

2022-2023

The Parliament of the  
Commonwealth of Australia

THE SENATE

EXPOSURE DRAFT
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## Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Bill 2023

*(Government)*

- (1) Schedule 2, page 6 (after line 15), after item 4, insert:

### **4A Section 705-60 (after table item 5)**

Insert:

- |    |   |   |
|----|---|---|
| 5A | Subtract from the result of step 5 the step 5A amount worked out under section 705-102, which is about certain *FRT disallowed amounts accruing to the joined group before the joining time | To prevent a double benefit arising from the FRT disallowed amounts |
|----|---|---|

### **4B Section 705-60 (table item 6, column headed “What the step requires”)**

Omit “step 5”, substitute “step 5A”.

***[allocable cost amount]***

- (2) Schedule 2, item 7, page 7 (before line 3), before subparagraph 705-65(5A)(b)(ii), insert:

(ia) the step 5A amount under section 705-102; or

***[allocable cost amount]***

- (3) Schedule 2, page 7 (after line 4), after item 7, insert:

### **7A Paragraph 705-65(5A)(c)**

After “(b)(i)”, insert “or (ia)”.

***[allocable cost amount]***

- (4) Schedule 2, page 7 (after line 6), after item 8, insert:

# EXPOSURE DRAFT

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## 8A Subparagraph 705-75(5)(b)(ii)

Repeal the subparagraph, substitute:

- (ii) the step 5A amount under section 705-102; or
- (iii) the step 6 amount under section 705-110; or
- (iv) the step 6A amount under section 705-112;

## 8B After section 705-100

Insert:

### 705-102 FRT disallowed amounts accruing to joined group before joining time—step 5A in working out allocable cost amount

- (1) For the purposes of step 5A in the table in section 705-60, the step 5A amount is the sum of all \*FRT disallowed amounts of the joining entity that:
  - (a) had not been applied by the joining entity under paragraph 820-56(2)(b) for the income year in which the joining time occurred or any earlier income year; and
  - (b) accrued to the joined group before the joining time (see subsection (2) of this section).
- (2) For the purposes of subsection (1), a \*FRT disallowed amount accrued to the joined group before the joining time if and to the extent that, assuming that as it arose it were instead a profit that was accruing, a distribution of that profit would have been a distribution made to the joined group out of profits that accrued to the joined group before the joining time.
- (3) However, a \*FRT disallowed amount is not to be taken into account under subsection (1) to the extent that it reduced the undistributed profits comprising the step 3 amount in the table in section 705-60.

## 8C Section 705-105 (heading)

Omit “to 5”, substitute “to 5A”.

## 8D Section 705-105

After “705-100”, insert “, 705-102”.

**[allocable cost amount]**

- (5) Schedule 2, item 9, page 7 (line 22), at the end of paragraph 705-112(2)(c), add “and”.

**[allocable cost amount]**
- (6) Schedule 2, item 9, page 7 (after line 22), after paragraph 705-112(2)(c), insert:
  - (d) were not taken into account in working out the step 3 amount under section 705-90 or 713-25;

**[allocable cost amount]**
- (7) Schedule 2, page 8 (before line 1), before item 10, insert:

## 9A At the end of paragraph 705-160(2)(c)

Add:

- or (iii) an amount is required to be subtracted (also the *second entity's profit/loss adjustment amount*) under step 5A in the table in section 705-60 (about \*FRT disallowed amounts accruing to a joined group before the joining time);

# EXPOSURE DRAFT

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## 9B Subsection 705-160(2)

After “subparagraph (c)(ii)”, insert “or (iii)”.

## 9C At the end of paragraph 705-160(4)(d)

Add:

or (iii) an amount is required to be subtracted (also the *third entity’s profit/loss adjustment amount*) under step 5A in the table in section 705-60 (about \*FRT disallowed amounts accruing to a joined group before the joining time);

## 9D Subsection 705-160(4)

After “subparagraph (d)(ii)”, insert “or (iii)”.

## 9E At the end of paragraph 705-235(2)(b)

Add:

or (iii) an amount is required to be subtracted (also the *second linked entity’s profit/loss adjustment amount*) under step 5A in the table in section 705-60 (about \*FRT disallowed amounts accruing to a joined group before the joining time);

## 9F Subsection 705-235(2)

After “subparagraph (b)(ii)”, insert “or (iii)”.

## 9G At the end of paragraph 705-235(4)(c)

Add:

or (iii) an amount is required to be subtracted (also the *third linked entity’s profit/loss adjustment amount*) under step 5A in the table in section 705-60 (about \*FRT disallowed amounts accruing to a joined group before the joining time);

## 9H Subsection 705-235(4)

After “subparagraph (c)(ii)”, insert “or (iii)”.

**[allocable cost amount]**

- (8) Schedule 2, item 14, page 9 (table item 2A, column 2), omit “, 820-C, 820-D or 820-E”, substitute “or 820-C”.

