



Treasury Laws Amendment (Making Sure Foreign Investors Pay Their Fair Share of Tax in Australia and Other Measures) Act 2019

No. 34, 2019

**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/>)

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Treasury Laws Amendment (Making Sure Foreign Investors Pay Their Fair Share of Tax in Australia and Other Measures) Act 2019

No. 34, 2019

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

[Assented to 5 April 2019]

The Parliament of Australia enacts:

No. 34, 2019 Treasury Laws Amendment (Making Sure Foreign Investors Pay Their Fair Share of Tax in Australia and Other Measures) Act 2019 1

1 Short title

This Act is the *Treasury Laws Amendment (Making Sure Foreign Investors Pay Their Fair Share of Tax in Australia and Other Measures) Act 2019*.

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 April 2019
2. Schedules 1 to 4	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 July 2019
3. Schedule 5, Part 1	At the same time as the provisions covered by table item 2. However, the provisions do not commence at all if Schedule 3 to the <i>Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No. 2) Act 2019</i> commences on or before that time.	
4. Schedule 5, Part 2	Immediately after the commencement of Schedule 3 to the <i>Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No. 2) Act 2019</i> . However, the provisions do not commence at all if that Schedule commences on or before the time the provisions covered by table item 2 commence.	

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Note: This table relates only to the provisions of this Act as originally enacted.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.

Schedule 1—Non-concessional MIT income

Part 1—Main amendments

Income Tax Assessment Act 1997

1 Section 12-5 (after table item headed “copyrights”)

Insert:

cross staple arrangements

rent from land investment 25-115, 25-120

2 At the end of Division 25

Add:

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

- (1) An entity that is an *operating entity in relation to a *cross staple arrangement can deduct an amount, for an income year, of *rent from land investment if:
 - (a) another entity derives or receives the amount from the operating entity:
 - (i) in the income year; and
 - (ii) on or after 27 March 2018; and
 - (b) the cross staple arrangement was entered into in relation to:
 - (i) a facility that is covered by section 12-439 in Schedule 1 to the *Taxation Administration Act 1953* at a time in the income year; or
 - (ii) an improvement to a facility that is covered by that section at a time in the income year; and
 - (c) the other entity is an *asset entity in relation to the cross staple arrangement; and
 - (d) apart from this subsection, the operating entity could otherwise deduct the amount under this Act; and

- (e) the amount is *excepted MIT CSA income of the asset entity for the income year; and
 - (f) each entity that is a *stapled entity in relation to the cross staple arrangement has made a choice in accordance with subsection (3).
- (2) If the *asset entity is not a *managed investment trust in relation to the income year, for the purposes of paragraph (1)(e), treat it as a managed investment trust in relation to the income year.
- (3) An entity makes a choice in accordance with this subsection if:
- (a) the entity makes the choice in the *approved form; and
 - (b) the entity makes the choice before:
 - (i) the start of the income year in which the asset is first put to use; or
 - (ii) a later time allowed by the Commissioner; and
 - (c) the entity gives the choice to the Commissioner within 60 days after the entity makes the choice.
- (4) The choice cannot be revoked.

25-120 Transitional—deduction for payment of rent from land investment by operating entity to asset entity

- (1) This section applies if the requirements in subsection 12-440(1) or (2) in Schedule 1 to the *Taxation Administration Act 1953* are satisfied in relation to a *cross staple arrangement.
- (2) An entity that is an *operating entity in relation to the *cross staple arrangement can deduct, for an income year, an amount of *rent from land investment if:
- (a) another entity derives or receives the amount from the operating entity at a time that:
 - (i) is in the income year; and
 - (ii) is on or after 27 March 2018; and
 - (iii) meets the requirements in subsection 12-440(4) of Schedule 1 to the *Taxation Administration Act 1953*; and
 - (b) the other entity is an *asset entity in relation to the cross staple arrangement; and

Schedule 1 Non-concessional MIT income

Part 1 Main amendments

(c) apart from this subsection, the operating entity could otherwise deduct the amount under this Act; and

(d) the amount is *excepted MIT CSA income of the asset entity for the income year.

(3) If the *asset entity is not a *managed investment trust in relation to the income year, for the purposes of paragraph (2)(d), treat it as a managed investment trust in relation to the income year.

3 After subsection 275-610(1)

Insert:

(1A) Disregard subparagraph (1)(c)(ii) if the amount of *ordinary income or *statutory income is *excepted MIT CSA income.

4 After subsection 275-615(1)

Insert:

(1A) Disregard paragraphs (1)(b) and (c) if the amount of *non-arm's length income is *excepted MIT CSA income.

5 Section 960-265 (after table item 13)

Insert:

13A	Concessional cross staple rent cap—existing lease with specified rent	section 12-443 in Schedule 1 to the <i>Taxation Administration Act 1953</i>
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Taxation Administration Act 1953

6 Paragraph 12-385(3)(a) in Schedule 1

Repeal the paragraph, substitute:

(a) if the address or place for payment of the recipient is in an *information exchange country:

(i) 15% for *fund payments (except to the extent mentioned in subparagraph (ii) or (iii)); or

(ii) 10% for fund payments, to the extent that they are, or are attributable to, fund payments from a *clean building

- managed investment trust (except to the extent mentioned in subparagraph (iii)); or
- (iii) 30% for fund payments, to the extent that they are attributable to *non-concessional MIT income (see section 12-435); or

7 Paragraph 12-390(3)(a) in Schedule 1

Repeal the paragraph, substitute:

- (a) if the address or place for payment of the recipient is in an *information exchange country:
- (i) 15% for *fund payments (except to the extent mentioned in subparagraph (ii) or (iii)); or
- (ii) 10% for fund payments, to the extent that they are, or are attributable to, fund payments from a *clean building managed investment trust (except to the extent mentioned in subparagraph (iii)); or
- (iii) 30% for fund payments, to the extent that they are attributable to *non-concessional MIT income (see section 12-435); or

8 Paragraph 12-390(6)(a) in Schedule 1

Repeal the paragraph, substitute:

- (a) if the recipient is a resident of an *information exchange country:
- (i) 15% for *fund payments (except to the extent mentioned in subparagraph (ii) or (iii)); or
- (ii) 10% for fund payments, to the extent that they are, or are attributable to, fund payments from a *clean building managed investment trust (except to the extent mentioned in subparagraph (iii)); or
- (iii) 30% for fund payments, to the extent that they are attributable to *non-concessional MIT income (see section 12-435); or

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

Insert:

Schedule 1 Non-concessional MIT income

Part 1 Main amendments

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

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

Insert:

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

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

Add:

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

Non-concessional MIT income means any of the following:

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

12-436 Meaning of *asset entity, operating entity, cross staple arrangement and stapled entity*

- (1) An *asset entity* in relation to an income year is a trust or partnership that is *not* covered by subsection 275-10(4) of the *Income Tax Assessment Act 1997* in relation to the income year.
 - (2) An *operating entity* in relation to an income year is a trust, partnership or company that is covered by subsection 275-10(4) of the *Income Tax Assessment Act 1997* in relation to the income year.
 - (3) For the purposes of this section, in determining whether a partnership or company is covered by subsection 275-10(4) of the *Income Tax Assessment Act 1997*, treat the partnership or company as a trust.
 - (4) A *cross staple arrangement* is an *arrangement that is entered into by 2 or more entities (the *arrangement entities*) if:
 - (a) at least one of the arrangement entities is an *asset entity; and
-

- (b) at least one of the arrangement entities is an *operating entity;
and
 - (c) the following conditions are satisfied:
 - (i) one or more other entities (the **external entities**) each hold a *total participation interest in each arrangement entity;
 - (ii) the sum of the total participation interests held by the external entities in each arrangement entity is 80% or more.
- (5) For the purposes of subparagraph (4)(c)(ii), in working out the sum of the *total participation interests held by the external entities in each arrangement entity, take into account:
- (a) a particular *direct participation interest; or
 - (b) a particular *indirect participation interest;
- held in the arrangement entity only once if it would otherwise be counted more than once.
- (6) Subsection (7) applies if:
- (a) an external entity holds *total participation interests in 2 or more arrangement entities; and
 - (b) either:
 - (i) the amount (the **lowest participation interest amount**) of one of those participation interests falls short of the amount of each of the other participation interests; or
 - (ii) the amount (the **lowest participation interest amount**) of 2 or more of those participation interests is the same but falls short of the amount of each of the other participation interests.
- (7) For the purposes of paragraph (4)(c), treat the amount of the *total participation interest held by the external entity in each of the arrangement entities as being equal to the lowest participation interest amount.
- (8) Each of the entities that entered into the *cross staple arrangement is a **stapled entity** in relation to the cross staple arrangement.

