

EXPOSURE DRAFT

EXPOSURE DRAFT

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Inserts for
**Treasury Laws Amendment (Making
Sure Foreign Investors Pay Their Fair
Share of Tax and Other Measures) Bill
2018: Integrity measures**

Income Tax Assessment Act 1997

1 After subsection 275-615(1)

Insert:

(1A) Disregard paragraphs (1)(b) and (1)(c) and subparagraph 275-610(1)(c)(ii) if the *managed investment trust derives, receives or makes an amount of *excepted MIT CSA income for the income year.

2 Section 960-265 (after table item 13)

Insert:

13A Concessional cross staple rent cap—existing lease with specified rent section 12-452 in Schedule 1 to the *Taxation Administration Act 1953*

3 Subsection 995-1(1)

Insert:

concessional cross staple rent cap has the meaning given by sections 12-452 and 12-453 in Schedule 1 to the *Taxation Administration Act 1953*.

EXPOSURE DRAFT

1 *excepted MIT CSA income* has the meaning given by
2 section 12-451 in Schedule 1 to the *Taxation Administration Act*
3 *1953*.

4 *Taxation Administration Act 1953*

5 **4 After section 12-450 in Schedule 1**

6 Insert:

7 **12-451 Integrity rule—concessional cross staple rent cap**

8 (1) This section applies if:

- 9 (a) a *managed investment trust in relation to an income year
10 derives, receives or makes an amount of *excepted MIT CSA
11 income for the income year; and
12 (b) if the amount is excepted MIT CSA income because of
13 subitem 10(3) of Schedule 1 to the *Treasury Laws*
14 *Amendment (Making Sure Foreign Investors Pay Their Fair*
15 *Share of Tax and Other Measures) Act 2018*—
16 paragraph (5)(b) of that Schedule applies (15 year
17 concession); and
18 (c) the amount of excepted MIT CSA income is, or is
19 attributable to, *rent from land investment under a lease (the
20 *cross staple lease*) entered into by:
21 (i) the *asset entity mentioned in paragraph 12-440(2)(a)
22 (the *relevant asset entity*); and
23 (ii) the *operating entity mentioned in
24 paragraph 12-440(2)(b) (the *relevant operating entity*).

25 (2) To the extent (if any) that the amount of the relevant asset entity's
26 *excepted MIT CSA income exceeds its *concessional cross staple
27 rent cap for the income year, the following provisions do not apply
28 to the amount of the *managed investment trust's excepted MIT
29 CSA income mentioned in paragraph (1)(a):

- 30 (a) subsection 12-440(5);
31 (b) subitem 10(3) of Schedule 1 to the *Treasury Laws*
32 *Amendment (Making Sure Foreign Investors Pay Their Fair*
33 *Share of Tax and Other Measures) Act 2018*.

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

EXPOSURE DRAFT

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- 1 (4) An amount is *excepted MIT CSA income* of a *managed
2 investment trust in relation to an income year if it would be *MIT
3 cross staple arrangement income of the managed investment trust
4 but for any of the following provisions:
5 (a) subsection 12-440(5);
6 (b) subitem 10(3) of Schedule 1 to the *Treasury Laws*
7 *Amendment (Making Sure Foreign Investors Pay Their Fair*
8 *Share of Tax and Other Measures) Act 2018.*

9 **12-452 Concessional cross staple rent cap—existing lease with** 10 **specified rent or rent method**

- 11 (1) This section applies if:
12 (a) the amount mentioned in subsection 12-451(1) is excepted
13 MIT CSA income because of subitem 10(3) of Schedule 1 to
14 the *Treasury Laws Amendment (Making Sure Foreign*
15 *Investors Pay Their Fair Share of Tax and Other Measures)*
16 *Act 2018*; and
17 (b) the cross staple lease was entered into before 27 March 2018;
18 and
19 (c) the cross staple lease, or associated documents, specified any
20 of the following before 27 March 2018:
21 (i) the amount of annual rent under the lease;
22 (ii) a method for determining the amount of annual rent
23 under the lease; and
24 (d) if subparagraph (c)(ii) applies—the method is set out fully in
25 the cross staple lease, or the associated documents, before
26 27 March 2018.
- 27 (2) If subparagraph (1)(c)(ii) applies, the *concessional cross staple*
28 *rent cap* for an income year of the *managed investment trust is the
29 amount of annual rent determined for the income year under the
30 method specified in the lease.
- 31 (3) If subparagraph (1)(c)(ii) does not apply, the *concessional cross*
32 *staple rent cap* for an income year of the *managed investment
33 trust is:
34 (a) for the first income year that ends after 27 March 2018—the
35 amount of annual rent specified in the lease for the first year
36 of the lease that ends after 27 March 2018; or

