Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016

No. 53, 2016

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

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)

Contents

1 Short title 1
2 Commencement 2
3 Schedules 3

Schedule 1—Attribution managed investment trusts 4

Income Tax Assessment Act 1997 4

Taxation Administration Act 1953 46

Schedule 2—Annual cost base adjustment for member's unit or interest in AMIT 49

Income Tax Assessment Act 1997 49

Schedule 3—Withholding MITs and fund payments 56

Income Tax Assessment Act 1936 56

Income Tax Assessment Act 1997 56

Taxation Administration Act 1953 57

Schedule 4—Managed investment trusts 81

Income Tax Assessment Act 1997 81

Taxation Administration Act 1953 98

Schedule 5—20% tracing rule and repeal of Division 6B 100

Part 1—20% tracing rule 100

Income Tax Assessment Act 1936 100

Income Tax Assessment Act 1997 100

Part 2—Repeal of Division 6B 102

Income Tax Assessment Act 1936 102

Part 3—Amendments consequential on the repeal of Division 6B 103

Development Allowance Authority Act 1992 103

Income Tax Act 1986 103

Income Tax Assessment Act 1936 103

Income Tax Assessment Act 1997 105

Income Tax Rates Act 1986 110

Authorised Version C2016A00053

International Tax Agreements Act 1953 110
Taxation Administration Act 1953 110
Part 4—Transitional 112
Schedule 6—Consequential amendments 114
Income Tax Assessment Act 1936 114
Income Tax Assessment Act 1997 118
Taxation Administration Act 1953 120
Tax Laws Amendment (2010 Measures No. 3) Act 2010 124
Schedule 7—Widely-held requirements 125
Taxation Administration Act 1953 125
Schedule 8—Application and transitional provisions etc. 126
Income Tax (Transitional Provisions) Act 1997 126
Tax Laws Amendment (2011 Measures No. 5) Act 2011 131
Schedule 9—Definitions 133
Income Tax Assessment Act 1997 133

Authorised Version C2016A00053

Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016

No. 53, 2016

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

[*Assented to 5 May 2016*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016*.

Authorised Version C2016A00053

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
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.	5 May 2016
2. Schedules 1 to 6	The latest of the following days: (a) the day this Act receives the Royal Assent; (b) the day the *Income Tax (Attribution Managed Investment Trusts—Offsets) Act 2016* receives the Royal Assent; (c) the day the *Income Tax Rates Amendment (Managed Investment Trusts) Act 2016* receives the Royal Assent; (d) the day the *Medicare Levy Amendment (Attribution Managed Investment Trusts) Act 2016* receives the Royal Assent. However, the provisions do not commence at all if any of the events mentioned in paragraphs (b), (c) and (d) does not occur.	5 May 2016
3. Schedule 7	1 July 2014.	1 July 2014
4. Schedules 8 and 9	The latest of the following days: (a) the day this Act receives the Royal Assent; (b) the day the *Income Tax (Attribution Managed Investment Trusts—Offsets) Act 2016* receives the Royal Assent; (c) the day the *Income Tax Rates*	5 May 2016

Authorised Version C2016A00053

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
	Amendment (Managed Investment Trusts) Act 2016 receives the Royal Assent; (d) the day the *Medicare Levy Amendment (Attribution Managed Investment Trusts) Act 2016* receives the Royal Assent. However, the provisions do not commence at all if any of the events mentioned in paragraphs (b), (c) and (d) does not occur.	

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

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

3 Schedules

Legislation 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.

Authorised Version C2016A00053

Schedule 1—Attribution managed investment trusts

Income Tax Assessment Act 1997

1 At the end of Part 3-25

Add:

Division 276—Australian managed investment trusts: attribution managed investment trusts

Table of Subdivisions

	Guide to Division 276
276-A	What is an attribution managed investment trust?
276-B	Member's vested and indefeasible interest in share of income and capital of AMIT
276-C	Taxation etc. of member components
276-D	Member components
276-E	Trust components
276-F	Unders and overs
276-G	Shortfall and excess taxation
276-H	AMMA statements
276-J	Debt-like trust instruments
276-K	Ceasing to be an AMIT

Guide to Division 276

276-1 What this Division is about

A managed investment trust in relation to an income year is an attribution managed investment trust (or AMIT) for the income year if certain criteria are satisfied. In particular, for the trust to be an AMIT, the interests of the members of the trust need to be

Authorised Version C2016A00053

clearly defined at all times during which the trust is in existence in the income year (see Subdivision 276-A).

An AMIT for an income year is treated as a fixed trust. A member of the AMIT in respect of the income year is treated as having a vested and indefeasible interest in a share of the income and capital of the AMIT throughout the income year (see Subdivision 276-B).

Amounts related to income and tax offsets of an AMIT, determined by the trustee to be of a particular tax character, are attributed to members, generally retaining that tax character (see Subdivision 276-C).

Underestimates and overestimates of amounts at the trust level are carried forward and dealt with in later years. This is done on a character-by-character basis. An underestimate in an income year of a particular character results in an under of that character. An overestimate results in an over of that character. Unders and overs arise, and are dealt with, in the income year in which they are discovered (see Subdivision 276-F).

The trustee of an AMIT is liable to pay income tax on certain amounts reflecting under-attribution of income or over-attribution of tax offsets (see Subdivision 276-G).

Special rules apply to a trust that ceases to be an AMIT (see Subdivision 276-K).

Subdivision 276-A—What is an attribution managed investment trust?

Guide to Subdivision 276-A

276-5 What this Subdivision is about

A managed investment trust in relation to an income year is an ***attribution managed investment trust*** (or ***AMIT***) for the income year if certain criteria are satisfied. In particular:

Authorised Version C2016A00053

(a)	the interests of the members of the trust need to be clearly defined at all times when the trust is in existence in the income year; and
(b)	the trustee of the trust needs to have made a choice for the trust to be an AMIT in respect of that income year or an earlier income year.

Table of sections

Operative provisions

276-10 Meaning of ***attribution managed investment trust*** (or ***AMIT***)
276-15 Clearly defined interests
276-20 Trust with classes of membership interests—each class treated as separate AMIT

Operative provisions

276-10 Meaning of *attribution managed investment trust* (or *AMIT*)

(1) A trust is an ***attribution managed investment trust*** (or ***AMIT***) for an income year if:

(a) the trust is a *managed investment trust in relation to the income year; and

(b) the rights to income and capital arising from each of the *membership interests in the trust are clearly defined (see section 276-15) at all times when the trust is in existence in the income year; and

(c) if the trust is a managed investment trust in relation to the income year solely because of paragraph 275-10(1)(b)—the only members of the trust are managed investment trusts in relation to the income year; and

(d) if the regulations specify criteria for the purposes of this paragraph—those criteria are satisfied in relation to the trust; and

(e) either:

(i) the trustee of the trust has made a choice for the purposes of this subparagraph in respect of that income year; or

Authorised Version C2016A00053

(ii) the trust was an AMIT for an earlier income year.

(2) A choice for the purposes of subparagraph (1)(e)(i) cannot be revoked.

276-15 Clearly defined interests

(1) Without limiting the circumstances in which the rights to income and capital arising from the *membership interests in a trust are clearly defined for the purposes of paragraph 276-10(1)(b), treat such rights as being clearly defined at a particular time for those purposes if any of the following conditions are satisfied at that time:

(a) the trust is registered under section 601EB of the *Corporations Act 2001*;

(b) the rights to income and capital arising from each of the membership interests in the trust are the same.

(2) For the purposes of working out whether the condition in paragraph (1)(b) is satisfied, disregard the following:

(a) fees or charges imposed by the trustee on the *members of the trust;

(b) issue and redemption prices of *membership interests in the trust;

(c) exposure of the membership interests in the trust to foreign exchange gains and losses.

276-20 Trust with classes of membership interests—each class treated as separate AMIT

(1) Subsections (2) and (3) apply if:

(a) the *membership interests in an *AMIT for an income year are divided into classes; and

(b) the rights arising from each of those membership interests in a particular class are the same as the rights arising from every other of those membership interests in that class; and

(c) each of those membership interests in a particular class is distinct from each of those membership interests in another class; and

Authorised Version C2016A00053

(d) the trustee of the AMIT has made a choice for the purposes of this paragraph that applies to the income year.

(2) For the purposes of this Division (other than this Subdivision), treat each class of those *membership interests in the *AMIT as being a separate AMIT for that income year.

(3) For the purposes of this Division, allocate assessable income, *exempt income, *non-assessable non-exempt income, *tax losses, *net capital losses and other similar amounts in respect of the *AMIT between each of the separate classes mentioned in subsection (1) on a fair and reasonable basis.

Making of choice by trustee

(4) A choice for the purposes of paragraph (1)(d) applies to the income year for which it is made and every subsequent income year.

(5) A choice for the purposes of paragraph (1)(d) cannot be revoked.

Subdivision 276-B—Member's vested and indefeasible interest in share of income and capital of AMIT

Guide to Subdivision 276-B

276-50 What this Subdivision is about

An AMIT for an income year is treated as a fixed trust. A member of the AMIT in respect of the income year is treated as having a vested and indefeasible interest in a share of the income and capital of the AMIT throughout the income year.

Table of sections

Operative provisions

276-55 AMIT taken to be fixed trust and member taken to have vested and indefeasible interest in income and capital

Authorised Version C2016A00053

Operative provisions

276-55 AMIT taken to be fixed trust and member taken to have vested and indefeasible interest in income and capital

For the purposes of this Act:

(a) treat an *AMIT for an income year as a *fixed trust; and

(b) treat an entity that is a *member of the AMIT in respect of the income year as having a vested and indefeasible interest in a share of the income and capital of the AMIT throughout the income year.

Subdivision 276-C—Taxation etc. of member components

Guide to Subdivision 276-C

276-75 What this Subdivision is about

Amounts related to income and tax offsets of an AMIT, of a particular tax character, are attributed to members of the AMIT on the basis of their determined member components of that tax character.

This attribution does not apply to the extent that amounts have been withheld etc. in relation to those components under Subdivision 12-F, 12-H or 12A-C in Schedule 1 to the *Taxation Administration Act 1953*.

The trustee of an AMIT that is not a withholding MIT may be liable to pay income tax in respect of a determined member component of a foreign resident member (including where that member is acting in the capacity of a trustee). As a result, the member may be entitled to a tax offset.

Table of sections

Taxation etc. of member on determined member components

276-80 Member's assessable income or tax offsets for determined member components—general rules

Authorised Version C2016A00053

276-85 Member's assessable income or tax offsets for determined member components—specific rules
276-90 Commissioner's determination as to status of member as qualified person
276-95 Relationship between section 276-80 and withholding rules
276-100 Relationship between section 276-80 and other charging provisions in this Act

Foreign resident members—taxation of trustee and corresponding tax offset for members

276-105 Trustee taxed on foreign resident's determined member components
276-110 Refundable tax offset for foreign resident member—member that is not a trustee

Special rule for interposed custodian

276-115 Custodian interposed between AMIT and member

Taxation etc. of member on determined member components

276-80 Member's assessable income or tax offsets for determined member components—general rules

Components of income character

(1) Subsection (2) applies if a *member of an *AMIT in respect of an income year has, for the income year, a *determined member component of:
  (a) a character relating to assessable income; or
  (b) a character relating to *exempt income; or
  (c) a character relating to *non-assessable non-exempt income.

(2) For the purpose of working out the effects mentioned in subsection (3) for the *member, treat the member as having derived, received or made the amount reflected in the *determined member component:
  (a) in the member's own right (rather than as a member of a trust); and
  (b) in the same circumstances as the *AMIT derived, received or made that amount, to the extent that those circumstances gave rise to the particular character of that component.

(3) The effects are as follows:

Authorised Version C2016A00053

(a) including an amount in the assessable income of the *member;
(b) including an amount in the *exempt income of the member;
(c) including an amount in the *non-assessable non-exempt income of the member;
(d) determining whether the member has made a *capital gain from a *CGT event;
(e) determining the extent to which the member's *net capital loss has been *utilised.

Components of tax offset character

(4) Subsection (5) applies if a *member of an *AMIT in respect of an income year has, for the income year, a *determined member component of a character relating to a *tax offset.

(5) For the purpose of working out the effects mentioned in subsection (6) for the *member, treat the member as having paid or received the amount reflected in the *determined member component:
(a) in the member's own right (rather than as a member of a trust); and
(b) in the same circumstances as the *AMIT paid or received that amount.

(6) The effects are as follows:
(a) entitling the member to a *tax offset;
(b) entitling the member to a credit under Division 18 in Schedule 1 to the *Taxation Administration Act 1953*.

276-85 Member's assessable income or tax offsets for determined member components—specific rules

(1) This section makes clarifications and modifications of the operation of section 276-80 in respect of a *member of an *AMIT in respect of an income year.

(2) For the purposes of this Act, if an amount is included in the *member's assessable income because of the operation of this

Authorised Version C2016A00053

section, treat that amount as being so included because of the operation of subsection 276-80(2).

Discount capital gains

(3) Subsection (4) applies if the *member has, for the income year, a *determined member component of the character of:

(a) a *discount capital gain from a *CGT asset that is *taxable Australian property; or

(b) a discount capital gain from a CGT asset that is *not* taxable Australian property.

(4) For the purposes of section 276-80 and this section, treat the amount of the component as being double what it would be apart from this subsection.

Franking credit gross-up

(5) Subsection (6) applies if the *member has, for the income year, a *determined member component (the ***franking credit gross-up component***) of the character of assessable income under subsection 207-20(1) (franking credit gross-up).

(6) For the purposes of subsection 207-20(1) (franking credit gross-up), treat the reference in that subsection to the amount of the *franking credit on the distribution as instead being a reference to the amount of the franking credit gross-up component.

Limitation on circumstances in paragraph 276-80(2)(b)

(7) The circumstances mentioned in paragraph 276-80(2)(b) or (5)(b) do not include the following:

(a) the residence of the trustee of the *AMIT;

(b) the place of the central management and control of the AMIT.

276-90 Commissioner's determination as to status of member as qualified person

(1) Subsection (2) applies to a *member of an *AMIT in respect of an income year if:

Authorised Version C2016A00053

(a) the AMIT is specified in a determination under subsection (3); and
(b) the income year is specified in the determination; and
(c) the member:
(i) is specified in the determination; or
(ii) is included in a class of members specified in the determination.

(2) Treat the *member as *not* being a qualified person in relation to a distribution in relation to the *AMIT for the income year, for the purposes of Division 1A of former Part IIIAA of the *Income Tax Assessment Act 1936*.

(3) For the purposes of this section, the Commissioner may make a determination in writing that identifies any of the following:
(a) a specified *member of a specified *AMIT;
(b) a specified class of members of a specified AMIT.

(4) The determination may specify one or more income years.

(5) In deciding whether to make a determination under subsection (3), the Commissioner may have regard to any of the following:
(a) arrangements (if any) entered into by the *member that directly or indirectly reduce the economic exposure of the member to changes in the value of the *membership interests held by the member in the *AMIT;
(b) the lack of such arrangements;
(c) the length of time that the member has been a member of the AMIT;
(d) any other matter that the Commissioner considers relevant.

(6) A determination under subsection (3) is not a legislative instrument.

(7) If an entity to whom a determination relates is dissatisfied with the determination, the entity may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

Authorised Version C2016A00053

276-95 Relationship between section 276-80 and withholding rules

(1) Subsection 276-80(2) does *not* apply to the extent that the *determined member component is reflected in an *AMIT DIR payment or a *fund payment, if an amount in respect of the payment:

(a) has been withheld from the payment under Subdivision 12-F or 12-H in Schedule 1 to the *Taxation Administration Act 1953*; or

(b) would be so withheld apart from an exemption from a requirement to withhold under Subdivision 12-F in that Schedule; or

(c) has been paid under Division 12A in that Schedule; or

(d) would be so paid apart from an exemption from a requirement to withhold under Subdivision 12-F in that Schedule.

(2) However, if the *determined member component is reflected in a *fund payment, subsection (1) applies only to the extent to which an amount attributable to the fund payment is treated under section 840-815 as not assessable income and not *exempt income.

(3) Subsection 276-80(2) does not affect the operation of the following:

(a) Division 11A of Part III of the *Income Tax Assessment Act 1936*;

(b) Subdivision 840-M of this Act;

(c) Division 12 in Schedule 1 to the *Taxation Administration Act 1953*.

Note: See Division 12A in Schedule 1 to the *Taxation Administration Act 1953* for provisions about withholding tax that apply specifically to AMITs.

276-100 Relationship between section 276-80 and other charging provisions in this Act

(1) This section applies if:

(a) an amount is included in the assessable income of a *member of an *AMIT in respect of an income year in respect of the member's interest in the AMIT; and

Authorised Version C2016A00053

(b) that amount is so included otherwise than because of the operation of subsection 276-80(2).

(2) Reduce the amount included in the assessable income of the *member as mentioned in subsection (1) to the extent (if any) that a corresponding amount is included in the assessable income of the member in respect of the member's interest in the *AMIT because of the operation of subsection 276-80(2).

(3) To avoid doubt, this section is subject to section 230-20 (financial arrangements).

Foreign resident members—taxation of trustee and corresponding tax offset for members

276-105 Trustee taxed on foreign resident's determined member components

(1) This section applies if:

(a) a *member of an *AMIT in respect of an income year has, for the income year, a *determined member component of a character relating to assessable income in respect of the AMIT; and

(b) either:

(i) unless subparagraph (ii) applies—the member is a foreign resident at the end of the income year; or

(ii) if the member is, in respect of that determined member component, a beneficiary in the capacity of a trustee of another trust—a trustee of the other trust is a foreign resident at the end of the income year; and

(c) the AMIT is not a *withholding MIT.

(2) The trustee of the *AMIT is to be assessed and is liable to pay income tax:

(a) if subparagraph (1)(b)(i) applies and the *member is *not* a company—in respect of the amount mentioned in subsection (3) as if it were the income of an individual and were not subject to any deduction; or

(b) if subparagraph (1)(b)(i) applies and the member is a company—in respect of the amount mentioned in

Authorised Version C2016A00053

subsection (3) at the rate declared by the Parliament for the purposes of this paragraph; or

(c) if subparagraph (1)(b)(ii) applies—in respect of the amount mentioned in subsection (4) or (5) at the rate declared by the Parliament for the purposes of this paragraph.

Note: The rates are set out in the following provisions:

(a) for paragraph (a)—subsection 12(6A) of the *Income Tax Rates Act 1986* and Schedule 10A to that Act;

(b) for paragraph (b)—paragraph 28A(a) of that Act;

(c) for paragraph (c)—paragraph 28A(b) of that Act.

(3) The amount is the *determined member component, to the extent that the component:

(a) is attributable to a period when the *member was an Australian resident; or

(b) is attributable to a period when the member was not an Australian resident and is attributable to sources in Australia.

(4) The amount is the *determined member component, to the extent that the component is attributable to sources in Australia.

(5) For the purposes of subsection (4), treat the entire amount of the *determined member component as not being attributable to sources in Australia if it is of the character of:

(a) a *discount capital gain from a *CGT asset that is not *taxable Australian property; or

(b) a *capital gain (other than a discount capital gain) from a CGT asset that is not taxable Australian property.

Exception for component reflected in AMIT DIR payment or fund payment

(6) Subsection (2) does *not* apply to the extent that the *determined member component is reflected in an *AMIT DIR payment or a *fund payment, if an amount in respect of the payment:

(a) has been withheld from the payment under Subdivision 12-F or 12-H in Schedule 1 to the *Taxation Administration Act 1953*; or

(b) would be so withheld apart from an exemption from a requirement to withhold under Subdivision 12-F in that Schedule; or

Authorised Version C2016A00053

(c) has been paid under Division 12A in that Schedule; or

(d) would be so paid apart from an exemption from a requirement to withhold under Subdivision 12-F in that Schedule.

Gross-up for discount capital gain

(7) Subsection (8) applies if a *determined member component is of the character of:

(a) a *discount capital gain from a *CGT asset that is *taxable Australian property; or

(b) a discount capital gain from a CGT asset that is *not* taxable Australian property.

(8) For the purposes of this section, treat the amount of the component as being double what it would be apart from this subsection.

276-110 Refundable tax offset for foreign resident member—member that is not a trustee

(1) This section applies if a trustee is assessed and liable to pay income tax under section 276-105 in respect of a *member because of paragraph 276-105(2)(a) or (b).

(2) The *member is entitled to a *tax offset for the income year equal to the tax paid by the trustee in accordance with subsection 276-105(2).

Note: The tax offset is subject to the refundable tax offset rules: see section 67-23.

Special rule for interposed custodian

276-115 Custodian interposed between AMIT and member

(1) This section applies if:

(a) a trust that is a *custodian is a *member of an *AMIT in respect of an income year; and

(b) the custodian has, for the income year, a *determined member component of a particular character for the AMIT; and

Authorised Version C2016A00053

(c) the custodian is interposed between the AMIT and another entity (the ***subsequent recipient***); and

(d) the subsequent recipient:

(i) starts to have, at a time in the income year, an entitlement to an amount that is reasonably attributable to all or part of the determined member component; or

(ii) would start to have, at a time in the income year, such an entitlement if the determined member component were an actual payment of an amount.