12-437 Meaning of *MIT cross staple arrangement income*

- (1) This section applies if:
 - (a) an amount is included in the assessable income for an income year of a *managed investment trust in relation to the income year (worked out for the purposes of determining the trust's *net income, or in the case of an *AMIT, the trust's total assessable income, for the income year); and
 - (b) the amount mentioned in paragraph (a) is, or is attributable to, an amount derived, received or made from another entity (the *second entity*); and
 - (c) the amount mentioned in paragraph (a) is *not* an amount mentioned in paragraph 12-405(1)(a), (b), (c), (d) or (e).
- (2) The amount is *MIT cross staple arrangement income* of the *managed investment trust if:
 - (a) either:
 - (i) the *managed investment trust is an *asset entity in relation to the income year and is a *stapled entity in relation to a *cross staple arrangement; or
 - (ii) the second entity is an asset entity in relation to the income year and is a stapled entity in relation to a cross staple arrangement; and
 - (b) either:
 - (i) if subparagraph (a)(i) applies—the second entity is an *operating entity in relation to the income year and is a stapled entity in relation to the cross staple arrangement; or
 - (ii) if subparagraph (a)(ii) applies—another entity (the *third entity*) is an operating entity in relation to the income year and is a stapled entity in relation to the cross staple arrangement; and
 - (c) either:
 - (i) if subparagraph (a)(i) applies—the amount is derived, received or made by the managed investment trust from the second entity; or
 - (ii) if subparagraph (a)(ii) applies—the amount is attributable to an amount derived, received or made by the second entity from the third entity.

- (3) The amount is *not MIT cross staple arrangement income* of the *managed investment trust under subsection (2) to the extent that it is attributable to an amount that satisfies the following requirements:
- (a) the amount is derived, received or made by a *stapled entity in relation to the *cross staple arrangement from an entity that is not a stapled entity in relation to the cross staple arrangement;
 - (b) the amount mentioned in paragraph (a) is *rent from land investment.
- (4) The amount is *not MIT cross staple arrangement income* of the *managed investment trust under subsection (2) to the extent that it is, or is attributable to, an amount covered by subsection 12-438(1).
- Note: The managed investment trust may be an asset entity in relation to the cross staple arrangement. If so, it may have no MIT cross staple arrangement income for the income year as a result of the operation of this subsection.
- (5) The amount is *not MIT cross staple arrangement income* of the *managed investment trust under subsection (2) to the extent that it is, or is attributable to, *rent from land investment that is:
- (a) attributable to a facility, or an improvement to a facility; and
 - (b) referable to a time in the income year when the facility, or the improvement to the facility, is covered by section 12-439.
- (6) Subsection (7) applies if:
- (a) an *asset entity in relation to the income year mentioned in paragraph (1)(a) makes a *capital gain because an *operating entity in relation to the income year *acquires an asset from the asset entity; and
 - (b) the asset entity and the operating entity are *stapled entities in relation to the *cross staple arrangement.
- (7) The amount is *not MIT cross staple arrangement income* of the *managed investment trust under subsection (2) to the extent that it is attributable to the *capital gain.

12-438 MIT cross staple arrangement income—de minimis exception

- (1) For the purposes of subsection 12-437(4), this subsection covers an amount if:
 - (a) the amount is *MIT cross staple arrangement income for the income year of an *asset entity in relation to the *cross staple arrangement; and
 - (b) the MIT cross staple arrangement income of the asset entity for the previous income year does not exceed 5% of the amount mentioned in subsection (3).
- (2) For the purposes of subsection (1), in working out the *MIT cross staple arrangement income of the *asset entity for the previous income year, disregard subsections 12-437(4) and (5).
- (3) The amount is:
 - (a) if the *asset entity is not an *AMIT for the income year—the assessable income of the asset entity for the previous income year (worked out for the purposes of determining the *net income of the asset entity for the income year); or
 - (b) if the asset entity is an AMIT for the income year—the total assessable income (as mentioned in subsection 276-265(2) of the *Income Tax Assessment Act 1997*) of the asset entity for the previous income year.
- (4) For the purposes of subsection (3), in working out the assessable income, or the total assessable income, of the *asset entity for the previous income year, disregard any *net capital gain of the asset entity for that year.
- (5) If the *asset entity did not exist in the previous income year:
 - (a) treat references in this section to the previous income year as instead being references to the income year; and
 - (b) treat references in this section to the *MIT cross staple arrangement income of the asset entity as instead being references to a reasonable estimate of the MIT cross staple arrangement income of the asset entity; and

- (c) treat references in this section to the assessable income of the asset entity as instead being references to a reasonable estimate of the assessable income of the asset entity; and
 - (d) treat references in this section to the total assessable income of the asset entity as instead being references to a reasonable estimate of the total assessable income of the asset entity.
- (6) If the *asset entity exists in an income year, but is not a *managed investment trust in relation to that income year, for the purposes of this section, treat it as a managed investment trust in relation to that income year that is not an *AMIT for that income year.

12-439 MIT cross staple arrangement income—approved economic infrastructure facility exception

- (1) This section covers a facility at a time if:
 - (a) the facility is covered by an approval of the Treasurer under this section that is in force at that time; and
 - (b) that time is no later than the end of the period of 15 years beginning on the day on which an asset that is part of the facility is first put to use.
- (2) This section covers an improvement to a facility at a time if:
 - (a) the improvement to the facility is covered by an approval of the Treasurer under this section that is in force at that time; and
 - (b) that time is no later than the end of the period of 15 years beginning on the day on which an asset that is part of the facility is first put to use after it has been improved under the improvement.
- (3) An *Australian government agency (other than the Commonwealth) may make an application to the Treasurer in respect of a facility, or an improvement to a facility, specified in the application.
- (4) The Treasurer may approve the facility, or the improvement to the facility, specified in the application under subsection (2) if the Treasurer is satisfied that the following criteria are met:
 - (a) the facility is an *economic infrastructure facility;

- (b) in the case of an application in respect of a facility:
 - (i) the estimated capital expenditure on the facility is \$500 million or more; and
 - (ii) the facility is yet to be constructed; and
 - (iii) the facility will significantly enhance the long-term productive capacity of the economy; and
 - (iv) approving the facility is in the national interest;
- (c) in the case of an application in respect of an improvement to a facility:
 - (i) the estimated capital expenditure on the improvement is \$500 million or more; and
 - (ii) the improvement is yet to be constructed; and
 - (iii) the improvement will significantly enhance the long-term productive capacity of the economy; and
 - (iv) approving the improvement is in the national interest.
- (5) An ***economic infrastructure facility*** is a facility that is any of the following:
 - (a) transport infrastructure;
 - (b) energy infrastructure;
 - (c) communications infrastructure;
 - (d) water infrastructure.
- (6) An approval under subsection (4):
 - (a) must be in writing; and
 - (b) must specify the facility, or the improvement, that is approved; and
 - (c) must specify the date on which the approval comes into force; and
 - (d) may contain any other information that the Treasurer considers appropriate.
- (7) The Treasurer may publish an approval under subsection (4) in any way that he or she considers appropriate.
- (8) If the Treasurer decides not to approve the facility, or the improvement to a facility, specified in the application under subsection (3), the Treasurer must notify the applicant of the

decision, in writing, as soon as practicable after making the decision.

12-440 Transitional—MIT cross staple arrangement income

- (1) This section applies if:
- (a) before 27 March 2018, an *Australian government agency:
 - (i) decided to approve the *acquisition, creation or lease of a facility; and
 - (ii) publicly announced that decision; and
 - (iii) took significant preparatory steps to implement that decision; and
 - (b) either:
 - (i) a *cross staple arrangement was entered into in relation to the facility before 27 March 2018; or
 - (ii) it was reasonable on 27 March 2018 to conclude that a cross staple arrangement will be entered into in relation to the facility; and
 - (c) all the entities that are *stapled entities in relation to the cross staple arrangement already existed before 27 March 2018; and
 - (d) each entity that is a stapled entity in relation to the cross staple arrangement has made a choice in accordance with subsection (5).
- (2) This section also applies if:
- (a) any of the following applies:
 - (i) an entity entered into a contract before 27 March 2018 for the *acquisition, creation or lease of a facility;
 - (ii) an entity owns, or is the lessee of, a facility at a time before 27 March 2018; and
 - (b) either:
 - (i) a *cross staple arrangement was entered into in relation to the facility before 27 March 2018; or
 - (ii) it was reasonable on 27 March 2018 to conclude that a cross staple arrangement will be entered into in relation to the facility; and

