendments **Part 1**

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## 1 **Schedule 1—Non-concessional MIT income**

### 2 **Part 1—Main amendments**

#### 3 *Income Tax Assessment Act 1997*

#### 4 **1 At the end of Division 25**

5 Add:

#### 6 **25-115 Deduction for payment of rent from land investment by** 7 **operating entity to asset entity in relation to approved** 8 **economic infrastructure facility**

- 9 (1) An entity that is an \*operating entity in relation to a \*cross staple  
10 arrangement can deduct an amount, for an income year, of \*rent  
11 from land investment if:
- 12 (a) another entity derives or receives the amount from the  
13 operating entity:
    - 14 (i) in the income year; and
    - 15 (ii) on or after 27 March 2018; and
  - 16 (b) the cross staple arrangement was entered into in relation to an  
17 asset that is part of a facility that is covered by  
18 section 12-450 in Schedule 1 to the *Taxation Administration*  
19 *Act 1953* throughout the income year; and
  - 20 (c) the amount is attributable to the asset; and
  - 21 (d) the other entity is an \*asset entity in relation to the cross  
22 staple arrangement; and
  - 23 (e) apart from this subsection, the operating entity could  
24 otherwise deduct the amount under section 8-1 of the *Income*  
25 *Tax Assessment Act 1997*; and
  - 26 (f) each entity that is a \*stapled entity in relation to the cross  
27 staple arrangement has made a choice in accordance with  
28 subsection (2).
- 29 (2) An entity makes a choice in accordance with this subsection if:
- 30 (a) the entity makes the choice in the approved form; and
  - 31 (b) the entity makes the choice before:
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# EXPOSURE DRAFT

## Schedule 1 Non-concessional MIT income

### Part 1 Main amendments

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- 1 (i) the start of the income year in which the asset is first put  
2 to use; or  
3 (ii) a later time allowed by the Commissioner; and  
4 (c) the entity gives the choice to the Commissioner within 60  
5 days after the entity makes the choice.
- 6 (3) The choice cannot be revoked.

### 7 *Taxation Administration Act 1953*

#### 8 **2 Paragraph 12-385(3)(a) in Schedule 1**

9 Repeal the paragraph, substitute:

- 10 (a) if the address or place for payment of the recipient is in an  
11 \*information exchange country:  
12 (i) 15% for \*fund payments (except to the extent mentioned  
13 in subparagraph (ii) or (iii)); or  
14 (ii) 10% for fund payments, to the extent that they are, or  
15 are attributable to, fund payments from a \*clean building  
16 managed investment trust (except to the extent  
17 mentioned in subparagraph (iii)); or  
18 (iii) the highest corporate tax rate for fund payments, to the  
19 extent that they are attributable to \*non-concessional  
20 MIT income (see section 12-435); or

#### 21 **3 Paragraph 12-390(3)(a) in Schedule 1**

22 Repeal the paragraph, substitute:

- 23 (a) if the address or place for payment of the recipient is in an  
24 \*information exchange country:  
25 (i) 15% for \*fund payments (except to the extent mentioned  
26 in subparagraph (ii) or (iii)); or  
27 (ii) 10% for fund payments, to the extent that they are, or  
28 are attributable to, fund payments from a \*clean building  
29 managed investment trust (except to the extent  
30 mentioned in subparagraph (ii)); or  
31 (iii) the highest corporate tax rate for fund payments, to the  
32 extent that they are attributable to \*non-concessional  
33 MIT income (see section 12-435); or



# EXPOSURE DRAFT

Non-concessional MIT income **Schedule 1**  
Main amendments **Part 1**

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## 4 Paragraph 12-390(6)(a) in Schedule 1

Repeal the paragraph, substitute:

- (a) if the recipient is a resident of an \*information exchange country:
  - (i) 15% for \*fund payments (except to the extent mentioned in subparagraph (ii) or (iii)); or
  - (ii) 10% for fund payments, to the extent that they are, or are attributable to, fund payments from a \*clean building managed investment trust (except to the extent mentioned in subparagraph (iii)); or
  - (iii) the highest corporate tax rate for fund payments, to the extent that they are attributable to \*non-concessional MIT income (see section 12-435); or

## 5 After paragraph 12-395(3)(aa) in Schedule 1

Insert:

- (ab) must specify the extent (if any) to which the payment is, or is attributable to, \*non-concessional MIT income (see section 12-435); and

## 6 After paragraph 12-395(6)(aa) in Schedule 1

Insert:

- (ab) must specify the extent (if any) to which the payment is, or is attributable to, \*non-concessional MIT income (see section 12-435); and

## 7 At the end of Subdivision 12-H of Part 2-5 in Schedule 1

Add:

### 12-435 Meaning of *non-concessional MIT income*

Non-concessional MIT income means any of the following:

- (a) \*MIT cross staple arrangement income;
- (b) \*MIT trading trust income;
- (c) \*MIT agricultural income;
- (d) \*MIT residential housing income.

# EXPOSURE DRAFT

## Schedule 1 Non-concessional MIT income

### Part 1 Main amendments

---

#### 12-440 Meaning of *MIT cross staple arrangement income*

- 1
- 2 (1) This section applies if:
- 3 (a) an amount is included in the assessable income for an income
- 4 year of a \*managed investment trust in relation to the income
- 5 year (worked out for the purposes of determining the trust's
- 6 \*net income for the income year, or in the case of an \*AMIT,
- 7 the trust's total assessable income for the income year); and
- 8 (b) that amount is, or is attributable to, an amount derived,
- 9 received or made from another entity (the *second entity*); and
- 10 (c) that amount is *not* an amount mentioned in
- 11 paragraph 12-405(1)(a), (b), (c), (d) or (e).
- 12 (2) The amount is *MIT cross staple arrangement income* of the
- 13 \*managed investment trust if:
- 14 (a) either:
- 15 (i) the \*managed investment trust is an \*asset entity in
- 16 relation to the income year and is a \*stapled entity in
- 17 relation to a \*cross staple arrangement; or
- 18 (ii) the second entity is an asset entity in relation to the
- 19 income year and is a stapled entity in relation to a cross
- 20 staple arrangement; and
- 21 (b) either:
- 22 (i) if subparagraph (a)(i) applies—the second entity is an
- 23 \*operating entity in relation to the income year and is a
- 24 stapled entity in relation to the cross staple arrangement;
- 25 or
- 26 (ii) if subparagraph (a)(ii) applies—another entity (the *third*
- 27 *entity*) is an operating entity in relation to the income
- 28 year and is a stapled entity in relation to the cross staple
- 29 arrangement; and
- 30 (c) either:
- 31 (i) if subparagraph (a)(i) applies—the amount is derived,
- 32 received or made by the managed investment trust from
- 33 the second entity; or
- 34 (ii) if subparagraph (a)(ii) applies—the amount is
- 35 attributable to an amount derived, received or made by
- 36 the second entity from the third entity.
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# EXPOSURE DRAFT