(2) For the purposes of this Subdivision, reduce the *custodian's *determined member component by the amount of the entitlement mentioned in subparagraph (1)(d)(i) or (ii).

Note: This subsection may operate to reduce the amount of the determined member component multiple times if there is more than one subsequent recipient in respect of which the requirements in paragraphs (1)(c) and (d) are satisfied.

(3) For the purposes of this Subdivision:

(a) treat the subsequent recipient as being a *member of the *AMIT in respect of the income year; and

(b) treat the subsequent recipient as having, for the income year, a *determined member component for the AMIT that:

(i) is of the character mentioned in paragraph (1)(b); and

(ii) is equal to the amount of the entitlement mentioned in subparagraph (1)(d)(i) or (ii).

Subdivision 276-D—Member components

Guide to Subdivision 276-D

276-200 What this Subdivision is about

A member's ***member component*** of a particular character is so much of an AMIT's determined trust component of that character (see Subdivision 276-E) as is attributable to membership interests held by the member, worked out in accordance with certain requirements.

Authorised Version C2016A00053

A member's ***determined member component*** of a particular character is the amount stated to be the member's member component of that character in an AMMA statement (see Subdivision 276-H).

Table of sections

Member-level concepts

276-205 Meaning of ***determined member component***
276-210 Meaning of ***member component***

Member-level concepts

276-205 Meaning of *determined member component*

(1) The ***determined member component*** of a particular character for an income year of a *member of an *AMIT in respect of the income year is the amount of the member's *member component of that character as reflected in the AMIT's latest *AMMA statement for the member for the income year.

(2) Subsection (3) applies if:
  (a) the *member makes a choice for the purposes of this paragraph that complies with subsection (5); and
  (b) the member gives a copy of the choice to the Commissioner within 4 months after:
    (i) unless subparagraph (ii) applies—the end of the member's income year; or
    (ii) if the *AMIT gives the member a revised *AMMA statement for the income year at a time after the end of that income year—that time; and
  (c) the member gives a notice of the choice, in accordance with subsection (7), to the trustee of the AMIT within those 4 months.

(3) Despite subsection (1), if the *determined member component of that character for the income year (disregarding this subsection) does *not* accord with subsections 276-210(2), (3) and (4), that

Authorised Version C2016A00053

determined member component is instead the member's *member component of that character for the income year.

(4) For the purposes of subsection (3), in working out the member's *member component of that character for the income year, if the *trust component of that character differs from the *determined trust component of that character, treat the references in section 276-210 to determined trust component as instead being references to trust component.

Example: The determined trust component exceeds the trust component because of an unintentional mistake by the trustee of the AMIT. As a result, a member's corresponding determined member component under subsection (1) exceeds what it would have been if the trustee had not made the mistake.

If the member makes a choice under subsection (2), the amount of the determined member component will be determined according to the amount of the trust component.

(5) The choice must:
  (a) be in writing; and
  (b) state the following matters:
    (i) the income year to which the choice relates;
    (ii) what the *member considers to be the member's *member component of that character for the income year;
    (iii) the reason why the member considers that the *determined member component of that character for the income year does *not* accord with subsections 276-210(2), (3) and (4).

(6) The way the *member's *income tax return is prepared is sufficient evidence of the making of the choice.

(7) The notice must:
  (a) be in writing; and
  (b) state the matters mentioned in paragraph (5)(b).

Authorised Version C2016A00053

276-210 Meaning of *member component*

(1) This section applies to a *member of an *AMIT in respect of an income year and sets out how to work out the member's *member components for the year.

Meaning of ***member component***

(2) The *member's ***member component*** of a character is so much of the *AMIT's *determined trust component of that character as is attributable to the *membership interests in the AMIT held by the member, worked out in accordance with the requirements in subsections (3) and (4).

Attribution must be fair and reasonable and accord with constituent documents

(3) The attribution must be worked out on a fair and reasonable basis, in accordance with the constituent documents of the *AMIT. This requirement is subject to the requirement in subsection (4).

Attribution must not involve streaming of character amounts

(4) The attribution must not attribute any part of a *determined trust component of a particular character to a *member's *membership interests because of the tax characteristics of the member.

Safe harbour rules

(5) Without limiting the scope of the requirements in subsection (3) and (4), an amount does not fail to be worked out in accordance with those requirements as mentioned in subsection (2) merely because the amount reflects the fact that:

(a) the constituent documents of the *AMIT give the trustee of the AMIT the power to direct an amount arising from the sale of an asset to a particular *member, if:

(i) the member redeems one or more *membership interests in the AMIT; and

(ii) the direction of the amount is made to fund the redemption; and

(b) the trustee exercises that power.

Authorised Version C2016A00053

(6) Without limiting the scope of the requirements in subsection (3) and (4), an amount does not fail to be worked out in accordance with those requirements as mentioned in subsection (2) merely because the amount reflects the fact that:

(a) either:

(i) an amount of an *under, relating to a base year (as mentioned in subsection 276-345(1)) increases a *trust component of the *AMIT for a later income year under section 276-305; or

(ii) an amount of an *over, relating to a base year (as mentioned in subsection 276-345(1)) decreases a trust component of the AMIT for a later income year under section 276-305; and

(b) an entity is a *member of the AMIT at a time in the later income year, but was *not* a member of the AMIT in respect of the base year.

(7) Without limiting the scope of the requirements in subsection (3) and (4), an amount does not fail to be worked out in accordance with those requirements as mentioned in subsection (2) merely because the amount reflects the fact that:

(a) the trustee made a *capital gain or *capital loss in an income year (for the purposes of working out the amount of a *trust component of the *AMIT for an income year in accordance with the rules in section 276-265); and

(b) an entity was a *member of the AMIT in respect of the income year, but was *not* a member of the AMIT at the time the capital gain or capital loss was made.

Subdivision 276-E—Trust components

Guide to Subdivision 276-E

276-250 What this Subdivision is about

An AMIT's ***trust component*** of a particular character is worked out on the basis of the AMIT's assessable income, exempt income, non-assessable non-exempt income and tax offsets (on the

Authorised Version C2016A00053

assumption that the AMIT were an Australian resident liable to pay tax).

An AMIT's ***determined trust component*** of a particular character is the amount stated to be its trust component of that character in a document that meets certain requirements.

Table of sections

Trust-level concepts

276-255 Meaning of ***determined trust component***
276-260 Meaning of ***trust component***
276-265 Rules for working out trust components—general rules
276-270 Rules for working out trust components—allocation of deductions

Trust-level concepts

276-255 Meaning of *determined trust component*

(1) An *AMIT's ***determined trust component*** of a particular character for an income year is the amount stated to be its *trust component of that character in a document that meets the requirements in subsection (2).

(2) The requirements are as follows:
  (a) the document was created by the *AMIT;
  (b) the document states expressly the amount of the *trust component;
  (c) at a time after the document was created, the AMIT sent *AMMA statements for the income year to entities that were *members of the AMIT in respect of the income year;
  (d) the amount of the trust component stated in the document reflects the amount of the *determined member components reflected in those AMMA statements.

(3) If, apart from this subsection, there are 2 or more documents that meet the requirements in subsection (2), treat the most recently created of those documents as being the only document that meets those requirements.

Authorised Version C2016A00053

Example: The income year for the AMIT ends on 30 June. The trustee creates a document stating the amount for the income year on 1 July. It sends all AMMA statements on 10 July. The trustee creates another document stating a different amount for the income year on 1 September. It sends revised AMMA statements reflecting that amount on 10 September. The document created on 1 September is the only document that meets the requirements in this section in respect of the amount for the income year.

276-260 Meaning of *trust component*

(1) The object of this section is to ensure that an *AMIT's amounts of assessable income, *exempt income, *non-assessable non-exempt income and *tax offsets for an income year are allocated, according to their character, into separate components for the purposes of this Act.

(2) An *AMIT's ***trust component*** for an income year:

(a) of a character relating to assessable income; or

(b) of a character relating to *exempt income; or

(c) of a character relating to *non-assessable non-exempt income; or

(d) of a character relating to a *tax offset;

is the amount of that character for the income year worked out for the AMIT in accordance with the rules in sections 276-265 and 276-270.

(3) This section is subject to Subdivision 276-F (which deals with the effect of *unders and *overs).

(4) The rules in sections 276-265 and 276-270 apply only for the purposes of determining the amounts of *trust components.

276-265 Rules for working out trust components—general rules

General taxability and residence assumptions to be made

(1) Work out the amount of the *trust component of each character in relation to the *AMIT assuming that the AMIT's trustee:

(a) was liable to pay *tax; and

(b) was an Australian resident.

Authorised Version C2016A00053

Trust components of assessable income character are net of deductions

(2) The sum of all of the *trust components of a character relating to assessable income of the *AMIT for the income year equals the total assessable income of the AMIT for the income year, reduced by all deductions of the AMIT for the year. To avoid doubt, for the purposes of this subsection, apply subsection (1).

(3) However, if that total assessable income does not exceed those deductions, the amount of each *trust component of a character relating to assessable income of the *AMIT for the income year is nil.

276-270 Rules for working out trust components—allocation of deductions

(1) An amount of a deduction that relates directly only to one or more amounts of assessable income can be deducted only against that amount or those amounts of assessable income. If there are 2 or more such amounts of assessable income, the amount of the deduction is allocated against those amounts on a reasonable basis.

(2) If an amount of a deduction remains after applying the rules in subsection (1), the remainder can be deducted against other amounts of assessable income. The amount of the remainder is allocated against those amounts on a reasonable basis.

(3) For the purposes of this section, determine whether a deduction relates directly to an amount of assessable income on a reasonable basis.

Subdivision 276-F—Unders and overs

Guide to Subdivision 276-F

276-300 What this Subdivision is about

This Subdivision sets out how underestimates and overestimates of amounts at the trust level are carried forward and dealt with in later years. This is generally done on a character-by-character basis.

Authorised Version C2016A00053

An underestimate in an income year of a particular character results in an under of that character. An overestimate results in an over of that character.

Unders and overs arise, and are dealt with, in the income year in which they are discovered.

Table of sections

Adjustment of trust component for unders and overs etc.

276-305 Adjustment of trust component for unders and overs
276-310 Rounding adjustment deficit increases trust component
276-315 Rounding adjustment surplus decreases trust component
276-320 Meaning of ***trust component deficit***
276-325 Trust component of character relating to assessable income—adjustment for cross-character allocation amount, carry-forward trust component deficit and FITO allocation amount
276-330 Meaning of ***cross-character allocation amount*** and ***carry-forward trust component deficit***
276-335 Meaning of ***FITO allocation amount***
276-340 Trust component character relating to tax offset—taxation of trust component deficit

Unders and overs

276-345 Meaning of ***under*** and ***over*** of a character
276-350 Limited discovery period for unders and overs

Adjustment of trust component for unders and overs etc.

276-305 Adjustment of trust component for unders and overs

Object

(1) The object of this section is to adjust an *AMIT's *trust component of a particular character for an income year to take account of any *unders or *overs of that character that the AMIT has in the income year.

Authorised Version C2016A00053

Unders increase trust component

(2) If the *AMIT has an *under of that character in the income year (relating to any earlier income year), increase the amount of the *trust component by that under.

Note: Those earlier income years are referred to in section 276-345 as base years.

Overs decrease trust component

(3) If the *AMIT has an *over of that character in the income year (relating to any earlier income year), decrease the amount of the *trust component by that over.

Note: Those earlier income years are referred to in section 276-345 as base years.

276-310 Rounding adjustment deficit increases trust component

(1) If the *AMIT has a *rounding adjustment deficit of that character for the income year, increase the amount of the *trust component by the amount of that rounding adjustment deficit.

(2) The *AMIT has a ***rounding adjustment deficit*** of a particular character for an income year if:

(a) the AMIT has a shortfall for the previous income year under subsection 276-415(1); and

(b) the shortfall results wholly or partly from the trustee of the AMIT rounding down amounts in working out *determined member components for the previous income year.

The amount of the rounding adjustment deficit is the amount of the shortfall, to the extent that it results from that rounding down.

276-315 Rounding adjustment surplus decreases trust component

(1) If the *AMIT has a *rounding adjustment surplus of that character for the income year, decrease the amount of the *trust component by the amount of that rounding adjustment surplus.

(2) The *AMIT has a ***rounding adjustment surplus*** of a particular character for an income year if:

Authorised Version C2016A00053

(a) the AMIT has an excess for the previous income year under subsection (3); and

(b) the excess results wholly or partly from the trustee of the AMIT rounding up amounts in working out *determined member components for the previous income year.

The amount of the rounding adjustment surplus is the amount of the excess, to the extent that it results from that rounding up.

(3) The *AMIT has an excess under this subsection for an income year equal to the amount (if any) by which:

(a) the sum of all the *determined member components of all the *members of the AMIT of a particular character relating to assessable income, *exempt income or *non-assessable non-exempt income for the income year;

exceeds:

(b) the *determined trust component of that character of the AMIT for the income year.

(4) Subsection (5) applies if a *determined member component is of the character of:

(a) a *discount capital gain from a *CGT asset that is *taxable Australian property; or

(b) a discount capital gain from a CGT asset that is *not* taxable Australian property.

(5) For the purposes of this section, treat the amount of the component as being double what it would be apart from this subsection.

276-320 Meaning of *trust component deficit*

If the amount of the *trust component, worked out after applying sections 276-305, 276-310 and 276-315 (and, if applicable, section 276-325), falls short of nil:

(a) despite those provisions, the *trust component of that character is nil; and

(b) the shortfall is the *AMIT's ***trust component deficit*** of that character for the income year.

Authorised Version C2016A00053

276-325 Trust component of character relating to assessable income—adjustment for cross-character allocation amount, carry-forward trust component deficit and FITO allocation amount

Section applies to trust component of assessable income character

(1) This section applies if the *trust component is of a character relating to assessable income.

Cross-character allocation amount decreases trust component

(2) If the *AMIT has a *cross-character allocation amount of that character for the income year, decrease the amount of the *trust component by that amount.

Note: A cross-character allocation amount of a character for the income year is allocated from a trust component deficit of another character for the income year in accordance with subsections 276-330(2), (3) and (4).

Carry-forward trust component deficit decreases trust component

(3) If the *AMIT has a *carry-forward trust component deficit of that character for the income year, decrease the amount of the *trust component by the amount of that deficit.

Note: A carry-forward trust component deficit for the income year is worked out in respect of the previous income year under subsection 276-330(5).

FITO allocation amount increases trust component with the character of foreign source income

(4) If:

(a) the character of the *trust component is a character relating to *ordinary income, or *statutory income, from a source *other than* an *Australian source; and

(b) the *AMIT has a *FITO allocation amount for the income year;

increase the amount of the trust component by that FITO allocation amount.

Note: A FITO allocation amount for the income year is worked out in accordance with section 276-335.

Authorised Version C2016A00053

276-330 Meaning of *cross-character allocation amount* and *carry-forward trust component deficit*

Section applies to trust component of assessable income character

(1) This section applies if the *trust component is of a character relating to assessable income.

Cross-character allocation amount

(2) The trustee may, in accordance with subsection (3), allocate a *trust component deficit (if any) of that character for the income year against the *AMIT's *other* trust components for that income year that are also of a character relating to assessable income.

(3) For the trustee to make an allocation under subsection (2) the trustee:
   (a) must allocate that *trust component deficit between those other *trust components on a reasonable basis; and
   (b) cannot allocate more to a trust component than the amount of that trust component.

(4) If the trustee allocates an amount under subsection (2) to a *trust component of a character for that income year, the amount allocated is a ***cross-character allocation amount*** of that character for that income year.

Carry-forward trust component deficit

(5) If there is an amount of that *trust component deficit remaining after allocating it in accordance with subsection (2), the remaining amount is the *AMIT's ***carry-forward trust component deficit*** of the character mentioned in subsection (1) for the *next* income year.

276-335 Meaning of *FITO allocation amount*

(1) This section applies if:
   (a) the *AMIT has a *trust component of the character of *foreign income tax paid that counts towards a *tax offset under Division 770; and

Authorised Version C2016A00053

(b) the AMIT has a *trust component deficit for the income year of that character.

(2) The *AMIT has a ***FITO allocation amount*** for the income year equal to the sum of:

(a) that *trust component deficit; and

(b) the product of:

(i) that trust component deficit; and

(ii) the *corporate tax gross-up rate.

276-340 Trust component character relating to tax offset—taxation of trust component deficit

(1) This section applies if:

(a) the *AMIT has a *trust component of a character relating to a *tax offset; and

(b) the character of the trust component is *not* the character of *foreign income tax paid that counts towards a tax offset under Division 770; and

(c) the AMIT has a *trust component deficit for the income year of that character.

Offset trust component deficit (other than FITO character) taxed

(2) The trustee of the *AMIT is liable to pay tax at the rate declared by the Parliament on the amount of the *trust component deficit.

Note: The tax is imposed by the *Income Tax (Attribution Managed Investment Trusts—Offsets) Act 2016* and the rate of the tax is set out in that Act.

Unders and overs

276-345 Meaning of *under* and *over* of a character

(1) This section sets out how to work out the amount (if any) of an *AMIT's *under or *over of a particular character for an income year (the ***base year***) in a later income year (the ***discovery year***).

Authorised Version C2016A00053

(2) The time (the ***discovery time***) at which this is worked out for the discovery year is just before the trustee works out the *determined trust component of that character for the discovery year.

Note: This allows unders and overs to be included in the determined trust component for the discovery year: see section 276-305.

(3) Compare the following amounts:

(a) the *AMIT's *trust component of that character for the base year, worked out on the basis of the trustee's knowledge at the discovery time (the ***discovery year amount***);

(b) this amount (the ***base year running balance***):

(i) if the discovery year is the first income year after the base year—the AMIT's *determined trust component of that character for the base year; or

(ii) otherwise—the discovery year amount worked out under a previous operation of this section for the most recent income year before the discovery year.

A shortfall is an ***under***

(4) If the base year running balance *falls short* of the discovery year amount, the amount of the shortfall is an ***under*** of that character, for the base year, that the *AMIT has in the discovery year.

An excess is an ***over***

(5) If the base year running balance *exceeds* the discovery year amount, the amount of the excess is an ***over*** of that character, for the base year, that the *AMIT has in the discovery year.

276-350 Limited discovery period for unders and overs

Despite section 276-345, an *AMIT does not have an *under or an *over of a particular character for an income year (the ***base year***) if:

(a) assuming the Commissioner made an assessment of the *trust component of that character on the day on which the document stating the AMIT's *determined trust component of that character for the base year was created; and

Authorised Version C2016A00053

(b) assuming the assessment had not been amended at the discovery time mentioned in subsection 276-345(2) for the under or over;

section 170 of the *Income Tax Assessment Act 1936* would prevent the assessment from being amended to take account of the under or over.

Note: Section 170 of the *Income Tax Assessment Act 1936* specifies the usual period within which assessments may be amended.

Subdivision 276-G—Shortfall and excess taxation

Guide to Subdivision 276-G

276-400 What this Subdivision is about

The trustee of an AMIT is liable to pay income tax on certain amounts reflecting under-attribution of income or over-attribution of tax offsets.

Table of sections

Ensuring determined trust components are properly taxed

276-405 Trustee taxed on shortfall in determined member component (character relating to assessable income)

276-410 Trustee taxed on excess in determined member component (character relating to tax offset)

276-415 Trustee taxed on amounts of determined trust component that are not reflected in determined member components

Ensuring unders and overs are properly taxed

276-420 Trustee taxed on amounts of under of character relating to assessable income not properly carried forward

276-425 Trustee taxed on amounts of over of character relating to tax offset not properly carried forward

Commissioner may remit tax under this Subdivision

276-430 Commissioner may remit tax under this Subdivision

Authorised Version C2016A00053

Ensuring determined trust components are properly taxed

276-405 Trustee taxed on shortfall in determined member component (character relating to assessable income)

Income character shortfall

(1) An *AMIT has a shortfall under this subsection for an income year equal to the amount (if any) by which:

(a) the *determined member component of a *member of the AMIT of a character relating to assessable income for the income year;

falls short of:

(b) the *member component of the member of that character for the income year.

Liability to tax

(2) The trustee is liable to pay income tax at the rate declared by the Parliament on the amount that is the sum of each shortfall of the *AMIT under subsection (1) for the income year.

Note: The rate is set out in subsection 12(11) of the *Income Tax Rates Act 1986*.

276-410 Trustee taxed on excess in determined member component (character relating to tax offset)

(1) An *AMIT has an excess under this subsection for an income year equal to the amount (if any) by which:

(a) the *determined member component of a *member of the AMIT of a character relating to a *tax offset for the income year;

exceeds:

(b) the *member component of the member of that character for the income year.

Authorised Version C2016A00053

Liability to tax

(2) The trustee is liable to pay tax at the rate declared by the Parliament on the amount that is the sum of each excess of the *AMIT under subsection (1) for the income year.