EXPOSURE DRAFT

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- 1 (b) for a subsequent income year—the amount mentioned in
2 paragraph (a), indexed annually in accordance with
3 Subdivision 960-M of the *Income Tax Assessment Act 1997*.

4 **12-453 Concessional cross staple rent cap—general**

- 5 (1) This section applies if section 12-452 does not apply.
- 6 (2) The **concessional cross staple rent cap** for an income year of the
7 *managed investment trust is worked out as follows:
- 8 (a) firstly, work out a reasonable estimate of:
- 9 (i) if the relevant asset entity is a trust that is not an
10 *AMIT—the relevant asset entity’s *net income, or *tax
11 loss, for the income year;
- 12 (ii) if the relevant asset entity is an AMIT—the sum of the
13 relevant asset entity’s *trust components with the
14 character of assessable income, or the relevant asset
15 entity’s tax loss, for the income year;
- 16 (iii) if the relevant asset entity is a partnership—the relevant
17 asset entity’s net income, or partnership loss (within the
18 meaning of section 90 of the *Income Tax Assessment*
19 *Act 1936*), for the income year;
- 20 (b) next, work out a reasonable estimate of:
- 21 (i) if the relevant operating entity is a trust that is not an
22 AMIT—the operating asset entity’s net income, or tax
23 loss, for the income year;
- 24 (ii) if the relevant operating entity is a partnership—the
25 relevant operating entity’s net income, or partnership
26 loss (within the meaning of section 90 of the *Income*
27 *Tax Assessment Act 1936*), for the income year;
- 28 (iii) otherwise—the relevant operating entity’s taxable
29 income or tax loss for the income year;
- 30 (c) next, add the results of paragraphs (a) and (b);
- 31 (d) next, multiply the result of paragraph (c) by 0.8;
- 32 (e) next, subtract the result of paragraph (a) from the result of
33 paragraph (d);
- 34 (f) next, add the amount of *excepted MIT CSA income
35 mentioned in subsection 12-451(1) to the result of
36 paragraph (e).

EXPOSURE DRAFT

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

4 (3) For the purposes of paragraphs (2)(a) and (b):

- 5 (a) treat the amount of a *tax loss, or of a partnership loss (within
6 the meaning of section 90 of the *Income Tax Assessment Act*
7 *1936*), as a negative number; and
8 (b) disregard any *tax loss for a previous income year of the
9 relevant asset entity or relevant operating entity.

10 **12-454 Asset entity to allocate deductions first against rental income** 11 **that is not MIT cross staple arrangement income**

12 (1) This section applies if:

- 13 (a) an entity is an *asset entity in relation to an income year and
14 is a *stapled entity in relation to a *cross staple arrangement;
15 and
16 (b) the entity is entitled to a deduction for the income year
17 against its assessable income that arises from *rent from land
18 investment that it derives or receives in the income year; and
19 (c) the entity derives, receives or makes an amount of *excepted
20 MIT CSA income in the income year (disregarding this
21 section and subsection 12-451(2)); and
22 (d) the amount of that excepted MIT CSA income exceeds the
23 entity's *concessional cross staple rent cap for the income
24 year.

25 (2) The amount of the deduction can only be deducted against an
26 amount of assessable income of the *asset entity that is *not* *MIT
27 cross staple arrangement income.

28 (3) If an amount of the deduction remains after applying the rule in
29 subsection (2), the remainder can be deducted against amounts of
30 assessable income of the *asset entity that are *MIT cross staple
31 arrangement income.

32 (4) If the *asset entity is not a *managed investment trust in relation to
33 the income year, for the purposes of determining whether an
34 amount of its assessable income for the income year is *MIT cross
35 staple arrangement income, treat it as a managed investment trust
36 in relation to the income year.