**[debt deduction limitation]**

- (9) Schedule 2, item 14, page 9 (table item 2A, column 2, paragraph (b)), omit the paragraph, substitute:

(b) debt deductions in relation to a financial arrangement that is entered into by an entity to fund etc. payments or distributions to one or more associate pairs of the entity.

**[debt deduction limitation]**

- (10) Schedule 2, page 9 (after line 5), after item 15, insert:

## 15A After section 820-30

Insert:

# EXPOSURE DRAFT

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## 820-31 Order of application of Subdivisions

- (1) First, work out if a \*debt deduction of an entity for an income year is disallowed under Subdivision 820-EAA (debt deduction limitation rules for debt deduction creation).
- (2) To the extent that all or part of a debt deduction is disallowed under that Subdivision, disregard the debt deduction in applying the following provisions in relation to the entity for the income year:
  - (a) Subdivision 820-AA;
  - (b) Subdivision 820-B;
  - (c) Subdivision 820-C.

Note: The provisions mentioned in paragraphs (2)(a) to (c) may further disallow debt deductions of the entity.

***[order of application]***

- (11) Schedule 2, page 10 (after line 27), after item 21, insert:

### **21A Subsection 820-39(1)**

Omit “or 820-E”, substitute “, 820-E or 820-EAA”.

***[exemption of special purpose entities]***

- (12) Schedule 2, page 10 (after line 29), after item 22, insert:

### **22A Subsection 820-39(2)**

Omit “or 820-E”, substitute “, 820-E or 820-EAA”.

***[exemption of special purpose entities]***

- (13) Schedule 2, item 29, page 14 (after line 24), after subsection 820-47(4), insert:

(4A) If, under subsection 820-46(5), an entity is taken to have made a choice to apply the third party debt test in relation to an income year:

- (a) the entity may *not* make a choice under subsection 820-46(3) (group ratio test applies) in relation to that income year; and
- (b) any choice previously made under subsection 820-46(3) by the entity in relation to that income year is revoked and taken never to have been made.

***[test choice]***

- (14) Schedule 2, item 29, page 14 (lines 25 and 26), omit “an entity revokes a choice under subsection (4)”, substitute “a choice is revoked under subsection (4) or (4A) of this section”.

***[test choice]***

- (15) Schedule 2, item 29, page 15 (lines 2 to 11), omit paragraph 820-47(6)(b).

***[test choice]***

- (16) Schedule 2, item 29, page 15 (lines 12 and 13), omit paragraph 820-47(6)(c), substitute:

(c) the entity has applied to the Commissioner, in the \*approved form, to revoke the choice before the earlier of the following days:

- (i) the day that is 4 years after the day the entity lodged its \*income tax return for the income year;
- (ii) the day that is 4 years after the day the entity was required to lodge its income tax return for the income year;

# EXPOSURE DRAFT

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**[test choice]**

- (17) Schedule 2, item 29, page 15 (line 22), omit “the entity mentioned in that subsection”, substitute “an entity (the *first entity*)”.
- [third party debt test]**
- (18) Schedule 2, item 29, page 15 (line 24), before “entity”, insert “first”.
- [third party debt test]**
- (19) Schedule 2, item 29, page 15 (line 33), omit “entity mentioned in subsection 820-46(5)”, substitute “first entity”.
- [third party debt test]**
- (20) Schedule 2, item 29, page 16 (before line 5), before paragraph 820-48(2)(a), insert:
- (aa) disregard the requirement in subsections 820-905(1) and (2A) that the entity is an \*associate of the other entity; and
- [associate entity]**
- (21) Schedule 2, item 29, page 16 (line 32), omit “the assets”, substitute “assets”.
- [obligor group]**
- (22) Schedule 2, item 29, page 16 (after line 35), at the end of section 820-49, add:
- (3) For the purposes of paragraph (1)(b), disregard assets that are \*membership interests in the borrower.
- [obligor group]**
- (23) Schedule 2, item 29, page 17 (line 34), after “this Division”, insert “other than Subdivision 820-EAA”.
- [net debt deductions]**
- (24) Schedule 2, item 29, page 18 (line 25), after “this Division”, insert “(other than Subdivision 820-EAA)”.
- [tax EBITDA]**
- (25) Schedule 2, item 29, page 18 (lines 29 to 32), omit paragraph 820-52(1)(c), substitute:
- (c) next, add the sum of the entity’s deductions (if any) from its assessable income for the income year that are any of the following:
    - (i) \*general deductions that relate to forestry establishment and preparation costs;
    - (ii) deductions under Divisions 40 and 43 (other than deductions for the entire amount of an expense incurred by the entity);
    - (iii) deductions under section 70-120;
- [tax EBITDA]**
- (26) Schedule 2, item 29, page 19 (before line 1), before paragraph 820-52(1)(d), insert:
- (ca) next, if the entity is a trust to which subsection 820-60(1) applies—add the \*trust excess tax EBITDA amount (if any) worked out under that section;
- [tax EBITDA]**
- (27) Schedule 2, item 29, page 19 (line 1), after “paragraph (c)”, insert “or (ca), as the case requires.”.