Note: The tax is imposed by the *Income Tax (Attribution Managed Investment Trusts—Offsets) Act 2016* and the rate of the tax is set out in that Act.

276-415 Trustee taxed on amounts of determined trust component that are not reflected in determined member components

(1) An *AMIT has a shortfall under this subsection for an income year equal to the amount (if any) by which:

(a) the sum of all the *determined member components of all the *members of the AMIT of a particular character relating to assessable income, *exempt income or *non-assessable non-exempt income for the income year;

falls short of:

(b) the *determined trust component of that character of the AMIT for the income year.

Liability to tax

(2) The trustee is liable to pay income tax at the rate declared by the Parliament on the amount worked out as follows:

(a) first, work out the sum of each shortfall of the *AMIT under subsection (1) for the income year;

(b) next, work out the extent (if any) to which each of those shortfalls gives rise to a *rounding adjustment deficit (see subsection 276-310(2));

(c) next, subtract the result of paragraph (b) from the result of paragraph (a);

(d) next, work out the extent (if any) to which the result of paragraph (c) is referable to one or more shortfalls under subsection 276-405(1);

(e) next, subtract the result of paragraph (d) from the result of paragraph (c).

Note: The rate is set out in subsection 12(12) of the *Income Tax Rates Act 1986*.

Authorised Version C2016A00053

Gross-up for discount capital gain

(3) Subsection (4) applies if a *determined member component is of the character of:

(a) a *discount capital gain from a *CGT asset that is *taxable Australian property; or

(b) a discount capital gain from a CGT asset that is *not* taxable Australian property.

(4) For the purposes of this section, treat the amount of the component as being double what it would be apart from this subsection.

Ensuring unders and overs are properly taxed

276-420 Trustee taxed on amounts of under of character relating to assessable income not properly carried forward

(1) An *AMIT for an income year has a shortfall under this subsection for the income year equal to the amount (if any) by which:

(a) an *under of the AMIT of a character relating to assessable income in the income year for an earlier income year (the ***base year***) (as worked out by the trustee on the basis of the trustee's knowledge at the discovery time mentioned in subsection 276-345(2));

falls short of:

(b) what the under would have been if it had been worked out on the basis of what the trustee should have known at that time.

Liability to tax

(2) The trustee is liable to pay income tax at the rate declared by the Parliament on the amount that is the sum of each shortfall of the *AMIT under subsection (1) for the income year.

Note: The rate is set out in subsection 12(13) of the *Income Tax Rates Act 1986*.

Adjustment for later unders relating to the same base year

(3) If there is a shortfall under subsection (1) for a particular character for an income year, for the purposes of applying paragraph 276-345(3)(b) (base year running balance) to a later

Authorised Version C2016A00053

income year, increase the amount mentioned in subparagraph 276-345(3)(b)(ii) (previous discovery year amount) for that character by the amount of the shortfall.

(4) Subsection (5) applies if:
  (a) there is a shortfall under subsection (1) for a particular character for an income year; and
  (b) the *AMIT has an *under of that character in a later income year for the base year mentioned in subsection (1); and
  (c) the amount mentioned in paragraph (1)(b) is reflected (in whole or in part) in the amount of the under.

(5) Reduce the shortfall by the extent to which the *under in the later income year reflects the amount mentioned in paragraph (1)(b).

276-425 Trustee taxed on amounts of over of character relating to tax offset not properly carried forward

(1) An *AMIT for an income year has a shortfall under this subsection for the income year equal to the amount (if any) by which:
  (a) an *over of the AMIT of a character relating to a *tax offset in the income year relating to an earlier income year (the ***base year***) (as worked out by the trustee on the basis of the trustee's knowledge at the discovery time mentioned in subsection 276-345(2));

  falls short of:
  (b) what the over would have been if it had been worked out on the basis of what the trustee should have known at that time.

Liability to tax

(2) The trustee is liable to pay tax at the rate declared by the Parliament on the amount that is the sum of each shortfall of the *AMIT under subsection (1) for the income year.

Note: The tax is imposed by the *Income Tax (Attribution Managed Investment Trusts—Offsets) Act 2016* and the rate of the tax is set out in that Act.

Authorised Version C2016A00053

Adjustment for later overs relating to the same base year

(3) If there is a shortfall under subsection (1) for a particular character for an income year, for the purposes of applying paragraph 276-345(3)(b) (base year running balance) to a later income year, decrease the amount mentioned in subparagraph 276-345(3)(b)(ii) (previous discovery year amount) for that character by the amount of the shortfall.

(4) Subsection (5) applies if:
  (a) there is a shortfall under subsection (1) of a particular character relating to a *tax offset for an income year; and
  (b) the *AMIT has an *over of that character in a later income year relating to the base year mentioned in subsection (1); and
  (c) the amount mentioned in paragraph (1)(b) is reflected (in whole or in part) in the amount of the over.

(5) Reduce the shortfall by the extent to which the *over in the later income year reflects the amount mentioned in paragraph (1)(b).

Commissioner may remit tax under this Subdivision

276-430 Commissioner may remit tax under this Subdivision

The Commissioner may remit the whole or any part of income tax for which a liability arises under this Subdivision if the Commissioner is satisfied that doing so does not result in a detriment to the revenue.

Subdivision 276-H—AMMA statements

Guide to Subdivision 276-H

276-450 What this Subdivision is about

An AMIT for an income year must give each member of the AMIT in respect of the income year an AMIT member annual statement (or AMMA statement) for the income year.

Authorised Version C2016A00053

Table of sections

Operative provisions

276-455 Obligation to give an AMMA statement
276-460 ***AMIT member annual statement*** (or ***AMMA statement***)

Operative provisions

276-455 Obligation to give an AMMA statement

(1) An *AMIT for an income year must give each *member of the AMIT in respect of the income year an *AMMA statement for the income year.

Note: Section 286-75 in Schedule 1 to the *Taxation Administration Act 1953* provides an administrative penalty for breach of this subsection.

(2) The statement must be given no later than 3 months after the end of the income year.

(3) However, the *AMIT need not give an *AMMA statement under subsection (1) to a *member if:

(a) all of the member's *determined member components for the AMIT for the income year are nil; and

(b) all of the member's *membership interests in the AMIT have an *AMIT cost base net amount for the income year of nil.

(4) To avoid doubt, the *AMIT does not fail to comply with subsection (1) merely because:

(a) the AMIT gives *AMMA statements for the income year to *members in accordance with subsection (1) by the time required under subsection (2); and

(b) after that time, the AMIT gives those members further AMMA statements for the income year that replace the AMMA statements mentioned in paragraph (a).

276-460 *AMIT member annual statement* (or *AMMA statement*)

(1) An ***AMIT member annual statement*** (or ***AMMA statement***) is a statement made by an *AMIT for an income year in accordance with this section.

Authorised Version C2016A00053

(2) The statement must:

(a) include information that reflects the amount and character of each *member component of the *member for the income year; and

(b) state what the trustee reasonably estimates to be the amount of the excess or shortfall mentioned in section 104-107C (AMIT cost base net amount) for the income year in respect of the *CGT asset that is the member's unit or interest in the *AMIT.

(3) The statement is *not* an ***AMMA statement*** if the *AMIT fails to give it to the *member to whom it is addressed within 4 years after the end of the income year.

Note: The AMIT must give each member an AMMA statement for the income year no later than 3 months after the end of the income year (see section 276-455).

Subdivision 276-J—Debt-like trust instruments

Guide to Subdivision 276-J

276-500 What this Subdivision is about

A debt-like trust instrument in an AMIT is treated as a debt interest in the AMIT. A distribution in relation to the instrument is treated as interest for the purposes of provisions relating to interest withholding tax, and may be treated as a deduction in working out the trust components of the AMIT.

Table of sections

Operative provisions

276-505 Meaning of ***debt-like trust instrument***
276-510 Debt-like trust instruments treated as debt interests etc.
276-515 Distribution on debt-like trust instrument could be deductible in working out trust components

Authorised Version C2016A00053

Operative provisions

276-505 Meaning of *debt-like trust instrument*

(1) An instrument that gives rise to an interest in a trust is a ***debt-like trust instrument*** in relation to the trust if:

(a) the amount of any distribution relating to the interest is fixed, at the time the interest is created, by reference to the amount subscribed for the interest; and

(b) any distribution relating to the interest is made solely at the discretion of the trustee of the trust; and

(c) rights to distributions of capital or profits arising from all interests in the trust that are in the same *class as the interest, rank above all such rights arising from other interests in the trust (other than those covered under subsection (2)) if:

(i) the trust ceases to exist; or

(ii) where the trust is a *managed investment scheme—the scheme is under administration or is being wound up; and

(d) in a case where, in relation to a particular period, the trustee of the trust does *not* make a distribution relating to the interest—making a distribution of any of the following kinds, in relation to that period, is prohibited by the constituent documents of the trust:

(i) a distribution relating to any membership interest in the trust;

(ii) a distribution relating to a membership interest in another entity, if that interest is stapled together with a membership interest in the trust.

(2) This subsection covers an interest in the trust that:

(a) is *not* a *membership interest in the trust; or

(b) satisfies the requirements in paragraphs (1)(a) and (b).

276-510 Debt-like trust instruments treated as debt interests etc.

(1) For the purposes of this Act:

(a) treat a *debt-like trust instrument in relation to an *AMIT as a *debt interest in the AMIT; and

Authorised Version C2016A00053

(b) treat a distribution on a debt-like trust instrument in relation to an AMIT as a cost incurred by the AMIT in relation to a debt interest issued by the AMIT.

(2) If a trust is an *AMIT for an income year (disregarding this subsection), paragraph (1)(a) applies for the purposes of:

(a) determining whether the trust is a *managed investment trust in relation to the income year; and

(b) determining whether the trust is an AMIT for the income year.

(3) For the purposes of Division 11A of Part III of the *Income Tax Assessment Act 1936*, if an entity is the holder of a *debt-like trust instrument in an *AMIT, treat a distribution to the entity in accordance with the instrument as interest.

276-515 Distribution on debt-like trust instrument could be deductible in working out trust components

(1) If an entity is the holder of a *debt-like trust instrument in relation to an *AMIT, for the purposes of sections 276-265 and 276-270, treat a distribution to the entity in accordance with the instrument as a *return that the AMIT pays or provides on a *debt interest.

(2) For the purposes of subsection (1), disregard the distribution to the extent (if any) that it is referable to any of the following:

(a) *exempt income of the *AMIT;

(b) *non-assessable non-exempt income of the AMIT.

Subdivision 276-K—Ceasing to be an AMIT

Guide to Subdivision 276-K

276-800 What this Subdivision is about

If a trust ceases to be an AMIT, and discovers an under or over from an income year when it was an AMIT, the under or over will have taxation consequences for the trust in the discovery year.

Authorised Version C2016A00053

Table of sections

Operative provisions

276-805 Application of Subdivision to former AMIT
276-810 Continue to work out trust components, unders, overs etc.
276-815 Effect of increase
276-820 Effect of decrease

Operative provisions

276-805 Application of Subdivision to former AMIT

This Subdivision applies if:

(a) a trust was an *AMIT for an income year; and

(b) the trust is *not* an AMIT for a later income year (the ***discovery year***).

276-810 Continue to work out trust components, unders, overs etc.

(1) For the purposes of this section, assume that the trust is an *AMIT for the discovery year.

(2) If the trust has an *under or *over of a character in the discovery year for an earlier income year when the trust was an *AMIT, work out the extent to which the under or over:

(a) increases the amount of the AMIT's *trust component of that character for the discovery year; or

(b) decreases the amount of the AMIT's trust component of that character for the discovery year.

276-815 Effect of increase

(1) This section applies if there is an increase as mentioned in paragraph 276-810(2)(a).

(2) If the character mentioned in subsection 276-810(2) relates to assessable income, treat the amount of the increase as assessable income of the trust for the discovery year.

(3) Subsection (4) applies if the character mentioned in subsection 276-810(2) is the character of:

Authorised Version C2016A00053

(a) a *discount capital gain from a *CGT asset that is *taxable Australian property; or

(b) a discount capital gain from a CGT asset that is *not* taxable Australian property.

(4) For the purposes of subsection (2), treat the amount of the increase as being double what it would be apart from this subsection.

(5) If that character relates to *exempt income, treat the amount of the increase as exempt income of the trust for the discovery year.

(6) If that character relates to *non-assessable non-exempt income, treat the amount of the increase as non-assessable non-exempt income of the trust for the discovery year.

(7) If that character relates to a *tax offset, treat the amount of the increase as a tax offset of the trust for the discovery year of a kind corresponding to that character (in addition to any other tax offsets of that kind that the trust may have for the discovery year).

276-820 Effect of decrease

(1) This section applies if there is a decrease as mentioned in paragraph 276-810(2)(b).

(2) If the character mentioned in subsection 276-810(2) relates to assessable income:

(a) in the case of a character of:

(i) a *discount capital gain from a *CGT asset that is *taxable Australian property; or

(ii) a discount capital gain from a CGT asset that is *not* taxable Australian property;

treat half the amount of the decrease as a *capital loss of the trust for the discovery year; or

(b) in the case of a character of:

(i) a *capital gain (other than a discount capital gain) from a CGT asset that is taxable Australian property; or

(ii) a capital gain (other than a discount capital gain) from a CGT asset that is *not* taxable Australian property;

Authorised Version C2016A00053

treat the amount of the decrease as a capital loss of the trust for the discovery year; or

(c) in any other case—treat the amount of the decrease as a deduction of the trust for the discovery year.

(3) If that character relates to *exempt income, treat the amount of the decrease as reducing the exempt income of the trust for the discovery year.

(4) If that character relates to *non-assessable non-exempt income, treat the amount of the decrease as reducing the non-assessable non-exempt income of the trust for the discovery year.

(5) If that character relates to a *tax offset, treat the amount of the decrease as reducing the tax offset or offsets (the ***existing offset or offsets***) of the trust for the discovery year of a kind corresponding to that character.

(6) If that character relates to a *tax offset and exceeds the total of the existing offset or offsets (before the reduction under subsection (5)):

(a) unless paragraph (b) applies—the trustee is liable to pay tax at the rate declared by the Parliament on the excess; or

Note: The tax is imposed by the *Income Tax (Attribution Managed Investment Trusts—Offsets) Act 2016* and the rate of the tax is set out in that Act.

(b) if that character is the character of *foreign income tax paid that counts towards a tax offset under Division 770—subsection (7) applies.

(7) Increase the trust's assessable income for the discovery year by the sum of:

(a) the excess mentioned in subsection (6); and

(b) the product of:

(i) that excess; and

(ii) the *corporate tax gross-up rate.

Treat the amount of that increase as assessable income from a source *other than* an *Australian source.

Authorised Version C2016A00053

Taxation Administration Act 1953

2 After subsection 286-75(2AA) in Schedule 1

Insert:

(2AB) You are also liable to an administrative penalty if:

(a) you are required under section 276-455 of the *Income Tax Assessment Act 1997* (AMMA statements) to give information to an entity (other than the Commissioner) by a particular day; and

(b) you do not give the information to the entity by that day.

3 Paragraph 286-80(2)(a) in Schedule 1

Before "(2A),", insert "(2AB),".

4 At the end of Division 288 in Schedule 1

Add:

288-115 AMIT under or over resulting from intentional disregard of or recklessness as to taxation law

(1) An entity is liable to an administrative penalty if:

(a) the entity is a trustee of an *AMIT for an income year (the ***base year***); and

(b) the AMIT has an *under or *over for the base year; and

(c) at least one of the items in the table in subsection (3) applies in respect of the under or over.

(2) To avoid doubt, subsection (1) has a separate operation in respect of each *under or *over mentioned in paragraph (1)(b).

(3) The amount of the penalty is 47% of the amount worked out using this table:

Authorised Version C2016A00053

Amount of penalty			
Item	**Column 1** **In this situation …**	**Column 2** **in the case of an *under or *over covered by subsection (5), the amount is:**	**Column 3** **in the case of an *under or *over covered by subsection (6), the amount is:**
1	if the *under or *over resulted from intentional disregard of a *taxation law (other than the *Excise Acts) by the trustee of the *AMIT or the trustee's agent	75% of the under or over	30% of the under or over
2	if the *under or *over resulted from recklessness by the trustee of the *AMIT or the trustee's agent as to the operation of a *taxation law (other than the *Excise Acts)	50% of the under or over	20% of the under or over

(4) Despite subsection (3):

(a) if the penalty specified under column 3 of item 1 of the table in that subsection is less than 60 penalty units—the amount of the penalty is 60 penalty units; and

(b) if the penalty specified under column 3 of item 2 of the table in that subsection is less than 40 penalty units—the amount of the penalty is 40 penalty units.

(5) This subsection covers the following:

(a) an *under of:

(i) a character relating to assessable income; or

(ii) a character relating to *exempt income; or

(iii) a character relating to *non-assessable non-exempt income;

(b) an *over of a character relating to a *tax offset.

(6) This subsection covers the following:

(a) an *over of:

(i) a character relating to assessable income; or

Authorised Version C2016A00053

(ii) a character relating to *exempt income; or

(iii) a character relating to *non-assessable non-exempt income;

(b) an *under of a character relating to a *tax offset.

(7) If both items in the table in subsection (3) apply, use item 1 and not item 2.

(8) If the income year corresponds to a financial year that is a temporary budget repair levy year (within the meaning of section 4-11 of the *Income Tax (Transitional Provisions) Act 1997*), treat the reference in subsection (3) to 47% as instead being a reference to 49%.

Authorised Version C2016A00053

Schedule 2—Annual cost base adjustment for member's unit or interest in AMIT

Income Tax Assessment Act 1997

1 Section 104-5 (after table item dealing with CGT event E9)

Insert:

E10 Annual cost base reduction exceeds cost base of interest in AMIT	when reduction happens	excess of cost base reduction over cost base	*no capital loss*

[See section 104-107A]

2 After subsection 104-70(1)

Insert:

(1A) However, ***CGT event E4*** does not happen if the unit or interest mentioned in subsection (1) is a unit or interest in an *AMIT.

3 At the end of Subdivision 104-E

Add:

104-107A AMIT—cost base reduction exceeds cost base: CGT event E10

(1) ***CGT event E10*** happens if:

(a) you are a *member of an *AMIT in respect of an income year because you have a *CGT asset that is your unit or your interest in the AMIT; and

(b) the *cost base of that asset is reduced under subsection 104-107B(2) at a time; and

(c) the asset's *AMIT cost base net amount for the income year in which the reduction occurs exceeds the cost base of the asset.

(2) The time of the event is the time at which the reduction occurs under section 104-107B.

Authorised Version C2016A00053

(3) You make a ***capital gain*** equal to the excess mentioned in paragraph (1)(c).

Note 1: If you make a capital gain, the cost base and reduced cost base of the CGT asset are reduced to nil (see paragraph 104-107B(2)(a)).

Note 2: You cannot make a capital loss.

Exceptions

(4) A *capital gain you make from *CGT event E10 is disregarded if you *acquired the *CGT asset that is the unit or interest before 20 September 1985.

104-107B Annual cost base adjustment for member's unit or interest in AMIT

(1) This section applies if you are a *member of an *AMIT in respect of an income year because you have a *CGT asset that is your unit or your interest in the AMIT.

(2) If the *CGT asset's *AMIT cost base net amount for the income year is the excess mentioned in paragraph 104-107C(a):

(a) in a case where that AMIT cost base net amount exceeds the *cost base of the asset—reduce the cost base *and* *reduced cost base of the asset to nil; or

(b) otherwise—reduce the cost base *and* reduced cost base of the asset by that AMIT cost base net amount.

Note: If that AMIT cost base net amount exceeds the cost base of the asset, CGT event E10 will happen (see section 104-107A).

(3) If the *CGT asset's *AMIT cost base net amount for the income year is the shortfall mentioned in paragraph 104-107C(b), increase the *cost base *and* *reduced cost base of the asset by that AMIT cost base net amount.

(4) The time of the reduction or increase is:

(a) unless paragraph (b) applies—just before the end of the income year; or

(b) if a *CGT event happens to the *CGT asset at a time when you hold it before the end of the income year—just before the time of that CGT event.

Authorised Version C2016A00053

104-107C AMIT cost base net amount

The *CGT asset's ***AMIT cost base net amount*** for the income year is:

(a) if the CGT asset's *AMIT cost base reduction amount for the income year exceeds the CGT asset's *AMIT cost base increase amount for the income year—the amount of the excess; or

(b) if the CGT asset's AMIT cost base reduction amount for the income year falls short of the CGT asset's AMIT cost base increase amount for the income year—the amount of the shortfall.

104-107D AMIT cost base reduction amount

(1) The *CGT asset's ***AMIT cost base reduction amount*** for the income year is the total of:

(a) money, and the *market value of any property, if:

(i) you start to have a right to receive the money or property from the trustee of the *AMIT in the income year; and

(ii) that right is indefeasible (disregarding section 276-55) or is reasonably likely not to be defeated; and

(b) all amounts of *tax offset that you have for the income year in respect of the AMIT because of the operation of section 276-80;

to the extent that the total is reasonably attributable to the CGT asset.