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- (c) all the entities that are *stapled entities in relation to the cross staple arrangement already existed before 27 March 2018; and
 - (d) each entity that is a stapled entity in relation to the cross staple arrangement has made a choice in accordance with subsection (5).
- (3) An amount included in the assessable income for an income year of a *managed investment trust is *not* **MIT cross staple arrangement income** of the managed investment trust if:
- (a) the amount is, or is attributable to, an amount derived, received or made from another entity (the *second entity*); and
 - (b) the amount relates to the facility; and
 - (c) the second entity is a *stapled entity in relation to the *cross staple arrangement; and
 - (d) either:
 - (i) if subparagraph 12-437(2)(a)(i) applies—the amount is *rent from land investment paid from an *operating entity in relation to the cross staple arrangement to the managed investment trust; or
 - (ii) if subparagraph 12-437(2)(a)(ii) applies—the amount is attributable to rent from land investment paid from an operating entity in relation to the cross staple arrangement to an *asset entity in relation to the cross staple arrangement; and
 - (e) the time when the amount was derived, received or made by the managed investment trust meets the requirements in subsection (4).
- (4) The time meets the requirements in this subsection if:
- (a) where the facility to which the *cross staple arrangement relates is *not* an *economic infrastructure facility—the time is before 1 July 2031 and before the later of:
 - (i) 1 July 2026; and
 - (ii) the end of the period of 7 years beginning on the earliest day on which an asset that is part of that facility is first put to use for the purpose of producing assessable income; or
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- (b) where the facility to which the cross staple arrangement relates is an economic infrastructure facility—the time is before 1 July 2039 and before the later of:
 - (i) 1 July 2034; and
 - (ii) the end of the period of 15 years beginning on the earliest day on which an asset that is part of that facility is first put to use for the purpose of producing assessable income.
- (5) An entity makes a choice in accordance with this subsection if:
 - (a) the entity makes the choice in the *approved form; and
 - (b) the entity makes the choice no later than:
 - (i) 30 June 2019; or
 - (ii) a later time allowed by the Commissioner; and
 - (c) the entity gives the choice to the Commissioner within 60 days after the entity makes the choice.
- (6) The choice cannot be revoked.

12-441 Integrity rule—concessional cross staple rent cap

- (1) This section applies if:
 - (a) a *managed investment trust in relation to an income year derives, receives or makes an amount of *excepted MIT CSA income for the income year; and
 - (b) if the amount is excepted MIT CSA income because of subsection 12-440(3)—paragraph 12-440(4)(b) applies (15 year concession); and
 - (c) the amount of excepted MIT CSA income is, or is attributable to, *rent from land investment under a lease (the ***cross staple lease***) entered into by:
 - (i) the *asset entity mentioned in paragraph 12-437(2)(a) (the ***relevant asset entity***); and
 - (ii) the *operating entity mentioned in paragraph 12-437(2)(b) (the ***relevant operating entity***).
- (2) To the extent (if any) that the amount of the relevant asset entity's *excepted MIT CSA income exceeds its *concessional cross staple rent cap for the income year, the following provisions do not apply

to the amount of the *managed investment trust's excepted MIT CSA income mentioned in paragraph (1)(a):

- (a) subsection 12-437(5);
 - (b) subsection 12-440(3).
- (3) If the relevant asset entity is not a *managed investment trust in relation to the income year, for the purposes of subsection (2), treat it as a managed investment trust in relation to the income year.

12-442 Meaning of *excepted MIT CSA income*

An amount is *excepted MIT CSA income* of a *managed investment trust in relation to an income year if it would be *MIT cross staple arrangement income of the managed investment trust but for any of the following provisions:

- (a) subsection 12-437(5);
- (b) subsection 12-440(3).

12-443 Concessional cross staple rent cap—existing lease with specified rent or rent method

- (1) This section applies if:
- (a) the amount mentioned in subsection 12-441(1) is *excepted MIT CSA income because of subsection 12-440(3); and
 - (b) the cross staple lease was entered into before 27 March 2018; and
 - (c) the cross staple lease, or associated documents, specified any of the following before 27 March 2018:
 - (i) the amount of annual rent under the lease for the first year of the lease that ends after 27 March 2018;
 - (ii) an objective method for determining the amount of annual rent under the lease; and
 - (d) if subparagraph (c)(ii) applies—the method is set out in the cross staple lease, or the associated documents, before 27 March 2018.
- (2) If subparagraph (1)(c)(ii) applies, the *concessional cross staple rent cap* for an income year of the *managed investment trust is the

amount of annual rent determined for the income year under the method mentioned in that subparagraph.

- (3) If subparagraph (1)(c)(ii) does not apply, the **concessional cross staple rent cap** for an income year of the *managed investment trust is:
- (a) for an income year where the lease, or the associated documents, specify the amount of annual rent for the corresponding year of the lease under subsection (4)—that amount; or
 - (b) for an income year where that amount is not so specified—the amount worked out under paragraph (a) in relation to the most recent year of the lease for which an amount is so specified, indexed annually in accordance with Subdivision 960-M of the *Income Tax Assessment Act 1997*.
- (4) An income year and a year of the lease correspond to each other under this subsection if both of those years end:
- (a) after a particular 27 March; and
 - (b) on or before the next 27 March.

12-444 Concessional cross staple rent cap—general

- (1) This section applies if section 12-443 does not apply.
- (2) The **concessional cross staple rent cap** for an income year of the *managed investment trust is worked out as follows:
- (a) first, work out a reasonable estimate of whichever of the following is applicable:
 - (i) if the relevant asset entity is a trust that is not an *AMIT—the relevant asset entity’s *net income, or *tax loss, for the income year;
 - (ii) if the relevant asset entity is an AMIT—the sum of the relevant asset entity’s *trust components with the character of assessable income, or the relevant asset entity’s tax loss, for the income year;
 - (iii) if the relevant asset entity is a partnership—the relevant asset entity’s net income, or partnership loss (within the meaning of section 90 of the *Income Tax Assessment Act 1936*), for the income year;

- (b) next, work out a reasonable estimate of whichever of the following is applicable:
 - (i) if the relevant operating entity is a trust that is not an AMIT—the operating asset entity’s net income, or tax loss, for the income year;
 - (ii) if the relevant operating entity is a partnership—the relevant operating entity’s net income, or partnership loss (within the meaning of section 90 of the *Income Tax Assessment Act 1936*), for the income year;
 - (iii) otherwise—the relevant operating entity’s taxable income or tax loss for the income year;
- (c) next, add the results of paragraphs (a) and (b);
- (d) next, multiply the result of paragraph (c) by 0.8;
- (e) next, subtract the result of paragraph (a) from the result of paragraph (d);
- (f) next, add the amount of *excepted MIT CSA income mentioned in subsection 12-441(1) to the result of paragraph (e).

If the result of paragraph (f) is a positive number, the **concessional cross staple rent cap** is that result. Otherwise, the **concessional cross staple rent cap** is nil.

- (3) For the purposes of paragraphs (2)(a) and (b):
 - (a) treat the amount of a *tax loss, or of a partnership loss (within the meaning of section 90 of the *Income Tax Assessment Act 1936*), as a negative number; and
 - (b) disregard any *tax loss for a previous income year of the relevant asset entity or relevant operating entity.

12-445 Asset entity to allocate deductions first against rental income that is not MIT cross staple arrangement income

- (1) This section applies if:
 - (a) an entity is an *asset entity in relation to an income year and is a *stapled entity in relation to a *cross staple arrangement; and
 - (b) the entity is entitled to a deduction for the income year against its assessable income that arises from *rent from land investment that it derives or receives in the income year; and

- (c) the entity derives, receives or makes an amount of *excepted MIT CSA income in the income year (disregarding this section and subsection 12-441(2)); and
 - (d) the amount of that excepted MIT CSA income exceeds the entity's *concessional cross staple rent cap for the income year.
- (2) The amount of the deduction can only be deducted against an amount of assessable income of the *asset entity as follows:
- (a) first, the amount can only be deducted against an amount of assessable income that is *excepted MIT CSA income, to the extent that the excepted MIT CSA income does not exceed the entity's *concessional cross staple rent cap for the income year;
 - (b) next, if an amount of the deduction remains after applying the rule in paragraph (a), the amount can only be deducted against an amount of assessable income that is *MIT cross staple arrangement income;
 - (c) next, if an amount of the deduction remains after applying the rules in paragraphs (a) and (b), the amount can be deducted against an amount of assessable income in accordance with other provisions of this Act.
- (3) If the *asset entity is not a *managed investment trust in relation to the income year, for the purposes of determining whether an amount of its assessable income for the income year is *MIT cross staple arrangement income, treat it as a managed investment trust in relation to the income year.