# EXPOSURE DRAFT

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**[tax EBITDA]**

(28) Schedule 2, item 29, page 19 (after line 6), after subsection 820-52(1), insert:

*Tax losses from earlier income years*

(1A) In working out the taxable income or \*tax loss of a \*corporate tax entity for an income year for the purposes of subsection (1), assume that:

- (a) the entity chooses to deduct, under subsection 36-17(2) or (3), all of the entity's tax losses for \*loss years occurring before the income year; and
- (b) subsection 36-17(5) does *not* apply to that choice.

**[tax EBITDA]**

(29) Schedule 2, item 29, page 19 (lines 9 to 13), omit subsection 820-52(3), substitute:

*Dividends etc.*

(3) In working out the taxable income or \*tax loss of an entity for the purposes of subsection (1), if the entity is a shareholder in a company, and is an \*associate entity of the company, disregard any \*dividend or \*non-share dividend paid by the company to the entity included in the entity's assessable income under section 44 of the *Income Tax Assessment Act 1936*.

**[tax EBITDA]**

(30) Schedule 2, item 29, page 19 (line 14), at the end of the heading to subsection 820-52(4), add "*other than AMITs*".

**[tax EBITDA]**

(31) Schedule 2, item 29, page 19 (line 15), after "trust", insert "other than an \*AMIT".

**[tax EBITDA]**

(32) Schedule 2, item 29, page 20 (line 1), at the end of the heading to subsection 820-52(6), add "*other than AMITs*".

**[tax EBITDA]**

(33) Schedule 2, item 29, page 20 (line 3), after "a trust", insert "other than an \*AMIT".

**[tax EBITDA]**

(34) Schedule 2, item 29, page 20 (after line 10), after subsection 820-52(6), insert:

*Attribution managed investment trusts*

(6A) If the entity is an \*AMIT:

- (a) treat the reference in subsection (1) to the entity's taxable income as being a reference to the \*net income of the entity; and
- (b) treat the reference in subsection (1) to the entity's \*net debt deductions as being a reference to the entity's net debt deductions taken into account in working out that net income; and
- (c) treat the reference in subsection (1) to the entity's deductions as being a reference to the entity's deductions taken into account in working out that net income; and
- (d) treat the references in subsection (1) to the entity's assessable income as being a reference to the entity's assessable income taken into account in working out that net income.

# EXPOSURE DRAFT

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## *Members of AMITs*

(6B) In working out the taxable income or \*tax loss of an entity for the purposes of subsection (1), if the entity is a member of an \*AMIT, and is an \*associate entity of the AMIT:

- (a) disregard the operation of Division 276 in relation to the AMIT; and
- (b) disregard distributions from the AMIT to the entity.

**[tax EBITDA]**

(35) Schedule 2, item 29, page 20 (line 32), omit “(6)”, substitute “(3), (6), (6B)”.

**[tax EBITDA]**

(36) Schedule 2, item 29, page 21 (before line 1), before paragraph 820-52(9)(a), insert:

- (aa) disregard the requirement in subsections 820-905(1) and (2A) that the entity is an \*associate of the other entity; and

**[tax EBITDA]**

(37) Schedule 2, item 29, page 21 (after line 13), at the end of section 820-52, add:

## *Notional deductions of R&D entities*

(10) In working out the taxable income or \*tax loss of an entity for the purposes of subsection (1), if the entity is an \*R&D entity that is entitled to a notional deduction for an income year under Division 355 in relation to \*R&D activities of the R&D entity, subtract an amount equivalent to the amount of the notional deduction.

**[tax EBITDA]**

(38) Schedule 2, item 29, page 24 (before line 30), before paragraph 820-54(5)(a), insert:

- (aa) disregard the requirement in subsections 820-905(1) and (2A) that the entity is an \*associate of the other entity; and

**[associate entity]**

(39) Schedule 2, item 29, page 26 (lines 18 and 19), omit “applied under this paragraph”, substitute “claimed under this section”.

**[deduction for FRT disallowed amounts]**

(40) Schedule 2, item 29, page 28 (after line 15), at the end of Subdivision 820-AA, add:

## **820-60 Trust excess tax EBITDA amount**

(1) This section applies to an entity (the *relevant entity*) if:

- (a) the relevant entity is for a period that is all or part of an income year:
  - (i) a unit trust that is a \*resident trust for CGT purposes; or
  - (ii) a \*managed investment trust; and
- (b) the relevant entity is a \*general class investor for all or part of the income year;
- (c) the relevant entity has not made a choice under subsection 820-46(3) or (4) (including a choice that is taken to have been made under subsection 820-46(5)) in relation to the income year; and
- (d) one or more trusts (each of which is a *controlled trust*) satisfy the conditions in subsection (2) in relation to the relevant entity for the income year.

