





# **Treasury Laws Amendment (Making Multinationals Pay Their Fair Share— Integrity and Transparency) Act 2024**

**No. 23, 2024**

**An Act to amend the law relating to corporations  
and 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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No. 23, 2024

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

[Assented to 8 April 2024]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Act 2024*.

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No. 23, 2024

*Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Act 2024*

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## 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 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	8 April 2024
2. Schedule 1	The day after this Act receives the Royal Assent.	9 April 2024
3. Schedule 2	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	1 July 2024

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## 4 Review of operation of amendments

- (1) The Minister must cause an independent review to be conducted of the operation of the amendments made by Schedule 2 to this Act.

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*Public consultation*

- (2) The review must make provision for public consultation.

*Timeframe for review*

- (3) The review must commence no later than 1 February 2026.

*Report*

- (4) The persons who conduct the review must give the Minister a written report of the review within 17 months of the commencement of the review.

*Tabling*

- (5) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

## Schedule 1—Multinational tax transparency— disclosure of subsidiaries

### *Corporations Act 2001*

#### **1 After paragraph 295(1)(b)**

Insert:

- (ba) for a public company—the consolidated entity disclosure statement required by subsection (3A); and

#### **2 After subsection 295(3)**

Insert:

##### *Consolidated entity disclosure statement*

- (3A) The consolidated entity disclosure statement for a public company’s financial report for a financial year is:
  - (a) if the accounting standards require the public company to prepare financial statements in relation to a consolidated entity—a statement that includes the following information for each entity that was, at the end of the financial year, part of the consolidated entity:
    - (i) the entity’s name (if any) at that time;
    - (ii) whether, at that time, the entity was a body corporate, partnership, or trust;
    - (iii) whether, at that time, the entity was a trustee of a trust within the consolidated entity, a partner in a partnership within the consolidated entity, or a participant in a joint venture within the consolidated entity;
    - (iv) if the entity is a body corporate—the place at which the entity was incorporated or formed;
    - (v) if the entity is a body corporate with a share capital—the percentage of the entity’s issued share capital (excluding any part that carries no right to participate beyond a specified amount in a distribution of either profits or capital) that was held, directly or indirectly, by the public company at that time;

- (vi) whether, at that time, the entity was an Australian resident (within the meaning of the *Income Tax Assessment Act 1997*) or a foreign resident (within the meaning of that Act);
  - (vii) if the entity was a foreign resident as described in subparagraph (vi)—a list of each foreign jurisdiction in which the entity was, at that time, a resident for the purposes of the law of the foreign jurisdiction relating to foreign income tax (within the meaning of that Act); or
- (b) if paragraph (a) does not apply—a statement to that effect.

### **3 After paragraph 295(4)(d)**

Insert:

- (da) whether, in the directors' opinion, the consolidated entity disclosure statement required by subsection (3A) is true and correct; and

### **4 After paragraph 295A(2)(c)**

Insert:

- (ca) the consolidated entity disclosure statement required by subsection 295(3A) is true and correct; and

### **5 In the appropriate position in Chapter 10**

Insert:

## **Part 10.72—Application provisions relating to Schedule 1 to the Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Act 2024**

### **1702 Application of amendments**

Sections 295 and 295A, as amended by Schedule 1 to the *Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Act 2024*, apply in relation to any

**Schedule 1** Multinational tax transparency—disclosure of subsidiaries

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financial reports for a financial year commencing on or after 1 July 2023.

## **Schedule 2—Thin capitalisation**

### **Part 1—Amendments**

#### *Income Tax Assessment Act 1936*

##### **1 Subsection 262A(2AA)**

Omit “or 820-980”, substitute “, 820-980 or 820-985”.

##### **2 At the end of subsection 262A(3)**

Add:

; and (e) for records required to be kept under section 820-985 of that Act—comply with subsections (2) and (3) of that section.

#### *Income Tax Assessment Act 1997*

##### **3 Section 12-5 (at the end of table item headed “thin capitalisation”)**

Add:

previously FRT disallowed amounts ..... 820-56

##### **4 Subsection 230-15(3)**

Omit “in relation to a \*debt interest you issue” (wherever occurring).

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

Insert:

5A	Subtract from the result of step 5 the step 5A amount worked out under section 705-102, which is about certain *FRT disallowed amounts accruing to the joined group before the joining time	To prevent a double benefit arising from the FRT disallowed amounts
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##### **4B Section 705-60 (table item 6, column headed “What the step requires”)**

Omit “step 5”, substitute “step 5A”.

## 5 Section 705-60 (after table item 6)

Insert:

- |    |                                                                                                                                                                                                               |                                                                                                                                                                                            |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6A | Subtract from the result of step 6 the step 6A amount worked out under section 705-112, which is about *FRT disallowed amounts that the joining entity transferred to the *head company under section 820-590 | To stop the joined group getting benefits both through higher *tax cost setting amounts for the joining entity's assets and through FRT disallowed amounts transferred to the head company |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## 6 Section 705-60 (table item 7, column headed "What the step requires")

Omit "step 6", substitute "step 6A".

## 7 Subparagraph 705-65(5A)(b)(ii)

Repeal the subparagraph, substitute:

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

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

After "(b)(i)", insert "or (ia)".

## 8 Paragraph 705-65(5A)(d)

Omit "subparagraph (b)(ii)", substitute "subparagraph (b)(ii) or (iii)".

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

Repeal the subparagraph, substitute:

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

## 8B After section 705-100

Insert:

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

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

**8C Section 705-105 (heading)**

Omit “to 5”, substitute “to 5A”.

**8D Section 705-105**

After “705-100”, insert “, 705-102”.

**9 After section 705-110**

Insert:

**705-112 If joining entity transfers a FRT disallowed amount to the head company—step 6A in working out allocable cost amount**

- (1) For the purposes of step 6A in the table in section 705-60, the step 6A amount is worked out by multiplying the sum of the \*FRT

disallowed amounts mentioned in subsection (2) by the \*corporate tax rate.

- (2) The \*FRT disallowed amounts are the joining entity's FRT disallowed amounts that:
- (a) did not accrue to the joined group before the joining time (see subsection (3)); and
  - (b) are transferred to the \*head company under section 820-590; and
  - (c) are not cancelled under section 820-592;
- to the extent that they were not applied by the joining entity under paragraph 820-56(2)(b) in respect of the income year in which the joining time occurred or any earlier income year.
- (3) For the purposes of subsection (2), a \*FRT disallowed amount accrued to the joined group before the joining time if and to the extent that, assuming that as it arose it were instead a profit that was accruing, a distribution of that profit would have been a distribution made to the joined group out of profits that accrued to the joined group before the joining time.

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

Add:

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

#### **9B Subsection 705-160(2)**

After "subparagraph (c)(ii)", insert "or (iii)".

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

Add:

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

**9D Subsection 705-160(4)**

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

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

Add:

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

**9F Subsection 705-235(2)**

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

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

Add:

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

**9H Subsection 705-235(4)**

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

**10 After paragraph 815-140(1)(a)**

Insert:

- (aa) the entity:
  - (i) is *not* a \*general class investor in relation to the income year; and
  - (ii) has *not* made a choice under subsection 820-85(2C) or 820-185(2C) in relation to the income year; and

**11 Section 820-1**

Omit:

Financing expenses that an entity can otherwise deduct from its assessable income may be disallowed under this Division in the following circumstances:

- for an entity that is not an authorised deposit-taking institution for the purposes of the *Banking Act 1959* (an **ADI**)—the entity’s debt exceeds the prescribed level (and the entity is therefore “thinly capitalised”);
- for an entity that is an ADI—the entity’s capital is less than the prescribed level (and the entity is therefore “thinly capitalised”).

substitute:

Financing expenses that an entity can otherwise deduct from its assessable income may be disallowed under this Division where the entity is “thinly capitalised”.

## **12 Section 820-5**

Repeal the section.

## **13 Section 820-10 (before table item 1)**

Insert:

- 1A Subdivision 820-AA
- (a) how all or a part of the debt deductions claimed by an entity covered by the Subdivision may be disallowed under one of three tests (the fixed ratio test, the group ratio test or the third party debt test); and
  - (b) how the entity can choose to apply which one of these tests applies; and
  - (c) where the fixed ratio test applies, whether the entity can claim a special deduction in respect of amounts previously disallowed under the fixed ratio test.

## **14 Section 820-10 (after table item 2)**

Insert:

- |    |                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|----|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2A | Subdivision 820-EAA | how all or a part of the debt deductions claimed by an entity covered by Subdivision 820-AA, 820-B or 820-C may be disallowed in relation to: <ul style="list-style-type: none"><li>(a) debt deductions in relation to the acquisition of CGT assets, or legal or equitable obligations, from associate pairs of the acquirer; or</li><li>(b) debt deductions in relation to a financial arrangement that is entered into by an entity to fund etc. certain payments or distributions to one or more associate pairs of the entity.</li></ul> |
| 2B | Subdivision 820-EAB | <ul style="list-style-type: none"><li>(a) concepts concerning third party debt; and</li><li>(b) concepts that are relevant to entities that choose to apply the third party debt test.</li></ul>                                                                                                                                                                                                                                                                                                                                              |

## **15 Section 820-30**

Omit “\*debt capital to finance their Australian operations”, substitute “\*debt deductions, in financing their Australian operations”.

## **15A After section 820-30**

Insert:

### **820-31 Order of application of Subdivisions**

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

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

**16 Section 820-32**

Before “This Division”, insert “(1)”.

**17 At the end of section 820-32**

Add:

- (2) Subsection (1) does not apply in relation to the following:
- (a) Subdivision 820-EAA;
  - (b) any other provision in this Division, to the extent that it relates to that Subdivision.

**18 Section 820-35**

Omit “Subdivision 820-B, 820-C, 820-D or 820-E”, substitute “Subdivision 820-AA, 820-B, 820-C, 820-D, 820-E or 820-EAA”.

**19 Subsection 820-37(1)**

Omit “Subdivision 820-B”, substitute “Subdivision 820-AA, 820-B”.

**20 Paragraphs 820-37(1)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) either:
- (i) the entity is an \*outward investing financial entity (non-ADI) or an \*outward investing entity (ADI) for a period that is all or any part of that year (and is not a \*general class investor for that year); or
  - (ii) assuming that the entity were a \*financial entity for all of that year, it would be, for all of that year, an outward investing financial entity (non-ADI) and *not* an inward investing financial entity (non-ADI); and
- (b) the entity is not also an \*inward investing financial entity (non-ADI) or an \*inward investing entity (ADI) for all or any part of that year; and

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

Omit “Subdivision 820-B”, substitute “Subdivision 820-AA, 820-B”.

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

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

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

Omit “Subdivision 820-B”, substitute “Subdivision 820-AA, 820-B”.

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

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

**23 Subsection 820-40(1)**

Omit “in relation to a \*debt interest issued by the entity,”.

**24 Subparagraph 820-40(1)(a)(i)**

Omit “or any other amount that is calculated by reference to the time value of money”, substitute “or any other amount that is economically equivalent to interest”.

**25 Subparagraph 820-40(1)(a)(ii)**

Omit “under the \*scheme giving rise to the debt interest”, substitute “under a \*scheme giving rise to a \*debt interest”.

**26 Subparagraph 820-40(1)(a)(iii)**

Omit “under the scheme giving rise to the debt interest”, substitute “under a scheme giving rise to a debt interest”.

**27 Paragraph 820-40(2)(c)**

Omit “the debt interest”, substitute “a \*debt interest”.

**28 Paragraph 820-40(3)(a)**

Repeal the paragraph.

**29 After Subdivision 820-A**

Insert:

## Subdivision 820-AA—Thin capitalisation rules for general class investors

### Guide to Subdivision 820-AA

#### 820-45 What this Subdivision is about

This Subdivision sets out the thin capitalisation rules that apply to general class investors (that is, entities that are not dealt with in rules set out in Subdivisions 820-B, 820-C, 820-D or 820-E). These rules deal with the following matters:

- how all or a part of the debt deductions claimed by the entity may be disallowed under one of three tests (the fixed ratio test, the group ratio test or the third party debt test);
- how the entity can choose to apply which one of these tests applies;
- where the fixed ratio test applies, whether the entity can claim a special deduction in respect of amounts previously disallowed under the fixed ratio test.