(2) If:

(a) *CGT event A1, C2, E1, E2, E6 or E7 happens to the *CGT asset before the end of the income year; and

(b) as a result, the time of the reduction or increase mentioned in subsection 104-107B(4) is just before the time of that CGT event;

do not include in the CGT asset's ***AMIT cost base reduction amount*** for the income year any *capital proceeds from that CGT event.

Authorised Version C2016A00053

104-107E AMIT cost base increase amount

(1) The *CGT asset's ***AMIT cost base increase amount*** for the income year is the total of the 2 amounts set out in the following subsections.

First amount—total of amounts not related to capital gains

(2) The first amount is the total of all of the following amounts included in your assessable income or *non-assessable non-exempt income for the income year in respect of the *AMIT, to the extent that they are reasonably attributable to the *CGT asset:

(a) amounts so included because of the operation of section 276-80;

(b) amounts so included otherwise than because of the operation of section 276-80 (as reduced in accordance with section 276-100).

(3) For the purposes of subsection (2), disregard the *AMIT's *net capital gain (if any) for the income year.

Second amount—total of amounts related to capital gains

(4) The second amount is the total of each *determined member component of a character relating to *capital gains that:

(a) you have for the income year in respect of the *AMIT; and

(b) is taken into account under section 276-80.

Residence assumption

(5) For the purposes of working out amounts under subsections (2) and (4), assume that you are an Australian resident.

104-107F Receipt of money etc. increasing AMIT cost base reduction amount not to be treated as income

(1) Subsections (2) and (3) apply if:

(a) you start to have a right to receive any money or any property from the trustee of an *AMIT in an income year; and

(b) the right is indefeasible (disregarding section 276-55) or is reasonably likely not to be defeated; and

Authorised Version C2016A00053

(c) the right is *not* remuneration or consideration for you providing finance, services, goods or property to the trustee of the AMIT or to another person; and

(d) the right is reasonably attributable to a *CGT asset that is a *membership interest in the AMIT; and

(e) the CGT asset is *neither* *trading stock nor a *Division 230 financial arrangement; and

(f) as a result of you starting to have the right, the CGT asset's *AMIT cost base reduction amount for the income year is increased because of the operation of section 104-107E.

(2) These provisions do not apply to you starting to have the right:

(a) sections 6-5 (about *ordinary income), 8-1 (about amounts you can deduct), 15-15 and 25-40 (about profit-making undertakings or plans);

(b) sections 25A and 52 of the *Income Tax Assessment Act 1936* (about profit-making undertakings or schemes).

(3) Section 6-10 (about *statutory income) does not apply to you starting to have the right except so far as that section applies in relation to section 102-5 (about net capital gains).

104-107G Effect of AMIT cost base net amount on cost of AMIT membership interest or unit that is a revenue asset—adjustment of cost of asset

(1) This section applies if:

(a) you are a *member of an *AMIT in respect of an income year because you have a *CGT asset that is your unit or your interest in the AMIT; and

(b) the CGT asset is a *revenue asset; and

(c) the CGT asset is not a *Division 230 financial arrangement.

(2) Make the adjustments in subsection (3) for the purposes of working out an amount included in your assessable income (or working out an amount treated as a deduction) under any of these provisions:

(a) sections 6-5 (about *ordinary income), 8-1 (about amounts you can deduct), 15-15 and 25-40 (about profit-making undertakings or plans);

Authorised Version C2016A00053

(b) sections 25A and 52 of the *Income Tax Assessment Act 1936* (about profit-making undertakings or schemes).

(3) If the *CGT asset's *AMIT cost base net amount for the income year is the excess mentioned in paragraph 104-107C(a):

(a) in a case where that AMIT cost base net amount exceeds the cost of the asset—reduce the cost of the asset to nil; or

(b) otherwise—reduce the cost of the asset by that AMIT cost base net amount.

Note: If the AMIT cost base net amount exceeds the cost of the asset, see section 104-107H.

(4) If the *CGT asset's *AMIT cost base net amount for the income year is the shortfall mentioned in paragraph 104-107C(b), increase the cost of the asset by that AMIT cost base net amount.

(5) The time of the reduction or increase is:

(a) unless paragraph (b) applies—just before the end of the income year; or

(b) if a *CGT event happens to the *CGT asset at a time when you hold it before the end of the income year—just before the time of that CGT event.

(6) For the purposes of this section and section 104-107H, in working out the *CGT asset's *AMIT cost base net amount for the income year, disregard any right that you start to have in the income year if:

(a) the right is for you to receive any money or any property from the trustee of the *AMIT; and

(b) the right is remuneration or consideration for you providing finance, services, goods or property to the trustee of the AMIT or to another person.

(7) For the purposes of section 118-20, treat this section as being outside of this Part.

Note: Section 118-20 deals with reducing capital gains if an amount is otherwise assessable.

Authorised Version C2016A00053

104-107H Effect of AMIT cost base net amount on cost of AMIT membership interest or unit that is a revenue asset—amount included in assessable income

(1) Subsection (2) applies if:

(a) paragraph 104-107G(3)(a) applies in respect of the *CGT asset's *AMIT cost base net amount for the income year; and

(b) that AMIT cost base net amount exceeds the cost of the *CGT asset just before the time mentioned in subsection 104-107G(5).

(2) Include in your assessable income for the income year in which that time occurs:

(a) if the cost of the *CGT asset was nil just before that time—the cost reduction amount; or

(b) otherwise—the excess mentioned in paragraph (1)(b).

(3) Subsection (2) applies despite subsection 104-107F(3).

(4) For the purposes of section 118-20, treat this section as being outside of this Part.

Note: Section 118-20 deals with reducing capital gains if an amount is otherwise assessable.

4 Section 977-5

After "E4", insert ", CGT event E10".

Authorised Version C2016A00053

Schedule 3—Withholding MITs and fund payments

Income Tax Assessment Act 1936

1 After subsection 128AF(1)

Insert:

(1A) However, this section does not apply if one or more of the interposed entities is an AMIT for the year of income in which the payment is received.

Note: See Division 12A in Schedule 1 to the *Taxation Administration Act 1953* for provisions about withholding tax that apply specifically to AMITs.

Income Tax Assessment Act 1997

2 After subsection 840-805(4C)

Insert:

Modification—AMITs

(4D) If the *managed investment trust mentioned in paragraph (2)(a), (3)(b) or (4)(b) is an *AMIT for the income year mentioned in that paragraph:

(a) if paragraph (2)(a) applies—disregard the phrase "(but not a beneficiary in the capacity of a trustee of another trust)" in paragraph (2)(c); or

(b) if paragraph (3)(b) applies—disregard the phrase "(but not a beneficiary in the capacity of a trustee of another trust)" in paragraph (3)(c); or

(c) if paragraph (4)(b) applies—disregard paragraph (4)(c).

(4E) If:

(a) a trustee of a trust is liable to pay income tax on a fund payment part (a ***taxed part***) because of the operation of subsection (4D); and

Authorised Version C2016A00053

(b) you are a beneficiary of the trust and are presently entitled to a share of the income or capital of the trust;

then, in working out for the purposes of paragraph (4)(b) whether all or part of that share is reasonably attributable to a payment that is a *fund payment, disregard the taxed part.

3 Section 840-815

Before "An amount on", insert "(1)".

4 At the end of section 840-815

Add:

(2) Subsection (1) does not apply to an Australian resident to the extent that:

(a) *managed investment trust withholding tax is payable on the amount because of subsection 840-805(4D); and

(b) the Australian resident is entitled, directly or indirectly, to the amount.

Taxation Administration Act 1953

5 Before section 12-385 in Schedule 1

Insert:

12-383 Meaning of *withholding MIT*

A trust is a ***withholding MIT*** in relation to an income year if:

(a) it is a *managed investment trust in relation to that income year because of paragraph 275-10(1)(a) or (2)(b) of the *Income Tax Assessment Act 1997*; and

(b) a substantial proportion of the investment management activities carried out in relation to the trust in respect of all of the following assets of the trust are carried out in Australia throughout the income year:

(i) assets that are situated in Australia at any time in the income year;

(ii) assets that are *taxable Australian property at any time in the income year;

Authorised Version C2016A00053

(iii) assets that are *shares, units or interests listed for quotation in the official list of an *approved stock exchange in Australia at any time in the income year.

6 Subsection 12-390(1) in Schedule 1 (note 1)

Repeal the note, substitute:

Note 1: The covered part referred to in paragraph (1)(a) is attributable to a fund payment made by a managed investment trust, or 2 or more fund payments made by one or more managed investment trusts. One or more of those managed investment trusts may be AMITs.

7 Subsection 12-390(4) in Schedule 1 (before the note)

Insert:

Note 1: The covered part referred to in paragraph (4)(a) is attributable to a fund payment made by a managed investment trust, or 2 or more fund payments made by one or more managed investment trusts. One or more of those managed investment trusts may be AMITs.

8 Subsection 12-390(4) in Schedule 1 (note)

Omit "Note", substitute "Note 2".

9 Section 12-405 in Schedule 1 (heading)

Repeal the heading, substitute:

12-405 Meaning of *fund payment*—general case

10 After subsection 12-405(1) in Schedule 1

Insert:

(1A) This section applies to a trust that is *not* an *AMIT for an income year.

Note: For the definition of ***fund payment*** in respect of a trust that is an AMIT for an income year, see section 12A-110.

11 After Division 12 in Schedule 1

Insert:

Authorised Version C2016A00053

Division 12A—Distributions by AMITs (including deemed payments)

Table of Subdivisions

Guide to Division 12A

12A-A Distributions by AMITs relating to dividend, interest and royalties

12A-B Distributions by AMITs relating to Subdivision 12-H fund payments

12A-C Deemed payments by AMITs etc.

Guide to Division 12A

12A-1 What this Division is about

When a withholding MIT that is an AMIT gives a member an AMMA statement, the trustee is deemed to have made a payment to the member.

The deemed payment can flow through one or more custodians, giving rise to subsequent deemed payments.

Withholding liabilities under Subdivisions 12-F and 12-H do not apply in relation to deemed payments (although analogous liabilities may arise under Subdivision 12A-C).

AMIT trustees, custodians and other entities may be required to give notices etc. to recipients of such deemed payments.

Authorised Version C2016A00053

Subdivision 12A-A—Distributions by AMITs relating to dividend, interest and royalties

Guide to Subdivision 12A-A

12A-5 What this Subdivision is about

> Withholding liabilities under Subdivision 12-F do not apply in relation to deemed payments arising under Subdivision 12A-C relating to dividends, interest or royalties (although analogous liabilities may arise under Subdivision 12A-C).
>
> AMIT trustees, custodians and other entities may be required to give notices etc. to recipients of such deemed payments.

Table of sections

Operative provisions

12A-10	Deemed payments—no obligation to withhold under Subdivision 12-F (dividend, interest and royalty payments)
12A-15	Dividend, interest or royalty payments relating to AMIT—requirement to give notice or make information available
12A-20	Failure to give notice or make information available under section 12A-15: administrative penalty
12A-25	Meaning of ***AMIT DIR payment***
12A-30	Meaning of ***AMIT dividend payment***
12A-35	Meaning of ***AMIT interest payment***
12A-40	Meaning of ***AMIT royalty payment***

Operative provisions

12A-10 Deemed payments—no obligation to withhold under Subdivision 12-F (dividend, interest and royalty payments)

(1) If the entity that receives a payment as mentioned in subsection 12-215(1), 12-250(1) or 12-285(1) is the trustee of an *AMIT, the entity need not withhold an amount under that

Authorised Version C2016A00053

subsection from the payment if the payment arises because of the operation of section 12A-205 (deemed payments).

Note: The trustee may have to pay the Commissioner an amount in respect of the deemed payment (see Subdivision 12A-C).

(2) Subsection (3) applies if:

(a) the entity that receives a payment as mentioned in subsection 12-215(1), 12-250(1) or 12-285(1) is a *custodian; and

(b) it received the payment from an *AMIT.

(3) The entity need not withhold an amount under that subsection from the payment mentioned in that subsection if:

(a) the payment arises because of the operation of section 12A-205 (deemed payments); or

(b) the payment is a *post-AMMA actual payment in respect of a payment that so arises.

Note: Either or both of the trustee of the AMIT concerned and the custodian may have to pay the Commissioner an amount in respect of the deemed payment (see Subdivision 12A-C).

(4) Disregard this section for the purposes of section 12A-15.

12A-15 Dividend, interest or royalty payments relating to AMIT—requirement to give notice or make information available

AMITs and custodians

(1) An entity that is an *AMIT or a *custodian must comply with subsection (2) if:

(a) the entity makes a payment to another entity (the ***recipient***) from which an amount would have been required to be withheld under Subdivision 12-F if:

(i) the entity were a company; and

(ii) the payment had been made to a foreign resident; and

(iii) the condition in either or both of paragraphs 12-210(a) or (b), of paragraphs 12-245(a) or (b) or of paragraphs 12-280(a) or (b) (as the case requires) were satisfied; and

Authorised Version C2016A00053

(b) an amount is not required to be withheld from the payment because:
  (i) the recipient is *not* a foreign resident; or
  (ii) the recipient is a foreign resident carrying on business in Australia at or through a permanent establishment (within the meaning of subsection 128B(3F) of the *Income Tax Assessment Act 1936*) of the recipient in Australia, and the payment is attributable to the permanent establishment; and

(c) the payment is any of the following:
  (i) a payment that arises because of the operation of section 12A-205 (deemed payments);
  (ii) a *pre-AMMA actual payment in respect of a payment that so arises.

(2) The entity must:
  (a) give to the recipient a written notice containing the details specified in subsection (3); or
  (b) make those details available on a website in a way that the details are readily accessible to the recipient for not less than 5 continuous years.

(3) The notice must be given, or the details must be made available on a website, before or at the time when the payment is made and:
  (a) must specify the part of the payment from which an amount would have been so required to have been withheld; and
  (b) must specify the income year of the *AMIT to which that part relates.

Note: Failure to give the notice or make the details available as required by this section incurs an administrative penalty: see section 12A-20.

Other entities

(4) An entity that is not an *AMIT or a *custodian must comply with subsection (5) if:
  (a) the entity receives a payment; and
  (b) another entity (the ***subsequent recipient***) is or becomes entitled:
    (i) to receive from the entity; or

Authorised Version C2016A00053

(ii) to have the entity credit to the subsequent recipient, or otherwise deal with on the subsequent recipient's behalf or as the subsequent recipient directs;

an amount attributable to the payment; and

(c) the entity would have been required to withhold an amount from the payment under subsection 12-215(1), 12-250(1) or 12-285(1) if the subsequent recipient had been a foreign resident; and

(d) an amount is not required to be withheld from the payment because:

(i) the subsequent recipient is *not* a foreign resident; or

(ii) the subsequent recipient is a foreign resident carrying on business in Australia at or through a permanent establishment (within the meaning of subsection 128B(3F) of the *Income Tax Assessment Act 1936*) of the subsequent recipient in Australia, and the payment is attributable to the permanent establishment; and

(e) the payment is any of the following:

(i) a payment that arises because of the operation of section 12A-205 (deemed payments);

(ii) a *pre-AMMA actual payment in respect of a payment that so arises.

(5) The entity must:

(a) give to the subsequent recipient a written notice containing the details specified in subsection (6); or

(b) make those details available on a website in a way that the details are readily accessible to the subsequent recipient for not less than 5 continuous years.

(6) The notice must be given, or the details must be made available on a website, before or at the time when the amount is paid or credited to the subsequent recipient, or is dealt with on the subsequent recipient's behalf or as the subsequent recipient directs, and:

(a) must specify the part of the payment referred to in paragraph (4)(a) from which an amount would have been so required to have been withheld; and

Authorised Version C2016A00053

(b) must specify the income year of the *AMIT to which that part relates.

Note: Failure to give the notice or make the details available as required by this section incurs an administrative penalty: see section 12A-20.

12A-20 Failure to give notice or make information available under section 12A-15: administrative penalty

An entity that:

(a) is required to give a notice, or make details available on a website, under section 12A-15 in relation to:

(i) a payment made to another entity; or

(ii) an amount paid or credited to, or dealt with on behalf of or as directed by, another entity; and

(b) fails to comply with that section;

is liable to pay to the Commissioner a penalty equal to the amount that would have been required to be withheld under this Subdivision (disregarding section 12-300) in relation to amounts attributable to the payment or amount if the notice had been given or the details had been made available.

Note: Division 298 in this Schedule contains machinery provisions for administrative penalties.

12A-25 Meaning of *AMIT DIR payment*

An ***AMIT DIR payment*** means any of the following:

(a) an *AMIT dividend payment;

(b) an *AMIT interest payment;

(c) an *AMIT royalty payment.

12A-30 Meaning of *AMIT dividend payment*

(1) This section applies to a trust that is an *AMIT for an income year.

(2) The object of this section is to ensure that the total of the *AMIT dividend payments that the trustee of the *AMIT makes in relation to the income year equals, as nearly as practicable, the amount mentioned in subsection (3).

Authorised Version C2016A00053

(3) The amount is the total of the *determined member components for the *AMIT for the income year of the character of a dividend (as defined in Division 11A of Part III of the *Income Tax Assessment Act 1936*) that is subject to a requirement to withhold under Subdivision 12-F.

(4) A payment (the ***actual or deemed payment***) that the trustee of a trust makes in relation to an income year is an ***AMIT dividend payment*** in relation to that year. However, the amount of the AMIT dividend payment is worked out under the following method statement, and may be:

(a) the amount of the actual or deemed payment; or

(b) the amount of the actual or deemed payment, increased or reduced as a result of the method statement.

Note: The payment by the trustee may be an actual payment, or a deemed payment under section 12A-205.

Method statement

Step 1. Work out what it is reasonable to expect will be the amount mentioned in subsection (3).

Step 2. The ***AMIT dividend payment*** is so much of the step 1 amount as is reasonable having regard to:

(a) the object of this section; and

(b) the amounts of any earlier AMIT dividend payments made by the trustee in relation to the income year; and

(c) the expected amounts of any later AMIT dividend payments the trustee expects to make in relation to the income year.

(5) The amount mentioned in subsection (3) and the expected amounts of any later *AMIT dividend payments are to be worked out on the basis of the trustee's knowledge when the payment is made.

Authorised Version C2016A00053

(6) Subsection (5) does not apply if the payment is a payment arising because of the operation of section 12A-205 (deemed payments).

(7) However, the payment is not an ***AMIT dividend payment*** in relation to the income year if:
   (a) the payment is a *post-AMMA actual payment in respect of another payment; and
   (b) the other payment arises because of the operation of section 12A-205; and
   (c) the other payment is an AMIT dividend payment.

12A-35 Meaning of *AMIT interest payment*

(1) This section applies to a trust that is an *AMIT for an income year.

(2) The object of this section is to ensure that the total of the *AMIT interest payments that the trustee of the *AMIT makes in relation to the income year equals, as nearly as practicable, the amount mentioned in subsection (3).

(3) The amount is the total of the *determined member components for the *AMIT for the income year of the character of interest (as defined in Division 11A of Part III of the *Income Tax Assessment Act 1936*) that is subject to a requirement to withhold under Subdivision 12-F.

(4) To work out the amount of an ***AMIT interest payment***, apply subsections 12A-30(4), (5), (6) and (7). For this purpose:
   (a) treat references in those subsections to AMIT dividend payments as instead being references to AMIT interest payments; and
   (b) treat the reference in subsection 12A-30(4) to "the amount mentioned in subsection (3)" as instead being a reference to "the amount mentioned in subsection 12A-35(3)".

12A-40 Meaning of *AMIT royalty payment*

(1) This section applies to a trust that is an *AMIT for an income year.

(2) The object of this section is to ensure that the total of the *AMIT royalty payments that the trustee of the *AMIT makes in relation to

Authorised Version C2016A00053

the income year equals, as nearly as practicable, the amount mentioned in subsection (3).

(3) The amount is the total of the *determined member components for the *AMIT for the income year of the character of a *royalty that is subject to a requirement to withhold under Subdivision 12-F.

(4) To work out the amount of an ***AMIT royalty payment***, apply subsections 12A-30(4), (5), (6) and (7). For this purpose:
   (a) treat references in those subsections to AMIT dividend payments as instead being references to AMIT royalty payments; and
   (b) treat the reference in subsection 12A-30(4) to "the amount mentioned in subsection (3)" as instead being a reference to "the amount mentioned in subsection 12A-40(3)".

Subdivision 12A-B—Distributions by AMITs relating to Subdivision 12-H fund payments

Guide to Subdivision 12A-B

12A-100 What this Subdivision is about

Withholding liabilities under Subdivision 12-H do not apply in relation to deemed payments arising under Subdivision 12A-C analogous to fund payments under Subdivision 12-H (although analogous liabilities may arise under Subdivision 12A-C).

AMIT trustees, custodians and other entities may be required to give notices etc. to recipients of such deemed payments.