# EXPOSURE DRAFT

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- (2) A trust satisfies the conditions in this subsection in relation to the relevant entity for an income year if:
- (a) the relevant entity has a \*TC direct control interest of 50% or more in the trust at any time during the income year; and
  - (b) the trust is, for a period that is all or part of the income year:
    - (i) a unit trust that is a \*resident trust for CGT purposes; or
    - (ii) a \*managed investment trust; and
  - (c) the trust is a \*general class investor for all or part of the income year; and
  - (d) the trust has not made a choice under subsection 820-46(3) or (4) (including a choice that is taken to have been made under subsection 820-46(5)) in relation to the income year.
- (3) The relevant entity's **trust excess tax EBITDA amount** for the income year is the amount worked out using the following method statement.

*Method statement*

- Step 1. For each controlled trust, work out the amount (if any) by which the \*fixed ratio earnings limit of the controlled trust for the income year exceeds the sum of the following:
- (a) the controlled trust's \*net debt deductions for the income year (for the purposes of this paragraph, treat a negative amount of net debt deductions as nil);
  - (b) the total of the controlled trust's \*FRT disallowed amounts for the 15 income years ending immediately before the income year (to the extent those amounts have not been applied under paragraph 820-56(2)(b)).
- Step 2. For each controlled trust:
- (a) work out the relevant entity's \*TC direct control interest for each day in the income year; and
  - (b) for each day on which the amount was 50% or greater, add the amounts; and
  - (c) divide the result of paragraph (b) by the number of days in the income year during which the controlled trust was in existence. Express the result as a percentage.
- Step 3. For each controlled trust, multiply the result of step 1 by the percentage worked out under step 2. If the amount worked out under step 1 for a controlled trust is nil, the result for that controlled trust under this step will be nil.
- Step 4. Add up the amounts worked out under step 3.
- Step 5. Divide the result of step 4 by 0.3. The result of this step is the **trust excess tax EBITDA amount**.

- (4) For the purposes of this section, in working out whether the relevant entity holds a \*TC direct control interest in a trust, apply subsection 820-860(2) as if it also included the



# EXPOSURE DRAFT

modification of Part X of the *Income Tax Assessment Act 1936* set out in the following table.

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**Modifications of provisions in Part X of the *Income Tax Assessment Act 1936***

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<b>Item</b>	<b>Provisions</b>	<b>Modifications</b>
3	Subsection 351(1)	The reference to “greater of those percentages” reads “lesser of those percentages”.

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***[trust excess tax EBITDA amount]***

(41) Schedule 2, item 33, page 31 (lines 6 and 7), omit subsection 820-85(2E).  
***[outward investing financial entity (non-ADI)]***

(42) Schedule 2, item 57, page 34 (line 10), omit “(2A)”, substitute “(2C)”.  
***[inward investing financial entities (non-ADI)]***

(43) Schedule 2, item 57, page 36 (lines 1 and 2), omit subsection 820-185(2E).  
***[inward investing financial entities (non-ADI)]***

(44) Schedule 2, item 76, page 39 (lines 6 to 9), omit paragraph 820-423(b), substitute:  
(b) debt deductions in relation to a financial arrangement that is entered into by an entity to fund etc. payments or distributions to one or more associate pairs of the entity.  
***[debt deduction limitation rules]***

(45) Schedule 2, item 76, page 39 (after line 9), at the end of section 820-423, add:

The rules in this Subdivision are applied before the rules set out in Subdivisions 820-AA, 820-B and 820-C. If a debt deduction of an entity is disallowed under this Subdivision, the debt deduction is disregarded for the purpose of applying those other Subdivisions (see section 820-31).

***[debt deduction limitation rules]***

(46) Schedule 2, item 76, page 39 (line 27), at the end of subparagraph 820-423A(1)(a)(iii), add “and”.  
***[debt deduction limitation rules]***

(47) Schedule 2, item 76, page 39 (lines 28 and 29), omit subparagraphs 820-423A(1)(a)(iv) and (v).  
***[debt deduction limitation rules]***

(48) Schedule 2, item 76, page 39 (after line 29), after paragraph 820-423A(1)(a), insert:  
(aa) the entity is *not* a \*securitisation vehicle; and  
***[debt deduction limitation rules]***

(49) Schedule 2, item 76, page 39 (lines 32 and 33), omit “, see”, substitute “: see”.  
***[debt deduction limitation rules]***

(50) Schedule 2, item 76, page 39 (after line 33), after note 1, insert:

Note 1A: This Subdivision does not apply to certain special purpose entities: see section 820-39.

