

# EXPOSURE DRAFT

~~B04PZ224.INT~~

~~2004-2005-2006-2007~~

2008

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

EXPOSURE DRAFT (01/10/2008)

## **Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008**

**No. , ~~2007~~2008**

*(Treasury)*

**A Bill for an Act to amend the law relating to  
taxation, and for related purposes**

**EXPOSURE DRAFT**

# EXPOSURE DRAFT

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EXPOSURE DRAFT

# EXPOSURE DRAFT

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## Contents

1	Short title .....	1
2	Commencement .....	1
3	Schedule(s) .....	3
<b>Schedule 1—Amendments</b>		<b>4</b>
Part 1—Main amendments		4
<i>Income Tax Assessment Act 1997</i>		4
Part 2—Consequential amendments		<del>115</del> <u>124</u>
<i>Income Tax Assessment Act 1936</i>		<del>115</del> <u>124</u>
<i>Income Tax Assessment Act 1997</i>		<del>116</del> <u>128</u>
<u><i>Income Tax (Transitional Provisions) Act 1997</i></u>		<u>139</u>
<i>New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003</i>		<del>124</del> <u>140</u>
<i>Taxation Administration Act 1953</i>		<del>124</del> <u>140</u>
Part 3—Application and transitional provisions		<del>126</del> <u>142</u>





# EXPOSURE DRAFT

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1, items 1 to 21	The day on which this Act receives the Royal Assent.	
3. Schedule 1, item 22	1 July 2003.	1 July 2003
4. Schedule 1, items 23 to <del>84</del> 103	The day on which this Act receives the Royal Assent.	
5. Schedule 1, items <del>85</del> 104 and <del>86</del> 105	Immediately after the commencement of the <i>New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003</i> .	17 December 2003
6. Schedule 1, item <del>87</del> 106	The day on which this Act receives the Royal Assent.	
7. Schedule 1, item <del>88</del> 107	Immediately after the commencement of the <i>New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003</i> .	17 December 2003
8. Schedule 1, item <del>89</del> 108	The day on which this Act receives the Royal Assent.	
9. Schedule 1, item <del>90</del> 109	Immediately after the commencement of the <i>New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003</i> .	17 December 2003
10. Schedule 1, item <del>91</del> 110	The day on which this Act receives the Royal Assent.	
11. Schedule 1, item <del>92</del> 111	Immediately after the commencement of the <i>New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003</i> .	17 December 2003
12. Schedule 1, <del>item 93</del> items 112 to 115	The day on which this Act receives the Royal Assent.	
13. Schedule 1, item <del>94</del> 116	Immediately after the commencement of the <i>New Business Tax System (Taxation of Financial Arrangements) Act (No. 1) 2003</i> .	17 December 2003

2 *Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008* No. \_\_\_\_\_, 20072008No. \_\_\_\_\_, 2008  
*B08PK338.v05.doc 29/9/2008 9:27 AM*

# EXPOSURE DRAFT

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## Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
14. Schedule 1, items <del>95117</del> to <del>99121</del>	The day on which this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally  
2 passed by both Houses of the Parliament and assented to. It will not be  
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not  
5 part of this Act. Information in this column may be added to or  
6 edited in any published version of this Act.

### 3 Schedule(s)

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

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)  
[Part 1 Main amendments](#)

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1  
2 **Schedule 1—Amendments**

3 **Part 1—Main amendments**

4 *Income Tax Assessment Act 1997*

5 **1 Before Division 240**

6 Insert:

7 **Division 230—Taxation of financial arrangements**

8 **Table of Subdivisions**

9		Guide to Division 230
10	230-A	Core rules
11	230-B	The accruals/realisation methods
12	230-C	Fair value method
13	230-D	Foreign exchange retranslation method
14	230-E	Hedging financial arrangements method
15	230-F	Reliance on financial reports
16	230-G	Balancing adjustment on ceasing to have a financial
17		arrangement
18	230-H	Exceptions
19	230-I	Other provisions
20	230-J	Additional operation of Division

21 **Guide to Division 230**

22 **230-1 What this Division is about**

23 

This Division is about the tax treatment of gains and losses from 24 your financial arrangements.
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4 *Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008* [No. \\_\\_\\_\\_\\_](#),  
[20072008](#)~~No. \_\_\_\_\_~~, 2008  
*B08PK338.v05.doc 29/9/2008 9:27 AM*

EXPOSURE DRAFT



# EXPOSURE DRAFT

1 You recognise the gains and losses, as appropriate, over the life of  
2 a financial arrangement and ignore distinctions between income  
3 and capital unless specific rules apply.

4 If it is sufficiently certain that you will make a gain or loss, you use  
5 a compounding accruals method to recognise the gain or loss.  
6 Otherwise you use a realisation method. Instead of either, you may  
7 be able to choose to use a fair value or hedging method or to rely  
8 on your financial reports. You may also be able to choose to  
9 recognise foreign exchange gains and losses using a retranslation  
10 method.

## 11 **230-5 Scope of this Division**

- 12 (1) You have a financial arrangement if you have one or more cash  
13 settlable legal or equitable rights and/or obligations to receive or  
14 provide a financial benefit.
- 15 (2) This Division does not apply to all financial arrangements. The  
16 main exceptions are if:
- 17 (a) you are:
- 18 (i) an individual; or  
19 (ii) an ADI, securitisation vehicle or other financial sector  
20 entity with an aggregated turnover of less than \$20  
21 million; or  
22 (iii) another entity with an aggregated turnover of less than  
23 \$100 million;  
24 and either:
- 25 (iv) the arrangement is to end not more than 12 months after  
26 you start to have it; or  
27 (v) the arrangement is not a qualifying security; or  
28 (b) the arrangement is a financial arrangement under section  
29 230-55 (equity interests etc.) and neither a fair value election,  
30 a hedging financial arrangement election nor an election to  
31 rely on financial reports applies to the arrangement.

32 Note: Section 230-405 provides for the exception referred to in paragraph  
33 (a).

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)  
[Part 1 Main amendments](#)

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1 **Subdivision 230-A—Core rules**

2 **Table of sections**

3 **Objects**

4 230-10 Objects of this Division

5 **Tax treatment of gains and losses from financial arrangements**

6 230-15 Gains are assessable and losses deductible

7 230-20 Gain or loss to be taken into account only once under this Act

8 230-25 Associated financial benefits to be taken into account only once under this  
9 Act

10 230-30 Disregard some gains and losses

11 ~~230-35 Certain gains treated as exempt income or non-assessable non-exempt~~  
12 ~~income~~

13 ~~230-40 Treatment of offshore banking units~~

14 **Method to be applied to take account of gain or loss**

15 230-45 Methods for taking gain or loss into account

16 **Financial arrangement concept**

17 230-50 Financial arrangement

18 230-55 Financial arrangement (equity interest or right or obligation in relation to  
19 equity interest)

20 230-60 Rights, obligations and arrangements (grouping and disaggregation rules)

21 **General rules**

22 230-65 When financial benefit provided or received under financial arrangement

23 ~~230-67 Amount of financial benefit relating to more than one financial arrangement~~

24 230-70 Amount of financial benefit where waiver

25 230-75 Apportionment when financial benefit received or right ceases

26 230-80 Apportionment when financial benefit provided or obligation ceases

27 230-85 Consistency in working out gains or losses (integrity measure)

28 230-90 Rights and obligations include contingent rights and obligations

29 **Objects**

30 **230-10 Objects of this Division**

31 The objects of this Division are:

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6 *Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008* [No. \\_\\_\\_\\_\\_](#),  
[20072008 No. \\_\\_\\_\\_\\_, 2008](#)  
*B08PK338.v05.doc 29/9/2008 9:27 AM*

EXPOSURE DRAFT

# EXPOSURE DRAFT

[Amendments Schedule 1](#)  
[Main amendments Part 1](#)

- 1 (a) to minimise the extent to which the tax treatment of gains and  
2 losses from your \*financial arrangements distorts, by  
3 providing inappropriate impediments and stimulation, your  
4 trading, financing and investment decisions and your risk  
5 taking and risk management; and  
6 (b) to do so by aligning more closely the tax and commercial  
7 recognition of gains and losses from your financial  
8 arrangements in the following ways:  
9 (i) by allocating the gains and losses to income years  
10 throughout the life of your financial arrangements on a  
11 reasonable basis;  
12 (ii) by generally recognising gains and losses on revenue  
13 rather than capital account; and  
14 (c) to appropriately take account of, and minimise, your  
15 compliance costs.

## 16 Tax treatment of gains and losses from financial arrangements

### 17 230-15 Gains are assessable and losses deductible

#### 18 *Gains*

- 19 (1) Your assessable income includes a gain you make from a \*financial  
20 arrangement.

21 Note: This Division does not apply to gains ~~or losses~~ that are subject to  
22 exceptions under Subdivision 230-H.

#### 23 *Losses*

- 24 (2) You can deduct a loss you make from a \*financial arrangement, but  
25 only to the extent that:

- 26 (a) you make it in gaining or producing your assessable income;  
27 or  
28 (b) you necessarily make it in carrying on a \*business for the  
29 purpose of gaining or producing your assessable income.

30 Note: This Division does not apply to ~~gains or~~ losses that are subject to  
31 exceptions under Subdivision 230-H.

- 32 (3) You can also deduct a loss you make from a \*financial arrangement  
33 if:

# EXPOSURE DRAFT

## [Schedule 1 Amendments](#)

### [Part 1 Main amendments](#)

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- 1 (a) you are an \*Australian entity; and  
2 (b) you make the loss in deriving income from a foreign source;  
3 and  
4 (c) the income is \*non-assessable non-exempt income under  
5 section 23AI, 23AJ or 23AK of the *Income Tax Assessment*  
6 *Act 1936*; and  
7 (d) the loss is, in whole or in part, a cost in relation to a \*debt  
8 interest you issue that is covered by paragraph 820-40(1)(a).  
9 You can deduct the loss only to the extent to which it is a cost in  
10 relation to a \*debt interest you issue that is covered by paragraph  
11 820-40(1)(a).

12 Note: This Division does not apply to ~~gains or~~ losses that are subject to  
13 exceptions under Subdivision 230-H.

- 14 (4) If the \*financial arrangement is a \*debt interest, the loss is not  
15 prevented from being deductible for an income year under  
16 subsection (2) merely because of either or both of the following:  
17 (a) one or more of the \*financial benefits that are taken into  
18 account in working out the amount of the loss are \*contingent  
19 on the economic performance (whether past, current or  
20 future) of:  
21 (i) you or a part of your activities; or  
22 (ii) a \*connected entity of yours or a part of the activities of  
23 a connected entity of yours;  
24 (b) one or more of the financial benefits that are taken into  
25 account in working out the amount of the loss secure a  
26 permanent or enduring benefit for you or a connected entity  
27 of yours.
- 28 (5) Subject to subsection (6), subsection (4) does not apply to the loss  
29 to the extent to which the annually compounded internal rate of  
30 return on the \*debt interest exceeds the \*benchmark rate of return  
31 for the debt interest increased by 150 basis points.
- 32 (6) If:  
33 (a) regulations made for the purposes of subsection 25-85(6)  
34 provide that a specified number of basis points is to apply for  
35 the purposes of applying subsection 25-85(5) in particular  
36 circumstances; and  
37 (b) those circumstances exist in relation to the \*debt interest;
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8 Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 [No. \\_\\_\\_\\_\\_](#),

[20072008No. \\_\\_\\_\\_\\_, 2008](#)

[B08PK338.v05.doc 29/9/2008 9:27 AM](#)

# EXPOSURE DRAFT

# EXPOSURE DRAFT

1 subsection (5) applies as if the reference in that subsection to 150  
2 basis points were a reference to the number of basis points  
3 specified in the regulations.