Table of sections

Operative provisions

12A-105 Deemed payments—no obligation to withhold under Subdivision 12-H
12A-110 Meaning of ***fund payment***—AMITs

Authorised Version C2016A00053

Operative provisions

12A-105 Deemed payments—no obligation to withhold under Subdivision 12-H

(1) The trustee mentioned in subsection 12-385(1) need not withhold an amount under that subsection from the payment mentioned in that subsection if the payment arises because of the operation of section 12A-205 (deemed payments).

Note: The trustee may have to pay the Commissioner an amount in respect of the deemed payment (see Subdivision 12A-C).

(2) The *custodian mentioned in subsection 12-390(1) need not withhold an amount under that subsection from the later payment mentioned in that subsection if:

(a) the later payment arises because of the operation of section 12A-205 (deemed payments); or

(b) the later payment is a *post-AMMA actual payment in respect of a payment of a kind mentioned in paragraph (a).

Note: Either or both of the trustee of the AMIT concerned and the custodian may have to pay the Commissioner an amount in respect of the deemed payment (see Subdivision 12A-C).

(3) The entity mentioned in subsection 12-390(4) need not withhold an amount under that subsection from the payment mentioned in that subsection if:

(a) the payment arises because of the operation of section 12A-205 (deemed payments); or

(b) the payment is a *post-AMMA actual payment in respect of a payment of a kind mentioned in paragraph (a).

Note: The entity may have to pay the Commissioner an amount in respect of the deemed payment (see Subdivision 12A-C).

(4) Disregard this section for the purposes of section 12-395.

12A-110 Meaning of *fund payment*—AMITs

(1) This section applies to a trust that is an *AMIT for an income year.

(2) The object of this section is to ensure that the total of the *fund payments that the trustee of the *AMIT makes in relation to the

Authorised Version C2016A00053

income year equals, as nearly as practicable, the amount mentioned in subsection (3).

(3) The amount is the sum of the following amounts:

(a) total of the *determined member components for the *AMIT for the income year of a character relating to assessable income, disregarding determined member components (the ***excluded components***) of any of the following characters:

(i) the character of a *discount capital gain from a *CGT asset that is *not* *taxable Australian property;

(ii) the character of a *capital gain (other than a discount capital gain) from a CGT asset that is *not* taxable Australian property;

(iii) the character of a dividend (as defined in Division 11A of Part III of the *Income Tax Assessment Act 1936*) that is subject to, or exempted from, a requirement to withhold under Subdivision 12-F;

(iv) the character of interest (as defined in Division 11A of Part III of the *Income Tax Assessment Act 1936*) that is subject to, or exempted from, a requirement to withhold under Subdivision 12-F;

(v) the character of a *royalty that is subject to, or exempted from, a requirement to withhold under Subdivision 12-F;

(vi) the character of *ordinary income, or *statutory income, from a source *other than* an *Australian source;

(vii) if a legislative instrument under subsection (4) specifies a character—that character;

(b) the total of each *capital loss of the AMIT from a *CGT event that happened in the income year to a CGT asset that is *not* taxable Australian property.

(4) The Commissioner may, by legislative instrument, specify one or more characters for the purposes of subparagraph (3)(a)(vii).

(5) A payment (the ***actual or deemed payment***) that the trustee of a trust makes in relation to an income year is a ***fund payment*** in relation to that year. However, the amount of the fund payment is worked out under the following method statement, and may be:

(a) the amount of the actual or deemed payment; or

Authorised Version C2016A00053

(b) the amount of the actual or deemed payment, increased or reduced as a result of the method statement.

Note: The payment by the trustee may be an actual payment, or a deemed payment under section 12A-205.

Method statement

Step 1. Reduce the actual or deemed payment by so much of it that is attributable to the excluded components.

Step 2. Work out what it is reasonable to expect will be the amount mentioned in subsection (3).

Do so on the basis that a *capital gain from *taxable Australian property of the trust that was or would be reduced under step 3 of the method statement in subsection 102-5(1) of the *Income Tax Assessment Act 1997* were double the amount it actually is.

Step 3. The ***fund payment*** is so much of the step 2 amount as is reasonable having regard to:

(a) the object of this section; and

(b) the step 1 amount; and

(c) the amounts of any earlier fund payments made by the trustee in relation to the income year; and

(d) the expected amounts of any later fund payments the trustee expects to make in relation to the income year.

(6) The amount mentioned in subsection (3) and the expected amounts of any later *fund payments are to be worked out on the basis of the trustee's knowledge when the payment is made.

(7) Subsection (6) does not apply if the payment is a payment arising because of the operation of section 12A-205 (deemed payments).

Authorised Version C2016A00053

(8) However, the payment is not a ***fund payment*** in relation to the income year if:
  (a) the payment (the ***actual payment***) is a *post-AMMA actual payment in respect of another payment; and
  (b) the other payment arises because of the operation of section 12A-205; and
  (c) the other payment is a fund payment.

(9) An amount is also not a ***fund payment*** in relation to the income year unless it is paid:
  (a) during the income year; or
  (b) within 3 months after the end of the income year; or
  (c) within a longer period (starting at the end of the period referred to in paragraph (b) and not exceeding 3 years) allowed by the Commissioner.

(10) The Commissioner may allow a longer period as mentioned in paragraph (9)(c) only if the Commissioner is of the opinion that:
  (a) if the other payment arises at a time because of the operation of section 12A-205 (deemed payments)—the *AMIT complied with subsection 276-455(1) of the *Income Tax Assessment Act 1997* in respect of the income year (requirement to give AMMA statements within 3 months); or
  (b) otherwise—the trustee was unable to make the payment during the income year, or within 3 months after the end of the income year, because of circumstances beyond the influence or control of the trustee.

Subdivision 12A-C—Deemed payments by AMITs etc.

Guide to Subdivision 12A-C

12A-200 What this Subdivision is about

When a withholding MIT that is an AMIT gives a member an AMMA statement, the trustee is deemed to have made a payment to the member.

Authorised Version C2016A00053

The payment is generally the sum of the determined member components reflected in the statement that are of a character relating to assessable income, reduced by any previous actual payments related to those components.

The deemed payment can flow through one or more custodians, giving rise to subsequent deemed payments.

Table of sections

Operative provisions

12A-205 Issue of AMMA statement etc. deemed to be payment
12A-210 ***Post-AMMA actual payment*** and ***pre-AMMA actual payment*** in respect of deemed payment
12A-215 AMIT payment to the Commissioner in respect of deemed payments to offshore entities etc.
12A-220 Custodian payment to the Commissioner in respect of deemed payments to offshore entities etc.

Operative provisions

12A-205 Issue of AMMA statement etc. deemed to be payment

(1) This section applies if:
  (a) an entity (the ***first recipient***) is or was a *member of a *withholding MIT in respect of an income year; and
  (b) the withholding MIT is an *AMIT for the income year; and
  (c) the AMIT gives the first recipient an *AMMA statement for the income year.

(2) For the purposes of this Part, Subdivision 840-M of the *Income Tax Assessment Act 1997* and Division 11A of Part III of the *Income Tax Assessment Act 1936*:
  (a) treat the trustee of the *AMIT as having made a payment (the ***first deemed payment***) of an amount to the first recipient at the time the AMIT gave the first recipient the *AMMA statement; and
  (b) treat the amount of the first deemed payment as being the amount worked out as follows:

Authorised Version C2016A00053

(i) first, work out the total of all the *determined member components of all the *members of the AMIT of a character relating to assessable income for the income year;

(ii) next, identify each of the *pre-AMMA actual payments (if any) made to those members in respect of all payments by the trustee to those members that arise from the operation of paragraph (a);

(iii) next, identify every *AMIT DIR payment (if any) and each *fund payment (if any) that arises from each such pre-AMMA actual payment;

(iv) next, reduce the result of subparagraph (i) by the sum of each such AMIT DIR payment and fund payment;

(v) next, work out how much of the result of subparagraph (iv) is referable to the first recipient.

(3) Also, for the purposes of Division 11A of Part III of the *Income Tax Assessment Act 1936*, treat the first recipient as having derived the first deemed payment just before the end of the income year to which the *AMMA statement relates.

(4) Subsection (5) applies if:

(a) the first recipient is a *custodian; and

(b) another entity (the ***subsequent recipient***):

(i) starts to have, at a time, an entitlement to an amount that is reasonably attributable to all or part of the first deemed payment; or

(ii) would start to have, at a time, such an entitlement if the first deemed payment were an actual payment of an amount.

(5) For the purposes of this Part, Subdivision 840-M of the *Income Tax Assessment Act 1997* and Division 11A of Part III of the *Income Tax Assessment Act 1936*:

(a) treat the first recipient as having made a payment (the ***subsequent deemed payment***) of an amount to the subsequent recipient at that time; and

(b) treat the amount of the subsequent deemed payment as being the amount of the entitlement mentioned in subparagraph (4)(b)(i) or (ii); and

Authorised Version C2016A00053

(c) treat the amount of the subsequent deemed payment as being attributable to the first deemed payment.

(6) Also, for the purposes of Division 11A of Part III of the *Income Tax Assessment Act 1936*, treat the subsequent recipient as having derived the subsequent deemed payment at the time the subsequent deemed payment arises.

(7) If:

(a) an entity is a subsequent recipient mentioned in subsection (4) (including as a result of a previous operation of this subsection); and

(b) subsection (5) applies with the result that a payment is treated as having been made to the entity; and

(c) the entity is a *custodian;

apply subsections (4), (5) and (6) again as if the entity were the first recipient mentioned in subsection (4).

Note: This means that the entity is treated under subsection (5) as having made a payment to another entity if the other entity has (or would have) an entitlement as mentioned in paragraph (4)(b).

12A-210 *Post-AMMA actual payment* and *pre-AMMA actual payment* in respect of deemed payment

(1) A payment that does *not* arise because of the operation of section 12A-205 is a ***post-AMMA actual payment*** in respect of a payment (the ***deemed payment***) that *does* arise because of the operation of that section if:

(a) the payment and the deemed payment are both attributable to the same *member component for the *AMIT mentioned in that section; and

(b) the actual payment is made *at or after* the time the deemed payment arises.

(2) A payment that does *not* arise because of the operation of section 12A-205 is a ***pre-AMMA actual payment*** in respect of a payment (the ***deemed payment***) that *does* arise because of the operation of that section if:

Authorised Version C2016A00053

(a) the payment and the deemed payment are both attributable to the same *member component for the *AMIT mentioned in that section; and

(b) the actual payment is made *before* the time the deemed payment arises.

12A-215 AMIT payment to the Commissioner in respect of deemed payments to offshore entities etc.

(1) A trustee of a trust that is an *AMIT for an income year must pay an amount to the Commissioner if:

(a) the trust is a *withholding MIT in relation to the income year; and

(b) the trustee makes a payment (the ***deemed payment***) that arises because of the operation of section 12A-205; and

(c) the payment is made to an entity (the ***recipient***) that is:

(i) if the payment is a *fund payment—an entity covered by section 12-410; or

(ii) if the payment is an *AMIT DIR payment—an entity that is not an Australian resident.

Note 1: An entity may be covered by section 12-410 if the entity has an address outside Australia or payment is authorised to be made to a place outside Australia.

Note 2: If the payment is made to a recipient not covered by subparagraph (c)(i) or (ii), the trustee is required to give a notice to the recipient or publish information on a website setting out certain details about the payment: see sections 12-395 and 12A-15.

(2) The amount that the trustee must pay is equal to the amount that the trustee would, if the assumptions in subsection (3) were made, have had to withhold under:

(a) if the deemed payment is a *fund payment—section 12-385; or

(b) if the deemed payment is an *AMIT DIR payment—section 12-210, 12-245 or 12-280.

(3) The assumptions are that:

(a) the deemed payment had *not* arisen because of the operation of section 12A-205; and

(b) the deemed payment had instead been an actual payment; and

Authorised Version C2016A00053

(c) if the deemed payment is an *AMIT DIR payment:

(i) where it corresponds to the character of a dividend (as defined in Division 11A of Part III of the *Income Tax Assessment Act 1936*) that is subject to a requirement to withhold under Subdivision 12-F—the trust had been a company, and it had paid it as a dividend; or

(ii) where it corresponds to the character of interest (as defined in Division 11A of Part III of the *Income Tax Assessment Act 1936*) that is subject to a requirement to withhold under Subdivision 12-F—it were the payment of interest; or

(iii) where it corresponds to the character of a *royalty that is subject to a requirement to withhold under Subdivision 12-F—it were the payment of a royalty; and

(d) if the deemed payment is an AMIT DIR payment—the condition in either or both of paragraphs 12-210(a) or (b), of paragraphs 12-245(a) or (b) or of paragraphs 12-280(a) or (b) (as the case requires) were satisfied.

(4) The trustee may recover from the recipient as a debt an amount that the trustee has paid to the Commissioner under subsection (1).

(5) The trustee is entitled to set off an amount that the trustee can recover from the recipient under subsection (4) against debts due by the trustee to the recipient.

12A-220 Custodian payment to the Commissioner in respect of deemed payments to offshore entities etc.

(1) A *custodian must pay an amount to the Commissioner if:

(a) the trustee of a trust that was an *AMIT for an income year and was a *withholding MIT in relation to the income year made a payment (the ***first deemed payment***) that:

(i) arose because of the operation of section 12A-205; and

(ii) was a *fund payment or an *AMIT DIR payment; and

(b) the custodian makes a payment (the ***subsequent deemed payment***) that arises because of the operation of section 12A-205; and

Authorised Version C2016A00053

(c) the first deemed payment gave rise to the subsequent deemed payment, because of one or more operations of section 12A-205; and

(d) the subsequent deemed payment or part of it (the ***covered part***) was covered by a notice or information under:

(i) if the first deemed payment was a fund payment—section 12-395; or

(ii) if the first deemed payment was an AMIT DIR payment—section 12A-15; and

(e) the subsequent deemed payment is made to an entity (the ***recipient***) that is:

(i) if the first deemed payment was a fund payment—covered by section 12-410; or

(ii) if the first deemed payment was an AMIT DIR payment—*not* an Australian resident.

Note 1: An entity may be covered by section 12-410 if the entity has an address outside Australia or payment is authorised to be made to a place outside Australia.

Note 2: If the payment is made to a recipient not covered by subparagraph (e)(i) or (ii), the trustee is required to give a notice to the recipient or publish information on a website setting out certain details about the payment: see sections 12-395 and 12A-15.

(2) The amount that the *custodian must pay is the amount that the custodian would, if the assumptions in subsection (3) were made, have had to withhold under:

(a) if the first deemed payment was a *fund payment—subsection 12-390(1); or

(b) if the first deemed payment was an *AMIT DIR payment—section 12-210, 12-245 or 12-280.

(3) The assumptions are that:

(a) the subsequent deemed payment had *not* arisen because of the operation of section 12A-205; and

(b) the subsequent deemed payment had instead been an actual payment; and

(c) if the first deemed payment was an *AMIT DIR payment:

(i) where the first deemed payment corresponded to the character of a dividend (as defined in Division 11A of

Authorised Version C2016A00053

Part III of the *Income Tax Assessment Act 1936*) that is subject to a requirement to withhold under Subdivision 12-F—the *custodian had been a company, and it had paid the subsequent deemed payment as a dividend; or

(ii) where the first deemed payment corresponded to the character of interest (as defined in Division 11A of Part III of the *Income Tax Assessment Act 1936*) that is subject to a requirement to withhold under Subdivision 12-F—the subsequent deemed payment were the payment of interest; or

(iii) where the first deemed payment corresponded to the character of a *royalty that is subject to a requirement to withhold under Subdivision 12-F—the subsequent deemed payment were the payment of a royalty; and

(d) if the first deemed payment was an AMIT DIR payment—the condition in either or both of paragraphs 12-210(a) or (b), of paragraphs 12-245(a) or (b) or of paragraphs 12-280(a) or (b) (as the case requires) were satisfied.

(4) The *custodian may recover from the recipient as a debt an amount that the custodian has paid to the Commissioner under subsection (1).

(5) The *custodian is entitled to set off an amount that the custodian can recover from the recipient under subsection (4) against debts due by the custodian to the recipient.

12 Section 16-1 in Schedule 1

Omit “Division 13 or 14”, substitute “Division 12A, 13 or 14”.

13 After section 16-5 in Schedule 1

Insert:

16-7 Treat entity obliged to pay under Subdivision 12A-C as having withheld amount under Division 12

For the purposes of this Division:

Authorised Version C2016A00053

(a) if an entity must pay an amount to the Commissioner under Subdivision 12A-C, treat the entity as being obliged to withhold the amount under Division 12; and

(b) if an entity has paid an amount to the Commissioner under Subdivision 12A-C, treat the entity as having withheld the amount under Division 12.

14 Paragraph 16-20(b) in Schedule 1

Omit "Division 13 or 14", substitute "Division 12A, 13 or 14".

15 Subsection 16-25(2) in Schedule 1

Omit "Division 13 or 14", substitute "Division 12A, 13 or 14".

16 Paragraph 16-25(4)(b) in Schedule 1

Omit "Division 13 or 14", substitute "Division 12A, 13 or 14".

17 Paragraph 16-30(b) in Schedule 1

Omit "Division 13 or 14", substitute "Division 12A, 13 or 14".

18 After paragraph 16-140(1)(a) in Schedule 1

Insert:

(aaa) Division 12A (about deemed payments by AMITs); or

19 Paragraph 16-140(2)(b) in Schedule 1

Omit "Division 13 or 14", substitute "Division 12A, 13 or 14".

20 Subsection 18-30(1) in Schedule 1

Repeal the subsection, substitute:

(1) An entity is entitled to a credit if:

(a) the entity's *ordinary income, or *statutory income, includes any of the following:

(i) a *dividend (or a part of it), interest (within the meaning of Division 11A of Part III of the *Income Tax Assessment Act 1936*) or a *royalty;

(ii) an amount that is represented by or reasonably attributable to an *AMIT DIR payment; and

Authorised Version C2016A00053

(b) if subparagraph (a)(i) applies—if the entity has borne all or part of an *amount withheld from the dividend, interest or royalty; and

(c) if subparagraph (a)(ii) applies—if the entity has borne all or part of an amount paid under Division 12A in respect of the AMIT DIR payment.

21 Paragraph 18-32(1)(b) in Schedule 1

Repeal the paragraph, substitute:

(b) the entity has borne all or part of:

(i) an *amount withheld from the payment under Subdivision 12-H; or

(ii) an amount paid under Division 12A in respect of the fund payment.

22 After subsection 18-65(1) in Schedule 1

Insert:

(1A) For the purposes of this section, if an entity has paid an amount to the Commissioner purportedly under Subdivision 12A-C (about deemed payments by AMITs), treat the entity as having withheld the amount purportedly under Division 12.

23 After subsection 18-70(1) in Schedule 1

Insert:

(1A) For the purposes of this section, if an entity has paid an amount to the Commissioner purportedly under Subdivision 12A-C (about deemed payments by AMITs), treat the entity as having withheld the amount purportedly under Division 12.

Authorised Version C2016A00053

Schedule 4—Managed investment trusts

Income Tax Assessment Act 1997

1 Division 275 (heading)

Repeal the heading, substitute:

Division 275—Australian managed investment trusts: general

2 Section 275-1

After "are or were certain Australian managed investment trusts", insert "(or certain other trusts)".

3 Subdivision 275-A

Repeal the Subdivision, substitute:

Subdivision 275-A—Meaning of managed investment trust

Guide to Subdivision 275-A

275-5 What this Subdivision is about

> This Subdivision sets out the requirements for a trust to be a managed investment trust in relation to an income year.

Table of sections

Operative provisions

275-10	Meaning of ***managed investment trust***
275-15	Trusts with wholesale membership
275-20	Widely-held requirements—ordinary case
275-25	Widely-held requirements for registered MIT—special case for entities covered by subsection 275-20(4)
275-30	Closely-held restrictions
275-35	Licensing requirements for unregistered MIS
275-40	MIT participation interest

Authorised Version C2016A00053

275-45 Meaning of ***managed investment trust***—every member of trust is a managed investment trust etc.
275-50 Extended definition of ***managed investment trust***—no fund payment made in relation to the income year
275-55 Extended definition of ***managed investment trust***—temporary circumstances outside the control of the trustee

Operative provisions

275-10 Meaning of *managed investment trust*

(1) A trust is a ***managed investment trust*** in relation to an income year if any of the following requirements are met:
  (a) the trust is covered under subsection (3) of this section in relation to the income year (ordinary case);
  (b) the trust is covered under section 275-45 in relation to the income year (only members of trust are managed investment trusts etc.).

(2) A trust is also a ***managed investment trust*** in relation to an income year if any of the following requirements are met:
  (a) the trust is covered under section 275-50 in relation to the income year (no fund payment made in relation to the income year);
  (b) the trust is covered under section 275-55 in relation to the income year (temporary circumstances outside the control of the trustee).