# EXPOSURE DRAFT

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***[debt deduction limitation rules]***

- (51) Schedule 2, item 76, page 40 (line 5), after “\*CGT asset”, insert “(other than a CGT asset covered by section 820-423AA)”.

***[debt deduction limitation rules]***

- (52) Schedule 2, item 76, page 40 (line 21), at the end of subsection 820-423A(2), add:
- (e) the relevant entity’s debt deduction mentioned in subsection (1) is referable to an amount paid or payable, either directly or indirectly, to any of the following:
    - (i) an associate pair of the relevant entity;
    - (ii) an associate pair of the acquirer;
    - (iii) an associate pair of an associate disposer.

***[debt deduction limitation rules]***

- (53) Schedule 2, item 76, page 40 (after line 24), after subsection 820-423A(3), insert:

- (3A) To avoid doubt, subsection (2) may apply in relation to the indirect acquisition by an entity (the ***first entity***) of a \*CGT asset through an interposed entity:
- (a) even if the indirect acquisition happens because of the direct acquisition by the first entity of a CGT asset covered by section 820-423AA; and
  - (b) whether the indirect acquisition happens before or after the direct acquisition by the first entity.

Example: Entity A acquires a membership interest in Entity B that is covered by the exception in subsection 820-423AA(1). Entity B later acquires, from Entity C, a CGT asset that is not covered by an exception in that section. There may be an indirect acquisition of the CGT asset by Entity A.

***[debt deduction limitation rules]***

- (54) Schedule 2, item 76, page 40 (line 27) to page 41 (line 22), omit subsection 820-423A(5), substitute:

*Financial arrangements involving associate pairs*

- (5) This subsection applies if all of the following conditions are satisfied:
- (a) an entity (the ***payer***) obtains proceeds from entering into or having a \*financial arrangement with another entity;
  - (b) the payer uses some or all of the proceeds to:
    - (i) fund; or
    - (ii) facilitate the funding of; or
    - (iii) increase the ability of any entity (including the payer) to make; one or more payments or distributions (within the meaning of section 26BC of the *Income Tax Assessment Act 1936*), other than a payment or distribution covered by subsection (5A) or (5B) of this section, that it makes to one or more other entities (each of which is a ***recipient***);
  - (c) one or more of the recipients (each of which is an ***associate recipient***) is an associate pair of the payer;
  - (d) the entity mentioned in subsection (1) (the ***relevant entity***) is any of the following:
    - (i) the payer;
    - (ii) an associate pair of the payer;
    - (iii) an associate pair of an associate recipient;

# EXPOSURE DRAFT

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- (e) the relevant entity's \*debt deduction mentioned in subsection (1) is, wholly or partly, in relation to the financial arrangement mentioned in paragraph (a) of this subsection;
- (f) the relevant entity's debt deduction is referable to an amount paid or payable, either directly or indirectly, to any of the following:
  - (i) an associate pair of the relevant entity;
  - (ii) an associate pair of the payer;
  - (iii) an associate pair of an associate recipient.

- (5A) For the purposes of paragraph (5)(b), this subsection covers a payment or distribution if:
- (a) the recipient has issued a debt interest to the payer; and
  - (b) the recipient is an \*Australian entity; and
  - (c) the payment or distribution is entirely referable to the proceeds from the issue of the debt interest; and
  - (d) in a case where the payment or distribution is predominantly funded from the proceeds of another debt interest (the *earlier debt interest*)—the terms of the earlier debt interest, to the extent that those terms relate to costs incurred in relation to the earlier debt interest, are the same as the terms of debt interest mentioned in paragraph (a), to the extent those terms relate to such costs incurred in relation to that debt interest.

- (5B) For the purposes of paragraph (5)(b), this subsection covers a payment or distribution if:
- (a) the recipient is an \*Australian entity; and
  - (b) the payment or distribution is entirely referable to the repayment of principal under a debt interest issued by the payer; and
  - (c) disregarding subsection (5A), paragraphs (5)(a), (b) and (c) are not satisfied in relation to the debt interest.

***[debt deduction limitation rules]***

- (55) Schedule 2, item 76, page 41 (line 23), omit “paragraph (5)(c)”, substitute “this section”.

***[debt deduction limitation rules]***

- (56) Schedule 2, item 76, page 41 (line 24), omit “that paragraph”, substitute “paragraph (5)(b)”.

***[debt deduction limitation rules]***

- (57) Schedule 2, item 76, page 41 (line 27), omit “(4)”, substitute “(7)”.

***[debt deduction limitation rules]***

- (58) Schedule 2, item 76, page 41 (lines 28 and 29), omit “first associate issues the \*debt interest”, substitute “payer enters into or has the \*financial arrangement mentioned in paragraph (5)(a)”.

***[debt deduction limitation rules]***

- (59) Schedule 2, item 76, page 41 (line 30), omit “second associate”, substitute “the entity with whom the payer enters into or has the financial arrangement.”.