Non-concessional MIT income **Schedule 1**  
Main amendments **Part 1**

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- 1 (3) The amount is *not MIT cross staple arrangement income* of the  
2 \*managed investment trust under subsection (2) to the extent that it  
3 is attributable to an amount that satisfies the following  
4 requirements:
- 5 (a) the amount is derived, received or made by a \*stapled entity  
6 in relation to the \*cross staple arrangement from an entity that  
7 is not a stapled entity in relation to the cross staple  
8 arrangement; and
- 9 (b) the amount mentioned in paragraph (a) is \*rent from land  
10 investment.
- 11 (4) The amount is *not MIT cross staple arrangement income* of the  
12 \*managed investment trust under subsection (2) if:
- 13 (a) if subparagraph (2)(a)(i) applies—subsection 12-445(1)  
14 applies for the income year to the managed investment trust;  
15 or
- 16 (b) if subparagraph (2)(a)(ii) applies—subsection 12-445(5)  
17 applies for the income year to the second entity mentioned in  
18 that subparagraph.
- 19 (5) The amount is *not MIT cross staple arrangement income* of the  
20 \*managed investment trust under subsection (2) to the extent that it  
21 is, or is attributable to, \*rent from land investment that is  
22 attributable to an asset (whether or not held by the managed  
23 investment trust) that is part of a facility covered by section 12-450  
24 throughout the income year.
- 25 (6) The amount is *not MIT cross staple arrangement income* of the  
26 \*managed investment trust under subsection (2) to the extent that it  
27 is, or is attributable to, \*MIT trading trust income of the managed  
28 investment trust.
- 29 (7) Subsection (8) applies if:
- 30 (a) an \*asset entity in relation to an income year (the *relevant*  
31 *year*) that is the income year mentioned in paragraph (1)(a)  
32 makes a \*capital gain because an \*operating entity in relation  
33 to the relevant year \*acquires an asset from the asset entity;  
34 and

# EXPOSURE DRAFT

## Schedule 1 Non-concessional MIT income

### Part 1 Main amendments

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1 (b) the asset entity and the operating entity are \*stapled entities in  
2 relation to the \*cross staple arrangement.

3 (8) The amount is *not MIT cross staple arrangement income* of the  
4 \*managed investment trust under subsection (2) to the extent that it  
5 is attributable to the \*capital gain.

#### 6 **12-445 MIT cross staple arrangement income—de minimis** 7 **exception**

8 (1) For the purposes of subparagraph 12-440(4)(a), this subsection  
9 applies for the income year to the \*managed investment trust if the  
10 \*MIT cross staple arrangement income of the managed investment  
11 trust for the previous income year does not exceed 5% of the  
12 amount mentioned in subsection (2).

13 (2) For the purposes of subsection (1), in working out the \*MIT cross  
14 staple arrangement income of the managed investment trust for the  
15 previous income year, disregard subsections 12-440(4) and (5).

16 (3) The amount is:

17 (a) if the \*managed investment trust is not an \*AMIT for the  
18 income year—the assessable income of the managed  
19 investment trust for the previous income year (worked out for  
20 the purposes of determining the \*net income of the managed  
21 investment trust for the income year); or

22 (b) where the managed investment trust is an AMIT for the  
23 income year—the total assessable income (as mentioned in  
24 subsection 276-265(2) of the *Income Tax Assessment Act*  
25 *1997*) of the managed investment trust for the previous  
26 income year.

27 (4) For the purposes of subsection (3), in working out the assessable  
28 income, or the total assessable income, of the \*managed investment  
29 trust for the previous income year, disregard any \*net capital gain  
30 of the managed investment trust for that year.

31 (5) For the purposes of paragraph 12-440(4)(b), this subsection applies  
32 for the income year to the second entity mentioned in that  
33 paragraph if, assuming that the second entity were a \*managed

# EXPOSURE DRAFT

Non-concessional MIT income **Schedule 1**  
Main amendments **Part 1**

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- 1 investment trust, the requirements in subsection (1) would be  
2 satisfied in relation to it.
- 3 (6) Subsection (7) applies if:
- 4 (a) a trust is a \*managed investment trust in relation to an income  
5 year; and
- 6 (b) the trust was not a managed investment trust in relation to the  
7 previous income year, or did not exist in the previous income  
8 year.
- 9 (7) For the purposes of this section (other than subsection (6)):
- 10 (a) treat references in this section to the previous income year as  
11 instead being references to the income year; and
- 12 (b) treat references in this section to the MIT cross staple  
13 arrangement income of the managed investment trust as  
14 instead being references to a reasonable estimate of the MIT  
15 cross staple arrangement income of the managed investment  
16 trust; and
- 17 (c) treat references in this section to the assessable income of the  
18 managed investment trust as instead being references to a  
19 reasonable estimate of the assessable income of the managed  
20 investment trust; and
- 21 (d) treat references in this section to the total assessable income  
22 of the managed investment trust as instead being references  
23 to a reasonable estimate of the total assessable income of the  
24 managed investment trust.

## 25 **12-450 MIT cross staple arrangement income—approved economic** 26 **infrastructure facility exception**

- 27 (1) This section covers a facility at a time if:
- 28 (a) the facility is covered by an approval of the Treasurer under  
29 this section that is in force at that time; and
- 30 (b) that time is no later than the end of the period of 15 years  
31 beginning on the day on which an asset that is part of the  
32 facility is first put to use.

**EXPOSURE DRAFT**

# EXPOSURE DRAFT

## Schedule 1 Non-concessional MIT income

### Part 1 Main amendments

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- 1 (2) An \*Australian government agency (other than the  
2 Commonwealth) may make an application to the Treasurer in  
3 respect of a facility specified in the application.
- 4 (3) The Treasurer may approve the facility specified in an application  
5 under subsection (2) if the Treasurer is satisfied that the following  
6 criteria are met:
- 7 (a) the facility is an \*economic infrastructure facility;
  - 8 (b) the estimated capital expenditure on the facility is \$500  
9 million or more;
  - 10 (c) the facility is yet to be constructed, or the facility is an  
11 existing facility that will be substantially improved;
  - 12 (d) the facility will significantly enhance the long-term  
13 productive capacity of the economy;
  - 14 (e) approving the facility is in the national interest.
- 15 (4) An *economic infrastructure facility* is a facility that is any of the  
16 following:
- 17 (a) transport infrastructure;
  - 18 (b) energy infrastructure;
  - 19 (c) communications infrastructure;
  - 20 (d) water infrastructure.
- 21 (5) An approval under subsection (3):
- 22 (a) must be in writing; and
  - 23 (b) must specify the facility that is approved; and
  - 24 (c) must specify the date on which the approval comes into  
25 force; and
  - 26 (d) may contain any other information that the Treasurer  
27 considers appropriate.
- 28 (6) The Treasurer may publish an approval under subsection (3) in any  
29 way that he or she considers appropriate.
- 30 (7) If the Treasurer decides not to approve the facility specified in an  
31 application under subsection (2), the Treasurer must notify the  
32 applicant of the decision, in writing, as soon as practicable after  
33 making the decision.