#### Table of sections

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- 820-57 Meaning of *FRT disallowed amount*  
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## Operative provisions

### 820-46 Thin capitalisation rule for general class investors

#### *Thin capitalisation rule*

- (1) This subsection disallows all or part of an entity's \*debt deductions for an income year if, for that year:
- (a) the entity is a \*general class investor (see subsection (2)); and
  - (b) the entity:
    - (i) has *not* made a choice under subsection (3) or (4) (fixed ratio test applies); or
    - (ii) has made a choice under subsection (3) (group ratio test applies); or
    - (iii) has made a choice under subsection (4) (third party debt test applies).

Note 1: This Subdivision does not apply if the total debt deductions of that entity and all its associate entities for that year are \$2 million or less, see section 820-35.

Note 2: To work out the amount to be disallowed, see section 820-50.

Note 3: A consolidated group or MEC group may be a general class investor to which this Subdivision applies: see Subdivisions 820-FA and 820-FB.

#### *General class investor*

- (2) The entity is a **general class investor** for an income year if, and only if:
- (a) for a period that is all or part of the income year, the entity is *not* any of the following:
    - (i) an \*outward investing financial entity (non-ADI);
    - (ii) an \*inward investing financial entity (non-ADI);
    - (iii) an \*outward investing entity (ADI);
    - (iv) an \*inward investing entity (ADI); and

- (b) assuming that the entity were a \*financial entity for all of the income year, it would be, for the income year, any of the following:
    - (i) an outward investing financial entity (non-ADI);
    - (ii) an inward investing financial entity (non-ADI).
- (3) An entity that is a \*general class investor for an income year may make a choice under this subsection to apply the group ratio test in relation to that income year if:
  - (a) the entity is a \*GR group member for the period corresponding to the income year of a \*GR group for the period; and
  - (b) the \*GR group EBITDA for the period of the GR group is greater than zero.
- (4) An entity that is a \*general class investor for an income year may make a choice under this subsection to apply the third party debt test in relation to that income year.
- (5) An entity that is a \*general class investor for an income year is taken to have made a choice under subsection (4) in relation to that income year if section 820-48 applies to the entity in relation to that income year.
- (6) Subsection (5) applies despite subsection 820-47(1).

**820-47 Choices under subsection 820-46(3) or (4)**

- (1) A choice under subsection 820-46(3) or (4) can only be made in the \*approved form.
- (2) A choice under subsection 820-46(3) or (4) can only be made:
  - (a) on or before the earlier of the following days:
    - (i) the day the entity lodges its \*income tax return for the income year;
    - (ii) the day the entity is required to lodge its income tax return for the income year; or
  - (b) a later day allowed by the Commissioner.
- (3) Subject to subsections (4) and (4A) of this section, a choice under subsection 820-46(3) or (4) cannot be revoked.

- (4) An entity that makes a choice under subsection 820-46(3) or (4) (other than a choice that is taken to have been made under subsection 820-46(5)) may revoke the choice if the Commissioner makes a decision to that effect under subsection (6).
- (4A) If, under subsection 820-46(5), an entity is taken to have made a choice to apply the third party debt test in relation to an income year:
- (a) the entity may *not* make a choice under subsection 820-46(3) (group ratio test applies) in relation to that income year; and
  - (b) any choice previously made under subsection 820-46(3) by the entity in relation to that income year is revoked and taken never to have been made.
- (5) For the purposes of this Division (other than this section), if a choice is revoked under subsection (4) or (4A) of this section, the entity is taken to have never made the choice.
- (6) The Commissioner can decide, in writing, that a specified entity can revoke a specified choice under subsection 820-46(3) or (4) (other than a choice that is taken to have been made under subsection 820-46(5)) in relation to an income year, if the Commissioner is satisfied that all of the following conditions are satisfied:
- (a) the entity made the choice;
  - (c) the entity has applied to the Commissioner, in the \*approved form, to revoke the choice before the earlier of the following days:
    - (i) the day that is 4 years after the day the entity lodged its \*income tax return for the income year;
    - (ii) the day that is 4 years after the day the entity was required to lodge its income tax return for the income year;
  - (d) it is fair and reasonable, having regard to matters the Commissioner considers relevant, to allow the entity to revoke the choice.
- (7) If the Commissioner makes a decision under subsection (6), the Commissioner must give a copy of the decision to the entity as soon as practicable.
-

### 820-48 Where entity is taken to make third party debt test choice

- (1) For the purposes of subsection 820-46(5), this section applies to an entity (the *first entity*) in relation to an income year if:
  - (a) the first entity is a \*member of an \*obligor group in relation to a \*debt interest; and
  - (b) the entity that issued the debt interest:
    - (i) has made a choice under subsection 820-46(4) in relation to that income year (including a choice that is taken to be made under subsection 820-46(5) in relation to a different obligor group); and
    - (ii) is required to lodge an \*income tax return for the income year; and
  - (c) the first entity:
    - (i) is an \*associate entity of the entity mentioned in paragraph (b) of this subsection; and
    - (ii) is required to lodge an \*income tax return for the income year.
- (2) For the purposes of subparagraph (1)(c)(i), in determining whether an entity is an *associate entity* of another entity:
  - (aa) disregard the requirement in subsections 820-905(1) and (2A) that the entity is an \*associate of the other entity, unless only paragraph 820-905(1)(b) applies; and
  - (a) treat the references in paragraphs 820-905(1)(a) and 820-905(2A)(a) to “an \*associate interest of 50% or more” as instead being a reference to “a \*TC control interest of 20% or more”; and
  - (b) treat subsection 820-860(3) as applying for the purposes of determining whether the entity is an associate entity of the other entity (as a result of paragraph (a) of this subsection); and
  - (c) treat the purposes mentioned in subparagraphs 820-870(1)(b)(i) and (ii) as including the purposes of determining whether the entity is an associate entity of the other entity (as a result of paragraph (a) of this subsection).

- (3) For the purposes of subsection 820-46(5), this section also applies to the entity mentioned in that subsection in relation to an income year if:
- (a) the entity has entered into a \*cross staple arrangement with one or more other entities; and
  - (b) one or more of those other entities has made a choice under subsection 820-46(4) in relation to that income year (including a choice that is taken to be made under subsection 820-46(5)).

#### **820-49 Meaning of *obligor group* etc.**

- (1) Subsection (2) applies if:
- (a) an entity (the *borrower*) has issued a \*debt interest to another entity (the *creditor*); and
  - (b) the creditor has recourse for payment of the debt to which the debt interest relates to assets of one or more other entities (each of which is an *obligor entity*).
- (2) Each obligor entity and the borrower is a *member* of an *obligor group* in relation to the \*debt interest.
- (3) For the purposes of paragraph (1)(b), disregard assets that are \*membership interests in the borrower.

#### **820-50 Amount of debt deduction disallowed**

- (1) The amount (the *total disallowed amount*) disallowed under subsection 820-46(1) of the \*debt deductions of an entity for an income year is:
- (a) if the entity has *not* made a choice under subsection 820-46(3) or (4) in relation to the income year (fixed ratio test applies)—the amount by which the entity's \*net debt deductions for the income year exceed the entity's \*fixed ratio earnings limit for the income year (see section 820-51); or
  - (b) if the entity has made a choice under subsection 820-46(3) in relation to the income year (group ratio test applies)—the amount by which the entity's net debt deductions for the

income year exceed the entity's \*group ratio earnings limit for the income year (see section 820-51); or

- (c) if the entity has made a choice under subsection 820-46(4) in relation to the income year (third party debt test applies)—the amount by which the entity's debt deductions for the income year exceed the entity's \*third party earnings limit for the income year (see section 820-427A).

Note 1: The disallowed amount also does not form part of the cost base of a CGT asset. See section 110-54.

Note 2: The entity's net debt deductions for the income year can be a negative amount.

- (2) The amount by which a particular \*debt deduction is disallowed as a result of subsection (1) is worked out as follows:
- (a) first, divide the total disallowed amount by the \*debt deductions of the entity for the income year;
- (b) next, multiply the amount of the particular debt deduction by the result of paragraph (a).
- (3) An entity's **net debt deductions** for an income year is worked out as follows:
- (a) first, work out the sum of the entity's \*debt deductions (disregarding this Division other than Subdivision 820-EAA) for the income year;
- (b) next, work out the sum of each amount included in the entity's assessable income for that year that is:
- (i) interest, an amount in the nature of interest, or any other amount that is economically equivalent to interest; or
- (ii) any amount directly incurred by another entity in obtaining or maintaining the financial benefits received, or to be received, by the other entity under a \*scheme giving rise to a \*debt interest; or
- (iii) any other expense that is incurred by another entity and that is specified in the regulations made for the purposes of this subparagraph;
- (c) next, subtract the result of paragraph (b) from the result of paragraph (a).
- (4) To avoid doubt, an entity's **net debt deductions** for an income year can be a negative amount.
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**820-51 Meaning of *fixed ratio earnings limit* and *group ratio earnings limit***

- (1) An entity's ***fixed ratio earnings limit*** for an income year is 30% of its \*tax EBITDA for the income year.
- (2) An entity's ***group ratio earnings limit*** for an income year is its \*group ratio for the income year multiplied by its \*tax EBITDA for the income year.

**820-52 Meaning of *tax EBITDA***

- (1) An entity's ***tax EBITDA*** for an income year is worked out as follows:
  - (a) first, work out the entity's taxable income or \*tax loss for the income year (disregarding the operation of this Division (other than Subdivision 820-EAA) and treating a tax loss as a negative amount);
  - (b) next, add the entity's \*net debt deductions for the income year;
  - (c) next, add the sum of the entity's deductions (if any) from its assessable income for the income year that are any of the following:
    - (i) \*general deductions that relate to forestry establishment and preparation costs unless those costs relate to the clearing of native forests;
    - (ii) deductions under Divisions 40 and 43 (other than deductions for the entire amount of an expense incurred by the entity);
    - (iii) deductions under section 70-120;
  - (ca) next, if the entity is an entity to which subsection 820-60(1) applies—add the \*excess tax EBITDA amount (if any) worked out under that section for the income year;
  - (d) next, make adjustments to the result of paragraph (c) or (ca), as the case requires, in accordance with regulations (if any) made for the purposes of this paragraph.

If the result of paragraph (d) is less than zero, treat it as being zero.

Note: The entity's net debt deductions for the income year can be a negative amount.

*Tax losses from earlier income years*

- (1A) In working out the taxable income or \*tax loss of a \*corporate tax entity for an income year for the purposes of subsection (1), assume that:
- (a) the entity chooses to deduct, under subsection 36-17(2) or (3), all of the entity's tax losses for \*loss years occurring before the income year; and
  - (b) subsection 36-17(5) does *not* apply to that choice.

*Franked distributions*

- (2) For the purposes of this section, disregard Division 207, to the extent that Division results in an amount of, or a \*share of, a \*franking credit being included in the entity's assessable income for the income year.

*Dividends etc.*

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

*Trusts other than AMITs*

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

- (5) To avoid doubt, for the purposes of references in subsection (4) to net income, do not make the assumption in subsection 102UX(3) of the *Income Tax Assessment Act 1936*.

*Beneficiaries of trusts other than AMITs*

- (6) In working out the taxable income or \*tax loss of an entity for the purposes of subsection (1), if the entity is a beneficiary of a trust other than an \*AMIT, and is an \*associate entity of the trust:
- (a) disregard the operation of the following provisions in relation to the trust:
    - (i) Subdivision 115-C;
    - (ii) Division 6 of Part III of the *Income Tax Assessment Act 1936*; and
  - (b) disregard distributions from the trust to the entity.

*Attribution managed investment trusts*

- (6A) If the entity is an \*AMIT:
- (a) treat the reference in subsection (1) to the entity's taxable income as being a reference to the \*net income of the entity; and
  - (b) treat the reference in subsection (1) to the entity's \*net debt deductions as being a reference to the entity's net debt deductions taken into account in working out that net income; and
  - (c) treat the reference in subsection (1) to the entity's deductions as being a reference to the entity's deductions taken into account in working out that net income; and
  - (d) treat the references in subsection (1) to the entity's assessable income as being a reference to the entity's assessable income taken into account in working out that net income.