***[debt deduction limitation rules]***

- (60) Schedule 2, item 76, page 42 (after line 3), after section 820-423A, insert:

# EXPOSURE DRAFT

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## 820-423AA Exceptions for acquisition of certain CGT assets

### *Acquisition of new membership interests in entities*

- (1) For the purposes of paragraph 820-423A(2)(a), the acquisition of a \*CGT asset is covered by this section if:
- (a) the CGT asset is a \*membership interest in:
    - (i) an \*Australian entity; or
    - (ii) a \*foreign entity that is a company; and
  - (b) the membership interest has not previously been held by any entity.

### *Acquisition of certain new depreciating assets*

- (2) For the purposes of paragraph 820-423A(2)(a), the acquisition of a \*CGT asset is covered by this section if all of the following conditions are satisfied:
- (a) the CGT asset is a \*depreciating asset other than an intangible asset;
  - (b) an entity (the **acquirer**) holds the CGT asset immediately after its acquisition;
  - (c) at the time of the acquisition, the acquirer reasonably expects to use the CGT asset:
    - (i) for a \*taxable purpose; and
    - (ii) within Australia; and
    - (iii) within 12 months;
  - (d) at the time of the acquisition, the CGT asset has not been \*installed ready for use, or previously used for a taxable purpose, by any of the following:
    - (i) the acquirer;
    - (ii) an \*associate disposer of the acquirer;
    - (iii) an \*associate pair of the acquirer.

### *Acquisition of certain debt interests*

- (3) For the purposes of paragraph 820-423A(2)(a), the acquisition of a \*CGT asset is covered by this section if all of the following conditions are satisfied:
- (a) the CGT asset is a \*debt interest;
  - (b) an entity (the **acquirer**) holds the debt interest immediately after its acquisition;
  - (c) the debt interest is issued by an \*associate pair of the acquirer.

**[debt deduction limitation rules]**

- (61) Schedule 2, item 76, page 42 (line 14), omit the heading to subsection 820-423B(2), substitute:

### *Financial arrangements involving associate pairs*

**[amount of debt deduction disallowed]**

- (62) Schedule 2, item 76, page 42 (line 15), omit “condition in subsection 820-423A(5) is”, substitute “conditions in subsection 820-423A(5) are”.

**[amount of debt deduction disallowed]**

- (63) Schedule 2, item 76, page 42 (line 19), omit “the \*debt interest mentioned in paragraph 820-423A(5)(b)”, substitute “the proceeds mentioned paragraph 820-423A(5)(b) or the use of those proceeds”.

**[amount of debt deduction disallowed]**

# EXPOSURE DRAFT

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(64) Schedule 2, item 76, page 43 (after line 25), at the end of Subdivision 820-EAA, add:

## **820-423E Modified meaning of *associate pair***

- (1) This section applies for the purposes of determining whether, for the purposes of this Subdivision, an entity that is a unit trust is an associate pair of another entity.

### *Treating certain unit trusts as companies*

- (2) Subsection (3) applies if any of the following \*CGT events are capable of applying to all of the units and interests in the trust:
- (a) \*CGT event E4;
  - (b) \*CGT event E10.

- (3) For the purposes of determining, under section 318 of the *Income Tax Assessment Act 1936*, whether the trust:
- (a) is an \*associate of another entity; or
  - (b) another entity is an associate of the trust;
- treat the trust as if it were a company.

### *Application of sufficient influence test*

- (4) Subsection (5) applies in determining whether the trust:
- (a) is sufficiently influenced by another entity for the purposes of section 318 of the *Income Tax Assessment Act 1936*; or
  - (b) sufficiently influences another entity for the purposes of that section.
- (5) If:
- (a) there is any breach by any entity of the terms of a debt interest issued by, or held by, the trust; and
  - (b) there are reasonable grounds to believe that the breach occurred only to protect the interests of secured creditors in relation to the debt interest;
- sufficient influence is not taken to exist in relation to the trust merely because of the breach.

## **820-423F Modified meaning of *Australian entity***

For the purposes of this Subdivision, in determining whether an entity is an \*Australian entity at a particular time:

- (a) for the purposes of paragraph 336(a) of the *Income Tax Assessment Act 1936*, treat a partnership as being an Australian partnership if, at that time, a \*direct participation interest of 50% or more is held in the partnership by one or more of the following:
  - (i) an Australian resident;
  - (ii) an \*Australian trust; and
- (b) disregard section 337 of that Act.

***[modified meanings of associate pair and Australian entity]***

(65) Schedule 2, item 76, page 44 (line 1), after “a choice”, insert “, or that are taken to have made a choice,”.