4 *Section does not affect foreign residence rules*

- 5 (7) Nothing in this ~~section~~ [Division](#) affects the operation of the  
6 provisions of Division 6 that provide for the significance of foreign  
7 residence for the assessability of income.

8 Note 1: Gains that ~~are assessable you make~~ under this Division ~~are, for~~  
9 ~~example, may be ordinary or~~ statutory income for the purposes of  
10 ~~subsections~~ [Division 6-10\(4\)](#).

11 Note 2: [For the effect of a change of residence during an income year, see](#)  
12 [sections 230-429 and ~~\(5\)230-430~~](#).

## 13 **230-20 Gain or loss to be taken into account only once under this** 14 **Act**

15 *Application of section*

- 16 (1) This section applies to the following:  
17 (a) a gain that is included in your assessable income for an  
18 income year under this Division;  
19 (b) a loss that is allowable as a deduction to you for an income  
20 year under this Division;  
21 (c) a gain or a loss that is dealt with in accordance with  
22 subsection 230-270(4) in relation to an income year.

23 *Purpose of this section*

- 24 (2) The purpose of this section is to ensure that your gains and losses,  
25 and \*financial benefits, to which this section applies are taken into  
26 account only once under this Act in working out your taxable  
27 income.

28 *Gain or loss to be taken into account only once*

- 29 (3) A gain or loss to which this section applies is not to be (to any  
30 extent):  
31 (a) included in your assessable income; or  
32 (b) allowable as a deduction to you; or

# EXPOSURE DRAFT

1 (c) dealt with in accordance with subsection 230-270(4);  
2 again under this Division for the same or any other income year.

3 (4) A gain or loss to which this section applies is not to be (to any  
4 extent):

5 (a) included in your assessable income; or

6 (b) allowable as a deduction to you;

7 under any provisions of this Act outside this Division for the same  
8 or any other income year.

9 *Section does not give rise to exempt income*

10 (5) A gain is not to be treated as \*exempt income merely because it is  
11 not included in your assessable income under this section.

## 12 **230-25 Associated financial benefits to be taken into account only** 13 **once under this Act**

14 *Application of section*

15 (1) This section applies to a \*financial benefit whose amount or value  
16 is taken into account in working out whether you make, or the  
17 amount of, a gain or loss to which paragraph 230-20(1)(a), (b) or  
18 (c) applies.

19 *Associated financial benefit to be taken into account only once*

20 (2) A \*financial benefit to which this section applies is not to be (to  
21 any extent):

22 (a) included in your assessable income; or

23 (b) allowable as a deduction to you;

24 under any provision of this Act outside this Division for the same  
25 or any other income year.

26 ~~(3) Subsection (4) applies if:~~

27 ~~(a) you start to have, or cease to have, a \*financial arrangement~~  
28 ~~(or a part of a financial arrangement) as consideration (or as~~  
29 ~~part of the consideration) for:~~

30 ~~(i) something (the *thing provided*) that you provided, or are~~  
31 ~~to provide, to someone else or that you ceased to have,~~  
32 ~~or are to cease to have; or~~

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# EXPOSURE DRAFT

- 1 ~~(ii) something (the *thing acquired*) that someone else has~~  
2 ~~provided, or is to provide, to you or that someone else~~  
3 ~~has ceased to have or is to cease to have; and~~  
4 ~~(b) you are taken, under subsection 230-440(2) or (5), to have~~  
5 ~~received, or provided, as consideration for starting to have, or~~  
6 ~~ceasing to have, the arrangement (or that part of the~~  
7 ~~arrangement), \*financial benefits whose value is equal to the~~  
8 ~~\*market value of the arrangement (or that part of the~~  
9 ~~arrangement) at a particular time.~~

- 10 ~~(4) To avoid doubt, subsection (2) does not, merely because of the~~  
11 ~~circumstances referred to in paragraph (3)(b), prevent the \*market~~  
12 ~~value of the \*financial arrangement (or that part of the financial~~  
13 ~~arrangement) from being taken into account to determine an~~  
14 ~~amount to be included in your assessable income, or allowable as a~~  
15 ~~deduction for you, in relation to the thing provided or the thing~~  
16 ~~acquired.~~

17 *Exception for certain bad debts*

- 18 (5) If:  
19 (a) a \*financial benefit has been included in your assessable  
20 income under a provision of this Act outside this Division;  
21 and  
22 (b) a bad debt deduction would, ~~but for subsection (3),~~ have been  
23 allowed under section 25-35 in relation to the financial  
24 benefit;  
25 ~~subsections (sub~~ [subsection \(2\)](#) ~~and (3) do~~ [does](#) not prevent that bad  
26 debt deduction from being allowed under section 25-35 in relation  
27 to the financial benefit as if the debt were still outstanding.

28 *Section does not give rise to exempt income*

- 29 (6) A \*financial benefit is not to be treated as \*exempt income merely  
30 because it is not included in your assessable income under this  
31 section.

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)

[Part 1 Main amendments](#)

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## 230-30 Disregard some gains and losses

*Exempt or non-assessable non-exempt income*

(1A) A gain that you make from a \*financial arrangement is disregarded:

(a) to the extent that it reflects an amount that is treated, or is reasonably expected to be treated, as \*exempt income under a provision of this Act outside this Division; or

(b) to the extent that it reflects an amount that is treated or is reasonably expected to be treated, as \*non-assessable non-exempt income under a provision of this Act outside this Division; or

(c) for a gain that is covered by subsection (1B)—to the extent that the \*franked distribution mentioned in that subsection has a \*franked part.

(1B) This subsection covers a gain that is in the form of:

(a) a \*franked distribution (including a franked distribution that \*flows indirectly to you); or

(b) a right to receive a franked distribution (including a franked distribution that will flow indirectly to you).

(1) A loss you make from a \*financial arrangement is disregarded to the extent that you make it in gaining or producing your \*exempt income or your \*non-assessable non-exempt income.

(2) Subsection (1) does not prevent you from deducting a loss under subsection 230-15(3).

*Gain or loss of private or domestic nature*

(3) A gain or loss you make from a \*financial arrangement is disregarded:

(a) if a \*borrowing is made to you, or credit is provided to you, under the arrangement and you use some or all of the funds borrowed or the credit provided for a private or domestic purpose—to the extent that you use the funds raised or the credit provided for a private or domestic purpose; or

(b) if you are an individual, the arrangement is a \*derivative financial arrangement and the arrangement is held, wholly or in part, for a private or domestic purpose—to the extent that

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12 Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 [No. \\_\\_\\_](#)

[20072008No. \\_\\_\\_](#), 2008

[B08PK338.v05.doc](#) 29/9/2008 9:27 AM

EXPOSURE DRAFT



# EXPOSURE DRAFT

1 the arrangement is held or used for a private or domestic  
2 purpose.

3 ~~**230-35 Certain gains treated as exempt income or non-assessable**~~  
4 ~~**non-exempt income**~~

5 ~~(1) A gain you make from a <sup>\*</sup>financial arrangement is <sup>\*</sup>exempt income~~  
6 ~~to the extent that, if it had been a loss, you would have made it in~~  
7 ~~gaining or producing exempt income.~~

8 ~~(2) A gain you make from a <sup>\*</sup>financial arrangement is <sup>\*</sup>non-assessable~~  
9 ~~non-exempt income to the extent to which, if it had been a loss,~~  
10 ~~you would have made it in gaining or producing non-assessable~~  
11 ~~non-exempt income.~~

12 ~~**230-40 Treatment of offshore banking units**~~

13 ~~———— If an <sup>\*</sup>offshore banking unit consists of:~~

14 ~~———— (a) one or more <sup>\*</sup>permanent establishments in Australia at or~~  
15 ~~through which the offshore banking unit carries on what are~~  
16 ~~<sup>\*</sup>OB activities; and~~

17 ~~———— (b) one or more other permanent establishments either in~~  
18 ~~Australia or outside Australia;~~

19 ~~this Division applies as if:~~

20 ~~———— (c) the offshore banking unit consisted only of the permanent~~  
21 ~~establishments referred to in paragraph (a); and~~

22 ~~———— (d) the permanent establishments referred to in paragraph (b)~~  
23 ~~were separate entities.~~

24 ~~Note: ——— This means that it is possible for the OBU to have a financial~~  
25 ~~arrangement between the permanent establishments referred to in~~  
26 ~~paragraph (a) and the permanent establishments referred to in~~  
27 ~~paragraph (b) and for the OBU to make a gain or loss from such an~~  
28 ~~arrangement.~~

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)

[Part 1 Main amendments](#)

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## Method to be applied to take account of gain or loss

### 230-45 Methods for taking gain or loss into account

#### *Methods available*

(1) The methods that can be applied to take account of a gain or loss you make from a \*financial arrangement are:

- (a) the accruals and realisation methods provided for in Subdivision 230-B; or
- (b) the fair value method provided for in Subdivision 230-C; or
- (c) the foreign exchange retranslation method provided for in Subdivision 230-D; or
- (d) the hedging financial arrangement method provided for in Subdivision 230-E; or
- (e) the method of relying on your financial reports provided for in Subdivision 230-F; or
- (f) a balancing adjustment provided for in Subdivision 230-G.

~~A gain or loss is not taken into account under any of the methods referred to in paragraphs (a) to (e) to the extent to which the gain or loss is taken into account under Subdivision 230-G.~~

Note: The methods referred to in paragraphs (b) to (e) only apply if you make an election under the relevant Subdivision and you must meet certain requirements before you can make such an election.

(1A) A gain or loss is not taken into account under any of the methods referred to in paragraphs (1)(a), (b), (c) and (e) to the extent to which it is taken into account under the method referred to in paragraph (1)(f) (balancing adjustment).

(1B) A gain or loss is not taken into account under the method referred to in paragraph (1)(f) (balancing adjustment) to the extent to which it is taken into account under the method referred to in paragraph (1)(d) (hedging financial arrangement method).

Note: The hedging financial arrangement method may take some account of the gain or loss by reference to the balancing adjustment method (see subsection 230-260(4)).

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14 Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 [No. \\_\\_\\_\\_\\_](#)

~~20072008 No. \_\_\_\_\_, 2008~~

~~B08PK338.v05.doc 29/9/2008 9:27 AM~~

# EXPOSURE DRAFT

# EXPOSURE DRAFT

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*Elections override accruals and realisation methods*

- 1  
2 (2) Subdivision 230-B (accruals and realisation method) does not  
3 apply to a gain or loss you make from a \*financial arrangement:  
4 (a) if Subdivision 230-C (fair value method) applies to the  
5 arrangement; or  
6 (b) to the extent that Subdivision 230-D (foreign exchange  
7 retranslation method) applies to the gain or loss; or  
8 (c) to the extent that Subdivision 230-E (hedging financial  
9 arrangements method) applies to the arrangement; or  
10 (d) if Subdivision 230-F (method of relying on financial reports)  
11 applies to the arrangement; or  
12 (e) if the arrangement is a financial arrangement under section  
13 230-55 (equity interests etc.).