*Members of AMITs*

- (6B) In working out the taxable income or \*tax loss of an entity for the purposes of subsection (1), if the entity is a member of an \*AMIT, and is an \*associate entity of the AMIT:
- (a) disregard the operation of Division 276 in relation to the AMIT; and

- (b) disregard distributions from the AMIT to the entity.

*Partnerships*

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

*Partners in partnerships*

- (8) In working out the taxable income or \*tax loss of an entity for the purposes of subsection (1), if the entity is a partner in a partnership, and is an \*associate entity of the partnership, disregard the operation of Division 5 of Part III of the *Income Tax Assessment Act 1936*.

*Associate entity test—TC control interest of 10% or more*

- (9) For the purposes of subsections (3), (6), (6B) and (8), in determining whether an entity is an **associate entity** of another entity:
  - (aa) disregard the requirement in subsections 820-905(1) and (2A) that the entity is an \*associate of the other entity, unless only paragraph 820-905(1)(b) applies; and
  - (a) treat the references in paragraphs 820-905(1)(a) and 820-905(2A)(a) to “an \*associate interest of 50% or more” as instead being a reference to “a \*TC control interest of 10% or more”; and
  - (b) treat subsection 820-860(3) as applying for the purposes of determining whether the entity is an associate entity of the

other entity (as a result of paragraph (a) of this subsection);  
and

- (c) treat the purposes mentioned in subparagraphs 820-870(1)(b)(i) and (ii) as including the purposes of determining whether the entity is an associate entity of the other entity (as a result of paragraph (a) of this subsection).

*Notional deductions of R&D entities*

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

**820-53 Meaning of *group ratio*, *GR group*, *GR group parent* and *GR group member***

- (1) If an entity is a \*GR group member for a period of a \*GR group for the period, the entity's *group ratio* for the income year corresponding to the period is worked out as follows:
- (a) first, work out the \*GR group net third party interest expense, for that period, of the GR group;
  - (b) next, work out the \*GR group EBITDA for that period of the GR group;
  - (c) next, divide the result of paragraph (a) by the result of paragraph (b).

If the result of paragraph (b) is zero, the entity's *group ratio* for the income year is zero.

Note: The entity must keep records in accordance with section 820-985 if the entity works out a group ratio under this section.

- (2) A **GR group**, for a period, is:
- (a) if \*audited consolidated financial statements for the period have been prepared for a worldwide parent entity (as described in subsection 820-935(6))—the group comprised of all of the following:
    - (i) the worldwide parent entity;

- (ii) each other entity that is fully consolidated on a line-by-line basis in those audited consolidated financial statements; or
  - (b) if paragraph (a) does not apply, and \*global financial statements have been prepared for the period for a \*global parent entity—the group comprised of all of the following:
    - (i) the global parent entity;
    - (ii) each other entity that is fully consolidated on a line-by-line basis in those global financial statements.
- (3) If paragraph (2)(a) applies:
  - (a) the **GR group parent** for the period of the \*GR group is the worldwide parent entity mentioned in that paragraph; and
  - (b) each of the entities mentioned in that paragraph is a **GR group member** for the period of the \*GR group.
- (4) If paragraph (2)(b) applies:
  - (a) the **GR group parent** for the period of the \*GR group is the \*global parent entity mentioned in that paragraph; and
  - (b) each of the entities mentioned in that paragraph is a **GR group member** for the period of the \*GR group.

**820-54 Meaning of *GR group net third party interest expense, financial statement net third party interest expense and adjusted net third party interest expense***

- (1) The **GR group net third party interest expense**, for a period, of a \*GR group for the period, is the amount that would be the group's \*financial statement net third party interest expense for the period, if:
  - (a) where paragraph 820-53(2)(a) applies—the \*audited consolidated financial statements for the period for the \*GR group parent for the period of the group were prepared on the basis that the following were treated as interest:
    - (i) an amount in the nature of interest;
    - (ii) any other amount that is economically equivalent to interest; or
  - (b) where paragraph 820-53(2)(b) applies—the \*global financial statements for the period for the GR group parent for the

period of the group were prepared on the basis that the following were treated as interest:

- (i) an amount in the nature of interest;
- (ii) any other amount that is economically equivalent to interest.

(2) The *financial statement net third party interest expense*, for a period, of a \*GR group for the period, is:

(a) the amount of the \*GR group's net third party interest expense for the period, as disclosed in the following statements:

- (i) if paragraph 820-53(2)(a) applies—the \*audited consolidated financial statements for the \*GR group parent for the period for the GR group;
- (ii) if paragraph 820-53(2)(b) applies—the \*global financial statements for the GR group parent for the period for the GR group;

reduced by the amount of each payment (if any) covered by subsection (3), to the extent that it was a factor in working out that net third party interest expense; or

(b) if those statements do not disclose that net third party interest expense—the amount worked out as follows:

- (i) first, identify the amount of the group's third party interest expenses for the period disclosed in those statements;
- (ii) next, reduce the result of subparagraph (i) by the amount of each payment (if any) covered by subsection (3), to the extent that it was a factor in working out those third party interest expenses;
- (iii) next, reduce the result of subparagraph (ii) by the amount of the group's third party interest income for the period disclosed in those statements;
- (iv) next, increase the result of subparagraph (iii) by the amount of each payment (if any) covered by subsection (3), to the extent that it was a factor in working out that third party interest income.

(3) For the purposes of subsection (2), this subsection covers a payment if:

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- (a) the payment is made by an entity to an \*associate entity of the entity; and
  - (b) either:
    - (i) the entity is a \*GR group member for the period of the \*GR group and the associate entity is *not* such a GR group member; or
    - (ii) the entity is not a GR group member for the period of the GR group and the associate entity is such a GR group member.
- (4) The ***adjusted net third party interest expense***, for a period, of an entity or a \*GR group is:
- (a) for an entity—the amount that would be the entity’s net interest expense for the period if the following payments were disregarded:
    - (i) a payment that is made by the entity to an \*associate entity of the entity;
    - (ii) a payment that is made by an associate entity of the entity to the entity; or
  - (b) for a GR group—the amount that would be the GR group’s net interest expense for the period if the following payments were disregarded:
    - (i) a payment that is made by a \*GR group member of the GR group to an associate entity of any GR group member of the GR group;
    - (ii) a payment that is made by an associate entity of a GR group member of the GR group to any GR group member of the GR group.
- (5) For the purposes of subsections (3) and (4), in determining whether an entity is an ***associate entity*** of another entity:
- (aa) disregard the requirement in subsections 820-905(1) and (2A) that the entity is an \*associate of the other entity, unless only paragraph 820-905(1)(b) applies; and
  - (a) treat the references in paragraphs 820-905(1)(a) and 820-905(2A)(a) to “an \*associate interest of 50% or more” as instead being a reference to “a \*TC control interest of 20% or more”; and

- (b) treat subsection 820-860(3) as applying for the purposes of determining whether the entity is an associate entity of the other entity (as a result of paragraph (a) of this subsection); and
- (c) treat the purposes mentioned in subparagraphs 820-870(1)(b)(i) and (ii) as including the purposes of determining whether the entity is an associate entity of the other entity (as a result of paragraph (a) of this subsection).

### **820-55 Meaning of *entity EBITDA* and *GR group EBITDA***

- (1) The ***entity EBITDA*** of an entity, for a period, is the sum of the following for the entity for the period:
  - (a) the entity's net profit (disregarding tax expenses);
  - (b) the entity's \*adjusted net third party interest expense;
  - (c) the entity's depreciation and amortisation expenses.
- (2) The ***GR group EBITDA***, for a period, of a \*GR group for the period, is the sum of the following:
  - (a) the GR group's net profit (disregarding tax expenses);
  - (b) the GR group's \*adjusted net third party interest expense;
  - (c) the GR group's depreciation and amortisation expenses;as disclosed in:
  - (d) if paragraph 820-53(2)(a) applies—the \*audited consolidated financial statements for the \*GR group parent for the period for the GR group; or
  - (e) if paragraph 820-53(2)(b) applies—the \*global financial statements for the GR group parent for the period for the GR group.
- (3) For the purposes of subsection (2), in working out the \*GR group's \*GR group EBITDA for the period, if a \*GR group member for the period of the GR group has an \*entity EBITDA for the period of less than zero, disregard that entity EBITDA.
- (4) To avoid doubt, for the purposes of this section, an entity's, or a \*GR group's, net profit (disregarding tax expenses) can be a negative amount.

**820-56 Special deduction for previously FRT disallowed amounts—  
fixed ratio test**

- (1) An entity can deduct the amount worked out under subsection (2) from its assessable income for the income year if:
- (a) the entity has *not* made a choice under subsection 820-46(3) or (4) in relation to the income year (fixed ratio test applies); and
  - (b) the entity's \*fixed ratio earnings limit for the income year exceeds the sum of the entity's \*net debt deductions for the income year.

Note: The entity's net debt deductions for the income year can be a negative amount.

- (2) Work out the amount of the deduction as follows:
- (a) first, work out the amount of the excess mentioned in paragraph (1)(b);
  - (b) next, apply against that excess each of the entity's \*FRT disallowed amounts for the previous 15 income years (to the extent that they have not already been applied under this paragraph in respect of any of those previous income years).

The amount of the deduction is the total amount applied under paragraph (b).

- (3) For the purposes of paragraph (2)(b):
- (a) apply \*FRT disallowed amounts in sequence, where a FRT disallowed amount for an earlier income year is applied before a FRT disallowed amount from a later income year; and
  - (b) apply FRT disallowed amounts up to, but not beyond, the excess mentioned in paragraph (1)(b).

Note: As a result of paragraph (3)(b), part of a FRT disallowed amount may be applied against the excess mentioned in paragraph (1)(b).

**820-57 Meaning of FRT disallowed amount**

An entity has a *fixed ratio test disallowed amount* (or *FRT disallowed amount*) for an income year equal to:

- (a) if \*debt deductions of the entity for the income year are disallowed under subsection 820-46(1) and the amount

disallowed is worked out in accordance with paragraph 820-50(1)(a) (fixed ratio test applies)—the amount disallowed; or

(b) otherwise—zero.

**820-58 FRT disallowed amount is treated as zero where subsequent choice means fixed ratio test does not apply**

- (1) Subsection (2) applies if:
  - (a) an entity has *not* made a choice under subsection 820-46(3) or (4) in relation to an income year; and
  - (b) the entity makes a choice under subsection 820-46(3) or (4) in relation to a subsequent income year.
- (2) Despite section 820-57, for the purpose of applying section 820-56 in respect of that subsequent income year and later income years, treat the entity as having a \*FRT disallowed amount of zero for every income year before that subsequent income year.

**820-59 When FRT disallowed amount is treated as zero for companies and trusts**

- (1) This section applies if an entity is a company or a trust.
- (2) This section applies for the purposes of applying a \*FRT disallowed amount of the entity for an income year (the *disallowance year*) under paragraph 820-56(2)(b), in order to work out the amount of a deduction from its assessable income for another income year (the *deduction year*) under subsection 820-56(1).
- (3) Despite section 820-57, treat the \*FRT disallowed amount for the disallowance year as being zero unless:
  - (a) if the entity is a company—subsection (4) applies; or
  - (b) if the entity is a trust—subsection (5) applies.

*Rules for companies*

- (4) This subsection applies if, assuming that:
    - (a) the \*FRT disallowed amount were a \*tax loss; and
    - (b) the disallowance year were the \*loss year; and
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(c) the following provisions were disregarded:

- (i) subsection 165-115B(3);
- (ii) subsection 165-115BA(5);
- (iii) section 415-35;

Divisions 165, 166 and 167 would not prevent the company from deducting the entire amount of that tax loss in the deduction year.

*Rules for trusts*

(5) This subsection applies if, assuming that:

- (a) the \*FRT disallowed amount were a tax loss (within the meaning of Schedule 2F to the *Income Tax Assessment Act 1936*); and
- (b) the disallowance year were a loss year (within the meaning of that Schedule);

that Schedule would not prevent the entity from deducting the entire amount of that tax loss in the deduction year.

