



Tax Laws Amendment (Clean Building Managed Investment Trust) Act 2012

No. 185, 2012

**An Act to amend the law relating to taxation, and
for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Tax Laws Amendment (Clean Building Managed Investment Trust) Act 2012

No. 185, 2012

An Act to amend the law relating to taxation, and for related purposes

[Assented to 10 December 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (Clean Building Managed Investment Trust) Act 2012*.

2 Commencement

This Act commences on the day this Act receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Clean building managed investment trusts

Income Tax Assessment Act 1997

1 Subsection 995-1(1)

Insert:

clean building has the meaning given by section 12-430 in Schedule 1 to the *Taxation Administration Act 1953*.

2 Subsection 995-1(1)

Insert:

clean building managed investment trust has the meaning given by section 12-425 in Schedule 1 to the *Taxation Administration Act 1953*.

Income Tax (Managed Investment Trust Withholding Tax) Act 2008

3 After section 2

Insert:

2A Definitions

In this Act:

clean building managed investment trust has the same meaning as in the *Income Tax Assessment Act 1997*.

entity has the same meaning as in the *Income Tax Assessment Act 1997*.

fund payment has the same meaning as in the *Income Tax Assessment Act 1997*.

income year has the same meaning as in the *Income Tax Assessment Act 1997*.

information exchange country has the same meaning as in the *Income Tax Assessment Act 1997*.

4 Paragraph 4(1)(a)

Omit “fund payments” (wherever occurring), substitute “fund payments (except to the extent that they are, or are attributable to, fund payments from a clean building managed investment trust)”.

5 At the end of paragraph 4(1)(a)

Add:

- (iv) 10% for fund payments to the extent that they are, or are attributable to, fund payments from a clean building managed investment trust in relation to the income years starting on or after 1 July 2012; or

6 Subsection 4(2)

Repeal the subsection.

Taxation Administration Act 1953

7 Section 12-375 in Schedule 1 (fourth paragraph)

Omit “is located”, substitute “is located and whether the trust is a clean building managed investment trust”.

8 At the end of section 12-375 in Schedule 1

Add:

<p>A managed investment trust is a clean building managed investment trust if it is a managed investment trust that holds one or more clean buildings and does not derive assessable income from any other taxable Australian property (other than certain assets that are reasonably incidental to a clean building).</p>
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9 Subparagraph 12-385(3)(a)(i) in Schedule 1

Omit “*fund payments”, substitute “*fund payments (except to the extent that they are, or are attributable to, fund payments from a *clean building managed investment trust)”.

10 Subparagraphs 12-385(3)(a)(ii), (iii) and (iv) in Schedule 1

Omit “fund payments” (wherever occurring), substitute “fund payments (except to the extent that they are, or are attributable to, fund payments from a clean building managed investment trust)”.

11 At the end of paragraph 12-385(3)(a) in Schedule 1

Add:

- (v) 10% for fund payments to the extent that they are, or are attributable to, fund payments from a clean building managed investment trust in relation to the income years starting on or after 1 July 2012; or

12 Subparagraph 12-390(3)(a)(i) in Schedule 1

Omit “*fund payments”, substitute “*fund payments (except to the extent that they are, or are attributable to, fund payments from a *clean building managed investment trust)”.

13 Subparagraphs 12-390(3)(a)(ii), (iii) and (iv) in Schedule 1

Omit “fund payments” (wherever occurring), substitute “fund payments (except to the extent that they are, or are attributable to, fund payments from a clean building managed investment trust)”.

14 At the end of paragraph 12-390(3)(a) in Schedule 1

Add:

- (v) 10% for fund payments to the extent that they are, or are attributable to, fund payments from a clean building managed investment trust in relation to the income years starting on or after 1 July 2012; or

15 Subparagraph 12-390(6)(a)(i) in Schedule 1

Omit “*fund payments”, substitute “*fund payments (except to the extent that they are, or are attributable to, fund payments from a clean building managed investment trust)”.

16 Subparagraphs 12-390(6)(a)(ii), (iii) and (iv) in Schedule 1

Omit “fund payments” (wherever occurring), substitute “fund payments (except to the extent that they are, or are attributable to, fund payments from a clean building managed investment trust)”.

17 At the end of paragraph 12-390(6)(a) in Schedule 1

Insert:

- (v) 10% for fund payments to the extent that they are, or are attributable to, fund payments from a clean building managed investment trust in relation to the income years starting on or after 1 July 2012; or

18 After paragraph 12-395(3)(a) in Schedule 1

Insert:

- (aa) must specify the extent (if any) to which the payment is, or is attributable to, a *fund payment from a *clean building managed investment trust; and

19 After paragraph 12-395(6)(a) in Schedule 1

Insert:

- (aa) must specify the extent (if any) to which the payment is, or is attributable to, a *fund payment from a *clean building managed investment trust; and

20 At the end of Subdivision 12-H in Schedule 1

Add:

12-425 Meaning of *clean building managed investment trust*

- (1) A trust is a *clean building managed investment trust* in relation to an income year if during the income year:
 - (a) it is a *managed investment trust in relation to the income year; and
 - (b) it holds one or more *clean buildings (including the land on which the buildings are situated); and
 - (c) it does not derive assessable income from any *taxable Australian property (other than from the clean buildings or assets that are reasonably incidental to those buildings).

5% safe harbour for certain income reasonably incidental to a clean building

- (2) A trust is not a *clean building managed investment trust in relation to an income year if the assessable income of the trust that is derived from assets that are reasonably incidental to *clean

buildings is greater than 5% of the assessable income of the trust that is derived from clean buildings.

- (3) The regulations may specify kinds of assets that are, or are not, reasonably incidental to *clean buildings for the purposes of this section.

12-430 Meaning of *clean building*

- (1) A building is a *clean building* if:
- (a) the construction of the building commenced on or after 1 July 2012; and
 - (b) it satisfies the requirements in subsections (3) and (4).
- (2) For the purpose of subsection (1):
- (a) the construction of the building is taken to have commenced at the time the works on the lowest level (including any basement level) of the building commence; and
 - (b) the construction of the building is not taken to have commenced merely because works preparing the site for construction, or works undertaken below the lowest level of the building (including any basement level), have commenced.
- (3) A building satisfies the requirements in this subsection if:
- (a) the building is a commercial building that is any of the following (or is a combination of any of the following):
 - (i) an office building;
 - (ii) a hotel for use wholly or mainly to provide short-term accommodation for travellers;
 - (iii) a shopping centre; or
 - (b) the building satisfies the requirements prescribed by the regulations for the purposes of this paragraph.
- (4) A building satisfies the requirements in this subsection if:
- (a) the building:
 - (i) has, and continues to maintain at all times during the income year, at least a 5 Star Green Star rating as certified by the Green Building Council of Australia; or
 - (ii) has, and continues to maintain at all times during the income year, at least a 5.5 star energy rating as

Schedule 1 Clean building managed investment trusts

- accredited by the National Australian Built Environment Rating System (*NABERS*); or
- (b) the building satisfies the requirements prescribed by the regulations for the purposes of this paragraph.
- (5) For the purposes of subsection (4), if:
- (a) a building has previously satisfied the requirements in that subsection; and
- (b) the building then fails to satisfy the requirements for a period (the *non-compliance period*); and
- (c) within 180 days after the first day of that failure, the building again satisfies the requirements;
- treat the building as having satisfied the requirements during the non-compliance period.
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[*Minister's second reading speech made in—
House of Representatives on 10 October 2012
Senate on 31 October 2012*]

(180/12)