14 *Priorities among election methods*

- 15 (3) Subdivision 230-C (fair value method) does not apply to a gain or  
16 loss you make from a \*financial arrangement:  
17 (a) to the extent that Subdivision 230-E (hedging financial  
18 arrangements method) applies to the arrangement; or  
19 (b) if Subdivision 230-F (method of relying on financial reports)  
20 applies to the arrangement.
- 21 (4) Subdivision 230-D (foreign exchange retranslation method) does  
22 not apply to a gain or loss you make from a \*financial arrangement:  
23 (a) if Subdivision 230-C (fair value method) applies to the  
24 arrangement; or  
25 (b) to the extent that Subdivision 230-E (hedging financial  
26 arrangements method) applies to the arrangement; or  
27 (c) if Subdivision 230-F (method of relying on financial reports)  
28 applies to the arrangement.
- 29 (5) Subdivision 230-F (method of relying on financial reports) does  
30 not apply to a gain or loss you make from a \*financial arrangement  
31 to the extent that Subdivision 230-E (hedging financial  
32 arrangements method) applies to the arrangement.

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)

[Part 1 Main amendments](#)

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## 1 Financial arrangement concept

### 2 230-50 Financial arrangement

3 (1) You have a *financial arrangement* if you have, under an  
4 \*arrangement:

5 (a) a \*cash settleable legal or equitable right to receive a \*financial  
6 benefit; or

7 (b) a cash settleable legal or equitable obligation to provide a  
8 financial benefit; or

9 (c) a combination of one or more such rights and/or one or more  
10 such obligations;

11 unless:

12 (d) you also have under the arrangement one or more legal or  
13 equitable rights to receive something and/or one or more  
14 legal or equitable obligations to provide something; and

15 (e) for one or more of the rights and/or obligations covered by  
16 paragraph (d):

17 (i) the thing that you have the right to receive, or the  
18 obligation to provide, is not a financial benefit; or

19 (ii) the right or obligation is not cash settleable; and

20 (f) the one or more rights and/or obligations covered by  
21 paragraph (e) are not insignificant in comparison with the  
22 right, obligation or combination covered by paragraph (a), (b)  
23 or (c).

24 The right, obligation or combination covered by paragraph (a), (b)  
25 or (c) constitutes the financial arrangement.

26 Note 1: Whether your rights and/or obligations under an arrangement  
27 constitute a financial arrangement can change over time depending on  
28 changes either to the terms of the arrangement or external  
29 circumstances (such as particular rights or obligations under the  
30 arrangement being satisfied by the parties). For example, a contract  
31 may provide for the transfer of a boat in 6 months time and payment  
32 of the contract price at the end of 2 years. Until the boat is delivered,  
33 there is no financial arrangement because of the operation of  
34 paragraphs (d), (e) and (f) above. Once the boat is delivered, there is a  
35 financial arrangement because those paragraphs are no longer  
36 applicable.

37 Note 2: The operative provisions of this Division do not apply to all financial  
38 arrangements, and only apply partially to some: see the exceptions in  
39 Subdivision 230-H.

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16 Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 [No. \\_\\_\\_](#)

[20072008No. \\_\\_\\_](#), 2008

[B08PK338.v05.doc](#) 29/9/2008 9:27 AM

EXPOSURE DRAFT

# EXPOSURE DRAFT

1 Note 3: There are some rules in this Division that tell you what happens if an  
2 arrangement ceases to be a financial arrangement (see Subdivision  
3 230-G and section 230-440).

4 (2) A right you have to receive, or an obligation you have to provide, a  
5 <sup>\*</sup>financial benefit is *cash settleable* if, and only if:

- 6 (a) the benefit is money or a <sup>\*</sup>money equivalent; or  
7 (b) in the case of a right—you intend to satisfy or settle it by  
8 receiving money or a money equivalent or by starting to  
9 have, or ceasing to have, another <sup>\*</sup>financial arrangement; or  
10 (c) in the case of an obligation—you intend to satisfy or settle it  
11 by providing money or a money equivalent or by starting to  
12 have, or ceasing to have, another financial arrangement; or  
13 (d) you have a practice of satisfying or settling similar rights or  
14 obligations as mentioned in paragraph (b) or (c) (whether or  
15 not you intend to satisfy or settle the right or obligation in  
16 that way); or  
17 (e) you deal with the right or obligation, or with similar rights or  
18 obligations, in order to generate a profit from short-term  
19 fluctuations in price, from a dealer's margin, or from both; or  
20 (f) none of paragraphs (a) to (e) applies but you satisfy  
21 subsection (3); or  
22 (g) you are able to settle the right or obligation as mentioned in  
23 paragraph (b) or (c) (whether or not you intend to satisfy or  
24 settle the right or obligation in that way) and you do not have,  
25 as your sole or dominant purpose for entering into the  
26 arrangement under which you are to receive or provide the  
27 financial benefit, the purpose of receiving or delivering the  
28 financial benefit as part of your expected purchase, sale or  
29 usage requirements.

30 A reference in paragraph (b) or (c) to a financial arrangement does  
31 not include a reference to something that is a financial arrangement  
32 under section 230-55.

33 Note: Examples of dealing of the kind covered by paragraph (e) are:

- 34 (a) dealing with the right or obligation, or similar rights or  
35 obligations, on a frequent basis, a short-term basis or [on a](#)  
36 frequent and short-term basis; and  
37 (b) acquiring the right or obligation, or similar rights or obligations,  
38 and managing the resulting risk by entering into offsetting  
39 arrangements that provide a profit margin.

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)

[Part 1 Main amendments](#)

---

- 1 (3) You satisfy this subsection if:
- 2 (a) the \*financial benefit is readily convertible into money or a
- 3 \*money equivalent; and
- 4 (b) there is a market for the financial benefit that has a high
- 5 degree of liquidity; and
- 6 (c) either:
- 7 (i) the amount of the money or money equivalent referred
- 8 to in paragraph (a) is not subject to a substantial risk of
- 9 change in value; or
- 10 (ii) your purpose, or one of your purposes, for entering into
- 11 the ~~financial~~ arrangement under which you are to
- 12 receive or provide the financial benefit, is to receive or
- 13 deliver the financial benefit so that it may be converted
- 14 or liquidated into money or a money equivalent (other
- 15 than in the ordinary course of business).

## 16 **230-55 Financial arrangement (equity interest or right or obligation**

### 17 **in relation to equity interest)**

- 18 (1) You also have a *financial arrangement* if you have an \*equity
- 19 interest. The equity interest constitutes the financial arrangement.
- 20 (2) You also have a *financial arrangement* if:
- 21 (a) you have, under an \*arrangement:
- 22 (i) a legal or equitable right to receive something that is a
- 23 financial arrangement under this section; or
- 24 (ii) a legal or equitable obligation to provide something that
- 25 is a financial arrangement under this section; or
- 26 (iii) a combination of one or more such rights and/or
- 27 obligations; and
- 28 (b) the right, obligation or combination does not constitute, or
- 29 form part of, a financial arrangement under [subsection 230-](#)
- 30 [50\(1\)](#).

31 The right, obligation or combination referred to in paragraph (a)

32 constitutes the financial arrangement.

33 Note 1: Paragraph 230-45(2)(e) prevents the accruals method or the realisation

34 method being applied to something that is a financial arrangement

35 under this section.

36 Note 2: Subsection 230-230(1) prevents the retranslation method being

37 applied to something that is a financial arrangement under this section.

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18 Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 [No. \\_\\_\\_](#),

[20072008No. \\_\\_\\_](#), 2008

[B08PK338.v05.doc](#) 29/9/2008 9:27 AM

# EXPOSURE DRAFT

# EXPOSURE DRAFT

1 Note 3: Subsection 230-285(1) prevents the hedging method being applied to  
2 something that is a financial arrangement under this section.

3 **230-60 Rights, obligations and arrangements (grouping and**  
4 **disaggregation rules)**

5 *Single right or obligation or multiple rights or obligations?*

6 (1) If you have a right to receive 2 or more \*financial benefits, you are  
7 taken, for the purposes of this Division, to have a separate right to  
8 receive each of those financial benefits.

9 (2) If you have an obligation to provide 2 or more \*financial benefits,  
10 you are taken, for the purposes of this Division, to have a separate  
11 obligation to provide each of those financial benefits.

12 (3) Subsections (1) and (2) apply for the avoidance of doubt.

13 *Matters relevant to determining what rights and/or obligations*  
14 *constitute particular arrangements*

15 (4) For the purposes of this Division, whether a number of rights  
16 and/or obligations are themselves an \*arrangement or are 2 or more  
17 separate arrangements is a question of fact and degree that you  
18 determine having regard to the following:

19 (a) the nature of the rights and/or obligations;

20 (b) their terms and conditions (including those relating to any  
21 payment or other consideration for them);

22 (c) the circumstances surrounding their creation and their  
23 proposed exercise or performance (including what can  
24 reasonably be seen as the purposes of one or more of the  
25 entities involved);

26 (d) whether they can be dealt with separately or must be dealt  
27 with together;

28 (e) normal commercial understandings and practices in relation  
29 to them (including whether they are regarded commercially  
30 as separate things or as a group or series that forms a whole);

31 (f) the objects of this Division.

32 In applying this subsection, have regard to the matters referred to  
33 in paragraphs (a) to (f) both in relation to the rights and/or

# EXPOSURE DRAFT

## [Schedule 1 Amendments](#)

### [Part 1 Main amendments](#)

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- 1 obligations separately and in relation to the rights and/or  
2 obligations in combination with each other.
- 3 Example 1: Your rights and obligations under a typical convertible note, including  
4 the right to convert the note into a share or shares, would constitute  
5 one arrangement.
- 6 Example 2: Your rights and obligations under a typical price-linked or index-  
7 linked bond would constitute one arrangement.
- 8 Note 1: If you raised funds by means of a contract that you would not have  
9 entered into without entering into another contract, and neither  
10 contract could be assigned to a third party without the other also being  
11 assigned, this would tend to indicate that your rights and obligations  
12 under the 2 contracts together constitute one arrangement.
- 13 Note 2: If the commercial effect of your individual rights and/or obligations in  
14 a group or series cannot be understood without reference to the group  
15 or series as a whole, this would tend to indicate that all of your rights  
16 and/or obligations in the group or series together constitute one  
17 arrangement.

## 18 General rules

### 19 **230-65 When financial benefit provided or received under financial** 20 **arrangement**

#### 21 *Financial benefit provided under financial arrangement*

- 22 (1) You are taken, for the purposes of this Division, to have (or to have  
23 had) an obligation to provide a \*financial benefit under a \*financial  
24 arrangement if:
- 25 (a) you have (or had) an obligation to provide the financial  
26 benefit in relation to the arrangement; and
- 27 (b) the financial benefit would not otherwise be treated as one  
28 that you have (or had) an obligation to provide under the  
29 arrangement; and
- 30 (c) the financial benefit plays an integral role in determining:  
31 (i) whether you make, ~~or the amount of,~~ a gain or loss from  
32 the arrangement; or  
33 (ii) the amount of such a gain or loss.

34 Paragraph (a) applies even if the entity to which you provide the  
35 financial benefit is not a party to the arrangement.

36 Note: This means that the financial benefits you provide to acquire the  
37 financial arrangement (whether to the issuer, a previous holder or a  
38 third party) are taken to be financial benefits you provide under the

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# EXPOSURE DRAFT

1 arrangement. The financial benefits you provide may include, for  
2 example, fees paid or the forgoing of rights to receive a financial  
3 benefit.