34 **[Integrity rules to be inserted here]**

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# EXPOSURE DRAFT

Non-concessional MIT income **Schedule 1**  
Main amendments **Part 1**

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1 **12-455 Meaning of *asset entity*, *operating entity*, *cross staple***  
2 ***arrangement* and *stapled entity***

- 3 (1) An ***asset entity*** in relation to an income year is a trust or  
4 partnership that is *not* covered by subsection 275-10(4) of the  
5 *Income Tax Assessment Act 1997* in relation to the income year.
- 6 (2) An ***operating entity*** in relation to an income year is a trust,  
7 partnership or company that is covered by subsection 275-10(4) of  
8 the *Income Tax Assessment Act 1997* in relation to the income year.
- 9 (3) For the purposes of this section, in determining whether a  
10 partnership or company is covered by subsection 275-10(4) of the  
11 *Income Tax Assessment Act 1997*, treat the partnership or company  
12 as a trust.
- 13 (4) A ***cross staple arrangement*** is an \*arrangement that is entered into  
14 by 2 or more entities (the ***arrangement entities***) if:  
15 (a) at least one of the arrangement entities is an asset entity; and  
16 (b) at least one of the arrangement entities is an operating entity;  
17 and  
18 (c) the following conditions are satisfied:  
19 (i) one or more other entities (the ***external entities***) each  
20 hold a \*total participation interest in each arrangement  
21 entity;  
22 (ii) the sum of the total participation interests held by the  
23 external entities in each arrangement entity is 80% or  
24 more.
- 25 (5) For the purposes of subparagraph (4)(c)(ii), in working out the sum  
26 of the \*total participation interests held by the external entities in  
27 each arrangement entity, take into account:  
28 (a) a particular \*direct participation interest; or  
29 (b) a particular \*indirect participation interest;  
30 held in the arrangement entity only once if it would otherwise be  
31 counted more than once.
- 32 (6) Subsection (7) applies if:

# EXPOSURE DRAFT

## Schedule 1 Non-concessional MIT income

### Part 1 Main amendments

---

- 1 (a) an external entity holds \*total participation interests in two or  
2 more arrangement entities; and  
3 (b) either:  
4 (i) the amount (the *lowest participation interest amount*)  
5 of one of those participation interests falls short of the  
6 amount of each of the other participation interests; or  
7 (ii) the amount (the *lowest participation interest amount*)  
8 of two or more of those participation interests is equal to  
9 but falls short of the amount of each of the other  
10 participation interests.
- 11 (7) For the purposes of paragraph (4)(c), treat the amount of the \*total  
12 participation interest held by the external entity in each of the  
13 arrangement entities as being equal to the lowest participation  
14 interest amount.
- 15 (8) Each of the entities that entered into the \*cross staple arrangement  
16 is a *stapled entity* in relation to the cross staple arrangement.

#### 17 **12-460 Meaning of MIT trading trust income**

- 18 (1) This section applies if:  
19 (a) an amount is included in the assessable income for an income  
20 year of a \*managed investment trust in relation to the income  
21 year (worked out for the purposes of determining the trust's  
22 \*net income for the income year, or in the case of an \*AMIT,  
23 the trust's total assessable income for the income year); and  
24 (b) that amount is, or is attributable to, an amount derived,  
25 received or made from another entity (the *second entity*); and  
26 (c) that amount is *not* an amount mentioned in  
27 paragraph 12-405(1)(a), (b), (c), (d) or (e).
- 28 (2) The amount is *MIT trading trust income* of the \*managed  
29 investment trust if:  
30 (a) the managed investment trust holds a \*total participation  
31 interest in the second entity of greater than nil; and  
32 (b) the amount arises because of that total participation interest;  
33 and  
34 (c) the second entity:



# EXPOSURE DRAFT

Non-concessional MIT income **Schedule 1**  
Main amendments **Part 1**

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- 1 (i) is a trading trust for the purposes of Division 6C of  
2 Part III of the *Income Tax Assessment Act 1936* in  
3 relation to the income year; or  
4 (ii) is a partnership or a trust that is not a unit trust, but  
5 would be such a trading trust in relation to the income  
6 year if it were a unit trust throughout the income year;  
7 and  
8 (d) the second entity is not a \*public trading trust in relation to  
9 the income year.

## 10 **12-465 Meaning of *MIT agricultural income***

- 11 (1) This section applies if:  
12 (a) an amount is included in the assessable income for an income  
13 year of a \*managed investment trust in relation to the income  
14 year (worked out for the purposes of determining the trust's  
15 \*net income for the income year, or in the case of an \*AMIT,  
16 the trust's total assessable income for the income year); and  
17 (b) that amount is *not* an amount mentioned in  
18 paragraph 12-405(1)(a), (b), (c), (d) or (e).  
19 (2) The amount is ***MIT agricultural income*** of the \*managed  
20 investment trust to the extent that it is attributable to an asset  
21 (whether or not held by the managed investment trust) that is  
22 \*Australian agricultural land for rent (see subsection (6)).

### 23 *CGT events in relation to membership interests*

- 24 (3) Subsection (4) applies if the amount is, or is attributable to, a  
25 \*capital gain from a \*CGT event in relation to a \*membership  
26 interest in an entity.  
27 (4) For the purposes of subsection (2), treat the \*capital gain as being  
28 attributable to the asset mentioned in subsection (2) only if the  
29 \*membership interest passes the principal asset test in  
30 section 855-30 of the *Income Tax Assessment Act 1997*  
31 immediately before the time the \*CGT event happens.  
32 (5) For the purposes of subsection (4), in determining whether the  
33 \*membership interest passes the principal asset test, treat references

# EXPOSURE DRAFT

## Schedule 1 Non-concessional MIT income

### Part 1 Main amendments

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1 in section 855-30 of that Act to \*taxable Australian real property as  
2 instead being references to an asset that is \*Australian agricultural  
3 land for rent.

- 4 (6) ***Australian agricultural land for rent*** is an asset that is real  
5 property situated in Australia (including a lease of land, if the land  
6 is situated in Australia) if the asset:
- 7 (a) is used, or could reasonably be used, for carrying on a  
8 \*primary production business; and
  - 9 (b) is held primarily for the purposes of deriving or receiving  
10 rent.

#### 11 **12-470 Meaning of *MIT residential housing income***

- 12 (1) This section applies if:
- 13 (a) an amount is included in the assessable income for an income  
14 year of a \*managed investment trust in relation to the income  
15 year (worked out for the purposes of determining the trust's  
16 \*net income for the income year, or in the case of an \*AMIT,  
17 the trust's total assessable income for the income year); and
  - 18 (b) that amount is *not* an amount mentioned in  
19 paragraph 12-405(1)(a), (b), (c), (d) or (e).
- 20 (2) The amount is ***MIT residential housing income*** of the \*managed  
21 investment trust to the extent that it is attributable to an asset  
22 (whether or not held by the managed investment trust) that:
- 23 (a) is a \*dwelling; and
  - 24 (b) is \*taxable Australian real property; and
  - 25 (c) is \*residential premises but not \*commercial residential  
26 premises.

#### 27 *CGT events in relation to membership interests*

- 28 (3) Subsection (4) applies if the amount is, or is attributable to, a  
29 \*capital gain from a \*CGT event in relation to a \*membership  
30 interest in an entity.
- 31 (4) For the purposes of subsection (2), treat the \*capital gain as being  
32 attributable to the asset mentioned in subsection (2) only if the

# EXPOSURE DRAFT

Non-concessional MIT income **Schedule 1**  
Main amendments **Part 1**

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- 1                   \*membership interest passes the principal asset test in  
2                   section 855-30 of the *Income Tax Assessment Act 1997*  
3                   immediately before the time the \*CGT event happens.
- 4                   (5) For the purposes of subsection (4), in determining whether the  
5                   \*membership interest passes the principal asset test, treat references  
6                   in section 855-30 of that Act to \*taxable Australian real property as  
7                   instead being references to an asset that satisfies the requirements  
8                   in paragraphs (2)(a), (b) and (c) of this section.
- 9                   *Asset used to provide affordable housing*
- 10                  (6) The amount is *not MIT residential housing income* of the  
11                  \*managed investment trust under subsection (2) to the extent that it  
12                  is referable to times when the asset mentioned in subsection (2)  
13                  was used to \*provide affordable housing.
- 14                  (7) Subsection (8) applies if the amount is, or is attributable to, a  
15                  \*capital gain from a \*CGT event (whether or not in relation to the  
16                  asset mentioned in subsection (2)).
- 17                  (8) For the purposes of subsection (6), treat the amount as being  
18                  referable to times when the asset mentioned in subsection (2) was  
19                  used to \*provide affordable housing only if the entity that holds  
20                  that asset held it for at least 3,650 days (consecutive or not), each  
21                  of which satisfies the following requirements:  
22                      (a) the day is on or after 1 July 2017 and before the CGT event;  
23                      (b) the asset was used on the day to \*provide affordable housing.