## 820-60 Excess tax EBITDA amount

*Scope*

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

- (a) the controlling entity is, for a period that is all or part of an income year, one of the following entities:
  - (i) a company that is an \*Australian entity;
  - (ii) a unit trust that is a \*resident trust for CGT purposes;
  - (iii) a \*managed investment trust;
  - (iv) a partnership that is an Australian entity; and
- (b) the controlling entity is a \*general class investor for all or part of the income year; and
- (c) the controlling entity has not made a choice under subsection 820-46(3) or (4) in relation to the income year; and
- (d) one or more other entities (each of which is a **controlled entity**) satisfy the conditions in subsection (2) of this section in relation to the controlling entity for the income year.

- (2) An entity (the **test entity**) satisfies the conditions in this subsection in relation to the controlling entity for an income year if:
- (a) the controlling entity has a \*TC direct control interest of 50% or more in the test entity at any time during the income year; and
  - (b) the test entity is, for a period that is all or part of the income year, one of the following entities:
    - (i) a company that is an \*Australian entity;
    - (ii) a unit trust that is a \*resident trust for CGT purposes;
    - (iii) a \*managed investment trust;
    - (iv) a partnership that is an Australian entity; and
  - (c) the test entity is a \*general class investor for all or part of the income year; and
  - (d) the test entity has not made a choice under subsection 820-46(3) or (4) in relation to the income year.

*Excess tax EBITDA amount*

- (3) The controlling entity's **excess tax EBITDA amount** for the income year is the amount worked out using the following method statement.

*Method statement*

- Step 1. For each controlled entity, work out the amount (if any) by which the \*fixed ratio earnings limit of the controlled entity for the income year exceeds the sum of the following:
- (a) the controlled entity's \*net debt deductions for the income year (for the purposes of this paragraph, treat a negative amount of net debt deductions as nil);
  - (b) the total of the controlled entity's \*FRT disallowed amounts for the 15 income years ending immediately before the income year (to the extent those amounts have not been applied under section 820-56).

**Schedule 2** Thin capitalisation  
**Part 1** Amendments

- Step 2. For each controlled entity:
- (a) work out the controlling entity’s \*TC direct control interest for each day in the income year; and
  - (b) for each day on which the amount was 50% or greater, add the amounts; and
  - (c) divide the result of paragraph (b) by the number of days in the income year during which the controlled entity was in existence. Express the result as a percentage.
- Step 3. For each controlled entity, multiply the result of step 1 by the percentage worked out under step 2. If the amount worked out under step 1 for a controlled entity is nil, the result for that controlled entity under this step will be nil.
- Step 4. Add up the amounts worked out under step 3.
- Step 5. Divide the result of step 4 by 0.3. The result of this step is the *excess tax EBITDA amount*.

*Modification of TC direct control interest—companies*

- (4) For the purposes of this section, in working out whether the controlling entity holds a \*TC direct control interest in a company, apply subsection 820-855(2) as if it instead included the modifications of Part X of the *Income Tax Assessment Act 1936* set out in the following table.

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

<b>Item</b>	<b>Provisions</b>	<b>Modifications</b>
1	Section 350 (including any other provision in Part X of the <i>Income Tax Assessment Act 1936</i> that defines a term used in the section)	The section applies for the purposes of this section and Subdivision 820-H rather than only for the purposes of Part X of the <i>Income Tax Assessment Act 1936</i>
2	Subsection 350(1)	The reference to “greater or greatest” is taken to be a reference to “lesser or least”

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

<b>Item</b>	<b>Provisions</b>	<b>Modifications</b>
3	Subsection 350(2)	The reference to “highest” is taken to be a reference to “lowest”
4	Subsections 350(6) and (7)	The subsections do not apply

*Modification of TC direct control interest—trusts*

- (5) For the purposes of this section, in working out whether the controlling entity holds a \*TC direct control interest in a trust, apply subsection 820-860(2) as if it also included the modifications of Part X of the *Income Tax Assessment Act 1936* set out in the following table.

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

<b>Item</b>	<b>Provisions</b>	<b>Modifications</b>
3	Subsection 351(1)	The reference to “greater of those percentages” reads “lesser of those percentages”
4	Subsections 351(2) to (4)	The subsections do not apply

*Modification of TC direct control interest—partnerships*

- (6) For the purposes of this section, in working out whether the controlling entity holds a \*TC direct control interest in a partnership, apply section 820-865 as if:
- (a) the reference to “greatest” were a reference to “least”; and
  - (b) paragraph 820-865(b) were omitted.

*Modified meaning of Australian entity*

- (7) For the purposes of this section, in determining whether an entity is an \*Australian entity (including for the purposes of determining whether another entity is a \*foreign entity) at a particular time:
- (a) for the purposes of paragraph 336(a) of the *Income Tax Assessment Act 1936*, treat a partnership as being an Australian entity if, at that time, a \*direct participation interest of 50% or more is held in the partnership by one or more of the following:

- (i) an Australian resident;
  - (ii) an \*Australian trust; and
- (b) disregard section 337 of that Act.

### 30 Subdivision 820-B (heading)

After “investing”, insert “financial”.

### 31 Section 820-65

Omit “an Australian entity that has certain types of overseas investments and is not an authorised deposit-taking institution (an *ADI*)”, substitute “an entity that is an outward investing financial entity (non-ADI) for all of an income year”.

### 32 Section 820-85 (heading)

After “investing”, insert “financial”.

### 33 Subsections 820-85(1) and (2)

Repeal the subsections, substitute:

*Thin capitalisation rule*

(1A) Subsection (1) applies if:

- (a) an entity is an \*outward investing financial entity (non-ADI) (see subsection (2)) for all of an income year; and
- (b) either:
  - (i) the entity has made a choice under subsection (2C) in relation to the income year; or
  - (ii) otherwise—the entity’s \*adjusted average debt (see subsection (3)) for the income year exceeds its \*maximum allowable debt (see section 820-90) for the income year.

Note: This Subdivision does not apply if the total debt deductions of that entity and all its associate entities for that year are \$2 million or less, see section 820-35.

(1) This subsection disallows:

- (a) if paragraph (1A)(b)(i) applies—all or part of the entity’s \*debt deductions for the income year (to the extent that they

are not attributable to an \*overseas permanent establishment of the entity); or

- (b) if paragraph (1A)(b)(ii) applies—all or a part of each debt deduction of the entity for the income year (to the extent that it is not attributable to an overseas permanent establishment of the entity).

Note 1: To work out the amount to be disallowed, see section 820-115.

Note 2: For the rules that apply to an entity that is an outward investing financial entity (non-ADI) for only a part of an income year, see section 820-120 in conjunction with subsection (2) of this section.

Note 3: A consolidated group or MEC group may be an outward investing financial entity (non-ADI) to which this Subdivision applies: see Subdivisions 820-FA and 820-FB.

*Outward investing financial entity (non-ADI)*

- (2) The entity is an **outward investing financial entity (non-ADI)** for a period that is all or a part of an income year if, and only if, it is an \*outward investor (financial) for that period (according to the items of the following table).

<b>Outward investing financial entity (non-ADI)</b>			
<b>Item</b>	<b>If:</b>	<b>and:</b>	<b>then:</b>
1	the entity (the <b>relevant entity</b> ) is one or both of the following throughout a period that is all or a part of an income year: (a) an *Australian controller of at least one *Australian controlled foreign entity (not necessarily the same Australian controlled foreign entity throughout that period); (b) an Australian entity that carries on a *business at or through at least one *overseas permanent establishment (not necessarily the same permanent establishment throughout that period)	the relevant entity is a *financial entity throughout that period	the relevant entity is an <b>outward investing financial entity (non-ADI)</b> for that period

Schedule 2 Thin capitalisation  
Part 1 Amendments

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**Outward investing financial entity (non-ADI)**

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<b>Item</b>	<b>If:</b>	<b>and:</b>	<b>then:</b>
2	(a) the entity (the <i>relevant entity</i> ) is an *Australian entity throughout a period that is all or a part of an income year; and (b) throughout that period, the relevant entity is an *associate entity of another Australian entity; and (c) that other Australian entity is an *outward investing financial entity (non-ADI) or an *outward investing entity (ADI) for that period	the relevant entity is a *financial entity throughout that period	the relevant entity is an <i>outward investing financial entity (non-ADI)</i> for that period

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Note: To determine whether an entity is an Australian controller of an Australian controlled foreign entity, see Subdivision 820-H.

- (2A) However, the entity is *not* an *outward investing financial entity (non-ADI)* for a period that is all or a part of an income year if it is a \*general class investor for that year.
- (2B) Subsection (2A) does not apply for the purposes of subsection 820-46(2) (definition of *general class investor*).
- (2C) An entity that is an \*outward investing financial entity (non-ADI) for a period that is all or part of an income year may make a choice under this subsection to apply the third party debt test in relation to that income year.
- (2D) Section 820-47 applies in relation to a choice under subsection (2C) in the same way that it applies in relation to a choice under subsection 820-46(3) or (4).

**34 Subsection 820-90(1) (heading)**

Omit “*inward investment vehicle (general) or*”.

**35 Subsection 820-90(1)**

Omit “an \*inward investment vehicle (general) or”.

**36 Paragraph 820-90(1)(b)**

Repeal the paragraph.

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**37 Subsection 820-90(1) (notes 1 and 2)**

Repeal the notes.

**38 Subsection 820-90(2) (heading)**

Omit “*inward investment vehicle (general) or*”.

**39 Subsection 820-90(2)**

Omit “an \*inward investment vehicle (general) or”.

**40 Paragraph 820-90(2)(b)**

Repeal the paragraph.

**41 Subsection 820-90(2) (notes 1 and 2)**

Repeal the notes.

**42 Section 820-95**

Repeal the section.

**43 Section 820-100 (heading)**

Omit “**investor (financial)**”, substitute “**investing financial entity (non-ADI)**”.

**44 Subsection 820-100(1)**

Omit “investor (financial)”, substitute “investing financial entity (non-ADI)”.

**45 Section 820-105**

Repeal the section.

**46 Subsection 820-110(1)**

Repeal the subsection.

**47 Subsection 820-110(2) (heading)**

Omit “*investor (financial)*”, substitute “*investing financial entity (non-ADI)*”.

**48 Subsection 820-110(2)**

Omit “(2) If the entity is an \*outward investor (financial)”, substitute “If the entity is an \*outward investing financial entity (non-ADI)”.

**49 Subsection 820-111(1)**

Repeal the subsection.

**50 Subsection 820-111(2) (heading)**

Omit “*investor (financial)*”, substitute “*investing financial entity (non-ADI)*”.

**51 Subsection 820-111(2)**

Omit “(2) If the entity is an \*outward investor (financial)”, substitute “If the entity is an \*outward investing financial entity (non-ADI)”.

**52 Section 820-115**

Omit:

The amount of \*debt deduction disallowed under subsection 820-85(1) is worked out using the following formula:  
substitute:

- (1) If subparagraph 820-85(1A)(b)(i) applies, the amount (the ***total disallowed amount***) disallowed under subsection 820-85(1) of the \*debt deductions of an entity for an income year is the amount by which those debt deductions (to the extent that they are not attributable to an \*overseas permanent establishment of the entity) exceed the entity’s \*third party earnings limit for the income year (see section 820-427A).

Note: The disallowed amount also does not form part of the cost base of a CGT asset. See section 110-54.

- (2) The amount by which a particular \*debt deduction is disallowed as a result of subsection (1) is worked out as follows:
  - (a) first, divide the total disallowed amount by the \*debt deductions of the entity for the income year;
  - (b) next, multiply the amount of the particular debt deduction by the result of paragraph (a).

- (3) If subparagraph 820-85(1A)(b)(ii) applies, the amount of a \*debt deduction of an entity for an income year disallowed under subsection 820-85(1) is worked out using the following formula:

**53 Paragraph 820-120(1)(a)**

After “investing”, insert “financial”.

**54 Subdivision 820-C (heading)**

After “investing”, insert “financial”.

**55 Section 820-180**

Omit “a foreign entity or a foreign controlled Australian entity that is not an authorised deposit-taking institution (an *ADI*)”, substitute “an entity that is an inward investing financial entity (non-ADI) for all of an income year (but not an outward investing financial entity (non-ADI) for all or any part of that year)”.