(3) A trust is covered under this subsection in relation to an income year if:
  (a) at the time the trustee of the trust makes the first *fund payment in relation to the income year, or at an earlier time in the income year:
    (i) the trustee of the trust was an Australian resident; or
    (ii) the central management and control of the trust was in Australia; and
  (b) the trust is not a trust covered by subsection (4) (trading trust etc.) in relation to the income year; and

Authorised Version C2016A00053

(c) at the time the payment is made, the trust is a managed investment scheme (within the meaning of section 9 of the *Corporations Act 2001*); and

(d) at the time the payment is made:

(i) the trust is covered by section 275-15 (trusts with wholesale membership); or

(ii) if the trust is *not* covered by section 275-15—the trust is registered under section 601EB of the *Corporations Act 2001*; and

(e) the trust satisfies, in relation to the income year:

(i) if, at the time the payment is made, the trust is registered under section 601EB of the *Corporations Act 2001* and is covered by section 275-15—either or both of the widely-held requirements in subsections 275-20(1) and 275-25(1); or

(ii) if, at the time the payment is made, the trust is so registered and is *not* covered by section 275-15—either or both of the widely-held requirements in subsections 275-20(2) and 275-25(1); or

(iii) if, at the time the payment is made, the trust is *not* so registered and is covered by section 275-15—the widely-held requirements in subsection 275-20(1); and

(f) the trust satisfies the closely-held restrictions in subsection 275-30(1) in relation to the income year; and

(g) if the trust is covered by section 275-15 at the time the payment is made—it satisfies the licensing requirements in section 275-35 in relation to the income year.

Trading unit trust or other trust carrying on trading business etc. cannot be managed investment trust

(4) A trust is covered by this subsection in relation to an income year if:

(a) in the case of a unit trust—the trust is a trading trust for the purposes of Division 6C of Part III of the *Income Tax Assessment Act 1936* in relation to the income year; or

(b) in any other case—the trust at any time in the income year:

(i) carried on a trading business (within the meaning of that Division); or

Authorised Version C2016A00053

(ii) controlled, or was able to control, directly or indirectly, the affairs or operations of another person in respect of the carrying on by that other person of a trading business (within the meaning of that Division).

Crown entities etc.

(5) For the purposes of paragraphs (3)(d) and (e), treat an entity as registered under section 601EB of the *Corporations Act 2001* at the time the payment is made if at that time the trust is operated by:

(a) an entity that would, but for subsection 5A(4) of that Act (about the Crown not being bound by Chapter 6CA or 7 of that Act), be required under that Act to be a financial services licensee (within the meaning of section 761A of that Act) whose licence would cover operating such a managed investment scheme; or

(b) an entity that:

(i) is a *wholly-owned subsidiary of an entity of a kind mentioned in paragraph (a); and

(ii) would, but for any instrument issued by ASIC under that Act that has effect in relation to the entity and operation of the scheme mentioned in paragraph (3)(c), be required under that Act to be a financial services licensee (within the meaning of section 761A of that Act) whose licence would cover operating such a managed investment scheme.

Start-up and wind-down phases

(6) Treat the requirements in paragraphs (3)(e) and (f) as being satisfied if:

(a) the trust is created during the period:

(i) starting 12 months before the start of the income year; and

(ii) ending at the end of the income year; or

(b) the trust ceases to exist during the income year, and was a *managed investment trust (disregarding paragraph (a) of this section) in relation to the previous income year.

Authorised Version C2016A00053

275-15 Trusts with wholesale membership

A trust is covered by this section at a time if, at that time:

(a) the trust is not required to be registered in accordance with section 601ED of the *Corporations Act 2001* (whether or not it is actually so registered) because of subsection 601ED(2) of that Act (no product disclosure statement required) or because it is operated or managed by an entity covered by subsection 275-35(2) (Crown entities); and

(b) the total number of entities that had become a *member of the trust because a financial product or a financial service was provided to, or acquired by, the entity as a retail client (within the meaning of sections 761G and 761GA of the *Corporations Act 2001*) is no more than 20; and

(c) the entities mentioned in paragraph (b) have a total *MIT participation interest in the trust of no more than 10%.

275-20 Widely-held requirements—ordinary case

(1) The trust satisfies the requirements in this subsection in relation to the income year if, at the time the payment mentioned in paragraph 275-10(3)(a) is made, the trust has at least 25 *members.

(2) The trust satisfies the requirements in this subsection in relation to the income year if, at the time the payment mentioned in paragraph 275-10(3)(a) is made:

(a) units in the trust are listed for quotation in the official list of an *approved stock exchange in Australia; or

(b) the trust has at least 50 *members (ignoring objects of a trust).

(3) For the purposes of subsection (1) and paragraph (2)(b), determine the number of *members of the trust as follows:

(a) first, by applying the rules in subsection (5), identify:

(i) the members of the trust that are not entities covered by subsection (4); and

(ii) the members of the trust that are entities covered by subsection (4);

(b) next, work out the number of members mentioned in subparagraph (a)(i);

Authorised Version C2016A00053

(c) next:
  (i) work out the *MIT participation interest in the trust of each entity mentioned in subparagraph (a)(ii); and
  (ii) for each of those entities, multiply the total of its MIT participation interest in the trust by 50 and round the result upwards to the nearest whole number; and
  (iii) work out the total of the results of subparagraph (ii) for all of those entities;
(d) next, work out the total of the results of paragraphs (b) and (c).

(4) This subsection covers the following kinds of entity:
(a) a *life insurance company;
(b) a *foreign life insurance company that is regulated under a *foreign law;
(c) a *complying superannuation fund, a *complying approved deposit fund or a *foreign superannuation fund, being a fund that has at least 50 *members;
(d) a *pooled superannuation trust that has at least one member that is a complying superannuation fund that has at least 50 members;
(e) a *managed investment trust in relation to the income year;
(f) an entity:
  (i) that is recognised under a foreign law as being used for collective investment by pooling the contributions of its members as consideration to acquire rights to benefits produced by the entity; and
  (ii) that has at least 50 members; and
  (iii) the contributing members of which do not have day-to-day control over the entity's operation;
(g) an entity, the principal purpose of which is to fund pensions (including disability and similar benefits) for the citizens or other contributors of a foreign country, if:
  (i) the entity is a fund established by an *exempt foreign government agency; or
  (ii) the entity is established under a foreign law for an exempt foreign government agency; or

Authorised Version C2016A00053

(iii) the entity is a *wholly-owned subsidiary of an entity mentioned in subparagraph (i) or (ii);

(h) an investment entity that satisfies all of these requirements:

(i) the entity is wholly-owned by one or more *foreign government agencies, or is a wholly-owned subsidiary of one or more foreign government agencies;

(ii) the entity is established using only the public money or public property of the foreign government concerned;

(iii) all economic benefits obtained by the entity have passed, or are expected to pass, to the foreign government concerned;

(i) an entity established and wholly-owned by an *Australian government agency, if the capital of the entity, and returns from the investment of that capital, are used for the primary purpose of meeting statutory government liabilities or obligations (such as superannuation liabilities and liabilities arising from compensation or workcover claims);

(j) a *limited partnership, if, throughout the income year:

(i) at least 95% of the *membership interests in the limited partnership are owned by entities mentioned in the preceding paragraphs of this subsection, or by entities that are wholly-owned by entities so mentioned; and

(ii) the remaining membership interests (if any) in the limited partnership are owned by a *general partner of the limited partnership that habitually exercises the management power of the limited partnership;

(k) an entity, all the membership interests in which are owned by any of the following:

(i) entities mentioned in the preceding paragraphs of this subsection;

(ii) entities that are wholly-owned by entities mentioned in the preceding paragraphs of this subsection;

(iii) entities that are covered under this subsection because of a previous operation of this paragraph;

(l) an entity of a kind similar to an entity mentioned in the preceding paragraphs of this subsection as specified in the regulations.

(5) The rules are as follows:

Authorised Version C2016A00053

(a) if an entity that is not a trust holds interests in the trust indirectly, through a *chain of trusts:
  (i) treat the entity as a member of the trust; and
  (ii) do not treat a trust in the chain of trusts as a member of the trust;
(b) do not treat an object of the trust as a member of the trust;
(c) if the trust is mentioned in subparagraph 275-10(3)(d)(i) (trusts with wholesale membership)—do not treat an individual as a member of the trust (other than an individual who became a member of the trust because a financial product or a financial service was provided to, or acquired by, the individual as a wholesale client (within the meaning of section 761G of the *Corporations Act 2001*));
(d) the rules in subsection (7).

(6) For the purposes of paragraph (5)(a), treat an entity covered by subsection (4) as an entity that is not a trust.

(7) The rules are as follows:
(a) treat the following entities as together being one entity:
  (i) an individual;
  (ii) each of his or her *relatives;
  (iii) each entity acting in the capacity of nominee of an individual mentioned in subparagraph (i) or (ii);
(b) treat the following entities as together being one entity (the ***notional entity***):
  (i) an entity that is not an individual;
  (ii) each entity acting in the capacity of nominee of the entity mentioned in subparagraph (i).

(8) For the purposes of subsection (5), if the entity mentioned in subparagraph (7)(b)(i) is an entity covered by subsection (4), treat the notional entity as an entity covered by subsection (4).

275-25 Widely-held requirements for registered MIT—special case for entities covered by subsection 275-20(4)

(1) The trust satisfies the requirements in this subsection in relation to the income year if:

Authorised Version C2016A00053

(a) one or more entities covered by subsection 275-20(4) have a total *MIT participation interest in the trust of more than 25% at the time the payment mentioned in paragraph 275-10(3)(a) is made; and

(b) at no time in the income year does an entity (other than an entity covered by subsection 275-20(4)) have a MIT participation interest in the trust of more than 60%.

(2) For the purposes of paragraphs (1)(a) and (b):

(a) if:

(i) an entity covered by subsection 275-20(4) has a *MIT participation interest (the ***first interest***) in the trust; and

(ii) another entity covered by subsection 275-20(4) also has a MIT participation interest (the ***second interest***) in the trust;

disregard the second interest to the extent that it arises through the existence of the first interest; and

(b) if an entity that is not a trust has a MIT participation interest in the trust because it holds interests in the trust indirectly, through a *chain of trusts—do not treat a trust in the chain of trusts as having a MIT participation interest in the trust.

(3) For the purposes of paragraph (2)(b), treat an entity covered by subsection 275-20(4) as an entity that is not a trust.

(4) For the purposes of paragraphs (1)(a) and (b), apply the rules in subsection 275-20(7).

275-30 Closely-held restrictions

(1) The trust satisfies the requirements in this subsection in relation to the income year unless, at any time in the income year, any of the following situations exist:

(a) for a trust mentioned in subparagraph 275-10(3)(d)(i) (trusts with wholesale membership)—10 or fewer persons have a total *MIT participation interest in the trust of 75% or more;

(b) if paragraph (a) does not apply—20 or fewer persons have a total MIT participation interest in the trust of 75% or more;

(c) a foreign resident individual has a MIT participation interest in the trust of 10% or more.

Authorised Version C2016A00053

(2) For the purposes of paragraphs (1)(a) and (b):
  (a) if an entity covered by subsection 275-20(4) has a *MIT participation interest in the trust—treat that entity as *not* having a MIT participation interest in the trust; and
  (b) if an entity that is not a trust has a MIT participation interest in the trust because it holds interests in the trust indirectly, through a *chain of trusts:
    (i) if the entity is covered by subsection 275-20(4)—do not treat it as having a MIT participation interest in the trust; and
    (ii) do not treat a trust in the chain of trusts as having a MIT participation interest in the trust.

(3) For the purposes of paragraph (2)(b), treat an entity covered by subsection 275-20(4) as an entity that is not a trust.

(4) For the purposes of paragraphs (1)(a) and (b), apply the rules in subsection 275-20(7).

275-35 Licensing requirements for unregistered MIS

(1) The trust satisfies the requirements in this section in relation to the income year if, at the time the payment mentioned in paragraph 275-10(3)(a) is made (the time of the first fund payment for the income year):
  (a) the trust is operated or managed by:
    (i) a financial services licensee (within the meaning of section 761A of the *Corporations Act 2001*) holding an Australian financial services licence whose licence covers it providing financial services (within the meaning of section 766A of that Act) to wholesale clients (within the meaning of section 761G of that Act); or
    (ii) an authorised representative (within the meaning of section 761A of that Act) of such a financial services licensee; or
  (b) the trust is operated or managed by an entity covered by subsection (2); or
  (c) the trust is operated or managed by an entity that:

Authorised Version C2016A00053

(i) is a *wholly-owned subsidiary of an entity covered by subsection (2); and

(ii) is an entity covered by subsection (3).

(2) An entity is covered by this subsection if it would, but for subsection 5A(4) of the *Corporations Act 2001* (about the Crown not being bound by Chapter 6CA or 7 of that Act), be required under that Act to be a financial services licensee (within the meaning of section 761A of that Act).

(3) An entity is covered by this subsection if it would, but for any instrument issued by ASIC under the *Corporations Act 2001* that has effect in relation to the entity and the operation of the scheme mentioned in paragraph 275-10(3)(c), be required under that Act to be a financial services licensee (within the meaning of section 761A of that Act).

275-40 MIT participation interest

(1) An entity has a ***MIT participation interest*** in a trust if the entity, directly or indirectly:

(a) holds, or has the right to *acquire, interests representing a percentage of the value of the interests in the trust; or

(b) has the control of, or the ability to control, a percentage of the rights attaching to *membership interests in the trust; or

(c) has the right to receive a percentage of any distribution of income that the trust may make.

(2) The ***MIT participation interest*** of the entity in the trust is the greatest of the percentages mentioned in paragraphs (1)(a), (b) and (c).

275-45 Meaning of *managed investment trust*—every member of trust is a managed investment trust etc.

(1) A trust is covered under this section in relation to an income year if:

(a) the condition in paragraph 275-10(3)(a) is satisfied; and

(b) the condition in paragraph 275-10(3)(b) is satisfied; and

(c) either:

Authorised Version C2016A00053

(i) the only *members of the trust are entities that are covered by subsection 275-20(4) (other than entities mentioned in paragraph 275-20(4)(f)); or

(ii) the only members of the trust are entities that are *managed investment trusts in relation to the income year because of subsection 275-10(2); and

(d) the trust satisfies the licensing requirements in section 275-35 in relation to the income year.

(2) A requirement in paragraph (1)(a) is satisfied if, and only if, it is satisfied:

(a) at the time the trustee of the trust makes the first *fund payment in relation to the income year; or

(b) if the trustee does not make such a payment in relation to the income year—at both the start and the end of the income year.

275-50 Extended definition of *managed investment trust*—no fund payment made in relation to the income year

A trust is covered under this section in relation to an income year if:

(a) the trustee of the trust does not make a *fund payment in relation to the income year; and

(b) the trust would be a *managed investment trust in relation to the income year if the trustee of the trust had made the first fund payment in relation to the income year on the first day of the income year when it was in existence; and

(c) the trust would be a managed investment trust in relation to the income year if the trustee of the trust had made the first fund payment in relation to the income year on the last day of the income year on which it was in existence.

275-55 Extended definition of *managed investment trust*—temporary circumstances outside the control of the trustee

A trust is covered under this section in relation to an income year if:

Authorised Version C2016A00053

(a) apart from a particular circumstance, the trust would be a *managed investment trust in relation to the income year; and

(b) the circumstance is temporary; and

(c) the circumstance arose outside the control of the trustee of the trust; and

(d) it is fair and reasonable to treat the trust as a managed investment trust in relation to the income year, having regard to the following matters:

(i) the matters in paragraphs (a) and (b);

(ii) the nature of the circumstance;

(iii) the actions (if any) taken by the trustee of the trust to address or remove the circumstance, and the speed with which such actions are taken;

(iv) the extent to which treating the trust as a managed investment trust in relation to the income year would increase or reduce the amount of tax otherwise payable by the trustee, the *members of the trust or any other entity;

(v) any other relevant matter.

4 After subsection 275-200(1)

Insert:

(1A) For the purposes of paragraph (1)(c), in determining whether the entity satisfies any of the requirements mentioned in that paragraph:

(a) disregard paragraph 275-10(3)(b) (requirement of not being a trading trust etc.); and

(b) disregard subsection 102T(16) of the *Income Tax Assessment Act 1936* (exclusion of public trading trust etc.).

5 At the end of Division 275

Add:

Authorised Version C2016A00053

Subdivision 275-L—Modification for non-arm's length income

Guide to Subdivision 275-L

275-600 What this Subdivision is about

> The trustee of a managed investment trust in relation to an income year is taxed on amounts related to the managed investment trust's non-arm's length income for the income year.

Table of sections

Operative provisions

275-605 Trustee taxed on amount of non-arm's length income of managed investment trust
275-610 Non-arm's length income
275-615 Commissioner's determination in relation to amount of non-arm's length income

Operative provisions

275-605 Trustee taxed on amount of non-arm's length income of managed investment trust

(1) Subsections (2), (3) and (4) apply if the Commissioner has made a determination under section 275-615 that specifies an amount of *non-arm's length income for a specified *managed investment trust in relation to a specified income year.

Excess amount to be taxed

(2) The trustee of the *managed investment trust is liable to pay income tax at the rate declared by the Parliament on the amount mentioned in subsection (5).

Note: The rate is set out in subsection 12(10) of the *Income Tax Rates Act 1986*.

Excess amount to be adjusted

(3) If the trust is an *AMIT for the income year:

Authorised Version C2016A00053

(a) if paragraph (b) does not apply—treat the trust as having an *over in the income year in which the determination is made, for the specified income year, of a character relating to *ordinary income, or *statutory income, from an *Australian source, equal to the amount mentioned in subsection (5); or

(b) if the trust already has such an over in the income year in which the determination is made, for the specified income year—increase the amount of that over by the amount mentioned in subsection (5).

(4) If the trust is *not* an *AMIT for the income year, reduce the trust's *net income for the income year in which the determination is made by the amount mentioned in subsection (5), to the extent that the net income is attributable to that amount.

Excess amount

(5) The amount is the excess mentioned in paragraph 275-610(1)(b) in respect of the *non-arm's length income, reduced by deductions (if any) that:

(a) are reflected in:

(i) if the trust is an *AMIT for the income year—the amounts of its *trust components for the income year (disregarding subsection (3)); or

(ii) otherwise—its *net income for the income year (disregarding subsection (4)); and

(b) are attributable only to the amount of non-arm's length income.

275-610 Non-arm's length income

(1) An amount of *ordinary income or *statutory income is ***non-arm's length income*** of a *managed investment trust if:

(a) it is derived from a *scheme the parties to which were not dealing with each other at *arm's length in relation to the scheme; and

(b) that amount exceeds the amount that the entity might have been expected to derive if those parties had been dealing with each other at arm's length in relation to the scheme; and

(c) the amount is none of the following:

Authorised Version C2016A00053

(i) a distribution from a *corporate tax entity;

(ii) a distribution from a trust that is *not* a party to the scheme mentioned in paragraph (a);

(iii) a *return covered by subsection (2).

(2) This subsection covers a *return that an entity pays or provides on a *debt interest, if the rate (expressed on an annual basis) of the return does not exceed the greater of:

(a) the *benchmark rate of return for the interest; and

(b) the *base interest rate for the day on which the return is paid or provided, plus 3 percentage points.

(3) Subsection (4) applies if:

(a) an amount would be *non-arm's length income of the *managed investment trust (disregarding that subsection); and

(b) the amount is a distribution from a trust, or a share of the *net income of a trust, if the trust is a party to the scheme mentioned in paragraph (1)(a).

(4) The amount is *non-arm's length income of the *managed investment trust only to the extent that the distribution or share of *net income is attributable to non-arm's length income of the trust mentioned in paragraph (3)(b) (on that assumption that the trust were a managed investment trust) because of another operation of this section.

(5) Subsection (6) applies if:

(a) an amount (the ***first amount***) of *ordinary income or *statutory income of the *managed investment trust that would be *non-arm's length income of the managed investment trust (disregarding that subsection) is:

(i) a distribution from a trust that is a party to the scheme mentioned in paragraph (1)(a); or

(ii) a share of the *net income of a trust that is a party to that scheme; and

(b) another amount (the ***second amount***) of ordinary income or statutory income of the managed investment trust is:

(i) a distribution from another trust (whether or not the other trust is a party to that scheme); or

Authorised Version C2016A00053

(ii) a share of the net income of another trust (whether or not the other trust is a party to that scheme); and

(c) it is reasonable to conclude that the second amount would have been higher but for the first amount.

(6) The first amount is *not* *non-arm's length income of the *managed investment trust to the extent that the second amount would have been higher as mentioned in paragraph (5)(c).

275-615 Commissioner's determination in relation to amount of non-arm's length income

(1) The Commissioner may make a determination in writing that specifies an amount of *non-arm's length income for a specified *managed investment trust in relation to a specified income year if the Commissioner is satisfied that:

(a) the amount of non-arm's length income for the managed investment trust in relation to the income year is reflected in:

(i) if the trust is an *AMIT for the income year—one or more of its *trust components for the income year; or

(ii) otherwise—its *net income for the income year; and

(b) the managed investment trust is a party to the *scheme mentioned in paragraph 275-610(1)(a) at a time in the income year in which the amount is derived; and

(c) at least one the parties to that scheme is *not* a managed investment trust in relation to the income year.