# EXPOSURE DRAFT

Schedule 1 Non-concessional MIT income

Part 2 Definitions

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1 **Part 2—Definitions**

2 ***Income Tax Assessment Act 1997***

3 **8 Subsection 995-1(1)**

4 Insert:

5 ***asset entity*** has the meaning given by section 12-455 in Schedule 1  
6 to the *Taxation Administration Act 1953*.

7 ***Australian agricultural land for rent*** has the meaning given by  
8 section 12-465 in Schedule 1 to the *Taxation Administration Act*  
9 *1953*.

10 ***cross staple arrangement*** has the meaning given by section 12-455  
11 in Schedule 1 to the *Taxation Administration Act 1953*.

12 ***economic infrastructure facility*** has the meaning given by  
13 section 12-450 in Schedule 1 to the *Taxation Administration Act*  
14 *1953*.

15 ***non-concessional MIT income*** has the meaning given by  
16 section 12-440 in Schedule 1 to the *Taxation Administration Act*  
17 *1953*.

18 ***MIT agricultural income*** has the meaning given by section 12-465  
19 in Schedule 1 to the *Taxation Administration Act 1953*.

20 ***MIT cross staple arrangement income*** has the meaning given by  
21 section 12-440 in Schedule 1 to the *Taxation Administration Act*  
22 *1953*.

23 ***MIT residential housing income*** has the meaning given by  
24 section 12-470 in Schedule 1 to the *Taxation Administration Act*  
25 *1953*.

26 ***MIT trading trust income*** has the meaning given by  
27 section 12-460 in Schedule 1 to the *Taxation Administration Act*  
28 *1953*.



# EXPOSURE DRAFT

Schedule 1 Non-concessional MIT income  
Part 3 Application and transitional provisions

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1 **Part 3—Application and transitional provisions**

2 **9 Application**

- 3 (1) The amendments made by this Schedule apply to a fund payment made  
4 by a managed investment trust in relation to an income year if:  
5 (a) the fund payment is made on or after 1 July 2019; and  
6 (b) the income year is the 2019-20 income year or a later income  
7 year.
- 8 (2) To avoid doubt, the amendments made by this Schedule also apply for  
9 the purposes of working out the MIT cross staple arrangement income  
10 of a managed investment trust for a previous income year as mentioned  
11 in section 12-445 in Schedule 1 to the *Tax Administration Act 1953* (as  
12 inserted by this Schedule).
- 13 (3) Despite subitem (1), item 1 of this Schedule (which inserts  
14 section 25-115 into the *Income Tax Assessment Act 1997*) applies in  
15 relation to an amount of rent from land investment that is derived or  
16 received in relation to the 2019-20 income year or a later income year.

17 **10 Transitional—MIT cross staple arrangement income**

- 18 (1) This item applies if:  
19 (a) before 27 March 2018, an Australian government agency:  
20 (i) decided to approve the acquisition or creation of a  
21 facility; and  
22 (ii) publicly announced that decision; and  
23 (iii) took significant preparatory steps to implement that  
24 decision; and  
25 (b) either:  
26 (i) a cross staple arrangement was entered into in relation  
27 to the facility before 27 March 2018; or  
28 (ii) it is reasonable to conclude that a cross staple  
29 arrangement will be entered into in relation to the  
30 facility; and

# EXPOSURE DRAFT

Non-concessional MIT income **Schedule 1**  
Application and transitional provisions **Part 3**

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- 1 (c) all the entities that will be stapled entities in relation to the  
2 cross staple arrangement already exist before 27 March 2018;  
3 and  
4 (d) each entity that is a stapled entity in relation to the cross  
5 staple arrangement, or that will become a stapled entity in  
6 relation to the cross staple arrangement, has made a choice in  
7 accordance with subitem (6).
- 8 (2) This item also applies if:  
9 (a) any of the following applies:  
10 (i) an entity entered into a contract before 27 March 2018  
11 in respect of the acquisition or creation of a facility;  
12 (ii) an entity owns a facility at a time before 27 March  
13 2018; and  
14 (b) either:  
15 (i) a cross staple arrangement was entered into in relation  
16 to the facility before 27 March 2018; or  
17 (ii) it is reasonable to conclude that a cross staple  
18 arrangement will be entered into in relation to the  
19 facility; and  
20 (c) all the entities that will be stapled entities in relation to the  
21 cross staple arrangement already exist before 27 March 2018;  
22 and  
23 (d) each entity that is a stapled entity in relation to the cross  
24 staple arrangement, or that will become a stapled entity in  
25 relation to the cross staple arrangement, has made a choice in  
26 accordance with subitem (6).
- 27 (3) An amount included in the assessable income for an income year of a  
28 managed investment trust is *not* MIT cross staple arrangement income  
29 of the managed investment trust if:  
30 (a) the amount is, or is attributable to, an amount derived,  
31 received or made from another entity (the **second entity**); and  
32 (b) the amount relates to an asset that is part of the facility; and  
33 (c) the second entity is a stapled entity in relation to the cross  
34 staple arrangement; and  
35 (d) either:

# EXPOSURE DRAFT

**Schedule 1** Non-concessional MIT income  
**Part 3** Application and transitional provisions

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- 1 (i) if subparagraph 12-440(2)(a)(i) in Schedule 1 to the  
2 *Taxation Administration Act 1953* applies—the amount  
3 is rent from land investment paid from an operating  
4 entity in relation to the cross staple arrangement to the  
5 managed investment trust; or  
6 (ii) if subparagraph 12-440(2)(a)(ii) in that Schedule  
7 applies—the amount is attributable to rent from land  
8 investment paid from an operating entity in relation to  
9 the cross staple arrangement to an asset entity in relation  
10 to the cross staple arrangement; and  
11 (e) the time when the amount was derived, received or made by  
12 the managed investment trust meets the requirements in  
13 subitem (5).
- 14 (4) An entity that is an operating entity in relation to the cross staple  
15 arrangement can deduct, for an income year, an amount of rent from  
16 land investment if:  
17 (a) another entity derives or receives the amount from the  
18 operating entity at a time that:  
19 (i) is in the income year; and  
20 (ii) is on or after 27 March 2018; and  
21 (iii) meets the requirements in subitem (5); and  
22 (b) the amount is attributable to an asset that is part of the  
23 facility; and  
24 (c) the other entity is an asset entity in relation to the cross staple  
25 arrangement; and  
26 (d) apart from this subitem, the operating entity could otherwise  
27 deduct the amount under section 8-1 of the *Income Tax*  
28 *Assessment Act 1997*.
- 29 (5) The time mentioned in paragraph (3)(e) or subparagraph (4)(a)(iii)  
30 meets the requirements in this subitem if:  
31 (a) where the facility to which the cross staple arrangement  
32 relates is *not* an economic infrastructure facility—the time is  
33 before 1 July 2031 and before the later of:  
34 (i) 1 July 2026; and  
35 (ii) the end of the period of 7 years beginning on the earliest  
36 day on which an asset that is part of that facility is first
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# EXPOSURE DRAFT