**56 Section 820-185 (heading)**

After “investing”, insert “financial”.

**57 Subsections 820-185(1) and (2)**

Repeal the subsections, substitute:

*Thin capitalisation rule*

(1A) Subsection (1) applies if:

- (a) an entity is an \*inward investing financial entity (non-ADI) (see subsection (2)) for all of an income year, but is not also an \*outward investing financial entity (non-ADI) (see section 820-85) for all or any part of that year; and
- (b) either:
  - (i) the entity has made a choice under subsection (2C) in relation to the income year; or
  - (ii) otherwise—the entity’s \*adjusted average debt (see subsection (3)) for the income year exceeds its \*maximum allowable debt (see section 820-190) for the income year.

**Schedule 2** Thin capitalisation  
**Part 1** Amendments

Note: This Subdivision does not apply if the total debt deductions of that entity and all its associate entities for that year are \$2 million or less, see section 820-35.

- (1) This subsection disallows:
- (a) if paragraph (1A)(b)(i) applies—all or part of the entity’s \*debt deductions for the income year; or
  - (b) if paragraph (1A)(b)(ii) applies—all or a part of each debt deduction of the entity for the income year.

Note 1: To work out the amount to be disallowed, see section 820-220.

Note 2: For the rules that apply to an entity that is an outward investing financial entity (non-ADI) as well as an inward investing financial entity (non-ADI), see Subdivision 820-B.

Note 3: For the rules that apply to an entity that is an inward investing financial entity (non-ADI) for only a part of an income year, see section 820-225 in conjunction with subsection (2) of this section.

Note 4: To calculate an average value for the purposes of this Division, see Subdivision 820-G.

Note 5: A consolidated group or MEC group may be an inward investing financial entity (non-ADI) to which this Subdivision applies: see Subdivisions 820-FA and 820-FB.

*Inward investing financial entity (non-ADI)*

- (2) The entity is an ***inward investing financial entity (non-ADI)*** for a period that is all or a part of an income year if, and only if, it is:
- (b) an \*inward investment vehicle (financial) for that period (as set out in item 1 of the following table); or
  - (d) an \*inward investor (financial) for that period (as set out in item 2 of that table).

**Inward investing financial entity (non-ADI)**

<b>Item</b>	<b>If the entity is a:</b>	<b>and the entity:</b>	<b>the entity is an:</b>
1	*foreign controlled Australian entity throughout a period that is all or a part of an income year	is a *financial entity throughout that period	<b><i>inward investment vehicle (financial)</i></b> for that period
2	*foreign entity throughout a period that is all or a part of an income year	is a *financial entity throughout that period	<b><i>inward investor (financial)</i></b> for that period

Note 1: To determine whether an entity is a foreign controlled Australian entity, see Subdivision 820-H.

Note 2: An entity covered by item 2 of the table may be required to keep certain records, see Subdivision 820-L.

(2A) However, the entity is *not* an **inward investing financial entity (non-ADI)** for a period that is all or a part of an income year if it is a \*general class investor for that year.

(2B) Subsection (2A) does not apply for the purposes of subsection 820-46(2) (definition of **general class investor**).

(2C) An entity that is an \*inward investing financial entity (non-ADI) for a period that is all or part of an income year may make a choice under this subsection to apply the third party debt test in relation to that income year.

(2D) Section 820-47 applies in relation to a choice under subsection (2C) in the same way that it applies in relation to a choice under subsection 820-46(3) or (4).

**58 Subsection 820-185(3) (method statement, step 2, paragraph (a))**

Omit “an \*inward investment vehicle (general) or”.

**59 Subsection 820-185(3) (method statement, step 2, paragraph (b))**

Omit “an \*inward investor (general) or”.

**60 Paragraph 820-190(1)(b)**

Repeal the paragraph.

**61 Subsection 820-190(1) (notes 1 and 2)**

Repeal the notes.

**62 Section 820-195**

Repeal the section.

**63 Section 820-205**

Repeal the section.

**64 Section 820-215**

Repeal the section.

**65 Section 820-216**

Repeal the section.

**66 Section 820-217**

Omit “investor (financial)”, substitute “investing financial entity (non-ADI)”.

**67 Section 820-218**

Repeal the section.

**68 Section 820-220**

Omit:

The amount of \*debt deduction disallowed under subsection 820-185(1) is worked out using the following formula:  
substitute:

- (1) If subparagraph 820-185(1A)(b)(i) applies, the amount (the ***total disallowed amount***) disallowed under subsection 820-185(1) of the \*debt deductions of an entity for an income year is the amount by which those debt deductions exceed the entity’s \*third party earnings limit for the income year (see section 820-427A).

Note: The disallowed amount also does not form part of the cost base of a CGT asset. See section 110-54.

- (2) The amount by which a particular \*debt deduction is disallowed as a result of subsection (1) is worked out as follows:
- (a) first, divide the total disallowed amount by the \*debt deductions of the entity for the income year;
  - (b) next, multiply the amount of the particular debt deduction by the result of paragraph (a).
- (3) If subparagraph 820-185(1A)(b)(ii) applies, the amount of a \*debt deduction of an entity for an income year disallowed under subsection 820-185(1) is worked out using the following formula:

**69 Subsection 820-225(1)**

Omit “investing” (wherever occurring), substitute “investing financial”.

**70 Subsection 820-225(2) (method statement, step 2, paragraph (a))**

Omit “an <sup>\*</sup>inward investment vehicle (general) or”.

**71 Subsection 820-225(2) (method statement, step 2, paragraph (b))**

Omit “an <sup>\*</sup>inward investor (general) or”.

**72 Subparagraph 820-300(2)(c)(ii)**

Omit “<sup>\*</sup>outward investing entity (non-ADI)”, substitute “<sup>\*</sup>outward investing financial entity (non-ADI)”.

**73 After subsection 820-300(2)**

Insert:

(2A) However, the entity is *not* an **outward investing entity (ADI)** for a period that is all or a part of an income year if it is a <sup>\*</sup>general class investor for that year.

(2B) Subsection (2A) does not apply for the purposes of subsection 820-46(2) (definition of **general class investor**).

**74 Subsection 820-330(1) (note)**

Omit “(non-ADI)”, substitute “(ADI)”.

**75 After subsection 820-395(2)**

Insert:

(2A) However, the entity is *not* an **inward investing entity (ADI)** for a period that is all or a part of an income year if it is a <sup>\*</sup>general class investor for that year.

(2B) Subsection (2A) does not apply for the purposes of subsection 820-46(2) (definition of **general class investor**).

## 76 After Subdivision 820-E

Insert:

### **Subdivision 820-EAA—Debt deduction limitation rules for debt deduction creation (all relevant entities)**

#### **Guide to Subdivision 820-EAA**

##### **820-423 What this Subdivision is about**

This Subdivision sets out debt deduction limitation rules that apply to entities that are dealt with in rules set out in Subdivisions 820-AA, 820-B, 820-C, 820-D or 820-E. These rules deal with:

- (a) debt deductions in relation to the acquisition of CGT assets, or legal or equitable obligations, from associate pairs of the acquirer; and
- (b) debt deductions in relation to a financial arrangement that is entered into by an entity to fund etc. certain payments or distributions to one or more associate pairs of the entity.

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

#### **Table of sections**

##### **Operative provisions**

- 820-423A Debt deduction limitation rule for debt deduction creation (all relevant entities)
- 820-423B Amount of debt deduction disallowed
- 820-423C This Subdivision does not limit reduction of debt deductions other provisions
- 820-423D Schemes relating to this Subdivision

## Operative provisions

### 820-423A Debt deduction limitation rule for debt deduction creation (all relevant entities)

#### *Debt deduction limitation rule*

- (1) This subsection disallows all or part of a \*debt deduction of an entity for an income year if, for that year:
- (a) the entity is any of the following for that year:
    - (i) a \*general class investor;
    - (ii) an \*outward investing financial entity (non-ADI);
    - (iii) an \*inward investing financial entity (non-ADI); and
  - (aa) the entity is *not* a \*securitisation vehicle; and
  - (b) subsection (2) or (5) applies.

Note 1: This Subdivision does not apply if the total debt deductions of that entity and all its associate entities for that year are \$2 million or less: see section 820-35.

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

Note 2: To work out the amount to be disallowed, see section 820-423B.

#### *Acquisition of CGT asset, or legal or equitable obligation*

- (2) This subsection applies if all of the following conditions are satisfied:
- (a) an entity (the **acquirer**) \*acquires a \*CGT asset, or a legal or equitable obligation, either directly, or indirectly through one or more interposed entities, from one or more other entities (each of which is a **disposer**);
  - (b) one or more of the disposers (each of which is an **associate disposer**) is an \*associate pair of the acquirer;
  - (c) the entity mentioned in subsection (1) (the **relevant entity**) is:
    - (i) the acquirer; or
    - (ii) an associate pair of the acquirer; or
    - (iii) an associate pair of an associate disposer;

- (d) the relevant entity's \*debt deduction mentioned in subsection (1) is, wholly or partly, in relation to any of the following:
    - (i) the acquisition mentioned in paragraph (a) of this subsection;
    - (ii) the acquirer's holding of the CGT asset, or legal or equitable obligation;
  - (e) the relevant entity's debt deduction mentioned in subsection (1) is referable to an amount paid or payable, either directly or indirectly, to any of the following:
    - (i) an associate pair of the relevant entity;
    - (ii) an associate pair of the acquirer;
    - (iii) an associate pair of an associate disposer;
  - (f) the acquisition mentioned in paragraph (a) of this subsection is not covered by section 820-423AA (which is about exceptions);
  - (g) the relevant entity has *not* made a choice under subsection 820-46(4) to use the third party debt test for the income year mentioned in subsection (1) of this section.
- (3) To avoid doubt, subsection (2) may apply more than once in relation to the \*acquisition of a \*CGT asset, or a legal or equitable obligation.
- (3A) For the purposes of subsection (2):
- (a) that subsection may apply in relation to an indirect \*acquisition by an entity through one or more interposed entities even if an acquisition in the series is covered by section 820-423AA (which is about exceptions); and
  - (b) in determining whether an acquisition occurs indirectly through one or more interposed entities:
    - (i) it is sufficient if acquisitions exist between each entity; and
    - (ii) it is not necessary to demonstrate that each acquisition in a series of acquisitions happened before the next acquisition.

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

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section. There may be an indirect acquisition of the CGT asset by Entity A.

- (4) For the purposes of subsections (2), (3) and (3A), disregard paragraph (b) of the definition of “acquire” in subsection 995-1(1).

*Financial arrangements involving associate pairs*

- (5) This subsection applies if all of the following conditions are satisfied:
- (a) an entity (the **payer**) enters into, or has a \*financial arrangement with another entity;
  - (b) the payer uses the financial arrangement to:
    - (i) fund; or
    - (ii) facilitate the funding of;  
one or more payments or distributions, of which one or more is a payment or distribution that, to an extent:
    - (iii) the payer makes to an entity (an **associate recipient**) that is an \*associate pair of the payer; and
    - (iv) is covered by subsection (5A) (which is about types of payments or distributions);
  - (c) the entity mentioned in subsection (1) (the **relevant entity**) is any of the following:
    - (i) the payer;
    - (ii) an associate pair of the payer;
    - (iii) an associate pair of an associate recipient;
  - (d) the relevant entity’s \*debt deduction mentioned in subsection (1) is, wholly or partly, in relation to the financial arrangement mentioned in paragraph (a) of this subsection;
  - (e) the relevant entity’s debt deduction is referable to an amount paid or payable, either directly or indirectly, to any of the following:
    - (i) an associate pair of the relevant entity;
    - (ii) an associate pair of the payer;
    - (iii) an associate pair of an associate recipient;
  - (f) the relevant entity has *not* made a choice under subsection 820-46(4) to use the third party debt test for the income year mentioned in subsection (1) of this section.
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- (5A) This subsection covers the following:
- (a) a \*dividend, \*distribution or \*non-share distribution;
  - (b) a distribution by a trustee or partnership;
  - (c) a return of capital, including a return of capital made by a distribution or payment made by a trustee or partnership;
  - (d) a payment or distribution in respect of the cancellation or redemption of a \*membership interest in an entity;
  - (e) a \*royalty, or a similar payment or distribution for the use of, or right to use, an asset;
  - (f) a payment or distribution that is wholly or partly referable to the repayment of principal under a \*debt interest if:
    - (i) the debt interest is issued by the payer; and
    - (ii) the debt interest is a \*financial arrangement that satisfies paragraphs (5)(a), (b) and (c);
  - (g) a payment or distribution of a kind similar to a payment or distribution mentioned in the preceding paragraphs;
  - (h) a payment or distribution prescribed by the regulations.
- (6) For the purposes of paragraph (5)(b):
- (a) the payments or distributions mentioned in that paragraph may be made:
    - (i) directly, or indirectly through one or more interposed entities (see subsection (7)); and
    - (ii) before, at or after the time the payer enters into or has the \*financial arrangement mentioned in paragraph (5)(a); and
  - (b) a recipient may be the entity with whom the payer enters into or has the financial arrangement, or another entity.
- (7) For the purposes of subparagraph (6)(a)(i), in determining whether a payment or distribution is made indirectly through one or more interposed entities:
- (a) it is sufficient if payments exist between each interposed entity; and
  - (b) it is not necessary to demonstrate that each payment in a series of payments funds the next payment, or is made after the previous payment.