4 *Financial benefit received under financial arrangement*

5 (2) You are taken, for the purposes of this Division, to have (or to have  
6 had) a right to receive a \*financial benefit under a \*financial  
7 arrangement if:

8 (a) you have (or had) a right to receive the financial benefit in  
9 relation to the arrangement; and

10 (b) the financial benefit would not otherwise be treated as one  
11 that you have (or had) a right to receive under the  
12 arrangement; and

13 (c) the financial benefit plays an integral role in determining:

14 (i) whether you make a gain or loss from the arrangement;

15 or

16 (ii) the amount of such a gain or loss.

17 Paragraph (a) applies even if the entity that provides the financial  
18 benefit is not a party to the arrangement.

19 Note: The financial benefits you receive may include, for example, the  
20 waiving of an obligation you have to provide a financial benefit.

21 **230-67 Amount of financial benefit relating to more than one**  
22 **financial arrangement**

23 (1) This section applies if a \*financial benefit plays the integral role  
24 mentioned in paragraph 230-65(1)(c) or (2)(c) in relation to more  
25 than one \*financial arrangement.

26 (2) For the purposes of this Division, determine the amount of the  
27 financial benefit that plays that integral role in relation to a  
28 particular \*financial arrangement by apportioning the actual  
29 amount of the financial benefit, on a reasonable basis, between the  
30 financial arrangements mentioned in subsection (1).

31 **230-70 Amount of financial benefit where waiver**

32 If:

33 (a) providing a \*financial benefit takes the form of waiving a  
34 right to receive a financial benefit in the future; or

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)

[Part 1 Main amendments](#)

---

1 (b) receiving a financial benefit takes the form of having an  
2 obligation to provide a financial benefit in the future waived;  
3 the amount of the financial benefit is taken, for the purposes of this  
4 Division, to be its \*market value at the time it is waived (and not its  
5 nominal value).

## 6 **230-75 Apportionment when financial benefit received or right** 7 **ceases**

- 8 (1) Apply subsection (2) in working out whether you make, or will  
9 make, a gain or loss (and the amount of the gain or loss) when:  
10 (a) you receive a particular \*financial benefit under a \*financial  
11 arrangement; or  
12 (b) one of your rights under a financial arrangement \*ceases.  
13 The gain or loss is to be calculated in nominal (and not \*present  
14 value) terms.
- 15 (2) You must have regard to the extent to which the \*financial benefits  
16 that you have provided, or are to provide, under the \*financial  
17 arrangement are reasonably attributable to the benefit or right  
18 referred to in paragraph (1)(a) or (b).
- 19 (3) Despite subsection (2), no \*financial benefit that you have  
20 provided, or are to provide, under the \*financial arrangement is to  
21 be attributed to the benefit or right referred to in paragraph (1)(a)  
22 or (b) if:  
23 (a) you are working out the amount of a gain or loss for the  
24 purposes of Subdivision 230-B; and  
25 (b) the gain or loss is not an overall gain or loss from the  
26 arrangement (within the meaning of that Subdivision) at the  
27 time when you start to have the arrangement; and  
28 (c) the benefit or right referred to in paragraph (1)(a) or (b) is an  
29 amount that represents, or is a right to an amount that  
30 represents:  
31 (i) interest; or  
32 [\(ia\) a \\*return paid or provided on a \\*debt interest; or](#)  
33 (ii) something that is in the nature of interest; or  
34 (iii) something that could reasonably be regarded as being a  
35 substitute for interest; or
- 

22 Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 [No. \\_\\_\\_](#).

[20072008No. \\_\\_\\_](#), 2008

[B08PK338.v05.doc](#) 29/9/2008 9:27 AM

EXPOSURE DRAFT

# EXPOSURE DRAFT

- 1 (iv) something prescribed by the regulations for the  
2 purposes of this paragraph.
- 3 Note 1: An example of something in the nature of interest is a discount on a  
4 security.
- 5 Note 2: An example of something that could reasonably be regarded as being a  
6 substitute for interest is a lump sum payment received instead of  
7 payments of interest.
- 8 (4) Any attribution made under subsection (2) must reflect appropriate  
9 and commercially accepted valuation principles that properly take  
10 into account:
- 11 (a) the nature of the rights and obligations under the \*financial  
12 arrangement; and
- 13 (b) the risks associated with each \*financial benefit, right and  
14 obligation under the arrangement; and
- 15 (c) the time value of money.

## 16 **230-80 Apportionment when financial benefit provided or obligation** 17 **ceases**

- 18 (1) Apply subsection (2) in working out whether you make, or will  
19 make, a gain or loss (and the amount of the gain or loss) when:
- 20 (a) you provide a particular \*financial benefit under the  
21 \*financial arrangement; or
- 22 (b) one of your obligations under a financial arrangement  
23 \*ceases.
- 24 The gain or loss is to be calculated in nominal (and not \*present  
25 value) terms.
- 26 (2) You must have regard to the extent to which the \*financial benefits  
27 that you have received, or are to receive, under the \*financial  
28 arrangement are reasonably attributable to the benefit or obligation  
29 referred to in paragraph (1)(a) or (b).
- 30 (3) Despite subsection (2), no \*financial benefit that you have  
31 received, or are to receive, under the \*financial arrangement is to  
32 be attributed to the benefit or obligation referred to in paragraph  
33 (1)(a) or (b) if:
- 34 (a) you are working out the amount of a gain or loss for the  
35 purposes of Subdivision 230-B; and

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 Main amendments

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- 1 (b) the gain or loss is not an overall gain or loss from the  
2 arrangement (within the meaning of that Subdivision) at the  
3 time when you start to have the arrangement; and  
4 (c) the benefit or obligation referred to in paragraph (1)(a) or (b)  
5 is an amount that represents, or is an obligation to provide an  
6 amount that represents:  
7 (i) interest; or  
8 (ia) a \*return paid or provided on a \*debt interest; or  
9 (ii) something that is in the nature of interest; or  
10 (iii) something that could reasonably be regarded as being a  
11 substitute for interest; or  
12 (iv) something prescribed by the regulations for the  
13 purposes of this paragraph.

14 Note 1: An example of something in the nature of interest is a discount on a  
15 security.

16 Note 2: An example of something that could reasonably be regarded as being a  
17 substitute for interest is a lump sum payment made instead of  
18 payments of interest.

- 19 (4) Any attribution made under subsection (2) must reflect appropriate  
20 and commercially accepted valuation principles that properly take  
21 into account:  
22 (a) the nature of the rights and obligations under the \*financial  
23 arrangement; and  
24 (b) the risks associated with each \*financial benefit, right and  
25 obligation under the arrangement; and  
26 (c) the time value of money.

## 27 **230-85 Consistency in working out gains or losses (integrity** 28 **measure)**

### 29 *Object of section*

- 30 (1) The object of this section is to stop you obtaining an inappropriate  
31 tax benefit from not working out your gains and losses in a  
32 consistent manner.

### 33 *Consistent treatment for particular financial arrangement*

- 34 (2) If:
- 

24 Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 No. \_\_\_\_\_

20072008 No. \_\_\_\_\_, 2008

B08PK338.v05.doc 29/9/2008 9:27 AM

# EXPOSURE DRAFT

- 1 (a) this Division provides that a particular method applies to  
2 gains or losses you make from a \*financial arrangement; and  
3 (b) that method allows you to choose the particular manner in  
4 which you apply that method;  
5 you must use that manner consistently for the arrangement for all  
6 income years.

7 *Consistent treatment for financial arrangements of essentially the*  
8 *same nature*

- 9 (3) If:  
10 (a) this Division provides that a particular method applies to  
11 gains or losses you make from 2 or more \*financial  
12 arrangements; and  
13 (b) that method allows you to choose the particular manner in  
14 which you apply that method;  
15 you must use that same manner consistently for all of those  
16 financial arrangements that are essentially of the same nature.

## 17 **230-90 Rights and obligations include contingent rights and** 18 **obligations**

19 To avoid doubt:

- 20 (a) a right is treated as a right for the purposes of this Division  
21 even it is subject to a contingency; and  
22 (b) an obligation is treated as an obligation for the purposes of  
23 this Division even if it is subject to a contingency.

## 24 **Subdivision 230-B—The accruals/realisation methods**

### 25 **Table of sections**

#### 26 **Guide to Subdivision 230-B**

27 230-95 What this Subdivision is about

#### 28 **Objects of Subdivision**

29 230-100 Objects of this Subdivision

#### 30 **When accruals method or realisation method applies**

# EXPOSURE DRAFT

## [Schedule 1 Amendments](#)

### [Part 1 Main amendments](#)

---

- 1           230-105   When accruals method or realisation method applies  
2           230-110   Sufficiently certain overall gain or loss  
3           230-115   Sufficiently certain gain or loss from particular event  
4           230-120   Sufficiently certain financial benefits

#### 5           **The accruals method**

- 6           230-125   Overview of the accruals method  
7           230-130   Applying accruals method to work out period over which gain or loss is to  
8                    be spread  
9           230-135   How gain or loss is spread  
10          [230-137 Election for portfolio treatment of fees](#)  
11          [230-138 Portfolio treatment of fees](#)  
12          230-140   Allocating gain or loss to income years  
13          230-145   Running balancing adjustments

#### 14          **Realisation method**

- 15          230-150   Realisation method

#### 16          **Reassessment and re-estimation**

- 17          230-155   Reassessment  
18          230-160   Re-estimation  
19          230-165   Balancing adjustment if rate of return maintained on re-estimation  
20          230-170   Re-estimation if balancing adjustment on partial disposal

### 21          **Guide to Subdivision 230-B**

#### 22          **230-95 What this Subdivision is about**

23                                   This Subdivision applies the accruals method to determine the  
24                                   amount and timing of gains and losses from a financial  
25                                   arrangement if they are sufficiently certain for such accrual to be  
26                                   done.

27                                   This Subdivision applies the realisation method to determine the  
28                                   amount and timing of gains and losses if they are not sufficiently  
29                                   certain to be dealt with under the accruals method.

30                                   If the accruals method is applied to a gain or loss on the basis of an  
31                                   estimate of a financial benefit and the benefit when received or

# EXPOSURE DRAFT

1 provided is more or less than the estimate, a balancing adjustment  
2 is made to correct for the underestimate or overestimate.

3 If the accruals method is being applied to gains and losses from the  
4 arrangement and there is a material change to the arrangement, or  
5 the circumstances in which it operates, a reassessment is made of  
6 whether the accruals method or the realisation method should  
7 apply to gains and losses from the arrangement.

8 A change in circumstances may also cause a re-estimation of gains  
9 and losses that the accruals method is being applied to.

## 10 **Objects of Subdivision**

### 11 **230-100 Objects of this Subdivision**

12 The objects of this Subdivision are:

- 13 (a) to properly recognise gains and losses from \*financial  
14 arrangements by allocating them to appropriate periods of  
15 time; and  
16 (b) to reduce compliance costs by reflecting commercial  
17 accounting concepts where appropriate; and  
18 (c) to minimise tax deferral.

## 19 **When accruals method or realisation method applies**

### 20 **230-105 When accruals method or realisation method applies**

21 *When accruals method applies and when realisation method*  
22 *applies*

- 23 (1) This section tells you when to apply the accruals method and when  
24 to apply the realisation method if this Subdivision applies to gains  
25 and losses from a \*financial arrangement.