Non-concessional MIT income **Schedule 1**  
Application and transitional provisions **Part 3**

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- 1 put to use for the purpose of producing assessable  
2 income; or  
3 (b) where the facility to which the cross staple arrangement  
4 relates is an economic infrastructure facility—the time is  
5 before 1 July 2039 and before the later of:  
6 (i) 1 July 2034; and  
7 (ii) the end of the period of 15 years beginning on the  
8 earliest day on which an asset that is part of that facility  
9 is first put to use for the purpose of producing  
10 assessable income.
- 11 (6) An entity makes a choice in accordance with this subitem if:  
12 (a) the entity makes the choice in the approved form; and  
13 (b) the entity makes the choice no later than:  
14 (i) 30 June 2019; or  
15 (ii) a later time allowed by the Commissioner; and  
16 (c) the entity gives the choice to the Commissioner within 60  
17 days after the entity makes the choice.
- 18 (7) The choice cannot be revoked.  
19 **[Integrity rules to be inserted here]**

## 20 **11 Transitional—MIT trading trust income**

- 21 (1) This item applies if:  
22 (a) an amount (the **relevant amount**) included in the assessable  
23 income for an income year of a managed investment trust is  
24 MIT trading trust income of the managed investment trust  
25 (disregarding this item); and  
26 (b) immediately before 27 March 2018, the managed investment  
27 trust held a total participation interest in the second entity  
28 mentioned in that subsection (the **second entity**) of an amount  
29 (the **pre-announcement TPI amount**) greater than nil; and  
30 (c) the relevant amount was derived, received or made by the  
31 managed investment trust before 1 July 2026.
- 32 (2) Treat part of the relevant amount as *not* being MIT trading trust income  
33 of the managed investment trust.

# EXPOSURE DRAFT

**Schedule 1** Non-concessional MIT income  
**Part 3** Application and transitional provisions

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- 1 (3) That part is equal to the relevant amount multiplied by the fraction  
2 worked out under subitems (4) and (5).
- 3 (4) If the amount (the *post-announcement TPI amount*) of the total  
4 participation interest held by the managed investment trust in the second  
5 entity at the end of the most recent income year ending before it  
6 derived, received or made the relevant amount exceeds the  
7 pre-announcement TPI amount, work out that fraction by dividing:  
8 (a) the pre-announcement TPI amount;  
9 by:  
10 (b) the post-announcement TPI amount.
- 11 (5) Otherwise, the fraction is 1.

## 12 **12 Transitional—MIT agricultural income**

- 13 (1) This item applies if:  
14 (a) an amount is included in the assessable income for an income  
15 year of a managed investment trust; and  
16 (b) the amount would be MIT agricultural income (disregarding  
17 this item) of the managed investment trust because it is  
18 attributable to an asset that is Australian agricultural land for  
19 rent; and  
20 (c) the managed investment trust derived, received or made the  
21 amount before 1 July 2026; and  
22 (d) if the managed investment trust derived, received or made the  
23 amount because the managed investment trust held the asset  
24 and derived, received or made the amount in respect of the  
25 asset—the managed investment trust held the asset  
26 throughout the period that:  
27 (i) started just before 27 March 2018; and  
28 (ii) ended when the managed investment trust derived,  
29 received or made the amount; and  
30 (e) if the managed investment trust derived, received or made the  
31 amount because another entity held the asset and derived,  
32 received or made another amount in respect of the asset—the  
33 other entity held the asset throughout the period that:  
34 (i) started just before 27 March 2018; and
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# EXPOSURE DRAFT

Non-concessional MIT income **Schedule 1**  
Application and transitional provisions **Part 3**

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- 1 (ii) ended when the other entity derived, received or made  
2 the other amount; and  
3 (f) if paragraph (e) applies—the managed investment trust held a  
4 total participation interest of 100% in the other entity  
5 throughout the period mentioned in that paragraph.
- 6 (2) Treat the amount as *not* being MIT agricultural income of the managed  
7 investment trust.

## 8 **13 Transitional—MIT residential housing income**

- 9 (1) This item applies if:
- 10 (a) an amount is included in the assessable income for an income  
11 year of a managed investment trust; and  
12 (b) the amount would be MIT residential housing income  
13 (disregarding this item) of the managed investment trust  
14 because it is attributable to an asset that satisfies the  
15 requirements in paragraphs 12-470(2)(a), (b) and (c) in  
16 Schedule 1 to the *Taxation Administration Act 1953*; and  
17 (c) the managed investment trust derived, received or made the  
18 amount before 1 October 2027; and  
19 (d) if the managed investment trust derived, received or made the  
20 amount because the managed investment trust held the asset  
21 and derived, received or made the amount in respect of the  
22 asset—the managed investment trust held the asset  
23 throughout the period that:  
24 (i) started just before the transition time; and  
25 (ii) ended when the managed investment trust derived,  
26 received or made the amount; and  
27 (e) if the managed investment trust derived, received or made the  
28 amount because another entity held the asset and derived,  
29 received or made another amount in respect of the asset—the  
30 other entity held the asset throughout the period that:  
31 (i) started just before the transition time; and  
32 (ii) ended when the other entity derived, received or made  
33 the other amount; and

# EXPOSURE DRAFT

Schedule 1 Non-concessional MIT income

Part 3 Application and transitional provisions

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- 1 (f) if paragraph (e) applies—the managed investment trust held a  
2 total participation interest of 100% in the other entity  
3 throughout the period mentioned in that paragraph.
- 4 (2) Treat the amount as *not* being MIT residential housing income of the  
5 managed investment trust.
- 6 (3) In this item:
- 7 *transition time* means 4.30 pm, by legal time in the Australian  
8 Capital Territory, on 14 September 2017.

# EXPOSURE DRAFT

Thin capitalisation **Schedule 2**  
Application and transitional provisions **Part 3**

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## Schedule 2—Thin capitalisation

### *Income Tax Assessment Act 1997*

#### **1 At the end of paragraph 820-105(3)(g)**

Add:

- (iv) each other entity in which the entity has a direct or indirect interest;

#### **2 At the end of paragraph 820-215(3)(g)**

Add:

- (iv) each other entity in which the entity has a direct or indirect interest;

#### **3 After subsection 820-905(2A)**

Insert:

(2B) For the purposes of sections 820-910, 820-915 and 820-920, if the first entity mentioned in paragraph (1)(a) or (2A)(a) is a trust (other than a \*public trading trust) or a partnership:

- (a) treat the reference in that paragraph to 50% as instead being a reference to 10%; and
- (b) if subsection (2C) applies—treat the other entity mentioned in paragraph (1)(a) or (2A)(a) as holding an \*associate interest in the first entity mentioned in that paragraph of 10% or more; and
- (c) disregard subsection 318(5) of the *Income Tax Assessment Act 1936*; and
- (d) if subsection (2D) applies—in determining whether two entities are associates of each other, treat the benefiting entity mentioned in that subsection as being a partner in the partnership.