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

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

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

### *Acquisition of certain new depreciating assets*

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

### *Acquisition of certain debt interests*

- (3) For the purposes of paragraph 820-423A(2)(f), the acquisition of a \*CGT asset is covered by this section if all of the following conditions are satisfied:
- (a) the CGT asset is a \*debt interest;

- (b) an entity (the *acquirer*) holds the debt interest immediately after its acquisition;
- (c) the debt interest is issued by an \* associate pair of the acquirer;
- (d) the debt interest has not previously been held by any entity.

### **820-423B Amount of debt deduction disallowed**

*Acquisition of CGT asset, or legal or equitable obligation*

- (1) If the condition in subsection 820-423A(2) is met, the amount of the \*debt deduction disallowed under subsection 820-423A(1) is the amount of the debt deduction, to the extent that the relevant entity mentioned in subsection 820-423A(2) incurred it in relation to any of the following:
  - (a) the acquisition mentioned in subparagraph 820-423A(2)(d)(i);
  - (b) the holding mentioned in subparagraph 820-423A(2)(d)(ii).

*Financial arrangements involving associate pairs*

- (2) If the conditions in subsection 820-423A(5) are met, then under subsection 820-423A(1) the \*debt deduction is disallowed to the same extent as the extent to which the payer mentioned in paragraph 820-423A(5)(a) uses the \*financial arrangement in a manner that satisfies paragraph 820-423A(5)(b).

### **820-423C This Subdivision does not limit reduction of debt deductions under other provisions**

Nothing in this Subdivision limits other provisions of this Division in their application to reduce, or further reduce, \*debt deductions of an entity.

### **820-423D Schemes relating to this Subdivision**

- (1) Subsection (2) applies if the Commissioner is satisfied that:
  - (a) it is reasonable to conclude that one or more entities (each of which is a *participant*) entered into or carried out a \*scheme for the principal purpose of, or for more than one principal

purpose that included the purpose of, achieving any of the following results:

- (i) subsection 820-423A(2) does not apply in relation to a \*debt deduction;
  - (ii) subsection 820-423A(5) does not apply in relation to a debt deduction;  
(whether or not the debt deduction is a debt deduction of any of the participants and whether or not any of them carried out the scheme or any part of the scheme); and
- (b) the scheme has achieved, or apart from this section would achieve, that purpose.
- (2) The Commissioner may determine that this Act has, and is taken always to have had, effect as if:
- (a) subsection 820-423A(2) applies in relation to the \*debt deduction; or
  - (b) subsection 820-423A(5) applies in relation to the debt deduction.
- (3) A determination under subsection (2) has effect accordingly.
- (4) This section applies whether or not the scheme has been or is entered into or carried out in Australia or outside Australia, or partly in Australia and partly outside Australia.
- (5) A determination under subsection (2) is not a legislative instrument.
- (6) An entity who is dissatisfied with a determination under subsection (2) made in relation to the entity may object against the determination in the manner set out in Part IVC of the *Taxation Administration Act 1953*.

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

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

*Treating certain unit trusts as companies*

- (2) Subsection (3) applies if any of the following \*CGT events are capable of applying to all of the units and interests in the trust:
- (a) \*CGT event E4;
  - (b) \*CGT event E10.
- (3) For the purposes of determining, under section 318 of the *Income Tax Assessment Act 1936*, whether:
- (a) the trust is an \*associate of another entity; or
  - (b) another entity is an associate of the trust;
- treat the trust as if it were a company.

*Application of sufficient influence test*

- (4) In determining whether the trust is sufficiently influenced by another entity for the purposes of subsection 318(2) of the *Income Tax Assessment Act 1936*, as applied by subsection (3) of this section:
- (a) treat the trust as sufficiently influenced by another entity or other entities if the trust is accustomed or under an obligation (whether formal or informal), or might reasonably be expected, to act in accordance with the directions, instructions or wishes of the other entity or other entities (whether those directions, instructions or wishes are, or might reasonably be expected to be, communicated directly or through interposed companies, partnerships or trusts); and
  - (b) another entity or other entities are taken to hold a majority voting interest in the trust if either of the following percentages is not less than 50%:
    - (i) the percentage of the income of the trust represented by the share of the income to which the other entity or other entities are entitled, or that the other entity or other entities are entitled to acquire;
    - (ii) the percentage of the corpus of the trust represented by the share of the corpus to which the other entity or other entities are entitled, or that the other entity or other entities are entitled to acquire; and

- (c) disregard the operation that paragraphs 318(6)(b) and (c) of that Act would otherwise have by reason only of subsection (3) of this section.
- (5) Subsection (6) applies in determining whether the trust:
  - (a) is sufficiently influenced by another entity for the purposes of section 318 of the *Income Tax Assessment Act 1936*; or
  - (b) sufficiently influences another entity for the purposes of that section.
- (6) If:
  - (a) there is any breach by any entity of the terms of a \*debt interest issued by, or held by, the trust; and
  - (b) there are reasonable grounds to believe that the breach occurred only to protect the interests of secured creditors in relation to the debt interest;sufficient influence is not taken to exist in relation to the trust merely because of the breach.

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

For the purposes of this Subdivision, in determining whether an entity is an \*Australian entity (including for the purposes of determining whether another entity is a \*foreign entity) at a particular time:

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

## Subdivision 820-EAB—Third party debt concepts

### Guide to Subdivision 820-EAB

#### 820-427 What this Subdivision is about

This Subdivision sets out concepts concerning third party debt. These concepts are relevant to entities that choose to apply the third party debt test, that is:

- (a) general class investors that make a choice, or that are taken to have made a choice, under subsection 820-46(4); and
- (b) outward investing financial entities (non-ADI) that make a choice under subsection 820-85(2C); and
- (c) inward investing financial entities (non-ADI) that make a choice under subsection 820-185(2C).

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820-427B Consequences of conduit financing conditions being met  
820-427C Conduit financing conditions  
820-427D Modified meaning of *associate entity*

#### Operative provisions

##### 820-427A Meaning of *third party earnings limit* and *third party debt conditions*

- (1) An entity's *third party earnings limit* for an income year is the sum of each \*debt deduction of the entity for the income year (disregarding this Division) that is attributable to a \*debt interest issued by the entity that satisfies the \*third party debt conditions in relation to the income year.
- (2) For the purposes of subsection (1), treat a \*debt deduction of an entity as being attributable to a \*debt interest issued by the entity to the extent that:

- (a) the debt deduction is directly associated with hedging or managing the interest rate risk in respect of the debt interest; and
  - (b) the debt deduction is not referable to an amount paid or payable, directly or indirectly, to an \*associate entity (see section 820-427D) of the entity.
- (3) A \*debt interest issued by an entity satisfies the ***third party debt conditions*** in relation to an income year if the following conditions are satisfied:
- (a) the entity issued the debt interest to an entity that is not an \*associate entity (see section 820-427D) of the entity;
  - (b) the debt interest is not held at any time in the income year by an entity that is an associate entity of the entity;
  - (c) disregarding recourse to minor or insignificant assets, the holder of the debt interest has recourse for payment of the debt to which the debt interest relates only to Australian assets that:
    - (i) are covered by subsection (4); and
    - (ii) are not rights covered by subsection (5) (about credit support rights);
  - (d) the entity uses all, or substantially all, of the proceeds of issuing the debt interest to fund its commercial activities in connection with Australia that do not include:
    - (i) any \*business carried on by the entity at or through its \*overseas permanent establishments; and
    - (ii) the holding by the entity of any \*associate entity debt, \*controlled foreign entity debt or \*controlled foreign entity equity;
  - (e) the entity is an \*Australian entity (see section 820-427E).
- (4) This subsection covers Australian assets that:
- (a) are held by the entity; or
  - (b) are \*membership interests in the entity (unless the entity has a legal or equitable interest, whether directly or indirectly, in an asset that is not an Australian asset); or
  - (c) are held by an \*Australian entity that is a \*member of the \*obligor group in relation to the \*debt interest.

- (5) This subsection covers a right under or in relation to a guarantee, security or other form of credit support, other than a right that:
- (a) is any of the following:
    - (i) a right that provides recourse, directly or indirectly, only to one or more Australian assets covered by subsection (4) that are not rights covered by this subsection;
    - (ii) a right that, assuming that the holder of the right exercised the right, would not reasonably be expected to allow, directly or indirectly, the holder or another entity to have recourse for payment of the debt mentioned in paragraph (3)(c) against an \*associate entity (see section 820-427D) of the entity that issued that debt interest;
    - (iii) a right that relates wholly to the creation or development of a \*CGT asset that is, or is reasonably expected to be, land situated in Australia (including an interest in land, if the land is situated in Australia);
    - (iv) a right that relates wholly to the creation or development of a CGT asset that is, or is reasonably expected to be, moveable property situated, or to be situated, on land of a kind mentioned in subparagraph (iii), where that moveable property is, or is reasonably expected to be, relevant to the income producing use of the land and situated on the land for the majority of its useful life;
    - (v) a right that relates wholly to the creation or development of a CGT asset that is, or is reasonably expected to be, offshore renewable energy infrastructure (within the meaning of the *Offshore Electricity Infrastructure Act 2021*) situated, or to be situated, in a declared area (within the meaning of that Act) for the majority of its useful life;
    - (vi) a right that relates wholly to the creation or development of a CGT asset that is, or is reasonably expected to be, offshore electricity transmission infrastructure (within the meaning of the *Offshore Electricity Infrastructure Act 2021*) that is directly

related to offshore renewable energy infrastructure covered by subparagraph (v); and

- (b) assuming that the holder of the right exercised the right, the right would *not* reasonably be expected to allow, directly or indirectly, the holder or another entity to have recourse for payment of the debt mentioned in paragraph (3)(c) of this section against a \*foreign entity that is an \*associate entity of the entity that issued the \*debt interest.
- (6) For the purposes of subparagraphs (5)(a)(iii), (iv), (v) and (vi), in determining whether a right relates wholly to the creation or development of a \*CGT asset of a kind mentioned in the relevant subparagraph, disregard the extent (if any) to which the right relates incidentally to another matter.

### **820-427B Modified third party debt conditions for conduit financing**

- (1) If a \*debt interest satisfies the conditions in subsection 820-427C(1) in relation to an income year, then this section applies in relation to:
- (a) that debt interest (the *relevant debt interest*); and
  - (b) the debt interest that is the ultimate debt interest mentioned in subsection 820-427C(1) in relation to the relevant debt interest.

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

- (2) In applying section 820-427A in relation to the income year, in relation to the relevant debt interest and the ultimate debt interest:
- (a) treat the reference in subparagraph 820-427A(3)(d)(ii) to \*associate entity debt as being a reference to associate entity debt other than:
    - (i) a debt interest that satisfies the conditions in subsection 820-427C(1) in relation to the ultimate debt interest; or
    - (ii) a debt interest issued by an entity that is an \*Australian entity and that has made a choice under subsection 820-46(4) to use the third party debt test for the income year; and

- (b) treat references in paragraphs 820-427A(4)(a) and (b) to the entity as including the conduit financier mentioned in paragraph 820-427C(1)(a) and each entity that issues a debt interest that satisfies the conditions in subsection 820-427C(1) in relation to the ultimate debt interest.