12-446 Meaning of MIT trading trust income

- (1) This section applies if:
- (a) an amount is included in the assessable income for an income year of a *managed investment trust in relation to the income year (worked out for the purposes of determining the trust's *net income, or in the case of an *AMIT, the trust's total assessable income, for the income year); and
 - (b) the amount mentioned in paragraph (a) is, or is attributable to, an amount derived, received or made from another entity (the *second entity*); and

- (c) the amount mentioned in paragraph (a) is *not* an amount mentioned in paragraph 12-405(1)(a), (b), (c), (d) or (e).
- (2) The amount is **MIT trading trust income** of the *managed investment trust if:
 - (a) the managed investment trust holds a *total participation interest in the second entity of greater than nil; and
 - (b) the amount arises because of that total participation interest; and
 - (c) the second entity:
 - (i) 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
 - (ii) is a partnership or a trust that is not a unit trust, but would be such a trading trust in relation to the income year if it were a unit trust throughout the income year; and
 - (d) the second entity is not a *public trading trust in relation to the income year.
- (3) The amount is *not* **MIT trading trust income** of the *managed investment trust under subsection (2) to the extent that it is attributable to a *capital gain made from *CGT event E4 or *CGT event E10.

12-447 Transitional—**MIT trading trust income**

- (1) This section applies if:
 - (a) an amount (the **relevant amount**) included in the assessable income for an income year of a *managed investment trust is *MIT trading trust income of the managed investment trust (disregarding this section); and
 - (b) immediately before 27 March 2018, the managed investment trust held a *total participation interest (the **pre-announcement TPI**) of greater than nil in the second entity mentioned in subsection 12-446(1) (the **second entity**); and
 - (c) the relevant amount was derived, received or made by the managed investment trust before 1 July 2026.
-

- (2) Treat part of the relevant amount as not being *MIT trading trust income of the *managed investment trust.
- (3) That part is equal to the relevant amount multiplied by the fraction worked out under subsections (4) and (5).
- (4) If the *total participation interest (the *post-announcement TPI*) held by the *managed investment trust in the second entity at the end of the most recent income year ending before it derived, received or made the relevant amount exceeds the pre-announcement TPI, work out that fraction by dividing:
 - (a) the pre-announcement TPI;by:
 - (b) the post-announcement TPI.
- (5) Otherwise, the fraction is 1.

12-448 Meaning of MIT agricultural income, Australian agricultural land for rent and Division 6C land

- (1) This section applies if:
 - (a) an amount is included in the assessable income for an income year of a *managed investment trust in relation to the income year (worked out for the purposes of determining the trust's *net income, or in the case of an *AMIT, the trust's total assessable income, for the income year); and
 - (b) the amount mentioned in paragraph (a) is *not* an amount mentioned in paragraph 12-405(1)(a), (b), (c), (d) or (e).
- (2) The amount is *MIT agricultural income* of the *managed investment trust to the extent that it is attributable to an asset that is *Australian agricultural land for rent (whether or not held by the managed investment trust).
- (3) *Australian agricultural land for rent* is *Division 6C land situated in Australia that:
 - (a) is used, or could reasonably be used, for carrying on a *primary production business; and
 - (b) is held primarily for the purposes of deriving or receiving rent.

- (4) For the purposes of this section, if an *economic infrastructure facility is a fixture on *Australian agricultural land for rent:
 - (a) treat the economic infrastructure facility as being separate from the Australian agricultural land for rent; and
 - (b) treat the economic infrastructure facility as *not* being Australian agricultural land for rent.
- (5) **Division 6C land** is land (within the meaning of Division 6C of Part III of the *Income Tax Assessment Act 1936*), and includes a thing if an investment in the thing would be an investment in land under subsection 102MB(1) of that Act.

12-449 Transitional—MIT agricultural income

- (1) This section applies if:
 - (a) an amount (the **relevant amount**) is included in the assessable income for an income year of a *managed investment trust in relation to the income year (worked out for the purposes of determining the trust's *net income, or in the case of an *AMIT, the trust's total assessable income, for the income year); and
 - (b) the relevant amount would be *MIT agricultural income (disregarding this section) of the managed investment trust because it is attributable to an asset that is *Australian agricultural land for rent; and
 - (c) the managed investment trust derived, received or made the relevant amount before 1 July 2026; and
 - (d) if the managed investment trust derived, received or made the relevant amount because the managed investment trust held the asset:
 - (i) the managed investment trust held the asset just before 27 March 2018; or
 - (ii) before 27 March 2018, the managed investment trust entered into a contract for the *acquisition or lease of the asset; and
 - (e) if the managed investment trust derived, received or made the relevant amount because another entity (the **second entity**) held the asset:

- (i) the second entity held the asset just before 27 March 2018; or
 - (ii) before 27 March 2018, the second entity entered into a contract for the acquisition or lease of the asset; and
 - (f) if paragraph (e) applies—immediately before 27 March 2018, the managed investment trust held a *total participation interest (the ***pre-announcement TPI***) of greater than nil in the second entity.
- (2) If paragraph (1)(d) applies, treat the relevant amount as not being *MIT agricultural income of the *managed investment trust.
- (3) If paragraph (1)(e) applies, treat part of the relevant amount as not being *MIT agricultural income of the *managed investment trust.
- (4) That part is equal to the relevant amount multiplied by the fraction worked out under subsections (5) and (6).
- (5) If the *total participation interest (the ***post-announcement TPI***) held by the *managed investment trust in the second entity at the end of the most recent income year ending before it derived, received or made the relevant amount exceeds the pre-announcement TPI, work out that fraction by dividing:
- (a) the pre-announcement TPI;
- by:
- (b) the post-announcement TPI.
- (6) Otherwise, the fraction is 1.

12-450 Meaning of *MIT residential housing income*

- (1) This section applies if:
- (a) an amount is included in the assessable income for an income year of a *managed investment trust in relation to the income year (worked out for the purposes of determining the trust's *net income, or in the case of an *AMIT, the trust's total assessable income, for the income year); and
 - (b) the amount mentioned in paragraph (a) is *not* an amount mentioned in paragraph 12-405(1)(a), (b), (c), (d) or (e).

- (2) The amount is **MIT residential housing income** of the *managed investment trust to the extent that it is attributable to a *residential dwelling asset (whether or not held by the managed investment trust).

Asset used to provide affordable housing

- (3) The amount is *not* **MIT residential housing income** of the *managed investment trust under subsection (2) to the extent that it is referable to the use of the *residential dwelling asset to *provide affordable housing.
- (4) If the amount is, or is attributable to, a *capital gain from a *CGT event, subsection (3) applies only if:
- (a) the entity that held the *residential dwelling asset just before the time (the **CGT event time**) when the CGT event happened had held it for at least 3,650 days (consecutive or not); and
 - (b) each of those days satisfies the following requirements:
 - (i) the day is on or after 1 July 2017 and before the CGT event time;
 - (ii) the residential dwelling asset was used on the day to *provide affordable housing.

12-451 Transitional—MIT residential housing income

- (1) This section applies if:
- (a) an amount (the **relevant amount**) is included in the assessable income for an income year of a *managed investment trust in relation to the income year (worked out for the purposes of determining the trust's *net income, or in the case of an *AMIT, the trust's total assessable income, for the income year); and
 - (b) the relevant amount would be *MIT residential housing income (disregarding this section) of the *managed investment trust because it is attributable to a facility that consists of or contains a *residential dwelling asset; and
 - (c) the managed investment trust derived, received or made the relevant amount before 1 October 2027; and

- (d) if the managed investment trust derived, received or made the relevant amount because the managed investment trust held the facility:
 - (i) the managed investment trust held the facility just before the time mentioned in subsection (7); or
 - (ii) before the time mentioned in subsection (7), the managed investment trust entered into a contract for the *acquisition, creation or lease of the facility; and
 - (e) if the managed investment trust derived, received or made the relevant amount because another entity (the **second entity**) held the facility:
 - (i) the second entity held the facility just before the time mentioned in subsection (7); or
 - (ii) before the time mentioned in subsection (7), the second entity entered into a contract for the acquisition, creation or lease of the facility; and
 - (f) if paragraph (e) applies—immediately before the time mentioned in subsection (7), the managed investment trust held a *total participation interest (the **pre-announcement TPI**) of greater than nil in the second entity.
- (2) If paragraph (1)(d) applies, treat the relevant amount as *not* being *MIT residential housing income of the *managed investment trust.
 - (3) If paragraph (1)(e) applies, treat part of the relevant amount as *not* being *MIT residential housing income of the *managed investment trust.
 - (4) That part is equal to the relevant amount multiplied by the fraction worked out under subsections (5) and (6).
 - (5) If the *total participation interest (the **post-announcement TPI**) held by the *managed investment trust in the second entity at the end of the most recent income year ending before it derived, received or made the relevant amount exceeds the pre-announcement TPI, work out that fraction by dividing:
 - (a) the pre-announcement TPI;by:
 - (b) the post-announcement TPI.

- (6) Otherwise, the fraction is 1.
- (7) The time is 4.30 pm, by legal time in the Australian Capital Territory, on 14 September 2017.