26 *Accruals method—sufficiently certain overall gain or loss at start*  
27 *time*

- 28 (2) The accruals method provided for in this Subdivision applies to a  
29 gain or loss you make from a \*financial arrangement if:

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 Main amendments

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1 (a) the gain or loss is an overall gain or loss from the  
2 arrangement; and

3 (b) the gain or loss is sufficiently certain at the time when you  
4 start to have the arrangement.

5 Note: Subsection 230-110(1) tells you when you have a sufficiently certain  
6 overall gain or loss.

7 *Accruals method—particular sufficiently certain gain or loss*

8 (3) The accruals method provided for in this Subdivision also applies  
9 to a gain or loss you make from a \*financial arrangement if:

10 (a) the gain or loss arises from a \*financial benefit that you are to  
11 receive or are to provide under the arrangement; and

12 (b) the gain or loss:

13 (i) is sufficiently certain at the time when you start to have  
14 the arrangement and before you are to receive or  
15 provide the benefit; or

16 (ii) becomes sufficiently certain after the time when you  
17 start to have the arrangement and before you are to  
18 receive or provide the benefit; and

19 (c) the benefit has not already been taken into account in  
20 applying:

21 (i) the accrual method provided for in this Subdivision; or

22 (ii) the realisation method provided for in this Subdivision;  
23 to another gain or loss from the arrangement.

24 This subsection has effect subject to subsection (4).

25 Note: Subsection 230-115(1) tells you when you have a sufficiently certain  
26 gain or loss at a particular time.

27 (4) Subsection (3) does not apply to a gain or loss that you make from  
28 a \*financial arrangement if:

29 (a) you are:

30 (i) an individual; or

31 (ii) an entity (other than an individual) that satisfies  
32 subsection 230-405(2) or (3) for the income year in  
33 which you start to have the arrangement; and

34 (b) the arrangement is a \*qualifying security; and

35 (c) you have not made an election under subsection 230-405(5).



# EXPOSURE DRAFT

*Realisation method—gain or loss not sufficiently certain*

- (5) The realisation method provided for in this Subdivision applies to a gain or loss that you make from a \*financial arrangement if the accruals method provided for in this Subdivision does not apply to that gain or loss.

Note: Section 230-150 tells you how to apply the realisation method to the gain or loss.

## 230-110 Sufficiently certain overall gain or loss

- (1) You have a sufficiently certain overall gain or loss from a \*financial arrangement at the time when you start to have the arrangement only if it is sufficiently certain at that time that you will make an overall gain or loss from the arrangement of:

- (a) a particular amount; or
- (b) at least a particular amount.

The amount of the gain or loss is the amount referred to in paragraph (a) or (b).

Note: Sections 230-75 and 230-80 (about apportionment of financial benefits) only apply in working out whether you make, or will make, a gain or loss (and the amount of the gain or loss) when particular events happen. They do not apply in working out, at the time when you start to have a financial arrangement, whether it is sufficiently certain that you will make an overall gain or loss from the arrangement.

- (2) In applying subsection (1), you must:
- (a) assume that you will continue to have the \*financial arrangement for the rest of its life; and
  - (b) have regard to the extent of the risk that a \*financial benefit that you are not sufficiently certain to provide or receive under the arrangement may reduce the amount of the gain or loss.

## 230-115 Sufficiently certain gain or loss from particular event

- (1) You have a sufficiently certain gain or loss from a \*financial arrangement at a particular time if it is sufficiently certain at that time that you will make a gain or loss from the arrangement of:
- (a) a particular amount; or
  - (b) at least a particular amount;

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)

[Part 1 Main amendments](#)

---

1 when one of the following occurs:

2 (c) you receive a particular \*financial benefit under the  
3 arrangement or one of your rights under the arrangement  
4 \*ceases;

5 (d) you provide a particular financial benefit under the  
6 arrangement or one of your obligations under the  
7 arrangement ceases.

8 The amount of the gain or loss is the amount referred to in  
9 paragraph (a) or (b).

10 (2) In applying subsection (1) to work out whether you have a  
11 sufficiently certain gain or loss at a particular time:

12 (a) have regard to the extent of the risk that a \*financial benefit  
13 that you are not sufficiently certain to provide or receive  
14 under the arrangement may reduce the amount of the gain or  
15 loss; and

16 (b) disregard any financial benefit that has already been taken  
17 into account in working out the amount of a sufficiently  
18 certain overall gain or loss from the \*financial arrangement  
19 under subsection 230-110(1) at the time when you started to  
20 have the arrangement; and

21 (c) disregard any financial benefit (or that part of any financial  
22 benefit) that has already been taken into account in working  
23 out the amount of a sufficiently certain gain or loss from the  
24 \*financial arrangement under subsection (1).

25 Note: Sections 230-75 and 230-80 allow you to apportion financial benefits  
26 provided and financial benefits received in working out the amount of  
27 a gain or loss.

## 28 **230-120 Sufficiently certain financial benefits**

29 (1) In deciding for the purposes of this ~~Division~~[Subdivision](#) whether it  
30 is sufficiently certain at a particular time that you will make a gain  
31 or loss from a \*financial arrangement, have regard only to:

32 (a) \*financial benefits that you are sufficiently certain to receive;  
33 and

34 (b) financial benefits that you are sufficiently certain to provide.

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30 Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 [No. \\_\\_\\_](#).

[20072008No. \\_\\_\\_](#), 2008

[B08PK338.v05.doc](#) 29/9/2008 9:27 AM

EXPOSURE DRAFT

# EXPOSURE DRAFT

- 1 (2) A \*financial benefit that you are to receive or provide is to be  
2 treated as one that you are sufficiently certain to receive or to  
3 provide only if:  
4 (a) it is reasonably expected that you will receive or provide the  
5 financial benefit (assuming that you will continue to have the  
6 \*financial arrangement for the rest of its life); and  
7 (b) the amount or value of the benefit is, at that time, fixed or  
8 determinable with reasonable accuracy.
- 9 (3) In applying subsection (2) to the \*financial benefit:  
10 (a) you must have regard to:  
11 (i) the terms and conditions of the \*financial arrangement;  
12 and  
13 (ii) accepted pricing and valuation techniques; and  
14 (iii) the economic or commercial substance and effect of the  
15 arrangement; and  
16 (iv) the contingencies that attach to the other financial  
17 benefits that are to be provided or received under the  
18 arrangement; and  
19 (b) you must treat the financial benefit as if it were not  
20 contingent if it is appropriate to do so having regard to the  
21 contingencies that attach to the other financial benefits that  
22 are to be received or provided under the arrangement.
- 23 (4) In applying paragraph (2)(b) at a particular time (the *reference*  
24 *time*) to a \*financial benefit that depends on a variable that is based  
25 on:  
26 (a) an interest rate; or  
27 (b) a rate that solely or primarily reflects the time value of  
28 money; or  
29 (c) a rate that solely or primarily reflects a consumer price index;  
30 or  
31 (d) a rate that solely or primarily reflects an index prescribed by  
32 the regulations for the purposes of this paragraph;  
33 you must assume that that variable will continue to have the value  
34 it has at the reference time.
- 35 (5) Despite subsection (4), in applying paragraph (2)(b) at a particular  
36 time to a \*financial benefit that depends on a rate of change to a  
37 variable that is based on:

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 Main amendments

---

- 1 (a) a rate that solely or primarily reflects a consumer price index;  
2 or  
3 (b) a rate that solely or primarily reflects an index prescribed by  
4 the regulations for the purposes of this paragraph;  
5 you must assume that the rate of change to that variable will  
6 continue to be the rate of change that is current at that time.
- 7 (6) If subsection (4) or (5) applies to a gain or loss and you are  
8 determining the amount of the gain or loss at a particular time, you  
9 must also assume that that variable will continue to have the value  
10 that it has at that time.
- 11 (7) Subsections (4) and (5) do not limit paragraph (2)(b).
- 12 (8) If all of the \*financial benefits provided and received under the  
13 \*financial arrangement are denominated in a particular foreign  
14 currency, those financial benefits are not to be translated into  
15 ~~Australian~~ your \*applicable functional currency for the purposes of  
16 applying subsection (2) to the arrangement.
- 17 (9) To avoid doubt:
- 18 (a) a \*financial benefit that you have already provided at a  
19 particular time is taken to be one that it is, at that time, a  
20 financial benefit that you are sufficiently certain to provide;  
21 and  
22 (b) a financial benefit that you have already received at a  
23 particular time is taken to be one that it is, at that time, a  
24 financial benefit that you are sufficiently certain to receive.

## **The accruals method**

### **230-125 Overview of the accruals method**

- 27 If the accruals method applies to a gain or loss you make from a  
28 \*financial arrangement:
- 29 (a) you use section 230-130 to work out the period over which  
30 the gain or loss is to be spread; and  
31 (b) you use section 230-135 to work out how to allocate the gain  
32 or loss to particular intervals within the period over which the  
33 gain or loss is to be spread; and

# EXPOSURE DRAFT

- 1 (c) if an interval to which part of the gain or loss is allocated  
2 straddles 2 income years, you use section 230-140 to work  
3 out how to allocate that part of the gain or loss allocated  
4 between those 2 income years.

## 5 **230-130 Applying accruals method to work out period over which** 6 **gain or loss is to be spread**

### 7 *Period over which overall gain or loss is to be spread*

- 8 (1) If you have a sufficiently certain overall gain or loss from a  
9 \*financial arrangement under subsection 230-110(1), the period  
10 over which the gain or loss is to be spread is the period that:

- 11 (a) starts when you start to have the arrangement; and  
12 (b) ends when you will cease to have the arrangement.

13 In applying paragraph (b), you must assume that you will continue  
14 to have the arrangement for the rest of its life.

### 15 *Period over which particular gain or loss is to be spread*

- 16 (2) If you have a sufficiently certain gain or loss from a \*financial  
17 arrangement under subsection 230-115(1), the period over which  
18 the gain or loss is to be spread is the period to which the gain or  
19 loss relates. Have regard to the pricing, terms and conditions of the  
20 arrangement in working out the period to which the gain or loss  
21 relates. This subsection has effect subject to subsections (3) and  
22 (4).

- 23 (3) The start of the period over which a gain or loss to which  
24 subsection (2) applies is to be spread must:

- 25 (a) not start earlier than the time when you start to have the  
26 \*financial arrangement; and

- 27 (b) not start earlier than the start of the income year during which  
28 it becomes sufficiently certain that you will make the gain or  
29 loss.

- 30 (4) The end of the period over which a gain or loss to which  
31 subsection (2) applies is to be spread must:

- 32 (a) not end later than the time when you will cease to have the  
33 \*financial arrangement; and

- 34 (b) not end later than the end of the income year during which:

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 Main amendments

---

- 1 (i) the \*financial benefit that gives rise to the gain or loss is  
2 to be received or provided; or  
3 (ii) the right or obligation whose \*ceasing gives rise to the  
4 gain or loss is to cease.

### 5 **230-135 How gain or loss is spread**

#### 6 *How to spread gain or loss*

- 7 (1) This section tells you how to spread a gain or loss to which the  
8 accruals method applies.

#### 9 *Compounding accruals or approximation*

- 10 (2) The gain or loss is to be spread using:  
11 (a) compounding accruals ~~(with the intervals to which parts of~~  
12 ~~the gain or loss are allocated complying with subsection (3));~~  
13 or  
14 (b) a method whose results approximate those obtained using the  
15 method referred to in paragraph (a) (having regard to the  
16 length of the period over which the gain or loss is to be  
17 spread).

18 (2A) The following subsections of this section clarify the way in which  
19 the gain or loss is to be spread in accordance with subsection (2).