Determination does not form part of assessment

(2) A determination under subsection (1) does not form part of an assessment.

Notice by Commissioner of determination

(3) If the Commissioner makes a determination under subsection (1), the Commissioner must give a copy of the determination to the *managed investment trust concerned. The notice may be included in a notice of assessment.

Authorised Version C2016A00053

Evidence of determination

(4) The production of:

(a) a notice of a determination; or

(b) a document signed by the Commissioner, a Second Commissioner or a Deputy Commissioner purporting to be a copy of a determination;

is:

(c) conclusive evidence of the due making of the determination; and

(d) conclusive evidence that the determination is correct (except in proceedings under Part IVC of the *Taxation Administration Act 1953* on an appeal or review relating to the determination).

Objections

(5) If an entity to whom a determination relates is dissatisfied with the determination, the entity may object against it in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

Taxation Administration Act 1953

6 Sections 12-400, 12-401, 12-402, 12-402A, 12-402B, 12-403 and 12-404 in Schedule 1

Repeal the sections.

7 After subsection 284-145(2B) in Schedule 1

Insert:

(2C) You are also liable to an administrative penalty if:

(a) you are the trustee of a *managed investment trust in relation to an income year; and

(b) to give effect to Subdivision 275-L of the *Income Tax Assessment Act 1997* (also the ***adjustment provision***) in relation to a *scheme, the Commissioner amends your assessment for the income year; and

(c) as a result, you are liable to pay an additional amount of income tax (as the case requires).

Authorised Version C2016A00053

Note: Subdivision 275-L of the *Income Tax Assessment Act 1997* applies to non-arm's length income of managed investment trusts.

8 At the end of section 284-150 in Schedule 1

Add:

Scheme shortfall amount for managed investment trust non-arm's length income

(6) Despite subsection (2), your scheme shortfall amount for a *scheme to which subsection 284-145(2C) applies is the total amount of additional income tax you are liable to pay as mentioned in that subsection.

(7) Disregard your *scheme shortfall amount for a *scheme to which subsection 284-145(1) applies to the extent that scheme shortfall amount is attributable to additional tax that is, or is part of, your scheme shortfall amount for a scheme to which subsection 284-145(2C) applies.

9 Subsection 284-160(1) in Schedule 1

After "subsection 284-145(1)", insert "or (2C)".

Authorised Version C2016A00053

Schedule 5—20% tracing rule and repeal of Division 6B

Part 1—20% tracing rule

Income Tax Assessment Act 1936

1 Section 102MD

Repeal the section, substitute:

102MD Exempt institution that is eligible for a refund not treated as exempt entity

For the purposes of this Division, treat an entity as not being an exempt entity if:

(a) the entity is an exempt institution that is eligible for a refund (within the meaning of the *Income Tax Assessment Act 1997*); or

(b) the entity is treated as such an exempt institution that is eligible for a refund.

Example: The Future Fund Board is treated as an exempt institution that is eligible for a refund for the purposes of the *Income Tax Assessment Act 1997* (see section 84B of the *Future Fund Act 2006*).

Income Tax Assessment Act 1997

2 Section 295-173

Repeal the section, substitute:

295-173 Exception—trustee contributions

Item 1 of the table in section 295-160 does not include in assessable income:

(a) a contribution made by an entity that was, when the contribution was made, the trustee of a *complying superannuation fund, a *complying approved deposit fund or a *pooled superannuation trust; or

Authorised Version C2016A00053

(b) a contribution made out of the *complying superannuation assets, or out of the *segregated exempt assets, of a *life insurance company.

Authorised Version C2016A00053

Part 2—Repeal of Division 6B

Income Tax Assessment Act 1936

3 Division 6B of Part III

Repeal the Division.

Authorised Version C2016A00053

Part 3—Amendments consequential on the repeal of Division 6B

Development Allowance Authority Act 1992

4 Subparagraph 93I(2)(a)(ii)

Omit "a corporate unit trust (within the meaning of section 102J of the Tax Act), or".

Income Tax Act 1986

5 Subsection 3(1) (definition of *prescribed unit trust*)

Repeal the definition, substitute:

> ***prescribed unit trust*** means a trust estate that is a public trading trust within the meaning of Division 6C of Part III of the Assessment Act.

Income Tax Assessment Act 1936

6 Subsection 6(1) (paragraph (b) of the definition of *assessment*)

Repeal the paragraph.

7 Subsection 6(1) (paragraph (b) of the definition of *full self-assessment taxpayer*)

Repeal the paragraph.

8 Subsection 6(1) (paragraph (b) of the definition of *passive income*)

Omit "6B or".

9 Subparagraph 47A(16)(c)(ii)

Repeal the subparagraph.

Authorised Version C2016A00053

10 Sub-subparagraph 47A(18)(d)(ii)(B)

Repeal the sub-subparagraph.

11 Section 102AAB (definition of *corporate unit trust*)

Repeal the definition.

12 Section 102AAB (paragraph (a) of the definition of *net income*)

Repeal the paragraph.

13 Section 102AAB (paragraph (b) of the definition of *resident trust estate*)

Omit "a corporate unit trust, or".

14 Sub-subparagraph 102AAE(2)(b)(ii)(C)

Repeal the sub-subparagraph.

15 Paragraph 102AAM(2)(b)

Repeal the paragraph.

16 Sub-subparagraph 102AAM(4)(b)(ii)(C)

Repeal the sub-subparagraph.

17 Sub-subparagraph 102R(1)(a)(iv)(B)

Omit "income; and", substitute "income; or".

18 Subparagraph 102R(1)(a)(v)

Repeal the subparagraph.

19 Sub-subparagraph 102R(1)(b)(iii)(B)

Omit "income; and", substitute "income.".

20 Subparagraph 102R(1)(b)(iv)

Repeal the subparagraph.

21 Subsection 102T(4)

Repeal the subsection.

Authorised Version C2016A00053

22 Paragraph 124ZM(3)(b)

Repeal the paragraph.

23 Subparagraph 159GZZZZG(1)(a)(ii)

Repeal the subparagraph.

24 Paragraph 338(b)

Omit "a corporate unit trust for the purposes of Division 6B of Part III, or".

25 Paragraph 371(7)(a)

Repeal the paragraph.

26 Paragraph 446(1)(b)

Omit "6B or".

27 Paragraph 459A(3)(a)

Repeal the paragraph.

28 Paragraph 460(1)(a)

Repeal the paragraph.

Income Tax Assessment Act 1997

29 Section 9-1 (table item 12)

Repeal the item.

30 Subsection 9-5(1) (table item 7)

Repeal the item.

31 Section 10-5 (table item headed "trusts")

Omit:

trustees' liability to tax	**98, 99, 99A, 102, 102K, 102S**

substitute:

trustees' liability to tax	**98, 99, 99A, 102, 102S**

Authorised Version C2016A00053

32 Section 12-5 (table item headed "trusts")

Omit:

unit trusts..... **102D to 102L**

33 Subsection 104-70(9)

Omit "a *corporate unit trust or".

34 Subparagraph 118-427(12)(b)(ii)

Omit "a *corporate unit trust or".

35 Paragraph 124-1045(1)(b)

Omit "6B or".

36 Paragraph 124-1045(1)(c)

Omit "6B or".

37 Subsection 124-1045(1) (note)

Repeal the note, substitute:

Note: Division 6C of Part III of the *Income Tax Assessment Act 1936* deals with taxing public trading trusts in the same way as companies.

38 Subdivision 125-D (heading)

Repeal the heading, substitute:

Subdivision 125-D—Public trading trusts

39 Section 125-230 (heading)

Repeal the heading, substitute:

125-230 Application of Division to public trading trusts

40 Section 125-230

Omit "102K or".

41 Subsection 126-235(2) (heading)

Repeal the heading, substitute:

Authorised Version C2016A00053

Public trading trusts

42 Subsection 126-235(2)

Omit "102K or".

43 Subsection 130-20(4)

Repeal the subsection, substitute:

(4) The modifications in this section are not made if, for the income year in which the bonus equities are issued, the unit trust is a public trading trust within the meaning of section 102R of the *Income Tax Assessment Act 1936*.

Note: Subsection 26BC(9E) of the *Income Tax Assessment Act 1936* (about securities lending arrangements) modifies the operation of this section.

44 Paragraph 202-20(c)

Repeal the paragraph.

45 Paragraph 205-25(1)(b)

Repeal the paragraph.

46 Paragraph 207-75(1)(d)

Repeal the paragraph.

47 Paragraph 208-155(2)(b)

Omit "*corporate unit trust or".

48 Section 275-110 (heading)

Repeal the heading, substitute:

275-110 MIT not to be trading trust

49 Subsection 275-110(1)

Repeal the subsection, substitute:

(1) An entity that is a trust meets the requirement in this section at a time if the entity is not, at that time, a trading trust for the purposes of Division 6C of Part III of the *Income Tax Assessment Act 1936* in relation to that income year.

Authorised Version C2016A00053

50 Subsection 275-110(2)

Omit "paragraph (1)(b)", substitute "subsection (1)".

51 Subsection 392-20(5)

Repeal the subsection, substitute:

Public trading trusts

(5) You are not taken to carry on a *primary production business carried on by the trustee of a public trading trust (as defined in section 102R of the *Income Tax Assessment Act 1936*, which deals with public trading trusts).

52 Section 703-25 (table items 2 and 3)

Repeal the items, substitute:

2	A unit trust (except a *public trading trust for the income year)	The trust must be: (a) a resident trust estate for the income year for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936*; and (b) a *resident trust for CGT purposes for the income year
3	A *public trading trust for the income year	The trust must be a *resident unit trust for the income year

53 Section 713-120

Omit "corporate unit trust or".

54 Subsection 713-125(2)

Omit "*corporate unit trust, or".

55 Paragraph 713-130(b)

Omit "a *corporate unit trust or".

56 Subsection 725-150(6)

Repeal the subsection, substitute:

Authorised Version C2016A00053

Application of subsections (3), (4) and (5)

(6) Subsection (3) does not apply if, for the income year in which the interest is issued, the issuing entity is a public trading trust within the meaning of section 102R of the *Income Tax Assessment Act 1936*.

57 Subparagraph 768-5(1)(c)(ii)

Omit "*corporate unit trust or".

58 Subparagraph 768-5(2)(e)(ii)

Omit "*corporate unit trust or".

59 Paragraph 802-30(1)(b)

Omit "*corporate unit trust or".

60 Paragraph 960-115(c)

Repeal the paragraph.

61 Subsection 960-120(1) (table item 3)

Repeal the item.

62 Subsection 960-130(1) (table item 3)

Omit "a *corporate unit trust or".

63 Subsection 960-130(1) (table item 4)

Repeal the item.

64 Paragraph 960-140(c)

Omit "*corporate unit trust or".

65 Subsection 995-1(1) (paragraph (c) of the definition of *Australian corporate tax entity*)

Omit "a *corporate unit trust or".

66 Subsection 995-1(1) (definition of *corporate unit trust*)

Repeal the definition.

Authorised Version C2016A00053

67 Subsection 995-1(1) (definition of *resident unit trust*)

Repeal the definition, substitute:

> ***resident unit trust*** has the meaning given by section 102Q of the *Income Tax Assessment Act 1936*.

Income Tax Rates Act 1986

68 Subsection 3(1) (definition of *corporate unit trust*)

Repeal the definition.

69 Subsection 3(1) (definition of *prescribed unit trust*)

Repeal the definition, substitute:

> ***prescribed unit trust***, in relation to a year of income, means a trust estate that is a public trading trust in relation to the year of income.

70 Section 24

Repeal the section.

International Tax Agreements Act 1953

71 Subsection 3(1) (definition of *prescribed trust estate*)

Repeal the definition, substitute:

> ***prescribed trust estate***, in relation to a year of income, means a trust estate that is a public trading trust, within the meaning of Division 6C of Part III of the *Income Tax Assessment Act 1936*, in relation to the year of income.

72 Subsection 17A(3) (definition of *unit trust dividend*)

Omit “6B or”.

Taxation Administration Act 1953

73 Subsection 45-280(4) in Schedule 1

Omit “102K or”.

Authorised Version C2016A00053

74 Subsection 45-450(3) in Schedule 1

Omit "a *corporate unit trust, or".

Authorised Version C2016A00053

Part 4—Transitional

75 Transitional rule for 20% tracing requirement and repeal of Division 6B—imputation

(1) This item applies if at a time (the ***cessation time***), on or after the commencement of this Schedule, either:

(a) section 102K of the *Income Tax Assessment Act 1936* ceases to apply to the trustee of a trust because of the repeal of that section by Part 2 of this Schedule; or

(b) section 102S of that Act ceases to apply to the trustee of a trust because of the amendment made by Part 1 of this Schedule.

(2) Subitem (3) applies if:

(a) an event happens in respect of the trust that is described in:

(i) the table in subsection 205-15(1) of the *Income Tax Assessment Act 1997*; or

(ii) the table in subsection 205-30(1) of that Act; and

(b) the event happens on or after the cessation time but before 1 July 2018; and

(c) the event is:

(i) the trust paying income tax for an income year starting before 1 July 2016; or

(ii) the trust paying a PAYG instalment in respect of income tax for an income year starting before 1 July 2016; or

(iii) the trust receiving a refund of income tax for an income year starting before 1 July 2016; or

(iv) the trust franking a distribution.

(3) For the purposes of determining whether a franking credit or franking debit arises in the trust's franking account as a result of the event:

(a) treat the trust as a corporate tax entity at the time the event happens; and

(b) treat the trust as satisfying the residency requirement in section 205-25 of the *Income Tax Assessment Act 1997* for the income year in which the event happens.

Authorised Version C2016A00053

(4) Subitem (5) applies if:

(a) the trust makes a distribution on or after the cessation time but before 1 July 2018; and

(b) the trust's franking account is in surplus just before the trust makes the distribution.

(5) For the purposes of determining whether the trust franks the distribution as a result of the event:

(a) treat the trust as a corporate tax entity at the time it makes the distribution; and

(b) treat the trust as satisfying the residency requirement in section 202-20 of the *Income Tax Assessment Act 1997* at the time it makes the distribution.

Note: As a result, the trust will satisfy the requirement in paragraph 202-5(a) of that Act in respect of the distribution. If the other requirements in section 202-5 of that Act are satisfied in respect of the distribution, this means that the trust franks the distribution.

Authorised Version C2016A00053

Schedule 6—Consequential amendments

Income Tax Assessment Act 1936

1 Subsection 6(1)

Insert:

> ***AMIT*** (short for ***attribution managed investment trust***) has the same meaning as in the *Income Tax Assessment Act 1997*.

2 Subsection 6(1) (at the end of the definition of *assessment*)

Add:

; or (j) the ascertainment of the amount payable (or that no amount is payable) under the following:

(i) subsection 276-105(2) of the *Income Tax Assessment Act 1997* (AMIT trustee taxed on amounts attributed to foreign resident members);

(ii) subsection 276-340(2) of that Act (AMIT trustee taxed on trust component deficit of character relating to tax offset);

(iii) subsection 276-405(2) of that Act (AMIT trustee taxed on shortfall in determined member components of character relating to assessable income);

(iv) subsection 276-410(2) of that Act (AMIT trustee taxed on excess in determined member components of character relating to tax offset);

(v) subsection 276-415(2) of that Act (AMIT trustee taxed on amounts of determined trust component that are not reflected in member components);

(vi) subsection 276-420(2) of that Act (AMIT trustee taxed on amounts of under of character relating to assessable income not properly carried forward);

(vii) subsection 276-425(2) of that Act (AMIT trustee taxed on amounts of over of character relating to tax offset not properly carried forward); or

Authorised Version C2016A00053

3 Subsection 6(1)

Insert:

attribution managed investment trust: see ***AMIT***.

4 After section 95AAC

Insert:

95AAD Division does not apply in relation to AMIT

This Division does not apply in relation to a trust estate that is an AMIT.

5 Paragraph 98B(2)(c)

Repeal the paragraph, substitute:

(c) the amount is reasonably attributable to:

(i) an amount (the ***taxed net income***) in respect of which the trustee of another trust estate is assessed and liable to pay tax (the ***subsection 98(4) tax***) under subsection 98(4); or

(ii) an amount (the ***taxed component***) in respect of which the trustee of an AMIT is assessed and liable to pay tax (the ***paragraph 276-105(2)(c) tax***) because of paragraph 276-105(2)(c) of the *Income Tax Assessment Act 1997*.

6 Subsection 98B(3)

After "subsection 98(4) tax", insert "or of the paragraph 276-105(2)(c) tax (as applicable)".

7 Subsection 98B(3)

Omit "the proportion of the taxed net income", substitute "the proportion of the taxed net income or of the taxed component (as applicable)".

8 Subsection 100AA(7)

Repeal the subsection, substitute:

Authorised Version C2016A00053

(7) This section does not apply in relation to a trust estate that is a managed investment trust (within the meaning of the *Income Tax Assessment Act 1997*) in relation to a year of income.

9 Subsection 100AB(8)

Repeal the subsection, substitute:

(8) This section does not apply in relation to a trust estate that is a managed investment trust (within the meaning of the *Income Tax Assessment Act 1997*) in relation to a year of income.

10 Subsection 102AAF(2)

Repeal the subsection, substitute:

(2) In determining whether a unit trust is a public unit trust at all times during a year of income for the purposes of this Division, subsections 102P(3) to (9) (inclusive) and (11) apply as if:

(a) a reference in those subsections to Division 6C were a reference to this Division; and

(b) a reference in those subsections to subsection 102P(1) were a reference to subsection (1) of this section; and

(c) a reference in those subsections to a public unit trust in relation to a year of income were a reference to a public unit trust at all times during a year of income.

11 Subparagraph 102NA(2)(b)(iii)

Omit "under Division 6B or this Division", substitute "under this Division (or under former Division 6B, before its repeal by the *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016*".

12 After subsection 102P(10)

Insert:

(10A) Subsection (10) does not apply in relation to units in a unit trust that are held by the trustee of another trust estate if the other trust estate is a complying superannuation entity (within the meaning of the *Income Tax Assessment Act 1997*).

Authorised Version C2016A00053

13 Subsection 102T(16)

Omit "Subdivision 840-M", substitute "Division 275 or Subdivision 840-M".

14 Subsection 128FA(8) (definition of *public unit trust*)

Omit "section 102G", substitute "section 102P (disregarding subsection (2) of that section)".

15 After subsection 170(10AA)

Insert:

(10AB) Nothing in this section prevents the amendment, at any time, of an assessment for the purpose of reflecting information contained in an AMMA statement (within the meaning of the *Income Tax Assessment Act 1997*) if:

(a) the statement is given by an AMIT for a year of income to an entity that is or was a member of the AMIT in respect of the year of income; and

(b) the statement is so given later than 3 months after the end of the year of income.

16 Paragraph 202EE(1)(c)

Repeal the paragraph, substitute:

(c) the investment body is required:

(i) to withhold an amount under Subdivision 12-F or 12-H in Schedule 1 to the *Taxation Administration Act 1953* from the payment; or

(ii) to pay the Commissioner an amount under Subdivision 12A-C in that Schedule in respect of the payment; or

17 At the end of subsection 251S(1)

Add:

; and (d) if the trustee of an AMIT is required to be assessed in pursuance of subsection 276-405(2) of the *Income Tax Assessment Act 1997* in respect of an amount mentioned in that subsection—that amount; and

Authorised Version C2016A00053

(e) if the trustee of an AMIT is required to be assessed in pursuance of subsection 276-415(2) of the *Income Tax Assessment Act 1997* in respect of an amount mentioned in that subsection—that amount; and

(f) if the trustee of an AMIT is required to be assessed in pursuance of subsection 276-420(2) of the *Income Tax Assessment Act 1997* in respect of an amount mentioned in that subsection—that amount.

18 Subsection 255(2A)

Omit "managed investment trusts", substitute "withholding MITs".

19 After subsection 255(2A)

Insert:

(2B) For the purposes of subsection (2A), if an entity must pay an amount to the Commissioner under Subdivision 12A-C in Schedule 1 to the *Taxation Administration Act 1953* in respect of money due by the entity to a non-resident, treat that amount as being an amount that must be withheld from the money under Subdivision 12-H in that Schedule.

20 At the end of subsection 272-105(1) in Schedule 2F

Add:

A trust is also a ***widely held unit trust*** if it is an AMIT (including an AMIT arising from the operation of section 276-20 (Trust with classes of interests—each class treated as separate AMIT)).

Income Tax Assessment Act 1997

21 Section 13-1 (after table item headed "approved deposit funds (ADFs)")

Insert:

attribution managed investment trusts

non-resident beneficiary 276-110

22 Section 67-23 (before table item 15)

Insert:

Authorised Version C2016A00053

14A	attribution managed investment trusts—foreign resident member	the *tax offset available under section 276-110

23 After section 112-45

Insert:

112-46 Annual cost base adjustment for member's unit or interest in AMIT

Annual cost base adjustment for member's unit or interest in AMIT			
Item	**In this situation:**	**Element affected:**	**See section:**
1	Annual cost base adjustment for member's unit or interest in AMIT	The total cost base and reduced cost base	104-107B

24 Paragraph 768-5(2)(b)

Repeal the paragraph, substitute:

(b) the amount is all or part of the *net income of the trust or partnership that would, apart from this subsection, be included in the entity's assessable income because of:

(i) Division 276; or

(ii) Division 5 or 6 of Part III of the *Income Tax Assessment Act 1936*; and

25 Section 840-800

Omit "managed investment trust", substitute "withholding MIT".