12-452 Meaning of residential dwelling asset

- (1) A *residential dwelling asset* is an asset that:
 - (a) is a *dwelling; and
 - (b) is *taxable Australian real property; and
 - (c) is *residential premises (other than *commercial residential premises); and
 - (d) is *not* a dwelling that:
 - (i) is used primarily to provide specialist disability accommodation (within the meaning of the *National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Rule 2018*); and
 - (ii) is enrolled in accordance with section 6 of that Rule; and
 - (e) is *not* a dwelling that:
 - (i) is used primarily to provide disability accommodation; and
 - (ii) is a dwelling of a kind prescribed by the regulations for the purposes of this subparagraph.
- (2) Section 118-120 (Extension to adjacent land) applies in relation to this section in the same way as it applies in relation to Subdivision 118-B.
- (3) To avoid doubt, for the purposes of applying section 118-120 in relation to this section, a *dwelling's *adjacent land may include land used primarily for private or domestic purposes in association with the dwelling and with one or more other dwellings.

12-453 MIT agricultural income and MIT residential housing income—capital gains in relation to membership interests

- (1) Subsection (2) applies if:
 - (a) any of the following provisions apply in relation to an amount:
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- (i) section 12-448;
 - (ii) section 12-450; and
 - (b) the amount is, or is attributable to, a *capital gain from a *CGT event in relation to an asset that is a *membership interest in an entity; and
 - (c) just before the CGT event happened, the entity held, directly or indirectly, one or more assets that are any of the following:
 - (i) *Australian agricultural land for rent;
 - (ii) a *residential dwelling asset.
- (2) For the purposes of subsections 12-448(2) and 12-450(2):
- (a) in a case where the *membership interest mentioned in subsection (1) passes the principal asset test in section 855-30 of the *Income Tax Assessment Act 1997* immediately before the time the *CGT event happens:
 - (i) if the assets mentioned in paragraph (1)(c) are all *Australian agricultural land for rent—treat the *capital gain as being wholly attributable to the Australian agricultural land for rent; or
 - (ii) if the assets mentioned in paragraph (1)(c) are all *residential dwelling assets—treat the capital gain as being wholly attributable to residential dwelling assets; or
 - (iii) if all the assets mentioned in paragraph (1)(c) are Australian agricultural land for rent and residential dwelling assets, and the *market value of the membership interest that is attributable to Australian agricultural land for rent equals or exceeds the market value of the membership interest that is attributable to residential dwelling assets—treat the capital gain as being wholly attributable to Australian agricultural land for rent; or
 - (iv) if all the assets mentioned in paragraph (1)(c) are Australian agricultural land for rent and residential dwelling assets, and the market value of the membership interest that is attributable to Australian agricultural land for rent falls short of the market value of the membership interest that is attributable to residential dwelling assets—treat the capital gain as

Schedule 1 Non-concessional MIT income
Part 1 Main amendments

- being wholly attributable to residential dwelling assets;
or
- (b) in any other case—treat the capital gain:
 - (i) as not being attributable to Australian agricultural land for rent; and
 - (ii) as not being attributable to residential dwelling assets.
 - (3) For the purposes of subsection (2), in determining whether the *membership interest passes the principal asset test, treat references in section 855-30 of the *Income Tax Assessment Act 1997* to *taxable Australian real property as instead being references to an asset that is any of the following:
 - (a) *Australian agricultural land for rent;
 - (b) a *residential dwelling asset.
 - (4) For the purposes of this section, in working out the *market value of an asset, work out that market value just before the time the *CGT event mentioned in paragraph (1)(b) happens.

Part 2—Definitions

Income Tax Assessment Act 1997

12 Subsection 995-1(1)

Insert:

asset entity has the meaning given by section 12-436 in Schedule 1 to the *Taxation Administration Act 1953*.

Australian agricultural land for rent has the meaning given by section 12-448 in Schedule 1 to the *Taxation Administration Act 1953*.

concessional cross staple rent cap has the meaning given by sections 12-443 and 12-444 in Schedule 1 to the *Taxation Administration Act 1953*.

cross staple arrangement has the meaning given by section 12-436 in Schedule 1 to the *Taxation Administration Act 1953*.

Division 6C land has the meaning given by section 12-448 in Schedule 1 to the *Taxation Administration Act 1953*.

economic infrastructure facility has the meaning given by section 12-439 in Schedule 1 to the *Taxation Administration Act 1953*.

excepted MIT CSA income has the meaning given by section 12-442 in Schedule 1 to the *Taxation Administration Act 1953*.

MIT agricultural income has the meaning given by sections 12-448 and 12-449 in Schedule 1 to the *Taxation Administration Act 1953*.

MIT cross staple arrangement income has the meaning given by sections 12-437 and 12-440 in Schedule 1 to the *Taxation Administration Act 1953*.

MIT residential housing income has the meaning given by sections 12-450 and 12-451 in Schedule 1 to the *Taxation Administration Act 1953*.

MIT trading trust income has the meaning given by sections 12-446 and 12-447 in Schedule 1 to the *Taxation Administration Act 1953*.

non-concessional MIT income has the meaning given by section 12-435 in Schedule 1 to the *Taxation Administration Act 1953*.

operating entity has the meaning given by section 12-436 in Schedule 1 to the *Taxation Administration Act 1953*.

rent from land investment means rent that is derived or received from investments in Division 6C land.

residential dwelling asset has the meaning given by section 12-452 in Schedule 1 to the *Taxation Administration Act 1953*.

13 Subsection 995-1(1) (definition of *stapled entity*)

Repeal the definition, substitute:

stapled entity:

- (a) in relation to a *cross staple arrangement—has the meaning given by section 12-436 in Schedule 1 to the *Taxation Administration Act 1953*; or
- (b) otherwise—has the meaning given by section 124-1045.

Part 3—Other amendments

Administrative Decisions (Judicial Review) Act 1977

14 After paragraph (gaa) of Schedule 1

Insert:

(gaaa) decisions of the Treasurer under section 12-439 in Schedule 1 to the *Taxation Administration Act 1953*;

Note: Section 12-439 in that Schedule empowers the Treasurer to approve economic infrastructure facilities.

Income Tax Assessment Act 1936

15 Subsection 6(1)

Insert:

industrial, commercial or scientific equipment means industrial, commercial or scientific equipment to the extent that an amount paid or credited as consideration for the use of the equipment, or for the right to use the equipment, is not rent from land (including rent from an interest in land or rent from fixtures on land).

Part 4—Application and transitional provisions

16 Application

- (1) The amendments made by this Schedule apply to a fund payment made by a managed investment trust in relation to an income year if:
 - (a) the fund payment is made on or after 1 July 2019; and
 - (b) the income year is the 2019-20 income year or a later income year.
- (2) To avoid doubt, the amendments made by this Schedule also apply for the purposes of working out the MIT cross staple arrangement income of a managed investment trust for a previous income year as mentioned in section 12-438 in Schedule 1 to the *Taxation Administration Act 1953* (as inserted by this Schedule).
- (3) Despite subitem (1):
 - (a) section 25-115 of the *Income Tax Assessment Act 1997*, as inserted by item 2 of this Schedule, applies in relation to an amount of rent from land investment that is derived or received in relation to the 2019-20 income year or a later income year; and
 - (b) section 25-120 of the *Income Tax Assessment Act 1997*, as inserted by item 2 of this Schedule, applies in relation to an amount of rent from land investment that is derived or received on or after 27 March 2018.
- (4) To avoid doubt, for the purposes of paragraph (3)(b), the amendments made by this Schedule also apply for the purposes of working out whether an entity can deduct an amount of rent from land investment under section 25-120 of the *Income Tax Assessment Act 1997* for an income year that is before the 2019-20 income year.
- (5) Despite subitem (1), the amendment made by item 15 of this Schedule (which relates to the definition of **industrial, commercial or scientific equipment** in the *Income Tax Assessment Act 1936*) applies in relation to amounts paid or credited on or after 1 July 2019.

Schedule 2—Thin capitalisation

Income Tax Assessment Act 1997

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

Add:

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

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

Add:

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

3 After subsection 820-905(2A)

Insert:

- (2B) For the purposes of sections 820-910, 820-915 and 820-920, if the first entity mentioned in subsection (1) or (2A) is a trust (other than a *public trading trust) or a partnership:
 - (a) treat the reference in paragraph (1)(a) or (2A)(a) to 50% as instead being a reference to 10%; and
 - (b) if subsection (2C) applies—treat the other entity mentioned in subsection (1) or (2A) as holding an *associate interest in the first entity mentioned in that subsection of 10%; and
 - (c) disregard subsection 318(5) of the *Income Tax Assessment Act 1936*; and
 - (d) if subsection (2D) applies—in determining whether an entity is an *associate of another entity, treat the benefiting entity mentioned in that subsection as being a partner in the partnership.
- (2C) This subsection applies if:
 - (a) the other entity mentioned in subsection (1) or (2A) holds an *associate interest in the first entity mentioned in that subsection of less than 10%; and

(b) it is reasonable to conclude that the entity, or one of the entities, who created the circumstance described in paragraph (a) of this subsection did so for the principal purpose of, or for more than one principal purpose that included the purpose of, ensuring that the first entity will not be an *associate entity of the other entity.