#### 20 *Intervals to which parts of gain or loss allocated*

- 21 (3) The intervals to which parts of the gain or loss are allocated must:  
22 (a) not exceed 12 months; and  
23 (b) all be of the same length.

24 Paragraph (b) does not apply to the first and last intervals. These  
25 may be shorter than the other intervals.

#### 26 *Fixing of amount and rate for interval*

27 (3A) For each interval:

- 28 (a) determine a rate of return; and  
29 (b) determine an amount to which you apply the rate of return.

# EXPOSURE DRAFT

1 (3B) For the purposes of paragraph (3A)(b), in determining the amount  
2 to which you apply the rate of return for an interval, have regard to:

3 (a) the amount or value; and

4 (b) the timing;

5 of \*financial benefits that are to be taken into account in working  
6 out the amount of the gain or loss, and were provided or received  
7 by you during the interval.

8 *Assumption of continuing to hold arrangement for rest of its life*

9 (4) The gain or loss is to be spread assuming that you will continue to  
10 have the \*financial arrangement for the rest of its life.

11 *Regard to be had to financial benefits provided or received in*  
12 *interval*

13 (5) In allocating the gain or loss to intervals, have regard to the  
14 \*financial benefits to be provided or received in each of those  
15 intervals.

## 16 230-137 Election for portfolio treatment of fees

17 (1) You may make an election for an income year under this section if:

18 (a) you prepare a financial report for the income year in  
19 accordance with:

20 (i) the \*accounting standards; or

21 (ii) if those standards do not apply to the preparation of the  
22 financial report—comparable accounting standards  
23 made under a \*foreign law that apply to the preparation  
24 of the financial report under a foreign law; and

25 (b) the financial report is audited in accordance with:

26 (i) the \*auditing standards; or

27 (ii) if the auditing standards do not apply to the auditing of  
28 the financial report—comparable auditing standards  
29 made under a \*foreign law.

30 (2) An election under this section is irrevocable.

## 31 230-138 Portfolio treatment of fees

32 (1) This section applies in relation to a \*financial arrangement if:

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 Main amendments

---

- 1 (a) you have made an election under section 230-137 in an  
2 income year; and  
3 (b) you start to have the financial arrangement in that income  
4 year or a later income year; and  
5 (c) an overall gain or loss to which subsection 230-130(1)  
6 applies arises in part from fees in respect of the \*financial  
7 arrangement; and  
8 (d) the net amount of the fees is not significant relative to the  
9 amount of the overall gain or loss; and  
10 (e) the fees play an integral role in determining the amount of the  
11 overall gain or loss; and  
12 (f) the financial arrangement is part of a portfolio of similar  
13 financial arrangements.

14 (2) For the purposes of this Division, split the overall gain or loss as  
15 follows:

- 16 (a) to the extent that it arises from the fees, treat it as an overall  
17 gain or loss from the \*financial arrangement (the *fees gain or*  
18 *loss*);  
19 (b) to the extent that it does *not* arise from the fees, treat it as a  
20 separate overall gain or loss from the financial arrangement.

#### *Determination of period for fees gain or loss*

- 22 (3) The period over which the fees gain or loss is to be spread is the  
23 period that you determine to be the average life of the portfolio, if:  
24 (a) the basis on which you determine the period accords with the  
25 spreading of the fees gain or loss for the purposes of the  
26 profit or loss statement of the financial report mentioned in  
27 paragraph 230-137(1)(a); and  
28 (b) the basis on which you determine the period is set and  
29 recorded before any fees in respect of the \*financial  
30 arrangement fall due; and  
31 (c) the period can be justified objectively; and  
32 (d) the period is reasonable in the circumstances.

#### *Spreading the fees gain or loss*

- 34 (4) The method by which the fees gain or loss is to be spread is the  
35 method that you determine, if:
-



# EXPOSURE DRAFT

- 1 (a) the basis on which you determine the method accords with  
2 the spreading of the fees gain or loss for the purposes of the  
3 profit or loss statement of the financial report mentioned in  
4 paragraph 230-137(1)(a); and  
5 (b) the method is determined before any fees in respect of the  
6 \*financial arrangement fall due; and  
7 (c) the method can be justified objectively; and  
8 (d) the method is reasonable in the circumstances.  
9 (5) To avoid doubt, subsections (3) and (4) apply despite sections 230-  
10 130 and 230-135.

## 230-140 Allocating gain or loss to income years

- 12 (1) You are taken, for the purposes of section 230-15, to make, for an  
13 income year, a gain or loss equal to a part of a gain or loss if:  
14 (a) that part of the gain or loss is allocated to an interval under  
15 section 230-135; and  
16 (b) that interval falls wholly within that income year.
- 17 (2) If:  
18 (a) a part of a gain or loss is allocated to an interval under  
19 section 230-135; and  
20 (b) that interval straddles 2 income years;  
21 you are taken, for purposes of section 230-15, to make a gain or  
22 loss equal to so much of that part of the gain or loss as is allocated  
23 between those income years on a reasonable basis.
- 24 (3) If:  
25 (a) a \*head company of a \*consolidated group or \*MEC group  
26 has a \*financial arrangement; and  
27 (b) a subsidiary member of the group ceases to be a member of  
28 the group at a particular time (the *leaving time*); and  
29 (c) immediately after the leaving time, the subsidiary member  
30 has the arrangement;  
31 an income year of the group is taken, for the purposes of applying  
32 this section to the group and the arrangement, to end at the leaving  
33 time.

# EXPOSURE DRAFT

1     **230-145 Running balancing adjustments**

2                     *Overestimate of financial benefit to be received*

- 3             (1) You are taken for the purposes of this Division to make a loss from  
4             a \*financial arrangement if:
- 5                 (a) a provision of this Subdivision has applied on the basis that  
6                 you were sufficiently certain, at a particular time, to receive a  
7                 \*financial benefit of, or of at least, a particular amount under  
8                 the arrangement; and
- 9                 (b) when you receive the benefit (or the time comes for you to  
10                 receive the benefit), the amount you receive (or are to  
11                 receive) is nil or is less than the amount estimated.

12             The amount of the loss is equal to the difference between the  
13             amount estimated and the amount you receive (or are to receive).  
14             You are taken to have made the loss for the income year in which  
15             you receive the benefit (or in which the time comes for you to  
16             receive the benefit).

17                     *Underestimate of financial benefit to be received*

- 18             (2) You are taken for the purposes of this Division to make a gain  
19             from a \*financial arrangement if:
- 20                 (a) a provision of this Subdivision has applied on the basis that  
21                 you were sufficiently certain at a particular time to receive a  
22                 \*financial benefit of, or of at least, a particular amount under  
23                 the arrangement; and
- 24                 (b) when you receive the benefit, or the time comes for you to  
25                 receive the benefit, the amount you receive, or are to receive,  
26                 is more than the amount estimated.

27             The amount of the gain is equal to the difference between the  
28             amount estimated and the amount you receive or are to receive.  
29             You are taken to have made that gain in the income year in which  
30             you receive the benefit or in which the time comes for you to  
31             receive the benefit.

32                     *Overestimate of financial benefit to be provided*

- 33             (3) You are taken for the purposes of this Division to make a gain  
34             from a \*financial arrangement if:

# EXPOSURE DRAFT

- 1 (a) a provision of this Subdivision has applied on the basis that  
2 you were sufficiently certain at a particular time to provide a  
3 \*financial benefit of, or of at least, a particular amount under  
4 the arrangement; and  
5 (b) when you provide the benefit, or the time comes for you to  
6 provide the benefit, the amount you provide, or are to  
7 provide, is nil or is less than the amount estimated.  
8 The amount of the gain is equal to the difference between the  
9 amount estimated and the amount you provide or are to provide.  
10 You are taken to have made that gain in the income year in which  
11 you provide the benefit or in which the time comes for you to  
12 provide the benefit.

13 *Underestimate of financial benefit to be provided*

- 14 (4) You are taken for the purposes of this Division to make a loss from  
15 a \*financial arrangement if:  
16 (a) a provision of this Subdivision has applied on the basis that  
17 you were sufficiently certain at a particular time to provide a  
18 \*financial benefit of, or of at least, a particular amount under  
19 the arrangement; and  
20 (b) when you provide the benefit, or the time comes for you to  
21 provide the benefit, the amount you are to provide is more  
22 than the estimated amount referred to in paragraph (a).  
23 The amount of the loss is equal to the difference between the  
24 amount estimated and the amount you are to provide. You are  
25 taken to have made that loss in the income year in which [you](#)  
26 [provide the benefit or in which](#) the time comes for you to provide  
27 the benefit.

28 **Realisation method**

29 **230-150 Realisation method**

- 30 (1) If a gain or loss is to be taken into account using the realisation  
31 method, you are taken, for the purposes of section 230-15, to make  
32 the gain or loss for the income year in which the gain or loss  
33 occurs.

34 Note: Sections 230-75 and 230-80 allow you to apportion financial benefits  
35 provided and financial benefits received in working out the amount of  
36 the gain or loss.

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 Main amendments

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- 1 (2) For the purposes of subsection (1), a gain or loss from a \*financial  
2 arrangement is taken to occur at the time at which the last of the  
3 \*financial benefits taken into account in determining the amount of  
4 the gain or loss:  
5 (a) is provided; or  
6 (b) if the financial benefit is not provided at the time when it is  
7 due to be provided under the arrangement and it is reasonable  
8 to expect that the financial benefit will be provided—is due  
9 to be provided.  
10 This subsection has effect subject to subsection (3).
- 11 (3) For the purposes of subsection (1), you make a loss from a  
12 \*financial arrangement from writing off, as a bad debt, a right to a  
13 \*financial benefit (or a part of a financial benefit) if:  
14 (a) the financial benefit was taken into account in working out  
15 the amount of a gain from the arrangement and the gain has  
16 been included in your assessable income under this Division;  
17 or  
18 (b) the right is one in respect of money that you lent in the  
19 ordinary course of your \*business of lending money; or  
20 (c) the right is one that you bought in the ordinary course of your  
21 business of lending money.
- 22 (4) The loss referred to in subsection (3) occurs when you write off the  
23 right to the \*financial benefit (or the part of the financial benefit) as  
24 a bad debt.
- 25 (5) The amount of the loss referred to in subsection (3) is:  
26 (a) if paragraph (3)(a) applies—so much of the gain referred to  
27 in that paragraph as is reasonably attributable to the  
28 \*financial benefit (or the part of the financial benefit); or  
29 (b) if paragraph (3)(b) applies—the amount of the financial  
30 benefit (or the part of the financial benefit); or  
31 (c) if paragraph (3)(c) applies—the amount of the financial  
32 benefit (or the part of the financial benefit) but only up to the  
33 value of the financial benefit you provided to acquire the  
34 right to the financial benefit (or the part of the financial  
35 benefit).
- 36 (6) For the purposes of this Act, a deduction for the loss referred to in  
37 subsection (3) is to be treated as a deduction of a bad debt.
-

# EXPOSURE DRAFT

1 Note: Various provisions in this Act and the *Income Tax Assessment Act*  
2 *1936* restrict the availability of deductions for bad debts and make  
3 provision in relation to the recoupment of amounts in relation to bad  
4 debts that have been written off. These provisions are set out in  
5 subsection 25-35(5).