(2C) This subsection applies if:

- (a) the other entity mentioned in paragraph (1)(a) or (2A)(a) holds an \*associate interest in the first entity mentioned in that paragraph of less than 10%; and

# EXPOSURE DRAFT

Schedule 2 Thin capitalisation

Part 3 Application and transitional provisions

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1 (b) it is reasonable to conclude that an entity created the  
2 circumstance described in paragraph (a) of this subsection for  
3 the principal purpose of, or for more than one principal  
4 purpose that included the purpose of, ensuring that the first  
5 entity will not be an \*associate entity of the other entity.

6 (2D) This subsection applies if:

7 (a) a trust (other than a \*public trading trust) is a partner in a  
8 partnership; and

9 (b) another entity (the *benefiting entity*) benefits under the trust  
10 (as determined in accordance with paragraph 318(6)(a) of the  
11 *Income Tax Assessment Act 1936*).

## 12 4 Application

13 The amendments made by this Schedule apply to income years starting  
14 on or after 1 July 2018.

# EXPOSURE DRAFT

Superannuation funds for foreign residents withholding tax exemption **Schedule 3**  
Amendments **Part 1**

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1 **Schedule 3—Superannuation funds for**  
2 **foreign residents withholding tax**  
3 **exemption**

4 **Part 1—Amendments**

5 *Income Tax Assessment Act 1936*

6 **1 At the end of paragraph 128B(3)(jb)**

7 Add:

8 Note: See subsection (3CA) for extra requirements relating to this  
9 paragraph.

10 **2 After subsection 128B(3C)**

11 Insert:

12 (3CA) Paragraph (3)(jb) applies to income that consists of interest paid by  
13 a person (a *paying entity*), or consists of dividends or non-share  
14 dividends paid by a company (also a *paying entity*), only if the  
15 superannuation fund mentioned in subparagraph (3)(jb)(i):

16 (a) satisfies the portfolio interest test in subsection (3CB) in  
17 relation to the paying entity:

18 (i) at the time the payment is made; and

19 (ii) throughout any 12 month period that began no earlier  
20 than 24 months before that time and ended no later than  
21 that time; and

22 (b) does not have influence of a kind described in  
23 subsection (3CC) in relation to the paying entity at the time  
24 the payment is made.

25 (3CB) A superannuation fund satisfies the portfolio interest test in this  
26 subsection in relation to the paying entity at a time if, at that time,  
27 the total participation interest (within the meaning of the *Income*  
28 *Tax Assessment Act 1997*) the superannuation fund holds in the  
29 paying entity:

30 (a) is less than 10%; and

# EXPOSURE DRAFT

## Schedule 3 Superannuation funds for foreign residents withholding tax exemption Part 1 Amendments

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- 1 (b) would be less than 10% if, in working out the direct  
2 participation interest (within the meaning of that Act) that  
3 any entity holds in a company:  
4 (i) an equity holder were treated as a shareholder; and  
5 (ii) the total amount contributed to the company in respect  
6 of non-share equity interests were included in the total  
7 paid-up share capital of the company.

8 *Influence test*

- 9 (3CC) For the purposes of paragraph (3CA)(b), a superannuation fund has  
10 influence of a kind described in this subsection in relation to the  
11 paying entity at a time if any of the following requirements are  
12 satisfied at that time:  
13 (a) the superannuation fund:  
14 (i) is directly or indirectly able to determine;  
15 (ii) in acting in concert with others is directly or indirectly  
16 able to determine;  
17 the identity of at least one of the persons who, individually or  
18 together with others, make (or might reasonably be expected  
19 to make) the decisions that comprise the control and direction  
20 of the paying entity's operations;  
21 (b) at least one of those persons is accustomed or obliged to act,  
22 or might reasonably be expected to act, in accordance with  
23 the directions, instructions or wishes of the superannuation  
24 fund (whether those directions, instructions or wishes are  
25 expressed directly or indirectly, or through the  
26 superannuation fund acting in concert with others).



# EXPOSURE DRAFT

Superannuation funds for foreign residents withholding tax exemption **Schedule 3**  
Application provisions **Part 2**

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1 **Part 2—Application provisions**

2 **3 Application**

3 (1) The amendments made by this Schedule apply in relation to income that  
4 is derived on or after 1 July 2019.

5 (2) Despite subitem (1), the amendments made by this Schedule apply to  
6 income that is derived by a superannuation fund on or after 1 July 2026  
7 if:

- 8 (a) the income consists of a payment received by the  
9 superannuation fund in respect of an asset (disregarding  
10 section 128AF of the *Income Tax Assessment Act 1936*); and  
11 (b) the superannuation fund acquired the asset on or before  
12 27 March 2018.

# EXPOSURE DRAFT

Schedule 4 Sovereign immunity

Part 1 Amendments

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1 **Schedule 4—Sovereign immunity**

2 **Part 1—Amendments**

3 *Income Tax Assessment Act 1936*

4 **1 At the end of subsection 128B(3)**

5 Add:  
6 ; or (n) income that is non-assessable non-exempt income because of  
7 Division 880 of the *Income Tax Assessment Act 1997*.

8 *Income Tax Assessment Act 1997*

9 **2 Section 9-1 (after item 8 of the table)**

10 Insert:  
11 8A A \*sovereign entity section 880-55

11 **3 Section 11-55 (table)**

12 After:  
13 **small business assets**  
income arising from CGT event, company or trust  
owned asset continuously for 15 years ..... 152-110(2)

14 Insert:  
15 **sovereign entities** ..... Subdivision 880-C

14 **4 At the end of section 840-805**

15 Add:  
16 (9) Subsections (2), (3) and (4) do not apply to you to the extent that  
17 the fund payment part relates to \*ordinary income or \*statutory  
18 income of yours that is \*non-assessable non-exempt income  
19 because of Division 880.

20 **5 At the end of Part 4-5**

21 Add:

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# EXPOSURE DRAFT

Sovereign immunity Schedule 4  
Amendments Part 1

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1 **Division 880—Sovereign entities**

2 **Table of Subdivisions**

- 3           880-A Basic concepts  
4           880-B Sovereign entities liable to pay tax  
5           880-C Sovereign immunity

6 **Subdivision 880-A—Basic concepts**

7 **880-10 What this Subdivision is about**

8 

[To be drafted]
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9 **Table of sections**

- 10           **Operative provisions**  
11           880-15 Meaning of *sovereign entity*  
12           880-20 Meaning of *sovereign entity group*

13 **Operative provisions**

14 **880-15 Meaning of *sovereign entity***

- 15           A *sovereign entity* is any of the following:  
16           (a) a body politic of a foreign country, or a part of a foreign  
17           country;  
18           (b) a \*foreign government agency;  
19           (c) an entity:  
20           (i) in which an entity covered by paragraph (a) or (b) holds  
21           a \*total participation interest of 100%; and  
22           (ii) that is *not* an Australian resident; and  
23           (iii) that is *not* a resident trust estate for the purposes of  
24           Division 6 of Part III of the *Income Tax Assessment Act*  
25           1936.

# EXPOSURE DRAFT

## Schedule 4 Sovereign immunity

### Part 1 Amendments

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#### 1 **880-20 Meaning of *sovereign entity group***

2 (1) Each of the following is part of a *sovereign entity group*:

- 3 (a) a body politic of a foreign country;
- 4 (b) a \*foreign government agency of that foreign country;
- 5 (c) an entity:
- 6 (i) in which an entity covered by paragraph (a) or (b) holds
- 7 a \*total participation interest of 100%; and
- 8 (i) that is *not* an Australian resident; and
- 9 (iii) that is *not* a resident trust estate for the purposes of
- 10 Division 6 of Part III of the *Income Tax Assessment Act*
- 11 *1936*.