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

- (3) In applying subsection 820-427A(3) in relation to the income year, in relation to the relevant debt interest, in addition to applying subsection (2) of this section:
  - (a) treat the conditions in paragraphs 820-427A(3)(a) and (b) as being satisfied; and
  - (b) treat subsection 820-427A(3) as also including the condition that the ultimate debt interest satisfies the \*third party debt conditions (having regard to subsection (2) of this section) in relation to the income year.

**820-427C Conduit financing conditions**

- (1) If, in relation to an income year:
  - (a) an entity (the **conduit financier**) issues a \*debt interest (the **ultimate debt interest**) to an entity (the **ultimate lender**) that is *not* an \*associate entity (see section 820-427D) of the conduit financier; and
  - (b) an entity (the **borrower**) that is an associate entity of the conduit financier issues another debt interest (the **relevant debt interest**) to:
    - (i) the conduit financier; or
    - (ii) another entity (the **conduit borrower**) that is an associate entity of the conduit financier and the borrower; and
  - (c) the amount loaned under the relevant debt interest:
    - (i) if subparagraph (b)(i) applies—was financed by the conduit financier only with proceeds from the ultimate debt interest; or
    - (ii) if subparagraph (b)(ii) applies—was financed by the conduit borrower only with proceeds from another debt

interest that is also a debt interest that satisfies the conditions in this subsection in relation to the ultimate debt interest because of a previous operation of this subsection; and

- (d) the terms of the relevant debt interest, to the extent that those terms relate to costs incurred by the borrower in relation to the relevant debt interest, are the same as the terms of the ultimate debt interest, to the extent that those terms relate to such costs incurred by the conduit financier in relation to the ultimate debt interest; and
  - (e) the conduit financier, the borrower and each conduit borrower (if any) are \*Australian entities (see section 820-427E); and
  - (f) it is not the case that subparagraph 820-46(1)(b)(i) or (ii) applies (fixed ratio test or group ratio test applies) to the conduit financier, the borrower or any conduit borrowers;
- then the relevant debt interest satisfies the conditions in this subsection in relation to the income year.

- (2) For the purposes of paragraph (1)(d):
  - (a) disregard the terms of a \*debt interest that is:
    - (i) a relevant debt interest; or
    - (ii) the ultimate debt interest;to the extent that those terms relate to the amount of the debt to which the debt interest relates; and
  - (b) disregard the terms (if any) of the ultimate debt interest that have the effect of allowing (whether directly, or indirectly through one or more interposed borrowers) the recovery of reasonable administrative costs that relate directly to the ultimate debt interest; and
  - (c) disregard the terms (if any) of a relevant debt interest issued to the conduit financier that have the effect of allowing (whether directly, or indirectly through one or more interposed borrowers) the recovery of reasonable administrative costs of the conduit financier that relate directly to the relevant debt interest; and
  - (d) disregard the terms (if any) of a relevant debt interest, to the extent that those terms have the effect of allowing (whether directly, or indirectly through one or more interposed borrowers) the recovery of costs of the conduit financier that:

- (i) are a \*debt deduction for the income year of the conduit financier; and
  - (ii) are a debt deduction that is treated as being attributable to the ultimate debt interest under subsection 820-427A(2) because it is directly associated with hedging or managing the interest rate risk in respect of the ultimate debt interest; and
- (e) disregard the terms (if any) of a relevant debt interest, to the extent that those terms have the effect of allowing (whether directly, or indirectly through one or more interposed borrowers) the recovery of costs of a borrower that:
- (i) are a debt deduction for the income year of the borrower; and
  - (ii) are a debt deduction that is treated as being attributable to another debt interest under subsection 820-427A(2) because it is directly associated with hedging or managing the interest rate risk in respect of that other debt interest.

**820-427D Modified meaning of *associate entity***

- (1) For the purposes of this Subdivision, in determining whether an entity is an *associate entity* of another entity:
- (a) treat the references in paragraphs 820-905(1)(a) and 820-905(2A)(a) to “an \*associate interest of 50% or more” as instead being:
    - (i) for the purposes of paragraph 820-427A(5)(b)—a reference to “a \*TC control interest of 50% or more”; or
    - (ii) for the purposes of any other provision in this Subdivision—a reference to “a \*TC control interest of 20% or more”; and
  - (aa) disregard the requirement in subsections 820-905(1) and (2A) that the entity is an \*associate of the other entity, unless only paragraph 820-905(1)(b) applies; and
  - (b) treat subsection 820-860(3) as applying for the purposes of determining whether the entity is an associate entity of the other entity (as a result of paragraph (a) of this subsection); and

- (c) treat the purposes mentioned in subparagraphs 820-870(1)(b)(i) and (ii) as including the purposes of determining whether the entity is an associate entity of the other entity (as a result of paragraph (a) of this subsection).
- (2) For the purposes of this Subdivision:
  - (a) treat an entity (the *first entity*) that has entered into a \*cross-staple arrangement with another entity as an *associate entity* of that other entity; and
  - (b) if that other entity is itself an associate entity of a conduit financier mentioned in section 820-427C (whether because of another operation of this subsection or otherwise)—treat the first entity as an *associate entity* of the conduit financier.

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

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

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

### **77 Subsection 820-430(1) (table item 1, column 1)**

Omit “\*outward investor (financial)”, substitute “\*outward investing financial entity (non-ADI)”.

### **78 Section 820-581 (example)**

Repeal the example.

### **79 Subsections 820-583(1) and (2)**

Repeal the subsections, substitute:

*General class investor*

- (1) The \*head company of a \*consolidated group or of a \*MEC group is a **general class investor** for a period that is all or part of an income year if:
- (a) for that period, the head company satisfies the requirement in subsection 820-46(2); and
  - (b) no \*member of the group is a \*financial entity or \*ADI at any time during that period.

**80 Subsection 820-583(3) (heading)**

Omit “*investor (financial)*”, substitute “*investing financial entity (non-ADI)*”.

**81 Subsection 820-583(3)**

Omit “*investor (financial)*”, substitute “*investing financial entity (non-ADI)*”.

**82 Paragraph 820-583(3)(a)**

Omit “item 1 or 3”, substitute “item 1 or 2”.

**83 Subsections 820-583(4) and (5)**

Repeal the subsections, substitute:

*Inward investing financial entity (non-ADI)*

- (4) The \*head company of a \*consolidated group or of a \*MEC group is an **inward investing financial entity (non-ADI)** for a period that is all or part of an income year if, and only if, it is an \*inward investment vehicle (financial) for that period (because of subsection (6)).

**84 Subparagraph 820-583(7)(b)(i)**

After “investing”, insert “financial”.

**85 Subsection 820-585(2)**

Omit “\*outward investing entity (non-ADI)”, substitute “\*outward investing financial entity (non-ADI)”.

**86 Subsection 820-588(1) (paragraph (a) of note 2)**

Repeal the paragraph, substitute:

- (a) an outward investing financial entity (non-ADI); or

**87 Subsection 820-588(1) (paragraph (b) of note 2)**

After “investing”, insert “financial”.

**88 At the end of Subdivision 820-FA**

Add:

**820-590 Treatment of FRT disallowed amounts—joining case**

- (1) This section applies if:
- (a) an entity (the *joining entity*) becomes a \*member of a \*consolidated group (the *joined group*) at a time (the *joining time*) in an income year (the *joining year*); and
  - (b) the joining entity had a \*FRT disallowed amount for an income year ending before the joining time.
- (2) Subject to subsection (4), the \*FRT disallowed amount is transferred at the joining time from the joining entity to the \*head company of the joined group (even if they are the same entity).
- (3) To avoid doubt, the result of the transfer under subsection (2) is that the \*head company of the joined group has the \*FRT disallowed amount for the income year mentioned in paragraph (1)(b).
- (4) The \*FRT disallowed amount is transferred under subsection (2) only to the extent (if any) that the FRT disallowed amount could have been applied by the joining entity under paragraph 820-56(2)(b) in respect of an income year (the *trial year*) consisting of the period described in subsection (5) if:
- (a) at the joining time, the joining entity had not become a \*member of the joined group (but had been a \*wholly-owned subsidiary of the \*head company if the joining entity is not the head company); and
  - (b) the amount applied by the joining entity under paragraph 820-56(2)(b) in respect of the trial year were not limited by

the joining entity's excess mentioned in that paragraph in respect of the trial year.

- (5) For the purposes of subsection (4), the period is the period:
- (a) starting at the latest of the following times:
    - (i) the time 12 months before the joining time;
    - (ii) the time the joining entity came into existence;
    - (iii) the time the joining entity last ceased to be a \*subsidiary member of a \*consolidated group, if the joining entity had been a member of a consolidated group before the joining time but was not a \*member of a consolidated group just before the joining time; and
  - (b) ending just after the joining time.
- (6) When working out, for the purposes of subsection (4), whether the joining entity carried on, throughout the \*trial year (or a period including the trial year):
- (a) the same business as the business it carried on at a particular time; or
  - (b) a similar business to the business it carried on at that time;
- assume that the entity carried on at and just after the joining time the same business that it carried on just before the joining time.
- (7) If the \*FRT disallowed amount was for an income year all or part of which occurs in the trial year, the transfer of the FRT disallowed amount under subsection (2) is not prevented by the fact that the FRT disallowed amount was for that income year.
- (8) If, apart from this subsection, the \*head company of the joined group would have 2 or more \*FRT disallowed amounts (the ***transferred FRT disallowed amounts***) for a particular income year as a result of the operation of subsection (2):
- (a) treat it as having only one FRT disallowed amount for the income year; and
  - (b) treat that one FRT disallowed amount as being equal to the sum of the transferred FRT disallowed amounts.

### **820-591 Effect of transfer of FRT disallowed amount**

- (1) This section applies if an \*FRT disallowed amount is transferred under section 820-590 from the joining entity to the \*head company of the joined group.
- (2) For the purposes of subsection 820-59(4), this Act operates (except so far as the contrary intention appears) for the purposes of income years ending after the joining time as if the head company had the \*FRT disallowed amount for the income year in which the joining time occurs.
- (3) For the purposes of applying subsection 820-59(4) in relation to the \*FRT disallowed amount, treat the disallowance year mentioned in paragraph 820-59(4)(b) as starting at the time of the transfer.

### **820-592 Cancelling the transfer of FRT disallowed amount**

- (1) The \*head company of the joined group may choose to cancel the transfer of the FRT disallowed amount under section 820-590.
- (2) If the \*head company of the joined group does so, this Act (except this section) operates for all income years ending after the transfer as if it had not occurred under section 820-590.
- (3) The choice cannot be revoked.

### **820-593 FRT disallowed amount cannot be applied for income year ending after the joining time**

To the extent that the \*FRT disallowed amount is not transferred under section 820-590 from the joining entity to the \*head company of the joined group, the FRT disallowed amount cannot be applied under paragraph 820-56(2)(b) by any entity in respect of an income year ending after the joining time.

### **820-594 Treatment of FRT disallowed amounts—leaving case**

To avoid doubt, if the \*head company of a \*consolidated group has a \*FRT disallowed amount and an entity ceases to be a \*subsidiary member of the group, the entity is not taken because of

section 701-40 (the exit history rule) to have the FRT disallowed amount.

### 89 Paragraph 820-609(1)(b)

Repeal the paragraph, substitute:

- (b) apart from this Subdivision, the head company or single company:
  - (i) would be an \*outward investing financial entity (non-ADI) for the trial period; and
  - (ii) at least one of the \*Australian permanent establishments is a \*permanent establishment through which a \*foreign bank carries on banking \*business in Australia.

### 90 Paragraph 820-609(4)(a)

Omit “\*inward investment vehicle (general) or an \*inward investment vehicle (financial), and not an \*outward investor (general) or an \*outward investor (financial),”, substitute “\*inward investment vehicle (financial), and not an \*outward investing financial entity (non-ADI),”.