## 6 **Reassessment and re-estimation**

### 7 **230-155 Reassessment**

- 8 (1) You must make a fresh assessment of which gains and losses from  
9 a \*financial arrangement the accruals method should apply to, and  
10 which gains and losses from that arrangement the realisation  
11 method should apply to, if:
- 12 (a) the accruals method, or the realisation method, provided for  
13 in this Subdivision applies to gains and losses from the  
14 arrangement; and
  - 15 (b) there is a material change to:
    - 16 (i) the terms and conditions of the arrangement; or
    - 17 (ii) circumstances that affect the arrangement.
- 18 (2) Without limiting subsection (1), the following changes are material  
19 changes to the terms and conditions of, or circumstances that  
20 affect, the \*financial arrangement:
- 21 (a) a change to the terms or conditions of the arrangement in a  
22 way that alters the essential nature of the arrangement (for  
23 example, by altering it from a \*debt interest to an \*equity  
24 interest or from an equity interest to a debt interest);
  - 25 (b) a change to the terms or conditions of the arrangement in a  
26 way that materially affects the contingencies on which  
27 significant obligations and rights under the arrangement are  
28 dependent (for example, by introducing such a contingency  
29 or removing such a contingency);
  - 30 (c) a change in circumstances that makes something that:
    - 31 (i) materially affects significant obligations and rights  
32 under the arrangement; and
    - 33 (ii) was previously dependent on a contingency;  
34 no longer dependent on a contingency (because, for example,  
35 only one of a number of previously possible contingencies is  
36 realised);
  - 37 (d) a change to:

# EXPOSURE DRAFT

- 1 (i) the terms on which credit is to be provided to an entity  
2 that is not a party to the arrangement; or  
3 (ii) the credit rating of an entity that is not a party to the  
4 arrangement;  
5 if a significant obligation or right under the arrangement is  
6 dependent on that credit being provided or that rating being  
7 maintained;
- 8 (e) if the arrangement is, or includes, a ~~loan~~[financial asset or](#)  
9 [financial liability](#) and you prepare your financial reports in  
10 accordance with:  
11 (i) the \*accounting standards; or  
12 (ii) if those standards do not apply to the preparation of the  
13 financial report—comparable accounting standards  
14 made under a \*foreign law that apply to the preparation  
15 of the financial report under a foreign law;  
16 a change to the terms or conditions of, or circumstances that  
17 affect, the arrangement that are sufficient for the  
18 ~~loan~~[financial asset or financial liability](#) to be treated as  
19 impaired for the purposes of those standards.
- 20 (3) You do not need to make a reassessment under this section merely  
21 because of a change in the fair value of the \*financial arrangement.

## 230-160 Re-estimation

### *When re-estimation necessary*

- 23
- 24 (1) You re-estimate a gain or loss from a \*financial arrangement under  
25 subsection (4) if:  
26 (a) the accruals method applies to the gain or loss; and  
27 (b) circumstances arise that materially affect:  
28 (i) the amount or value; or  
29 (ii) the timing;  
30 of \*financial benefits that were taken into account in working  
31 out the amount of the gain or loss; and  
32 (c) the circumstances do not give rise to a re-estimation under  
33 section 230-170.

# EXPOSURE DRAFT

1 You must re-estimate the gain or loss as soon as reasonably  
2 practicable after you become aware of the circumstances referred  
3 to in paragraph (b).

4 (2) Without limiting subsection (1), the following are circumstances of  
5 the kind referred to in paragraph (1)(b):

- 6 (a) a material change in market conditions that are relevant to the  
7 amount or value of the \*financial benefits to be received or  
8 provided under the \*financial arrangement;
- 9 (b) cash flows that were previously estimated becoming known  
10 and the difference between the cash flows that become  
11 known and the cash flows that were previously estimates is  
12 not insignificant;
- 13 (c) a right to, or a part of a right to, a financial benefit under the  
14 arrangement is written off as a bad debt;
- 15 (d) you have made a reassessment under section 230-155 in  
16 relation to gains or losses under the arrangement and you  
17 have determined on the reassessment under that section that  
18 the accruals method should continue to apply to those gains  
19 or losses.

20 (3) You do not re-estimate ~~a~~the gain or loss from a \*financial  
21 arrangement under subsection (4) merely because of ~~any one or~~  
22 ~~more of the following:~~

23 ~~(a) a change in the credit rating, or the creditworthiness, of a~~  
24 ~~party or parties to the arrangement;~~

25 ~~(b) the impairment (within the meaning of the \*accounting standards)~~  
26 ~~of the arrangement or a debt that forms part of the arrangement.~~

## 27 *Nature of re-estimation*

28 (4) Making a re-estimation in relation to a gain or loss under this  
29 subsection involves:

- 30 (a) a fresh determination of the amount of the gain or loss; and  
31 (b) a reapplication of the accruals method to the redetermined  
32 gain or loss to make a fresh allocation of the part of the  
33 redetermined gain or loss that has not already been allocated  
34 to intervals ending before the re-estimation is made to  
35 intervals ending after the re-estimation is made.

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)

[Part 1 Main amendments](#)

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1

## *Basis for re-estimation*

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- (5) You may make the fresh allocation of the gain or loss under subsection (4) on either of the following bases:

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- (a) by maintaining the rate of return being used and adjusting the amount to which you apply the rate of return to the present value of the estimated future cash flows discounted at the maintained rate of return;

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- (b) adjusting the rate of return and maintaining the amount to which the adjusted rate of return is to be applied.

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The object to be achieved by both bases is to allow you to bring the remainder of the gain or loss based on the new estimates properly to account over the remainder of the period over which you spread the gain or loss.

14

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Note: The amount referred to in paragraph (b) is the amount to which the previous rate of return was being applied immediately before the re-estimation.

17

18

19

20

- (6) If you adopt a particular basis under subsection (5) for a gain or loss from a \*financial arrangement, you must use the same basis for all the re-estimations you make under this section in relation to your gains and losses from all your financial arrangements.

21

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- (7) The following subsections apply if the re-estimation arises because of an impairment (within the meaning of the \*accounting standards) of:

25

26

- (a) the \*financial arrangement; or

- (b) a financial asset or financial liability that forms part of the arrangement.

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- (8) You must make the fresh allocation in accordance with paragraph (5)(b).

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31

- (9) To the extent that the impairment results in you making a loss for an income year under section 230-15, you cannot deduct that loss for the income year.
- 

44 Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 No. \_\_\_\_\_

~~20072008~~~~No. \_\_\_\_\_~~, 2008

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EXPOSURE DRAFT



# EXPOSURE DRAFT

## 230-165 Balancing adjustment if rate of return maintained on re-estimation

- (1) If you make a fresh allocation of the gain or loss on the basis referred to in paragraph 230-160(5)(a), you must make the following balancing adjustment:
- (a) if you re-estimate a gain and the amount to which you apply the rate of return increases—you make a gain from the \*financial arrangement, for the income year in which you make the re-estimation, equal to the amount of the increase;
  - (b) if you re-estimate a gain and the amount to which you apply the rate of return decreases—you make a loss from the arrangement, for the income year in which you make the re-estimation, equal to the amount of the decrease;
  - (c) if you re-estimate a loss and the amount to which you apply the rate of return increases—you make a loss from the arrangement, for the income year in which you make the re-estimation, equal to the amount of the increase;
  - (d) if you re-estimate a loss and the amount to which you apply the rate of return decreases—you make a gain from the arrangement, for the income year in which you make the re-estimation, equal to the amount of the decrease.
- (2) Subsection (3) applies if:
- (a) the re-estimation is made wholly or partly on the basis that you have written off, as a bad debt, a right to receive a \*financial benefit (or a part of a financial benefit); and
  - (b) the right:
    - (i) is not one in respect of money that you lent in the ordinary course of your \*business of lending money; and
    - (ii) is not one that you bought in the ordinary course of your business of lending money.
- (3) The balancing adjustment to be made under paragraph (1)(b), to the extent that it relates to the writing off of the bad debt, must not exceed so much of the gain in relation to the \*financial arrangement as:
- (a) has been assessed under this Division; and

# EXPOSURE DRAFT

1 (b) is reasonably attributable to the \*financial benefit (or the part  
2 of the financial benefit).

3 (4) Subsection (5) applies if:

4 (a) the re-estimation is made wholly or partly on the basis that  
5 you have written off, as a bad debt, a right to receive a  
6 \*financial benefit; and

7 (b) the right is one that you bought in the ordinary course of your  
8 \*business of lending money.

9 (5) The balancing adjustment to be made under paragraph (1)(b), to  
10 the extent that it relates to the writing off of the bad debt, must not  
11 exceed the value of the \*financial benefit you provided to acquire  
12 the right to the financial benefit (or the part of the financial  
13 benefit).

14 (6) For the purposes of this Act, a deduction for the balancing  
15 adjustment referred to in subsection (3) is to be treated as a  
16 deduction of a bad debt.

17 Note: Various provisions in this Act and the *Income Tax Assessment Act*  
18 *1936* restrict the availability of deductions for bad debts and make  
19 provision in relation to the recoupment of amounts in relation to bad  
20 debts that have been written off. These provisions are set out in  
21 subsection 25-35(5).

## 22 **230-170 Re-estimation if balancing adjustment on partial disposal**

### 23 *Re-estimation if balancing adjustment on partial disposal*

24 (1) You also re-estimate a gain or loss from a \*financial arrangement  
25 under subsection (2) if:

26 (a) the accruals method applies to the gain or loss; and

27 (b) a balancing adjustment is made in relation to the arrangement  
28 under Subdivision 230-G because you transfer to another  
29 entity:

30 (i) a proportionate share of all of your rights and/or  
31 obligations under the arrangement; or

32 (ii) a right or obligation that you have under the  
33 arrangement to a specifically identified \*financial  
34 benefit; or

# EXPOSURE DRAFT

- 1 (iii) a proportionate share of a right or obligation that you  
2 have under the arrangement to a specifically identified  
3 financial benefit.

4 You must re-estimate the gain or loss as soon as reasonably  
5 practicable after the transfer occurs.

6 *Nature of re-estimation*

- 7 (2) Making a re-estimation in relation to a gain or loss under this  
8 subsection involves:

9 (a) a fresh determination of the amount of the gain or loss  
10 disregarding:

11 (i) \*financial benefits; and

12 (ii) amounts of the gain or loss that have already been  
13 allocated to intervals ending before the re-estimation is  
14 made;

15 to the extent to which they are reasonably attributable to the  
16 proportionate share, or the right or obligation, referred to in  
17 paragraph (1)(b); and

18 (b) a reapplication of the accruals method to the redetermined  
19 gain or loss to make a fresh allocation of the part of that gain  
20 or loss that has not already been allocated to intervals ending  
21 before the re-estimation is made to intervals ending after the  
22 re-estimation is made.

23 In applying paragraph (a), disregard subsections 230-75(3) and  
24 230-80(3).

25 *Basis for re-estimation*

- 26 (3) You make the fresh allocation of the gain or loss under subsection  
27 (2) by maintaining the rate of return being used and adjusting the  
28 amount to which you apply the rate of return to the present value of  
29 the estimated future cash flows discounted at the maintained rate of  
30 return. The object to be achieved by the fresh allocation is to allow  
31 you to bring the redetermined gain or loss properly to account over  
32 the remainder of the period over which you spread the gain or loss.