***[third party debt concepts]***

# EXPOSURE DRAFT

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- (66) Schedule 2, item 76, page 44 (line 4), omit “subparagraph 820-85(1A)(b)(i)”, substitute “subsection 820-85(2C)”.  
**[third party debt concepts]**
- (67) Schedule 2, item 76, page 44 (line 6), omit “subparagraph 820-185(1A)(b)(i)”, substitute “subsection 820-185(2C)”.  
**[third party debt concepts]**
- (68) Schedule 2, item 76, page 44 (line 22), omit “if”, substitute “to the extent that”.  
**[third party earnings limit]**
- (69) Schedule 2, item 76, page 44 (line 26), omit “referrable”, substitute “referable”.  
**[third party earnings limit]**
- (70) Schedule 2, item 76, page 44 (line 26), after “paid”, insert “or payable”.  
**[third party earnings limit]**
- (71) Schedule 2, item 76, page 45 (lines 3 to 8), omit paragraph 820-427A(3)(c), substitute:  
(c) the holder of the debt interest has recourse only to assets of the following kind for payment of the debt to which the debt interests relates:  
(i) Australian assets held by the entity;  
(ii) Australian assets that are \*membership interests in the entity (unless the entity has a legal or equitable interest, whether directly or indirectly, in an asset that is not an Australian asset);  
(iii) Australian assets held by an \*Australian entity that is a \*member of the \*obligor group in relation to the debt interest;  
(ca) none of the assets mentioned in paragraph (c) are rights under or in relation to a guarantee, security or other form of credit support;  
**[third party debt conditions]**
- (72) Schedule 2, item 76, page 45 (line 17), omit “resident”, substitute “entity”.  
**[third party debt conditions]**
- (73) Schedule 2, item 76, page 45 (line 18), omit “For the purposes of subparagraph (3)(c)(ii), disregard a right”, substitute “A right is not taken to be a right of a kind mentioned in paragraph (3)(ca)”.  
**[third party debt conditions]**
- (74) Schedule 2, item 76, page 45 (lines 19 to 22), omit paragraph 820-427A(4)(a), substitute:  
(a) the right relates wholly to the creation or development of a \*CGT asset that is, or is reasonably expected to be:  
(i) land or other real property situated in Australia (including a lease of land, if the land is situated in Australia); or  
(ii) moveable property of a kind covered by subsection (6) situated on such land;  
and  
**[third party debt conditions]**
- (75) Schedule 2, item 76, page 45 (after line 31), at the end of section 820-427A, add:  
(6) For the purposes of subparagraph (4)(a)(ii), moveable property situated on land is of a kind covered by this subsection if the property is, or is reasonably expected to be:

# EXPOSURE DRAFT

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- (a) incidental to and relevant to the ownership and use of the land; and
- (b) situated on the land for the majority of its useful life.

**[third party debt conditions]**

- (76) Schedule 2, item 76, page 45 (line 33), omit “applies”, substitute “modifies the operation of section 820-427A”.

**[third party debt conditions]**

- (77) Schedule 2, item 76, page 46 (lines 2 to 3), omit subsection 820-427B(2).

**[third party debt conditions]**

- (78) Schedule 2, item 76, page 46 (lines 8 to 21), omit subsection 820-427B(4), substitute:

*Special rules for third party debt conditions—relevant debt interest and ultimate debt interest*

- (4) In applying subsection 820-427A(3) in relation to the income year, for an interest that is a relevant debt interest or the ultimate debt interest mentioned in subsection 820-427C(1), treat the reference in subparagraph 820-427A(3)(c)(i) to recourse to Australian assets held by the entity as being a reference to recourse to Australian assets held by the conduit financier and each borrower mentioned in subsection 820-427C(1).
- (5) In applying subsection 820-427A(3) in relation to the income year, for an interest that is a relevant debt interest or the ultimate debt interest mentioned in subsection 820-427C(1), treat the reference in subparagraph 820-427A(3)(c)(ii) to recourse to Australian assets that are \*membership interests in the entity as being a reference to recourse to Australian assets that are membership interests in the conduit financier and each borrower mentioned in subsection 820-427C(1).
- (6) In applying subsection 820-427A(3) in relation to the income year, for an interest that is a relevant debt interest or the ultimate debt interest mentioned in subsection 820-427C(1), treat the reference in subparagraph 820-427A(3)(d)(ii) to \*associated entity debt as being a reference to associated entity debt other than a relevant debt interest mentioned in subsection 820-427C(1).

**[third party debt conditions]**

- (79) Schedule 2, item 76, page 46 (line 28), omit “(the *borrowers*)”.

**[conduit financing conditions]**

- (80) Schedule 2, item 76, page 46 (line 31), omit “each borrower”, substitute “one or more of those associate entities (each of which is a *borrower*)”.

**[conduit financing conditions]**

- (81) Schedule 2, item 76, page 46 (line 31), omit “(a *relevant debt interest*)”.