12 (2) Each of the following is part of a *sovereign entity group*:

- 13 (a) a body politic of a part of a foreign country;
- 14 (b) a \*foreign government agency of that part of that foreign
- 15 country;
- 16 (c) an entity:
- 17 (i) in which an entity covered by paragraph (a) or (b) holds
- 18 a \*total participation interest of 100%; and
- 19 (i) that is *not* an Australian resident; and
- 20 (iii) that is *not* a resident trust estate for the purposes of
- 21 Division 6 of Part III of the *Income Tax Assessment Act*
- 22 *1936*.

23 (3) Each entity that is part of the \*sovereign entity group is a *member*

24 of the group.

#### 25 **Subdivision 880-B—Basic tax treatment of sovereign entities**

#### 26 **880-50 What this Subdivision is about**

27 [To be drafted]

#### 28 **Table of sections**

##### 29 **Operative provisions**

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# EXPOSURE DRAFT

1	880-55	Sovereign entity liable to pay tax
2	880-60	Bodies politic of foreign countries and foreign government agencies treated
3		as foreign residents

## 4 Operative provisions

### 5 880-55 Sovereign entity liable to pay tax

6 A \*sovereign entity is liable to pay tax.

7 Note: The actual amount of income tax payable may be nil.

### 8 880-60 Bodies politic of foreign countries and foreign government 9 agencies treated as foreign residents

10 (1) For the purposes of this Act, treat a body politic of a foreign  
11 country, or a part of a foreign country, as being a foreign resident  
12 and as being a resident of the foreign country.

13 (2) For the purposes of this Act, treat a \*foreign government agency, or  
14 a part of a foreign country, as being a foreign resident and as being  
15 a resident of the foreign country.

## 16 Subdivision 880-C—Sovereign immunity

### 17 Guide to Subdivision 880-B

#### 18 880-100 What this Subdivision is about

19

[To be drafted]
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## 20 Table of sections

### 21 Operative provisions

22	880-105	Non-assessable non-exempt income of sovereign entity—income from
23		membership interest etc. in trust or company
24	880-110	Non-assessable non-exempt income of sovereign entity—income from
25		consular activities
26	880-115	Disregarded capital gain or loss of sovereign entity—asset
27	880-120	Covered sovereign entities

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# EXPOSURE DRAFT

## Schedule 4 Sovereign immunity

### Part 1 Amendments

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1 880-125 Meaning of public non-financial entity and public financial entity

## 2 Operative provisions

### 3 **880-105 Non-assessable non-exempt income of sovereign entity—** 4 **income from membership interest etc. in trust or** 5 **company**

- 6 (1) An amount of \*ordinary income or \*statutory income of a  
7 \*sovereign entity is not assessable income and is not \*exempt  
8 income if:
- 9 (a) the entity is covered by section 880-120; and
  - 10 (b) the amount is derived, received or made from a trust or  
11 company (the *paying entity*); and
  - 12 (c) the paying entity is any of the following:
    - 13 (i) an Australian resident;
    - 14 (ii) a resident trust estate for the purposes of Division 6 of  
15 Part III of the *Income Tax Assessment Act 1936*;
    - 16 (d) the entity derives, receives or makes the amount from the  
17 paying entity because the entity holds any of the following  
18 kinds of interest in the paying entity:
      - 19 (i) a \*membership interest;
      - 20 (ii) a \*debt interest;
      - 21 (iii) a \*non-share equity interest; and
    - 22 (e) if the paying entity is a trust—it is a \*managed investment  
23 trust in relation to the income year in which the amount is  
24 derived, received or made; and
    - 25 (f) the \*sovereign entity group of which the \*sovereign entity is a  
26 member satisfies the portfolio interest test in subsection (3) in  
27 relation to the paying entity:
      - 28 (i) at the time the amount is derived, received or made; and
      - 29 (ii) throughout any 12 month period that began no earlier  
30 than 24 months before that time and ended no later than  
31 that time; and
    - 32 (g) the sovereign entity group of which the sovereign entity is a  
33 member does not have influence of a kind described in  
34 subsection (5) in relation to the paying entity at that time.

# EXPOSURE DRAFT

Sovereign immunity **Schedule 4**  
Amendments **Part 1**

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- 1 (2) If the amount is a \*fund payment, subsection (1) does not apply to  
2 the extent that the amount is attributable to:  
3 (a) \*non-concessional MIT income (see section 12-435 in  
4 Schedule 1 to the *Tax Administration Act 1953*); or  
5 (b) an amount that would be non-concessional MIT income if the  
6 following provisions were disregarded:  
7 (i) subsections 12-440(4) and (5) in that Schedule;  
8 (ii) item 10 in Schedule 1 to the *Treasury Laws Amendment*  
9 *(Making Sure Foreign Investors Pay Their Fair Share*  
10 *of Tax and Other Measures) Act 2018*.

11 *Portfolio interest test*

- 12 (3) For the purposes of paragraph (1)(f), a \*sovereign entity group  
13 satisfies the portfolio interest test in this subsection in relation to  
14 the paying entity at a time if, at that time, the sum of the \*total  
15 participation interests that each \*member of the group holds in the  
16 paying entity:  
17 (a) is less than 10%; and  
18 (b) would be less than 10% if, in working out the \*direct  
19 participation interest that any entity holds in a company:  
20 (i) an \*equity holder were treated as a shareholder; and  
21 (ii) the total amount contributed to the company in respect  
22 of \*non-share equity interests were included in the total  
23 paid-up share capital of the company.
- 24 (4) For the purposes of subsection (3), in working out the sum of the  
25 \*total participation interests held by each \*member of the group in  
26 the paying entity, take into account:  
27 (a) a particular \*direct participation interest; or  
28 (b) a particular \*indirect participation interest;  
29 held in the paying entity only once if it would otherwise be counted  
30 more than once.

31 *Influence test*

- 32 (5) For the purposes of paragraph (1)(g), a \*sovereign entity group has  
33 influence of a kind described in this subsection in relation to an

# EXPOSURE DRAFT

## Schedule 4 Sovereign immunity

### Part 1 Amendments

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1 entity at a time if any of the following requirements are satisfied at  
2 that time:

3 (a) a \*member of the group:

4 (i) is directly or indirectly able to determine;

5 (ii) in acting in concert with others is directly or indirectly  
6 able to determine;

7 the identity of at least one of the persons who, individually or  
8 together with others, make (or might reasonably be expected  
9 to make) the decisions that comprise the control and direction  
10 of the entity's operations;

11 (b) at least one of those persons is accustomed or obliged to act,  
12 or might reasonably be expected to act, in accordance with  
13 the directions, instructions or wishes of a member of the  
14 group (whether those directions, instructions or wishes are  
15 expressed directly or indirectly, or through the member  
16 acting in concert with others).

17 (6) For the purposes of subsection (5), treat the references in  
18 paragraphs 880-20(1)(c) and (2)(c) to 100% as instead being  
19 references to 50%.

#### 20 **880-110 Non-assessable non-exempt income of sovereign entity—** 21 **income from consular activities**

22 (1) An amount of \*ordinary income or \*statutory income of a  
23 \*sovereign entity is not assessable income and is not \*exempt  
24 income if:

25 (a) the entity is covered by section 880-120; and

26 (b) the income arises from the entity's consular functions.