(2D) This subsection applies if:

- (a) a trust (other than a *public trading trust) is a partner in a partnership; and
- (b) another entity (the *benefiting entity*) benefits under the trust (as determined in accordance with paragraph 318(6)(a) of the *Income Tax Assessment Act 1936*).

4 Application

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

Schedule 3—Superannuation funds for foreign residents withholding tax exemption

Part 1—Amendments

Income Tax Assessment Act 1936

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

Add:

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

2 After subsection 128B(3C)

Insert:

- (3CA) Paragraph (3)(jb) applies to income derived by the superannuation fund mentioned in subparagraph (3)(jb)(i) only if:
- (a) the superannuation fund satisfies the portfolio interest test in subsection (3CC) in relation to the entity mentioned in subsection (3CB) (the *test entity*):
 - (i) at the time the income was derived; and
 - (ii) throughout any 12 month period that began no earlier than 24 months before that time and ended no later than that time; and
 - (b) the superannuation fund does not, at the time the income was derived, have influence of a kind described in subsection (3CD) in relation to the test entity; and
 - (c) the income is *not* non-assessable non-exempt income of the superannuation fund because of:
 - (i) Subdivision 880-C of the *Income Tax Assessment Act 1997*; or
 - (ii) Division 880 of the *Income Tax (Transitional Provisions) Act 1997*.

(3CB) For the purposes of subsection (3CA), the test entity is:

- (a) unless paragraph (b) applies—the entity that paid the interest, dividends or non-share dividends as mentioned in subparagraph (3)(j)(ii); or
 - (b) if subsection 128A(3) applies in relation to a resident trust estate (within the meaning of Division 6)—the trust estate.
- (3CC) A superannuation fund satisfies the portfolio interest test in this subsection in relation to the test entity at a time if, at that time, the total participation interest (within the meaning of the *Income Tax Assessment Act 1997*) the superannuation fund holds in the test entity:
- (a) is less than 10%; and
 - (b) would be less than 10% if, in working out the direct participation interest (within the meaning of that Act) that any entity holds in a company:
 - (i) an equity holder were treated as a shareholder; and
 - (ii) the total amount contributed to the company in respect of non-share equity interests were included in the total paid-up share capital of the company.
- (3CD) A superannuation fund has influence of a kind described in this subsection in relation to the test entity at a time if any of the following requirements are satisfied at that time:
- (a) the superannuation fund:
 - (i) is directly or indirectly able to determine; or
 - (ii) in acting in concert with others, is directly or indirectly able to determine;the identity of at least one of the persons who, individually or together with others, make (or might reasonably be expected to make) the decisions that comprise the control and direction of the test entity's operations;
 - (b) at least one of those persons is accustomed or obliged to act, or might reasonably be expected to act, in accordance with the directions, instructions or wishes of the superannuation fund (whether those directions, instructions or wishes are expressed directly or indirectly, or through the superannuation fund acting in concert with others).
- (3CE) However, a superannuation fund does not have influence of a kind described in subsection (3CD) if, disregarding any breach of terms
-

of a debt interest by any entity, the superannuation fund would not have influence of that kind.

Part 2—Application provisions

3 Application

- (1) Subject to subitems (2) and (3), the amendments made by this Schedule apply in relation to income that is derived on or after 1 July 2019.
- (2) The amendments made by this Schedule apply to income that is derived by a superannuation fund on or after 1 July 2026 if:
 - (a) the income was derived by the superannuation fund in respect of an asset; and
 - (b) subsection 128A(3) of the *Income Tax Assessment Act 1936* does not apply in relation to that income; and
 - (c) the superannuation fund acquired the asset on or before 27 March 2018.
- (3) The amendments made by this Schedule apply to income that is derived by a superannuation fund on or after 1 July 2026 if:
 - (a) because of the operation of subsection 128A(3) of the *Income Tax Assessment Act 1936*, a superannuation fund derived the income because it holds an interest in a trust estate; and
 - (b) the superannuation fund started to hold that interest on or before 27 March 2018; and
 - (c) the dividend, non-share dividend or interest that was included in the income of the trust estate as mentioned in that subsection was so included in respect of an asset; and
 - (d) the trustee of the trust estate acquired the asset on or before 27 March 2018.

Schedule 4—Sovereign immunity

Part 1—Amendments

Income Tax Assessment Act 1936

1 After section 99G

Insert:

99GA Amounts covered by sovereign immunity exemption

Subsection 98(3) does not apply to so much of the net income of a trust estate as represents income to which a beneficiary is presently entitled and gives rise to an amount that is non-assessable non-exempt income because of:

- (a) Division 880 of the *Income Tax Assessment Act 1997*; or
- (b) Division 880 of the *Income Tax (Transitional Provisions) Act 1997*.

2 At the end of subsection 128B(3)

Add:

; or (n) income that is non-assessable non-exempt income because of Division 880 of the *Income Tax Assessment Act 1997* or Division 880 of the *Income Tax (Transitional Provisions) Act 1997*.

Income Tax Assessment Act 1997

3 Section 9-1 (after table item 8)

Insert:

8A A sovereign entity section 880-55

4 Section 11-55 (table)

After:

small business assets

income arising from CGT event, company or trust
owned asset continuously for 15 years 152-110(2)

insert:
sovereign entities Subdivision 880-C

5 At the end of section 840-805

Add:

- (9) Subsections (2), (3) and (4) do not apply to you to the extent that the fund payment part relates to an amount that is *non-assessable non-exempt income of yours because of:
- (a) Division 880; or
 - (b) Division 880 of the *Income Tax (Transitional Provisions) Act 1997*.

6 At the end of Part 4-5

Add:

Division 880—Sovereign entities and activities

Table of Subdivisions

880-A	Basic concepts
880-B	Basic tax treatment of sovereign entities
880-C	Sovereign immunity
880-D	Consular activities

Subdivision 880-A—Basic concepts

Guide to Subdivision 880-A

880-10 What this Subdivision is about

This Subdivision defines several terms that are fundamental to the operation of this Division, such as *sovereign entity* and *sovereign entity group*.

Table of sections

Operative provisions

- 880-15 Meaning of *sovereign entity*
880-20 Meaning of *sovereign entity group*

Operative provisions

880-15 Meaning of *sovereign entity*

A *sovereign entity* is any of the following:

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

880-20 Meaning of *sovereign entity group*

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

- (a) a body politic of a foreign country (other than a body politic of a part of that foreign country);
- (b) a *foreign government agency in relation to that foreign country (other than a foreign government agency in relation to a part of that foreign country);
- (c) an entity:
 - (i) in which an entity covered by paragraph (a) or (b) holds a *total participation interest of 100%; and
 - (ii) that is *not* an Australian resident; and
 - (iii) that is *not* a resident trust estate for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936*.

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

- (a) a body politic of a part of a foreign country;
- (b) a *foreign government agency in relation to that part of that foreign country;

- (c) an entity:
- (i) in which an entity covered by paragraph (a) or (b) holds a *total participation interest of 100%; and
 - (ii) that is *not* an Australian resident; and
 - (iii) that is *not* a resident trust estate for the purposes of Division 6 of Part III of the *Income Tax Assessment Act 1936*.
- (3) Each entity that is part of a *sovereign entity group is a *member* of the group.

Subdivision 880-B—Basic tax treatment of sovereign entities

Guide to Subdivision 880-B

880-50 What this Subdivision is about

This Subdivision provides that a sovereign entity is liable to pay tax. It also provides that a body politic (or a foreign government agency) of a foreign country, or part of a foreign country, is treated as being a person that is not a resident of Australia, but is a resident of the foreign country.

Table of sections

Operative provisions

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

Operative provisions

880-55 Sovereign entity liable to pay tax

A *sovereign entity is liable to pay *tax.

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

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

- (1) For the purposes of this Act, treat a body politic of a foreign country, or a part of a foreign country:
 - (a) as being a person that is not a resident of Australia; and
 - (b) as being a resident of the foreign country.
- (2) For the purposes of this Act, treat a *foreign government agency in relation to a foreign country (including a foreign government agency in relation to a part of a foreign country):
 - (a) as being a person that is not a resident of Australia; and
 - (b) as being a resident of the foreign country.

Subdivision 880-C—Sovereign immunity

Guide to Subdivision 880-C

880-100 What this Subdivision is about

This Subdivision provides a tax exemption for certain sovereign entities in respect of certain returns on membership interests (etc.) in entities that are Australian resident companies or managed investment trusts. To obtain this exemption, the relevant sovereign entity group can hold only a portfolio interest in the entity, and cannot have relevant influence over the entity.