### 91 Subsections 820-609(5) and (6)

Repeal the subsections, substitute:

- (5) The \*head company or single company is an ***outward investing financial entity (non-ADI)*** for the trial period if, apart from this Subdivision:
  - (a) it would be an \*outward investing financial entity (non-ADI) for that period; and
  - (b) at least one of the \*Australian permanent establishments is a \*permanent establishment of a \*foreign entity that is a \*financial entity; and
  - (c) none of the Australian permanent establishments is a permanent establishment through which a \*foreign bank carries on banking \*business in Australia.
- (6) The \*head company or single company is an ***inward investing financial entity (non-ADI)*** and an ***inward investment vehicle (financial)*** for the trial period if, apart from this Subdivision:

- (a) it would be an \*inward investing financial entity (non-ADI) and an \*inward investment vehicle (financial) for that period; and
- (b) it would not be an \*outward investing financial entity (non-ADI) for that period; and
- (c) at least one of the \*Australian permanent establishments is a \*permanent establishment of a \*foreign entity that is a \*financial entity; and
- (d) none of the Australian permanent establishments is a permanent establishment through which a \*foreign bank carries on banking \*business in Australia.

**92 Subsection 820-609(7) (note)**

Omit “investor (financial)”, substitute “investing financial entity (non-ADI)”.

**93 Subsection 820-610(2)**

Omit “is an *outward investing entity (non-ADI)* and an *outward investor (financial)*”, substitute “is an *outward investing financial entity (non-ADI)*”.

**94 Paragraph 820-610(2)(b)**

Omit “to be an outward investing entity (non-ADI) and an outward investor (financial)”, substitute “to be an outward investing financial entity (non-ADI)”.

**95 Subsection 820-610(3)**

After “*investing*”, insert “*financial*”.

**96 Paragraph 820-610(3)(b)**

After “investing”, insert “financial”.

**97 Subsection 820-630(1) (note 1)**

Omit “investing” (wherever occurring), substitute “investing financial”.

**98 Section 820-740**

Omit “investing entity (non-ADI)” (wherever occurring), substitute “investing financial entity (non-ADI)”.

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

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

**99 After subsection 820-905(1)**

Insert:

(1A) Subsection (1) does not apply if the other entity is any of the following:

- (a) a trustee of a \*complying superannuation entity (other than a \*self managed superannuation fund);
- (b) \*wholly-owned subsidiary of a complying superannuation entity (other than a self managed superannuation fund).

**100 Subsection 820-905(2B)**

Omit “For the purposes of sections”, substitute “For the purposes of Subdivision 820-AA, and of sections”.

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

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

**101 Subsection 820-910(1)**

Omit “investing entity (non-ADI)” (wherever occurring), substitute “investing financial entity (non-ADI)”.

**102 Subparagraph 820-910(2)(a)(i)**

Omit “an \*outward investing entity (non-ADI), an \*inward investment vehicle (general), or”, substitute “an \*outward investing financial entity (non-ADI) or”.

**103 Subparagraph 820-910(2)(a)(ii)**

Omit “an \*inward investor (general) or”.

**104 Subsection 820-915(1)**

Omit “investing entity” (wherever occurring), substitute “investing financial entity”.

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**105 Subsections 820-920(1) and (3)**

Omit “investing entity” (wherever occurring), substitute “investing financial entity”.

**106 Subsection 820-920(3) (method statement, step 4, paragraph (c))**

Repeal the paragraph.

**107 Subsection 820-920(3) (method statement, step 4, paragraph (d))**

Omit “subsection (1) or (2) of section 820-110 (as appropriate)”, substitute “subsection 820-110(2)”.

**108 Subsection 820-920(4)**

Omit “investing entity” (first occurring), substitute “investing financial entity”.

**109 Subsection 820-920(4) (method statement, step 1)**

Repeal the step, substitute:

<p>Step 1. Work out the *safe harbour debt amount of the *associate entity for the day during which that particular time occurs, as if the associate entity were an *outward investing financial entity (non-ADI) or *inward investing financial entity (non-ADI), as appropriate, for the period consisting only of that day.</p>
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**110 Paragraph 820-946(1)(a)**

Omit “investing entity (non-ADI)” (wherever occurring), substitute “investing financial entity (non-ADI)”.

**111 Paragraph 820-960(1)(a)**

Omit “\*inward investor (general)”.

**112 Section 820-980 (heading)**

Omit “arm’s length debt amount and”.

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**113 Subsection 820-980(1)**

Omit “\*arm’s length debt amount or”.

**114 Subsection 820-980(2)**

Omit “820-105, 820-215,”.

**115 After section 820-980**

Insert:

**820-985 Records about group ratio**

- (1) An entity must keep records under this section for a \*group ratio that the entity worked out for the purposes of this Division.
- (2) The records must:
  - (a) contain particulars that have been taken into account in working out the \*group ratio; and
  - (b) be sufficient for a reasonable person to understand how the group ratio has been worked out.
- (3) The entity must prepare the records before the earlier of the following times:
  - (a) the time by which the entity must lodge its \*income tax return for the income year in relation to all or a part of which the amount is worked out;
  - (b) the time at which the entity lodges its \*income tax return for that income year.

Note: A person must comply with the requirements in section 262A of the *Income Tax Assessment Act 1936* about the keeping of these records (see subsections (2AA) and (3) of that section).

**116 Paragraph 820-990(1)(a)**

Omit “820-962 and 820-980”, substitute “820-962, 820-980 and 820-985”.

**117 Paragraph 820-995(1)(a)**

Omit “820-962 and 820-980”, substitute “820-962, 820-980 and 820-985”.

**118 Subsection 995-1(1)**

Insert:

*adjusted net third party interest expense* has the meaning given by section 820-54.

**119 Subsection 995-1(1) (definition of *arm's length debt amount*)**

Repeal the definition.

**120 Subsection 995-1(1)**

Insert:

*associate pair*: an entity is an *associate pair* of another entity if any of the following conditions are satisfied:

- (a) the entity is an associate of the other entity;
- (b) the other entity is an associate of the entity.

**121 Subsection 995-1(1)**

Insert:

*entity EBITDA* has the meaning given by section 820-55.

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

**122 Subsection 995-1(1) (paragraph (a) of the definition of *financial entity*)**

Repeal the paragraph, substitute:

- (a) an entity that:
  - (i) is a registered corporation under the *Financial Sector (Collection of Data) Act 2001*; and
  - (ii) at the particular time, carries on a \*business of providing finance, but not predominantly for the purposes of providing finance directly or indirectly to, or on behalf of, the entity's associates; and
  - (iii) in the income year in which the particular time occurs, derives all, or substantially all, of its profits from that business;

**123 Subsection 995-1(1) (paragraph (c) of the definition of *financial entity*)**

Omit “\*business”, substitute “business”.

**124 Subsection 995-1(1)**

Insert:

*financial statement net third party interest expense* has the meaning given by section 820-54.

*fixed ratio earnings limit* has the meaning given by section 820-51.

*fixed ratio test disallowed amount* has the meaning given by section 820-57.

*FRT disallowed amount*: see *fixed ratio test disallowed amount*.

*general class investor* has the meaning given by subsections 820-46(2) and 820-583(1).

*GR group* has the meaning given by section 820-53.

*GR group member* has the meaning given by section 820-53.

*GR group net third party interest expense* has the meaning given by section 820-54.

*GR group parent* has the meaning given by section 820-53.

*group EBITDA* has the meaning given by section 820-55.

*group ratio* has the meaning given by section 820-53.

*group ratio earnings limit* has the meaning given by section 820-51.

**125 Subsection 995-1(1) (definition of *inward investing entity (non-ADI)*)**

Repeal the definition.

**126 Subsection 995-1(1)**

Insert:

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*inward investing financial entity (non-ADI)* has the meaning given by section 820-185 and 820-583(1).

**127 Subsection 995-1(1) (definition of *inward investment vehicle (general)*)**

Repeal the definition.

**128 Subsection 995-1(1) (definition of *inward investor (general)*)**

Repeal the definition.

**129 Subsection 995-1(1) (paragraph (a) of the definition of *maximum allowable debt*)**

After “investing”, insert “financial”.

**130 Subsection 995-1(1) (paragraph (b) of the definition of *maximum allowable debt*)**

Omit “\*inward investing entity (non-ADI) covered by paragraph 820-185(1)(a)”, substitute “\*inward investing financial entity (non-ADI) covered by paragraph 820-185(1A)(a)”.

**131 Subsection 995-1(1) (at the end of the definition of *member*)**

Add:

; and (g) in relation to an \*obligor group—has the meaning given by section 820-49.

**132 Subsection 995-1(1)**

Insert:

*net debt deductions* has the meaning given by section 820-50.

**133 Subsection 995-1(1)**

Insert:

*obligor group* has the meaning given by section 820-49.

**134 Subsection 995-1(1) (note to the definition of *outward investing entity (ADI)*)**

Omit “investor (financial)”, substitute “investing financial entity (non-ADI)”.

**135 Subsection 995-1(1) (definition of *outward investing entity (non-ADI)*)**

Repeal the definition.

**136 Subsection 995-1(1)**

Insert:

*outward investing financial entity (non-ADI)* has the meaning given by sections 820-85, 820-583, 820-609 and 820-610.

Note: Section 820-430 allows an outward investing financial entity (non-ADI) to be treated as an outward investing entity (ADI) in certain cases.

**137 Subsection 995-1(1) (definition of *outward investor (financial)*)**

Repeal the definition.

**138 Subsection 995-1(1) (definition of *outward investor (general)*)**

Repeal the definition.

**139 Subsection 995-1(1) (paragraphs (a), (b), (c) and (e) of the definition of *safe harbour debt amount*)**

Repeal the paragraphs.

**140 Subsection 995-1(1)**

Insert:

*tax EBITDA* has the meaning given by section 820-52.

*third party debt conditions* has the meaning given by section 820-427A.

*third party earnings limit* has the meaning given by section 820-427A.

**141 Subsection 995-1(1) (paragraph (a) of the definition of *worldwide gearing debt amount*)**

Omit “\*outward investing entity (non-ADI)”, substitute “\*outward investing financial entity (non-ADI)”.

**142 Subsection 995-1(1) (paragraphs (b) and (d) of the definition of *worldwide gearing debt amount*)**

Repeal the paragraphs.

***Taxation Administration Act 1953***

**143 After paragraph 14ZVA(a)**

Insert:

- (aa) a determination under subsection 820-423D(2) of the *Income Tax Assessment Act 1997*; or

## Part 2—Application

### 144 Application

- (1) Subject to this Part, the amendments made by Part 1 of this Schedule apply in relation to assessments for income years starting on or after 1 July 2023.
- (2) However, the amendments made by that Part to section 820-980 of the *Income Tax Assessment Act 1997* do not apply in relation to records mentioned in that section (disregarding those amendments) that relate to one or more income years starting before 1 July 2023.
- (3) Despite subitem (1), Subdivision 820-EAA of the *Income Tax Assessment Act 1997*, as inserted by Part 1 of this Schedule, applies in relation to assessments for income years starting on or after 1 July 2024.

### 145 Transitional—choice

If:

- (a) before the commencement of this Part, an entity made a choice set out in item 1 of the table in subsection 820-430(1) of the *Income Tax Assessment Act 1997*; and
- (b) immediately before that commencement, the choice had effect;

after that commencement, the choice continues to have effect as if it were a choice set out in that item as amended by Part 1.

### 146 Saving—old law continues to apply to Australian plantation forestry entities

- (1) Despite the amendments made by Part 1 of this Schedule, the old law continues to apply in relation to assessments for income years starting on or after 1 July 2023 for entities that are Australian plantation forestry entities for a period that is all or part of the income year, as if the amendments had not been made.
- (2) In this item:

***Australian plantation forestry entity***, at a particular time, means an entity that solely or predominantly carries on a business, at that time, of establishing and tending trees for felling in Australia.

***old law*** means the following provisions, as in force immediately before the commencement of this item:

- (a) Division 820 of the *Income Tax Assessment Act 1997*;
- (b) any other provision of that Act to the extent that it relates to that Division;
- (c) any provision in an instrument (whether legislative or administrative) made under that Act to the extent that it relates to that Division.

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[*Minister's second reading speech made in—  
House of Representatives on 22 June 2023  
Senate on 9 August 2023*]

(87/23)

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