26 Subsection 840-805(1) (note 2)

Repeal the note, substitute:

Note 2: See Subdivision 12-H in Schedule 1 to the *Taxation Administration Act 1953* for provisions dealing with withholding from fund payments, and Subdivision 12A-C in that Schedule for provisions dealing with obligations to pay the Commissioner amounts analogous to such withholding in relation to AMITs.

27 Subsection 840-805(2) (heading)

Repeal the heading, substitute:

Authorised Version C2016A00053

Payments from withholding MITs

28 Paragraph 840-805(2)(a)

Omit "*managed investment trust", substitute "*withholding MIT".

29 Paragraph 840-805(3)(b)

Omit "*managed investment trust", substitute "*withholding MIT".

30 Paragraph 840-805(4)(a)

Omit "*managed investment trust", substitute "*withholding MIT".

31 Paragraph 840-805(4)(b)

Omit "managed investment trust", substitute "withholding MIT".

32 Paragraphs 842-230(1)(a) and (b)

Repeal the paragraphs, substitute:

(a) an entity that is covered by paragraph 275-20(4)(a), (b), (c), (d), (e), (g), (h) or (i);

33 Paragraph 842-235(6)(b)

Omit "paragraph 12-402(3)(e) in Schedule 1 to the *Taxation Administration Act 1953*", substitute "paragraph 275-20(4)(f)".

34 Paragraph 842-235(9) (paragraph (e) of the example)

Omit "paragraph 12-402(3)(a) in Schedule 1 to the *Taxation Administration Act 1953*", substitute "paragraph 275-20(4)(a)".

Taxation Administration Act 1953

35 Subsection 10-5(1) in Schedule 1 (table item 25, column headed "Withholding payment")

Omit "managed investment trust", substitute "withholding MIT".

36 Before paragraph 10-5(2)(a)

Insert:

(aa) a payment that arises because of the operation of section 12A-205 (see Division 12A);

Authorised Version C2016A00053

37 Subsection 12-5(2) in Schedule 1 (table item 1AA, column headed "Which is about")

Omit "*managed investment trusts", substitute "*withholding MITs".

38 Subdivision 12-H in Schedule 1 (heading)

Repeal the heading, substitute:

Subdivision 12-H—Distributions of withholding MIT income

39 Section 12-375 in Schedule 1

Omit "A managed investment trust may", substitute "A withholding MIT may".

40 Section 12-375 in Schedule 1

Omit "the managed investment trust", substitute "the withholding MIT".

41 Section 12-385 in Schedule 1 (heading)

Repeal the heading, substitute:

12-385 Withholding by withholding MITs

42 Subsection 12-385(1) in Schedule 1

Omit "*managed investment trust", substitute "*withholding MIT".

43 Subsection 12-385(5) in Schedule 1

Omit "*managed investment trust", substitute "*withholding MIT".

44 Subsection 12-390(1) in Schedule 1 (note 1)

Omit "managed investment trust", substitute "withholding MIT".

45 Subsection 12-390(1) in Schedule 1 (note 1)

Omit "managed investment trusts", substitute "withholding MITs".

46 Subsection 12-390(4) in Schedule 1

Omit "*managed investment trust", substitute "*withholding MIT".

Authorised Version C2016A00053

47 Subsection 12-390(9) in Schedule 1

Repeal the subsection, substitute:

*Meaning of **custodian***

(9) An entity is a ***custodian*** if:

(a) the entity is *carrying on a *business that consists predominantly of providing a custodial or depository service (as defined by section 766E of the *Corporations Act 2001*) pursuant to an *Australian financial services licence; or

(b) the entity is acting on behalf of an entity that is carrying on such a business pursuant to such a licence.

48 Subsection 12-395(1) in Schedule 1 (heading)

Repeal the heading, substitute:

Withholding MITs and custodians

49 Subsection 12-395(1) in Schedule 1

Omit "*managed investment trust", substitute "*withholding MIT".

50 Paragraph 12-395(3)(b) in Schedule 1

Omit "*managed investment trust", substitute "*withholding MIT".

51 Subsection 12-395(4) in Schedule 1

Omit "*managed investment trust", substitute "*withholding MIT".

52 Paragraph 12-395(6)(b) in Schedule 1

Omit "*managed investment trust", substitute "*withholding MIT".

53 Paragraph 12-425(1)(a) in Schedule 1

Omit "*managed investment trust", substitute "*withholding MIT".

54 Subsection 15-15(1) in Schedule 1 (note 4)

Omit "managed investment trust", substitute "withholding MIT".

55 Subsection 16-153(4) in Schedule 1

Omit "*managed investment trust", substitute "*withholding MIT".

Authorised Version C2016A00053

56 Subsection 16-153(4) in Schedule 1 (note)

Omit "managed investment trust", substitute "withholding MIT".

57 Paragraph 16-153(4A)(a) in Schedule 1

Omit "*managed investment trust", substitute "*withholding MIT".

58 Subsection 16-157(1) in Schedule 1

Omit "*managed investment trust", substitute "*withholding MIT".

59 Subsection 16-157(1) in Schedule 1 (note)

Omit "managed investment trust", substitute "withholding MIT".

60 Subparagraph 16-157(2)(c)(i) in Schedule 1

Omit "*managed investment trust", substitute "*withholding MIT".

61 Paragraph 16-170(1AA)(d) in Schedule 1

Omit "*managed investment trust", substitute "*withholding MIT".

62 Paragraph 16-195(1)(c) in Schedule 1

Omit "managed investment trust", substitute "withholding MIT".

63 Subsection 18-10(1) in Schedule 1

Omit "managed investment trust", substitute "withholding MIT".

64 Paragraph 45-286(b) in Schedule 1

Omit "the condition in paragraph 12-400(1)(a)", substitute "the condition in paragraph 275-10(3)(a) of the *Income Tax Assessment Act 1997*".

65 Paragraph 45-286(c) in Schedule 1

Repeal the paragraph, substitute:

(c) the trust is a *managed investment trust for that income year; and

66 Section 298-30 in Schedule 1 (heading)

Repeal the heading, substitute:

Authorised Version C2016A00053

298-30 Assessment of penalties under Division 284 or section 288-115

67 Subsection 298-30(1) in Schedule 1

Omit "Division 284", substitute "Division 284 or section 288-115".

68 After subsection 393-10(5) in Schedule 1

Insert:

(5A) Paragraph (5)(b) does not apply to an *investment body that is a *managed investment trust.

Tax Laws Amendment (2010 Measures No. 3) Act 2010

69 Paragraph 7(2)(a) of Schedule 5

Before "section 12-400 in Schedule 1 to the *Taxation Administration Act 1953*", insert "former".

Authorised Version C2016A00053

Schedule 7—Widely-held requirements

Taxation Administration Act 1953

1 After paragraph 12-402(3)(a) in Schedule 1

Insert:

(aa) a *foreign life insurance company that is regulated under a *foreign law;

2 Paragraph 12-402(3)(i) in Schedule 1

Repeal the paragraph, substitute:

(j) a *limited partnership, if, throughout the income year:

(i) at least 95% of the *membership interests in the limited partnership are owned by entities mentioned in the preceding paragraphs of this subsection, or by entities that are wholly-owned by entities so mentioned; and

(ii) the remaining membership interests (if any) in the limited partnership are owned by a *general partner of the limited partnership that habitually exercises the management power of the limited partnership;

(k) an entity, all the membership interests in which are owned by any of the following:

(i) entities mentioned in the preceding paragraphs of this subsection;

(ii) entities that are wholly-owned by entities mentioned in the preceding paragraphs of this subsection;

(iii) entities that are covered under this subsection because of a previous operation of this paragraph;

(l) an entity of a kind similar to an entity mentioned in the preceding paragraphs of this subsection as specified in the regulations.

Authorised Version C2016A00053

Schedule 8—Application and transitional provisions etc.

1 Application provision

(1) The amendments made by Schedules 1, 2, 3, 4, 6 and 9 apply to assessments for income years starting on or after:

(a) unless paragraph (b) applies—1 July 2016; or

(b) if the assessment is in respect of a trust, and the trustee of the trust has made a choice under subitem (5)—1 July 2015.

(2) The amendments made by Schedule 5 apply to assessments for income years starting on or after 1 July 2016.

(3) Despite subitem (1), the amendments made by items 32, 33 and 34 in Schedule 6 apply to income years starting on or after 1 July 2016.

(4) The amendments made by Schedule 7 apply to income years starting on or after 1 July 2014.

(5) The trustee of a trust may make a choice for the purposes of paragraph (1)(b) if the 2015-16 income year of the trust starts on or after 1 July 2015.

(6) The choice cannot be revoked.

Income Tax (Transitional Provisions) Act 1997

2 At the end of Division 275

Add:

Subdivision 275-L—Modification for non-arm's length income

Table of sections

275-605 Trustee taxed on amount of non-arm's length income of managed investment trust—not applicable for pre-introduction scheme where amount derived before start of 2018-19 income year

Authorised Version C2016A00053

275-605 Trustee taxed on amount of non-arm's length income of managed investment trust—not applicable for pre-introduction scheme where amount derived before start of 2018-19 income year

(1) This section applies if:

(a) the requirements set out in paragraphs 275-610(1)(a), (b) and (c) of the *Income Tax Assessment Act 1997* are satisfied in respect of an amount of non-arm's length income of a managed investment trust in relation to an income year; and

(b) the managed investment trust became a party to the scheme mentioned in paragraph 275-610(1)(a) of that Act before the day on which the Bill that became the *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016* was introduced into the House of Representatives; and

(c) the amount was derived before the start of the 2018-19 income year.

(2) Subsections 275-605(2), (3) and (4) of that Act do not apply in respect of the amount.

3 At the end of Part 3-25

Add:

Division 276—Attribution managed investment trusts

Table of Subdivisions

276-A Application

276-B Starting income year

276-T Becoming an AMIT: unders and overs

276-U Becoming an AMIT: CGT treatment of payment by trustee of AMIT

Subdivision 276-A—Application

Table of sections

276-5 Application of Division 276

Authorised Version C2016A00053

276-5 Application of Division 276

Division 276 of the *Income Tax Assessment Act 1997* as inserted in that Act by the *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016* (the ***amending Act***) applies as set out in subitem 1(1) of Schedule 8 to the amending Act.

Subdivision 276-B—Starting income year

Table of sections

276-25 Starting income year

276-25 Starting income year

In this Division:

starting income year means the first income year starting on or after:

(a) unless paragraph (b) or (c) applies—1 July 2017; or

(b) if the trustee of the trust has made a choice for the purposes of paragraph 1(1)(b) of Schedule 8 to the *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016*—1 July 2015; or

(c) if the trustee of the trust has made a choice for the purposes of subparagraph 276-10(1)(e)(i) in respect of the 2016-17 income year—1 July 2016.

Subdivision 276-T—Becoming an AMIT: unders and overs

Table of sections

276-700 Application of Subdivision to MIT that becomes AMIT
276-705 Accounting for unders and overs for base years before becoming an AMIT

276-700 Application of Subdivision to MIT that becomes AMIT

This Subdivision applies if:

(a) a managed investment trust becomes an AMIT for the starting income year; and

(b) the trust existed in an earlier income year (the ***base year***); and

Authorised Version C2016A00053

(c) the trust is an AMIT for an income year (the ***discovery year***) that is the starting income year or a later income year.

276-705 Accounting for unders and overs for base years before becoming an AMIT

(1) This section applies if the trust has an under or over of a character in the discovery year relating to the base year.

(2) For the purposes of subsection (1):
  (a) assume that the trust is an AMIT for the base year and every later year before the starting income year; and
  (b) if, at a time, the trust sent its members distribution statements for an income year that is prior to the starting income year—assume that the trust sent those members AMMA statements for that income year at that time.

(3) For the purposes of Division 276 of the *Income Tax Assessment Act 1997*, treat the under or over mentioned in subsection (1) as an under or over of the AMIT, in the discovery year relating to the base year, of the character mentioned in that subsection.

(4) If:
  (a) had the under or over mentioned in subsection (1) been discovered before the starting income year, this Act would have operated to produce a particular effect (the ***pre-AMIT scheme effect***) for the base year in relation to the amount or amounts reflected in the under or over; and
  (b) subsection (3) accounts for the pre-AMIT scheme effect;

treat this Act as not operating to produce the pre-AMIT scheme effect for the base year.

Note: Subsection (3) continues to operate in relation to the under or over.

Subdivision 276-U—Becoming an AMIT: CGT treatment of payment by trustee of AMIT

Table of sections

276-750 Payment by trustee on or after 1 July 2011—certain CGT provisions etc. apply for the purposes of working out non-assessable part for first income year of AMIT

Authorised Version C2016A00053

276-750 Payment by trustee on or after 1 July 2011—certain CGT provisions etc. apply for the purposes of working out non-assessable part for first income year of AMIT

(1) This section applies if:
  (a) a trust becomes an AMIT for an income year; and
  (b) the trustee of the trust made a payment to an entity at a time:
    (i) on or after 1 July 2011; and
    (ii) before the start of the income year mentioned in paragraph (a).

(2) Subsection (3) applies for the purpose of:
  (a) working out whether CGT event E4 happens because of the payment; and
  (b) working out the amount (if any) of the entity's capital gain under subsection 104-70(4) of the *Income Tax Assessment Act 1997*.

(3) For the purpose of working out the amount of the non-assessable part mentioned in paragraph 104-70(1)(b), treat the following provisions as being in operation at the time the payment was made:
  (a) sections 104-107F and 104-107G of the *Income Tax Assessment Act 1997*;
  (b) any other provision of that Act, to the extent that it relates to the operation of the provisions mentioned in paragraph (a).

(4) Subsection (3) does not apply to the extent (if any) that the entity, in the income tax return that it lodged for the income year in which the payment was made, included the amount of the payment in its assessable income for that income year.

(5) For the purposes of section 118-20 of the *Income Tax Assessment Act 1997*, treat this section as being in Part 3-1 of that Act.

Note: Section 118-20 deals with reducing capital gains if an amount is otherwise assessable.

Authorised Version C2016A00053

276-755 Payment by trustee before 1 July 2011—limit on amendment of assessment

(1) This section applies if:
  (a) a trust becomes an AMIT for an income year; and
  (b) the trustee of the trust made a payment to an entity at a time before 1 July 2011.

(2) The Commissioner cannot amend the entity's assessment for the income year in which the payment was made in a particular way if:
  (a) the effect of the amendment would be to increase the entity's assessable income for that income year; and
  (b) the Commissioner could not amend the assessment in that way if the following provisions were in operation at the time the payment was made:
    (i) sections 104-107F, 104-107G and 104-107H of the *Income Tax Assessment Act 1997*;
    (ii) any other provision of that Act, to the extent that it relates to the operation of the provisions mentioned in subparagraph (i); and
  (c) the entity has not requested the Commissioner to amend the assessment in that way.

Tax Laws Amendment (2011 Measures No. 5) Act 2011

4 Subitem 51(5) of Schedule 2 (heading)

Repeal the heading, substitute:

MITs and the 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17 income years

5 Subitem 51(7) of Schedule 2

Repeal the subitem, substitute:

(7) A choice mentioned in subitem (6):
  (a) can only be made before the end of 2 months after the later of:
    (i) the end of the income year in relation to which the choice is made; and

Authorised Version C2016A00053

(ii) the commencement of:

(A) if that income year is the 2010-11, 2011-12, 2012-13 or 2013-14 income year—Schedule 2 to the *Tax Laws Amendment (2011 Measures No. 5) Act 2011*; or

(B) if that income year is the 2014-15, 2015-16 or 2016-17 income year—Schedule 8 to the *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016*; and

(b) can only be made in writing; and

(c) can only be made in relation to the following income years:

(i) the 2010-11 income year;

(ii) the 2011-12 income year;

(iii) the 2012-13 income year;

(iv) the 2013-14 income year;

(v) the 2014-15 income year;

(vi) the 2015-16 income year;

(vii) the 2016-17 income year.

Authorised Version C2016A00053

Schedule 9—Definitions

Income Tax Assessment Act 1997

1 Subsection 995-1(1)

Insert:

AMIT (short for ***attribution managed investment trust***) has the meaning given by section 276-10.

AMIT cost base increase amount has the meaning given by section 104-107E.

AMIT cost base net amount has the meaning given by section 104-107C.

AMIT cost base reduction amount has the meaning given by section 104-107D.

AMIT DIR payment has the meaning given by section 12A-25 in Schedule 1 to the *Taxation Administration Act 1953*.

AMIT dividend payment has the meaning given by section 12A-30 in Schedule 1 to the *Taxation Administration Act 1953*.

AMIT interest payment has the meaning given by section 12A-35 in Schedule 1 to the *Taxation Administration Act 1953*.

AMIT member annual statement: see ***AMMA statement***.

AMIT royalty payment has the meaning given by section 12A-40 in Schedule 1 to the *Taxation Administration Act 1953*.

AMMA statement (short for ***AMIT member annual statement***) has the meaning given by section 276-460.

2 Subsection 995-1(1) (after paragraph (a) of the definition of *amount required to be withheld*)

Insert:

Authorised Version C2016A00053

(aaa) the amount that Division 12A in that Schedule requires the entity to pay to the Commissioner in respect of the payment; or

3 Subsection 995-1(1) (after paragraph (a) of the definition of *amount withheld*)

Insert:

(aaa) an amount that the entity paid to the Commissioner under Division 12A in that Schedule in respect of the payment; or

4 Subsection 995-1(1)

Insert:

attribution managed investment trust: see ***AMIT***.

carry-forward trust component deficit, of a particular character, has the meaning given by section 276-330.

cross-character allocation amount, of a particular character, has the meaning given by section 276-330.

debt-like trust instrument has the meaning given by section 276-505.

determined member component has the meaning given by section 276-205.

determined trust component has the meaning given by section 276-255.

FITO allocation amount, of a particular character, has the meaning given by section 276-335.

5 Subsection 995-1(1) (at the end of the definition of *fixed trust*)

Add:

Note: AMITs are treated as fixed trusts (see section 276-55).

6 Subsection 995-1(1) (definition of *fund payment*)

Omit “12-405”, substitute “sections 12-405 and 12A-110”.

Authorised Version C2016A00053

7 Subsection 995-1(1) (at the end of the definition of *income tax law*)

Add:

; or (f) tax payable in accordance with subsection 276-340(2), 276-410(2), 276-425(2) or 276-820(6) (AMIT offset taxation).

8 Subsection 995-1(1) (definition of *managed investment trust*)

Repeal the definition, substitute:

> ***managed investment trust*** has the meaning given by section 275-10.

9 Subsection 995-1(1)

Insert:

> ***member component*** has the meaning given by section 276-210.

10 Subsection 995-1(1) (definition of *MIT participation interest*)

Repeal the definition, substitute:

> ***MIT participation interest*** has the meaning given by section 275-40.

11 Subsection 995-1(1) (definition of *non-arm's length income*)

Repeal the definition, substitute:

> ***non-arm's length income*** has the meaning given by sections 295-550 and 275-610.

12 Subsection 995-1(1)

Insert:

> ***over***, of a particular character, has the meaning given by section 276-345.

Authorised Version C2016A00053

post-AMMA actual payment has the meaning given by section 12A-210 in Schedule 1 to the *Taxation Administration Act 1953*.

pre-AMMA actual payment has the meaning given by section 12A-210 in Schedule 1 to the *Taxation Administration Act 1953*.

rounding adjustment deficit has the meaning given by section 276-310.

rounding adjustment surplus has the meaning given by section 276-315.

trust component, of a particular character, has the meaning given by sections 276-260.

trust component deficit, of a particular character, has the meaning given by sections 276-320.

under, of a particular character, has the meaning given by section 276-345.

withholding MIT has the meaning given by section 12-383 in Schedule 1 to the *Taxation Administration Act 1953*.

13 Subsection 995-1(1) (after paragraph (a) of the definition of *withholding payment* (first occurring))

Insert:

(aa) a payment that arises because of the operation of section 12A-205 in that Schedule (deemed payments) in respect of which Subdivision 12A-C in that Schedule requires an amount to be paid to the Commissioner; or

14 Subsection 995-1(1) (after paragraph (a) of the definition of *withholding payment* (second occurring))

Insert:

(aa) a payment that arises because of the operation of section 12A-205 in that Schedule (deemed payments) in respect of which that provision requires an amount to be paid to the Commissioner; or

Authorised Version C2016A00053

[*Minister's second reading speech made in—*
House of Representatives on 3 December 2015
Senate on 4 May 2016]

(226/15)

Authorised Version C2016A00053