Table of sections

Operative provisions

880-105	Sovereign entity's income from membership interest etc. in trust or company—non-assessable non-exempt income
880-110	Sovereign entity's deduction from membership interest etc.—loss not deductible
880-115	Sovereign entity's capital gain from membership interest etc.—gain disregarded
880-120	Sovereign entity's capital loss from membership interest etc. in trust or company—loss disregarded
880-125	Covered sovereign entities
880-130	Meaning of <i>public non-financial entity</i> and <i>public financial entity</i>

Operative provisions

880-105 Sovereign entity's income from membership interest etc. in trust or company—non-assessable non-exempt income

- (1) An amount of *ordinary income or *statutory income of a *sovereign entity is not assessable income and is not *exempt income if:
 - (a) the sovereign entity is covered by section 880-125; and
 - (b) the amount is a return on any of the following kinds of interest that the sovereign entity holds in another entity (the *test entity*):
 - (i) a *membership interest;
 - (ii) a *debt interest;
 - (iii) a *non-share equity interest; and
 - (c) the test entity is:
 - (i) a company that is an Australian resident at the time (the *income time*) when the amount becomes ordinary or statutory income of the sovereign entity; or
 - (ii) a *managed investment trust in relation to the income year in which the income time occurs; and
 - (d) the *sovereign entity group of which the sovereign entity is a member satisfies the portfolio interest test in subsection (4) in relation to the test entity:
 - (i) at the income time; and
 - (ii) throughout any 12 month period that began no earlier than 24 months before that time and ended no later than that time; and
 - (e) the sovereign entity group of which the sovereign entity is a member does not have influence of a kind described in subsection (6) in relation to the test entity at the income time.
 - (2) For the purposes of paragraph (1)(b), treat an interest that a *sovereign entity holds in another entity as a partner in a *partnership as not being an interest that the sovereign entity holds in the other entity.
 - (3) If the amount is a *fund payment, subsection (1) does not apply to the extent that the amount is attributable to:
-

- (a) *non-concessional MIT income (see section 12-435 in Schedule 1 to the *Taxation Administration Act 1953*); or
- (b) an amount that would be non-concessional MIT income if the following provisions were disregarded:
 - (i) subsection 12-437(5) in that Schedule;
 - (ii) sections 12-440, 12-447, 12-449 and 12-451 in that Schedule.

Portfolio interest test

- (4) A *sovereign entity group satisfies the portfolio interest test in this subsection in relation to the test entity at a time if, at that time, the sum of the *total participation interests that each *member of the group holds in the test entity:
 - (a) is less than 10%; and
 - (b) would be less than 10% if, in working out the *direct participation interest that any entity holds in a company:
 - (i) an *equity holder were treated as a shareholder; and
 - (ii) the total amount contributed to the company in respect of *non-share equity interests were included in the total paid-up share capital of the company.
- (5) For the purposes of subsection (4), in working out the sum of the *total participation interests held by each *member of the group in the test entity, take into account:
 - (a) a particular *direct participation interest; or
 - (b) a particular *indirect participation interest;held in the entity only once if it would otherwise be counted more than once.

Influence test

- (6) A *sovereign entity group has influence of a kind described in this subsection in relation to the test entity at a time if any of the following requirements are satisfied at that time:
 - (a) a *member of the group:
 - (i) is directly or indirectly able to determine; or
 - (ii) in acting in concert with others, is directly or indirectly able to determine;

- the identity of at least one of the persons who, individually or together with others, make (or might reasonably be expected to make) the decisions that comprise the control and direction of the test entity's operations;
- (b) at least one of those persons is accustomed or obliged to act, or might reasonably be expected to act, in accordance with the directions, instructions or wishes of a member of the group (whether those directions, instructions or wishes are expressed directly or indirectly, or through the member acting in concert with others).
- (7) However, a *sovereign entity group does not have influence of a kind described in subsection (6) if, disregarding any breach of terms of a *debt interest by any entity, the sovereign entity group would not have influence of that kind.
- (8) For the purposes of subsection (6), in working out whether an entity is a *member of a *sovereign entity group, treat the references in paragraphs 880-20(1)(c) and (2)(c) to 100% as instead being references to more than 50%.

880-110 Sovereign entity's deduction from membership interest etc.—loss not deductible

A *sovereign entity cannot deduct an amount if:

- (a) the sovereign entity is covered by section 880-125; and
- (b) the amount is a loss in respect of any of the following kinds of interest that the sovereign entity holds in another entity:
- (i) a *membership interest;
 - (ii) a *debt interest;
 - (iii) a *non-share equity interest; and
- (c) the requirements in paragraphs 880-105(1)(c), (d) and (e) would be satisfied, on the assumptions that:
- (i) the amount were *ordinary income or *statutory income; and
 - (ii) the amount became ordinary income or statutory income of the sovereign entity at the time it arose; and

- (iii) references in those paragraphs to the test entity were references to the other entity mentioned in paragraph (b) of this section.

880-115 Sovereign entity's capital gain from membership interest etc.—gain disregarded

Disregard a *capital gain of a *sovereign entity from a *CGT event that happens in relation to a *CGT asset if:

- (a) the sovereign entity is covered by section 880-125; and
- (b) the CGT asset is a *membership interest, *non-share equity interest or *debt interest in another entity; and
- (c) the requirements in paragraphs 880-105(1)(c), (d) and (e) would be satisfied, on the assumptions that:
 - (i) the capital gain were an amount of *ordinary income or *statutory income; and
 - (ii) the amount mentioned in subparagraph (i) became ordinary income or statutory income of the sovereign entity immediately before the time the CGT event happened; and
 - (iii) references in those paragraphs to the test entity were references to the other entity mentioned in paragraph (b) of this section.

880-120 Sovereign entity's capital loss from membership interest etc. in trust or company—loss disregarded

Disregard a *capital loss of a *sovereign entity from a *CGT event that happens at a time if, on the assumption that the loss were a *capital gain that happened at that time, the capital gain would be disregarded because of section 880-115.

880-125 Covered sovereign entities

A *sovereign entity is covered by this section if it satisfies all of the following requirements:

- (a) the entity is funded solely by public monies;
- (b) all returns on the entity's investments are public monies;
- (c) the entity is *not* a partnership;

- (d) the entity is *not* any of the following:
 - (i) a *public non-financial entity;
 - (ii) a *public financial entity (other than a public financial entity that only carries on central banking activities).

880-130 Meaning of *public non-financial entity* and *public financial entity*

- (1) An entity is a ***public non-financial entity*** if its principal activity is either or both of the following:
 - (a) producing or trading non-financial goods;
 - (b) providing services that are not financial services.
- (2) An entity is a ***public financial entity*** if any of the following requirements are satisfied:
 - (a) it trades in financial assets and liabilities;
 - (b) it operates commercially in the financial markets;
 - (c) its principal activities include providing any of the following financial services:
 - (i) financial intermediary services, including deposit-taking and insurance services;
 - (ii) financial auxiliary services, including brokerage, foreign exchange and investment management services;
 - (iii) capital financial institution services, including financial services in relation to assets or liabilities that are not available on open financial markets.

Subdivision 880-D—Consular activities

Guide to Subdivision 880-D

880-200 What this Subdivision is about

<p>This Subdivision provides a tax exemption for income of an entity that arises from its consular functions.</p>

Table of sections

Operative provisions

880-205 Income from consular functions—non-assessable non-exempt income

Operative provisions

**880-205 Income from consular functions—non-assessable
non-exempt income**

An amount of *ordinary income or *statutory income of an entity is not assessable income and is not *exempt income if the income arises from the entity's consular functions.

Part 2—Application and transitional provisions

Income Tax (Transitional Provisions) Act 1997

7 At the end of Part 4-5

Add:

Division 880—Sovereign entities and activities

Table of sections

880-1	Application of Division 880 of the <i>Income Tax Assessment Act 1997</i>
880-5	Certain income of sovereign entity in respect of a scheme is non-assessable non-exempt income if covered by a private ruling
880-10	Certain amounts of sovereign entity in respect of a scheme are not deductible if covered by a private ruling
880-15	Sovereign entity's capital gain from membership interest etc.—gain disregarded
880-20	Sovereign entity's capital loss from membership interest etc.—loss disregarded
880-25	Asset of sovereign entity—deemed sale and purchase

880-1 Application of Division 880 of the *Income Tax Assessment Act 1997*

Division 880 of the *Income Tax Assessment Act 1997* applies to the 2019-20 income year and later income years.