#### 27 **880-115 Particular capital gains etc. of sovereign entity**

28 (1) Subsection (2) applies if:

29 (a) an entity covered by section 880-120 \*disposes of an asset;  
30 and

31 (b) the asset is a \*membership interest in another entity; and

32 (c) any of the following applies:



# EXPOSURE DRAFT

Sovereign immunity **Schedule 4**  
Amendments **Part 1**

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- 1 (i) a \*capital gain or \*capital loss arises because of the  
2 disposal;  
3 (ii) if the asset is a \*revenue asset (and is not a  
4 \*Division 230 financial arrangement)—an amount is  
5 included in, or can be deducted from, the assessable  
6 income of the entity.
- 7 (2) For the purposes of paragraphs 880-105(1)(f) and  
8 subsections 880-105(2) and (3) (portfolio interest test), treat the  
9 other entity as the paying entity.

## 10 **880-120 Covered sovereign entities**

- 11 (1) A \*sovereign entity is covered by this section if it satisfies all of the  
12 following requirements:  
13 (a) the entity is funded only by public monies;  
14 (b) the entity is *not* any of the following:  
15 (i) a \*superannuation fund for foreign residents;  
16 (ii) a \*foreign superannuation fund;  
17 (c) the entity is *not* a partnership;  
18 (d) the entity is *not* any of the following:  
19 (i) a \*public non-financial entity;  
20 (ii) a \*public financial entity (other than a public financial  
21 entity that only carries on central banking activities).

## 22 **880-125 Meaning of public non-financial entity and public financial** 23 **entity**

- 24 (1) A public corporation is a ***public non-financial entity*** if its principal  
25 activity is either or both of the following:  
26 (a) producing or trading non-financial goods;  
27 (b) providing services that are not financial services.
- 28 (2) A public corporation is a ***public financial entity*** if:  
29 (a) it trades in financial assets and liabilities; and  
30 (b) it operates commercially in the financial markets; and  
31 (c) its principal activities include providing any of the following  
32 financial services:
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# EXPOSURE DRAFT

## Schedule 4 Sovereign immunity

### Part 1 Amendments

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- 1 (i) financial intermediary services, including deposit-taking  
2 and insurance services;
- 3 (ii) financial auxiliary services, including brokerage, foreign  
4 exchange and investment management services;
- 5 (iii) capital financial institution services, including financial  
6 services in relation to assets or liabilities that are not  
7 available on open financial markets; and
- 8 (d) it is not a central bank.

# EXPOSURE DRAFT

Sovereign immunity **Schedule 4**  
Application and transitional provisions **Part 2**

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## 1 **Part 2—Application and transitional provisions**

### 2 **6 Application**

3 (1) Subject to subitem (2), the amendments made by this Schedule apply to  
4 the 2019-20 income year and later income years.

5 (2) The amendments made by this Schedule do not apply in relation to an  
6 amount of ordinary income or statutory income of a sovereign entity for  
7 an income year if:

8 (a) the amount is derived, received or made in respect of an  
9 investment asset under a scheme; and

10 (b) the sovereign entity acquired the investment asset on or  
11 before 27 March 2018; and

12 (c) on or before 27 March 2018, the sovereign entity applied for  
13 a private ruling in relation to the investment asset; and

14 (d) before 1 July 2026, the Commissioner gave the entity a  
15 private ruling confirming that income from the investment  
16 asset was not subject to income tax, or withholding tax,  
17 because of the doctrine of sovereign immunity; and

18 (e) the private ruling applied during at least part of the period:

19 (i) starting on 27 March 2018; and

20 (ii) ending before 1 July 2026;

21 regardless whether the private ruling started to apply before  
22 27 March 2018, or ceased to apply before 1 July 2026; and

23 (f) the scheme carried out is not materially different to the  
24 scheme specified in the private ruling; and

25 (g) the income year is:

26 (i) unless subparagraph (ii) applies—the 2025-26 income  
27 year or an earlier income year; or

28 (ii) if the last income year to which the private ruling relates  
29 is a later income year than the 2025-26 income year—  
30 that later income year, or an earlier income year.

### 31 **7 Transitional—deemed sale and purchase**

32 (1) This item applies if:

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# EXPOSURE DRAFT

## Schedule 4 Sovereign immunity

### Part 2 Application and transitional provisions

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- 1 (a) a sovereign entity acquired an asset (other than money) on or  
2 before 27 March 2018 under a scheme; and
- 3 (b) on or before 27 March 2018, the sovereign entity applied for  
4 a private ruling in relation to the asset; and
- 5 (c) before 1 July 2026, the Commissioner gave the entity a  
6 private ruling confirming that income from the asset was not  
7 subject to income tax, or withholding tax, because of the  
8 doctrine of sovereign immunity; and
- 9 (d) the private ruling applied during at least part of the period:  
10 (i) starting on 27 March 2018; and  
11 (ii) ending before 1 July 2026;  
12 regardless whether the private ruling started to apply before  
13 27 March 2018, or ceased to apply before 1 July 2026; and
- 14 (e) the sovereign entity holds the asset on the day mentioned in  
15 subitem (5); and
- 16 (f) the scheme carried out is not materially different to the  
17 scheme specified in the private ruling.
- 18 (2) For the purposes mentioned in subitem (3), the sovereign entity is taken:  
19 (a) to have disposed of the asset, immediately before the day  
20 mentioned in subitem (5), for a consideration equal to its  
21 market value; and
- 22 (b) to have acquired the asset again, immediately after the sale  
23 mentioned in paragraph (a), for a consideration equal to the  
24 higher of the following:  
25 (i) its market value immediately before that sale;  
26 (ii) its cost base immediately before that sale.
- 27 (3) The purposes are as follows:  
28 (a) the purposes of Parts 3-1 and 3-3 of the *Income Tax*  
29 *Assessment Act 1997*;  
30 (b) if the asset is a revenue asset (and is not a Division 230  
31 financial arrangement)—determining whether an amount is  
32 included in, or can be deducted from, the assessable income  
33 of the entity.
- 34 (4) Despite subitem (3):
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# EXPOSURE DRAFT

Sovereign immunity **Schedule 4**  
Application and transitional provisions **Part 2**

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- 1 (a) disregard any capital gain or capital loss the sovereign entity  
2 makes because of the disposal mentioned in paragraph (2)(a);  
3 or  
4 (b) if the asset is a revenue asset (and is not a Division 230  
5 financial arrangement)—disregard any amount that could  
6 (apart from this subitem) be included in, or be deducted from,  
7 the assessable income of the entity as a result of that disposal.
- 8 (5) For the purposes of paragraphs (1)(e) and (2)(a), the day is the later of:  
9 (a) 1 July 2026; and  
10 (b) the day before the private ruling ceases to apply.

# EXPOSURE DRAFT

Schedule 4 Sovereign immunity

Part 3 Definitions

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1 **Part 3—Definitions**

2 *Income Tax Assessment Act 1997*

3 **8 Subsection 995-1(1) (after paragraph (bb) of the definition**  
4 **of member)**

5 Insert:

6 (bd) in relation to a \*sovereign entity group—has the meaning  
7 given by section 880-20; and

8 **9 Subsection 995-1(1)**

9 Insert:

10 *public financial entity* has the meaning given by section 880-125.

11 *public non-financial entity* has the meaning given by  
12 section 880-125.

13 *sovereign entity* has the meaning given by section 880-15.

14 *sovereign entity group* has the meaning given by section 880-20.