**[conduit financing conditions]**

- (82) Schedule 2, item 76, page 46 (line 34), omit “borrower”, substitute “associate entity”.

**[conduit financing conditions]**

- (83) Schedule 2, item 76, page 47 (line 1), omit “each relevant debt interest”, substitute “the debt interest (each of which is a *relevant debt interest*)”.

**[conduit financing conditions]**

# EXPOSURE DRAFT

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- (84) Schedule 2, item 76, page 47 (line 6), omit “other borrower”, substitute “associate entity”.  
**[conduit financing conditions]**
- (85) Schedule 2, item 76, page 47 (lines 6 to 9), omit “another debt interest that is a relevant debt interest (whether because of subparagraph (i) of this paragraph, or because of another operation of this subparagraph)”, substitute “another borrower”.  
**[conduit financing conditions]**
- (86) Schedule 2, item 76, page 47 (line 11), omit “a cost”, substitute “costs”.  
**[conduit financing conditions]**
- (87) Schedule 2, item 76, page 47 (line 13), omit “a cost incurred”, substitute “such costs”.  
**[conduit financing conditions]**
- (88) Schedule 2, item 76, page 47 (line 18), omit “residents”, substitute “entities”.  
**[conduit financing conditions]**
- (89) Schedule 2, item 76, page 48 (line 7), at the end of subsection 820-427C(2), add:  
; and (e) disregard the terms (if any) of a relevant debt interest, to the extent that those terms have the effect of allowing the recovery of costs of a borrower that:  
    (i) are a debt deduction for the income year of the borrower; and  
    (ii) are a debt deduction that is treated as being attributable to the relevant debt interest under subsection 820-427A(2) because it is directly associated with hedging or managing the interest rate risk in respect of the relevant debt interest.  
**[conduit financing conditions]**
- (90) Schedule 2, item 76, page 48 (line 9), before “For the”, insert “(1)”.  
**[associate entity]**
- (91) Schedule 2, item 76, page 48 (before line 11), before paragraph 820-427D(a), insert:  
    (aa) disregard the requirement in subsections 820-905(1) and (2A) that the entity is an \*associate of the other entity; and  
**[associate entity]**
- (92) Schedule 2, item 76, page 48 (after line 27), at the end of section 820-427D, add:  
    (2) For the purposes of this Subdivision:  
        (a) treat an entity (the *first entity*) that has entered into a \*cross-staple arrangement with another entity as an *associate entity* of that other entity; and  
        (b) if that other entity is itself an associate entity of a conduit financier mentioned in section 820-427C (whether because of another operation of this subsection or otherwise)—treat the first entity as an *associate entity* of the conduit financier.  
**[associate entity]**
- (93) Schedule 2, item 76, page 48 (after line 27), at the end of Subdivision 820-EAB, add:

## **820-427E Modified meaning of *Australian entity***

For the purposes of this Subdivision, in determining whether an entity is an \*Australian entity at a particular time:



# EXPOSURE DRAFT

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- (a) for the purposes of paragraph 336(a) of the *Income Tax Assessment Act 1936*, treat a partnership as being an Australian partnership if, at that time, a \*direct participation interest of 50% or more is held in the partnership by one or more of the following:
- (i) an Australian resident;
  - (ii) an \*Australian trust; and
- (b) disregard section 337 of that Act.

**[modified meaning of Australian entity]**

- (94) Schedule 2, page 54 (after line 31), after item 98, insert:

## **98A Paragraph 820-881(a)**

Before “an \*outward investing entity (non-ADI)”, insert “a \*general class investor,”.

**[controlled entity concepts]**

- (95) Schedule 2, page 55 (after line 11), after item 100, insert:

## **100A Subsection 820-910(1)**

Before “an \*outward investing entity (non-ADI)”, insert “a \*general class investor,”.

**[associate entity debt]**

- (96) Schedule 2, item 140, page 61 (after line 21), after the definition of *third party earnings limit* in subsection 995-1(1), insert:

*trust excess tax EBITDA amount* has the meaning given by section 820-60.

**[trust excess tax EBITDA amount]**

- (97) Schedule 2, page 61 (after line 28), after item 142, insert:

## ***Income Tax (Transitional Provisions) Act 1997***

### **142A At the end of Division 820**

Add:

### **820-50 Application of Subdivision 820-EAA of the Income Tax Assessment Act 1997**

- (1) Subject to this section, Subdivision 820-EAA of the *Income Tax Assessment Act 1997* applies in relation to an income year that begins on or after 1 July 2023.
- (2) Subject to subsection (3), Subdivision 820-EAA does not apply to a debt deduction that relates to a financial arrangement entered into before 22 June 2023.
- (3) Subdivision 820-EAA applies in relation to a debt deduction for an income year that begins on or after 1 July 2024 regardless of when the financial arrangement to which the debt deduction relates was entered into.

**[application of Subdivision 820-EAA]**