880-5 Certain income of sovereign entity in respect of a scheme is non-assessable non-exempt income if covered by a private ruling

An amount of ordinary income or statutory income of a sovereign entity for an income year is not assessable income and is not exempt income if:

- (a) the amount is a return on an investment asset under a scheme; and
- (b) the sovereign entity acquired the investment asset on or before 27 March 2018 under the scheme; and

- (c) on or before 27 March 2018, the sovereign entity applied for a private ruling in relation to the scheme; and
- (d) before 1 July 2026, the Commissioner gave the entity a private ruling confirming that income from the investment asset was not subject to income tax, or withholding tax, because of the doctrine of sovereign immunity; and
- (e) the private ruling applied during at least part of the period:
 - (i) starting on 27 March 2018; and
 - (ii) ending before 1 July 2026;regardless of whether the private ruling started to apply before 27 March 2018, or ceased to apply before 1 July 2026; and
- (f) the scheme carried out is not materially different to the scheme specified in the private ruling; and
- (g) the income year is:
 - (i) unless subparagraph (ii) applies—the 2025-26 income year or an earlier income year; or
 - (ii) if the last income year to which the private ruling relates is a later income year than the 2025-26 income year—that later income year, or an earlier income year.

880-10 Certain amounts of sovereign entity in respect of a scheme are not deductible if covered by a private ruling

A sovereign entity cannot deduct an amount for an income year if:

- (a) the amount is a loss in respect of an investment asset under a scheme; and
- (b) the requirements in paragraphs 880-5(b) to (g) are satisfied.

880-15 Sovereign entity's capital gain from membership interest etc.—gain disregarded

Disregard a capital gain of a sovereign entity from a CGT event that happens in relation to a CGT asset if:

- (a) the capital gain arises under a scheme; and
- (b) the CGT asset is a membership interest, non-share equity interest or debt interest in another entity; and

- (c) the requirements in paragraphs 880-5(b) to (g) are satisfied (on the assumption that references in those paragraphs to the investment asset were references to the CGT asset).

880-20 Sovereign entity’s capital loss from membership interest etc.—loss disregarded

Disregard a capital loss of a sovereign entity from a CGT event that happens at a time if, on the assumption that the loss were a capital gain that happened at that time, the capital gain would be disregarded because of section 880-15.

880-25 Asset of sovereign entity—deemed sale and purchase

- (1) This section applies if:
 - (a) a sovereign entity acquired an asset (other than money) on or before 27 March 2018 under a scheme; and
 - (b) on or before 27 March 2018, the sovereign entity applied for a private ruling in relation to the scheme; and
 - (c) before 1 July 2026, the Commissioner gave the entity a private ruling confirming that income from the asset was not subject to income tax, or withholding tax, because of the doctrine of sovereign immunity; and
 - (d) the private ruling applied during at least part of the period:
 - (i) starting on 27 March 2018; and
 - (ii) ending before 1 July 2026;regardless of whether the private ruling started to apply before 27 March 2018, or ceased to apply before 1 July 2026; and
 - (e) the sovereign entity holds the asset on the day mentioned in subsection (5).
- (2) For the purposes mentioned in subsection (3), the sovereign entity is taken:
 - (a) to have disposed of the asset, immediately before the day mentioned in subsection (5), for a consideration equal to its market value; and

- (b) to have acquired the asset again, immediately after the disposal mentioned in paragraph (a), for a consideration equal to the higher of the following:
 - (i) its market value immediately before that disposal;
 - (ii) its cost base immediately before that disposal.
- (3) The purposes are as follows:
 - (a) the purposes of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*;
 - (b) if the asset is a revenue asset—determining whether an amount is included in, or can be deducted from, the assessable income of the entity.
- (4) Despite subsection (3):
 - (a) disregard any capital gain or capital loss the sovereign entity makes because of the disposal mentioned in paragraph (2)(a);
or
 - (b) if the asset is a revenue asset—disregard any amount that could (apart from this subsection) be included in, or be deducted from, the assessable income of the entity as a result of that disposal.
- (5) For the purposes of paragraphs (1)(e) and (2)(a), the day is:
 - (a) unless paragraph (b) applies—the later of the following days:
 - (i) 1 July 2026;
 - (ii) the day before the private ruling ceases to apply; or
 - (b) a day earlier than the day mentioned in paragraph (a), if:
 - (i) the scheme mentioned in paragraph (1)(a) is not, when it is first carried out, materially different to the scheme specified in the private ruling; and
 - (ii) it becomes, on the earlier day, materially different to the scheme specified in the private ruling.

Part 3—Definitions

Income Tax Assessment Act 1997

8 Subsection 995-1(1) (before paragraph (c) of the definition of member)

Insert:

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

9 Subsection 995-1(1)

Insert:

public financial entity has the meaning given by section 880-130.

public non-financial entity has the meaning given by section 880-130.

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

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

Schedule 5—Contingent amendments relating to definition of provide affordable housing

Part 1—Main amendments

Income Tax Assessment Act 1997

1 At the end of Part 6-1

Add:

Division 980—Affordable housing

Table of Subdivisions

Guide to Division 980

980-A Providing affordable housing

Guide to Division 980

980-1 What this Division is about

A dwelling is used to provide affordable housing if certain conditions are met, including that the dwelling is tenanted or available to be tenanted, and that tenancies of the dwelling are exclusively managed by a community housing provider.

Subdivision 980-A—Providing affordable housing

Table of sections

Operative provisions

980-5 Providing affordable housing

980-10 Eligible community housing providers

980-15 Affordable housing certificates

Operative provisions

980-5 Providing affordable housing

A *dwelling is used to **provide affordable housing** on a particular day (the **test day**) if:

- (a) on the test day, the dwelling is *taxable Australian real property and is *residential premises that:
 - (i) are tenanted or available to be tenanted; and
 - (ii) are not *commercial residential premises; and
- (b) on the test day, the tenancy or prospective tenancy of the dwelling is exclusively managed by an *eligible community housing provider; and
- (c) the eligible community housing provider has given each entity that holds an *ownership interest in the dwelling a certificate under section 980-15 that covers the dwelling for the test day; and
- (d) no entity is entitled to receive an incentive, under the Scheme prescribed for the purposes of Part 2 of the *National Rental Affordability Scheme Act 2008*, for the dwelling for the NRAS year (within the meaning of that Scheme) that includes the test day; and
- (e) in the case of a *managed investment trust holding an *ownership interest in the dwelling on the test day—none of the tenants or occupants of the dwelling on that day holds an interest in the trust that passes the *non-portfolio interest test at any time during that day.

980-10 Eligible community housing providers

- (1) An **eligible community housing provider** is:
 - (a) an entity registered (however described) under an *Australian law as a provider of community housing services; or
 - (b) an entity registered (however described) by an *Australian government agency as a provider of community housing services.

- (2) However, an entity that ceases to be covered by subsection (1) continues to be an *eligible community housing provider* for the 90-day period starting on the day of the cessation.

980-15 Affordable housing certificates

For the purposes of paragraph 980-5(c), a certificate must:

- (a) include a declaration that the *eligible community housing provider reasonably believes paragraphs 980-5(a) and (b) to be satisfied for the *dwelling for the test day; and
- (b) be given in the *approved form on or before the 31st day after the end of the income year that contains the test day.

2 Subsection 995-1(1)

Insert:

eligible community housing provider has the meaning given by section 980-10.

provide affordable housing has the meaning given by section 980-5.

Taxation Administration Act 1953

3 Subsection 355-65(8) in Schedule 1 (at the end of the table)

Add:

- | | | |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9 | an *Australian government agency that administers an *Australian law referred to in paragraph 980-10(1)(a) of the <i>Income Tax Assessment Act 1997</i> | is for the purpose of administering that *Australian law in relation to whether an entity should be, or should continue to be, covered by that Australian law in the way described in that paragraph. |
| 10 | an *Australian government agency that registers entities as described in paragraph 980-10(1)(b) of the <i>Income Tax Assessment Act 1997</i> | is for the purpose of determining whether an entity should be, or should continue to be, registered as described in that paragraph. |

4 Section 396-55 in Schedule 1 (after table item 9)

Insert:

Schedule 5 Contingent amendments relating to definition of provide affordable housing

Part 1 Main amendments

9A	an *eligible community housing provider	the issuing by the provider of a certificate under section 980-15 of the <i>Income Tax Assessment Act 1997</i>
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5 Application of amendments

- (1) Division 980 of the *Income Tax Assessment Act 1997* (as added by this Schedule) applies in relation to tenancies starting before, at or after 1 January 2018.
- (2) The amendment of subsection 355-65(8) in Schedule 1 to the *Taxation Administration Act 1953* made by this Schedule applies in relation to records and disclosures of information made at or after the commencement of this Schedule, whether the information was obtained before, at or after the commencement of this Schedule.

Part 2—Other amendments

Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No. 2) Act 2019

6 Items 3, 4, 5 and 6 of Schedule 3

Repeal the items.

7 Subitems 7(2) and (3) of Schedule 3

Repeal the subitems.

*[Minister's second reading speech made in—
House of Representatives on 20 September 2018
Senate on 2 April 2019]*

(195/18)

No. 34, 2019 *Treasury Laws Amendment (Making Sure Foreign Investors Pay Their
Fair Share of Tax in Australia and Other Measures) Act 2019*

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