33 **Subdivision 230-C—Fair value method**

34 **Table of sections**

# EXPOSURE DRAFT

## [Schedule 1 Amendments](#)

### [Part 1 Main amendments](#)

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1	230-175	Objects of this Subdivision
2	230-180	Fair value election
3	230-185	Financial arrangements to which fair value election applies
4	230-190	Financial arrangements to which election does not apply
5	230-195	Applying fair value method to gains and losses
6	230-200	Splitting financial arrangements into 2 financial arrangements
7	230-205	When election ceases to apply
8	230-210	Balancing adjustment if election ceases to apply

#### 230-175 Objects of this Subdivision

10 The objects of this Subdivision are:

- 11 (a) to allow you to align the tax treatment of gains and losses
- 12 from \*financial arrangements with the accounting treatment
- 13 that applies where ~~financial~~ assets and liabilities are
- 14 classified or designated as at fair value through profit or loss;
- 15 and
- 16 (b) to facilitate efficient price-making; and
- 17 (c) to achieve the above objects without allowing you to obtain
- 18 an inappropriate tax benefit.

#### 230-180 Fair value election

20 *Election*

- 21 (1) You may make a *fair value election* under this section if you are
- 22 eligible under subsection (2) to make the election for the income
- 23 year in which you make the election.

24 *Eligibility to make fair value election for an income year*

- 25 (2) You are eligible to make a *fair value election* for an income year
- 26 if:
- 27 (a) you prepare a financial report for that income year in
  - 28 accordance with:
    - 29 (i) the \*accounting standards; or
    - 30 (ii) if those standards do not apply to the preparation of the
    - 31 financial report—comparable accounting standards
    - 32 made under a \*foreign law that apply to the preparation
    - 33 of the financial report under a foreign law; and
  - 34 (b) the financial report is audited in accordance with:

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48 Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 [No. \\_\\_\\_](#)

[20072008No. \\_\\_\\_](#), 2008

[B08PK338.v05.doc](#) 29/9/2008 9:27 AM

EXPOSURE DRAFT

# EXPOSURE DRAFT

- 1 (i) the \*auditing standards; or  
2 (ii) if the auditing standards do not apply to the auditing of  
3 the financial report—comparable auditing standards  
4 made under a \*foreign law.

5 Note: Section 230-435 allows regulations to be made specifying particular  
6 foreign accounting and auditing standards as ones that are to be treated  
7 as comparable with Australian accounting and auditing standards for  
8 the purposes of this Division.

- 9 (2A) For the purposes of paragraph (2)(a), treat a financial report  
10 prepared by another entity as being prepared by you if:  
11 (a) the other entity is a \*connected entity of yours; and  
12 (b) the report is a consolidated financial report that deals with  
13 both your affairs and the affairs of the connected entity; and  
14 (c) the report properly reflects your affairs.

15 *Election irrevocable*

- 16 (3) A \*fair value election is irrevocable.

17 Note: The election may cease to have effect, or cease to apply to a particular  
18 financial arrangement, under section 230-205.

## 19 **230-185 Financial arrangements to which fair value election applies**

- 20 (1) A \*fair value election applies in relation to \*financial arrangements  
21 that:  
22 (a) are \*Division 230 financial arrangements; and  
23 (b) are recognised in financial reports of the kind referred to in  
24 paragraph 230-180(2)(a) that are audited, or required to be  
25 audited, as referred to in paragraph 230-180(2)(b); and  
26 (c) are assets or liabilities that you are required (whether or not  
27 as a result of a choice you make) by:  
28 (i) the \*accounting standards; or  
29 (ii) if those standards do not apply to the preparation of the  
30 financial report—comparable accounting standards that  
31 apply to the preparation of the financial report under a  
32 \*foreign law;  
33 to classify or designate, in the financial reports, as at fair  
34 value through profit or loss; and

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 Main amendments

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1 (d) you start to have in the income year in which you make the  
2 election or in a later income year.

3 This subsection has effect subject to section 230-190.

4 (2) If:

5 ~~(a) the \*fair value election is made by the \*head company of a~~  
6 ~~\*consolidated group or a \*MEC group; and~~

7 ~~(b)~~ but for this subsection, paragraphs (1)(b) and (c) would not be  
8 satisfied in relation to a \*financial arrangement because the  
9 arrangement is an intra-group transaction for the purposes of:

10 (i) \*accounting standard AASB 127 (or another accounting  
11 standard prescribed by the regulations for the purposes of this  
12 paragraph); or

13 (ii) if that standard does not apply to the preparation of the  
14 financial report—a comparable accounting standard that  
15 applies to the preparation of the financial report under a  
16 \*foreign law;

17 paragraphs (1)(b) and (c) are taken to be satisfied in relation to the  
18 arrangement.

19 Note: Financial arrangements between members of a consolidated group or  
20 MEC group are not covered by this subsection because the single  
21 entity rule in subsection 701-1(1) operates to treat them as not being  
22 financial arrangements for the purposes of this Division.

23 (3) If:

24 (a) the \*financial arrangement would not be a financial  
25 arrangement if the following provisions were disregarded:

26 (i) Division 9A of Part III of the *Income Tax Assessment*  
27 *Act 1936* (which deals with offshore banking units);

28 (ii) Part IIIB of that Act (which deals with Australian  
29 branches of foreign banks etc.); and

30 (b) paragraphs (1)(b) and (c) would be satisfied in relation to the  
31 financial arrangement if the arrangement had been between 2  
32 separate entities; and

33 (c) the \*fair value election is made by:

34 (i) if section 121EB of the *Income Tax Assessment Act*  
35 *1936* applies—the OBU mentioned in that section  
36 (disregarding the operation of that section); or

# EXPOSURE DRAFT

1 (ii) if section 160ZZW of that Act applies—the bank  
2 mentioned in that section (disregarding the operation of  
3 that section);  
4 paragraphs (1)(b) and (c) are taken to be satisfied in relation to the  
5 arrangement.

## 6 **230-190 Financial arrangements to which election does not apply**

- 7 (1) A \*fair value election does not apply to a \*financial arrangement if:  
8 (a) the arrangement is an \*equity interest; and  
9 (b) you are the issuer of the equity interest.
- 10 (2) A \*fair value election does not apply to a \*financial arrangement if:  
11 (a) you are:  
12 (i) an individual; or  
13 (ii) an entity (other than an individual) that satisfies  
14 subsection 230-405(2) or (3) for the income year in  
15 which you start to have the arrangement; and  
16 (b) the arrangement is a \*qualifying security; and  
17 (c) you have not made an election under subsection 230-405(5).
- 18 (3) A \*fair value election does not apply to a \*financial arrangement if:  
19 (a) the election is made by the \*head company of a \*consolidated  
20 group or a \*MEC group; and  
21 (b) the election specifies that the election is not to apply to  
22 financial arrangements in relation to \*life insurance business  
23 carried on by a member of the consolidated group or MEC  
24 group; and  
25 (c) the arrangement is one that relates to the life insurance  
26 business carried on by a member of the consolidated group or  
27 MEC group.
- 28 (4) A \*fair value election does not apply to a \*financial arrangement if  
29 the arrangement is associated with a business of a kind specified in  
30 regulations made for the purposes of this subsection.

## 31 **230-195 Applying fair value method to gains and losses**

- 32 (1) If a \*fair value election applies to your \*financial arrangement, the  
33 gain or loss you make from the arrangement for an income year is:

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)  
[Part 1 Main amendments](#)

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- 1 (a) the gain or loss that the standards referred to in paragraph  
2 230-180(2)(a) require you to recognise in profit or loss for  
3 the income year from the asset or liability mentioned in  
4 paragraph 230-185(1)(c); or  
5 (b) if subsection 230-185(2) applies to the arrangement—the  
6 gain or loss that the standards referred to in paragraph 230-  
7 185(1)(c) would have required you to recognise in profit or  
8 loss for the year from the asset or liability mentioned in  
9 paragraph 230-185(1)(c) if the arrangement had not been an  
10 intra-group transaction for the purposes of the standards  
11 referred to in paragraph 230-185(2)(b); or  
12 (c) if subsection 230-185(3) applies to the arrangement—the  
13 gain or loss that the standards referred to in paragraph 230-  
14 185(1)(c) would have required you to recognise in profit or  
15 loss for the year from the asset or liability mentioned in  
16 paragraph 230-185(1)(c) if the arrangement had been  
17 between 2 separate entities.

18 Note: Subsection 230-45(3) provides that an election under Subdivision 230-  
19 E (hedging financial arrangements method) or Subdivision 230-F  
20 (method of relying on financial reports) may override a fair value  
21 election.

- 22 ~~(2) Subsection (1) does not apply to a gain if the gain is in the form of:~~  
23 ~~(a) a \*franked distribution (including a franked distribution that~~  
24 ~~\*flows indirectly to you); or~~  
25 ~~(b) a right to receive a franked distribution (including a franked~~  
26 ~~distribution that will flow indirectly to you).~~

- 27 (3) Subsection (4) applies if:  
28 (a) a \*head company of a \*consolidated group or \*MEC group  
29 has a \*financial arrangement; and  
30 (b) a \*fair value election applies to the arrangement; and  
31 (c) a subsidiary member of the group ceases to be a member of  
32 the group at a particular time (the *leaving time*); and  
33 (d) immediately after the leaving time, the subsidiary member  
34 has the arrangement.  
35 (4) The gain or loss the group makes from the arrangement for the  
36 income year in which the leaving time occurs is taken to be the  
37 gain or loss that the standards referred to in paragraph 230-  
38 180(2)(a) would require the group to recognise as at fair value
-



# EXPOSURE DRAFT

1 through profit or loss for the income year from the asset or liability  
2 mentioned in paragraph 230-185(1)(c) if:

- 3 (a) the circumstances that existed in relation to the arrangement  
4 (including its value) immediately before the leaving time had  
5 continued to exist until the end of the income year; and  
6 (b) any circumstances that arise in relation to the financial  
7 arrangement after the leaving time were disregarded.

## 8 **230-200 Splitting financial arrangements into 2 financial** 9 **arrangements**

10 (1) If:

- 11 (a) a \*financial arrangement is constituted only in part by an  
12 asset or liability mentioned in paragraph 230-185(1)(c); and  
13 (b) a \*fair value election would apply to the arrangement if it  
14 were constituted solely by that asset or liability;

15 the provisions of this Division (other than this section) apply to the  
16 arrangement as if it were instead 2 separate financial arrangements.

17 (2) The 2 separate \*financial arrangements are:

- 18 (a) one consisting of the part referred to in paragraph (1)(a); and  
19 (b) one consisting of the remaining part.

## 20 **230-205 When election ceases to apply**

21 (1) A \*fair value election ceases to have effect from the start of an  
22 income year if you cease to be eligible under subsection 230-  
23 180(2) to make the fair value election for that income year.

24 (2) Subsection (1) does not prevent you from making a new \*fair value  
25 election at a later time if you become, at that later time, eligible  
26 under subsection 230-180(2) to make a fair value election for an  
27 income year.

28 Note: The new election will only apply to financial arrangements you start to  
29 have after the start of the income year in which the new election is  
30 made.

31 (3) A \*fair value election ceases to apply to a particular \*financial  
32 arrangement from the start of an income year if the arrangement  
33 ceases to satisfy a requirement of paragraph 230-185(1)(b) or (c)  
34 during that income year.

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)

[Part 1 Main amendments](#)

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- 1 (4) If the election ceases to apply to a particular \*financial arrangement  
2 under subsection (3), the election cannot subsequently reapply to  
3 that arrangement (even if the requirements of paragraphs 230-  
4 185(1)(b) and (c) are satisfied once more in relation to the  
5 arrangement).

## 6 **230-210 Balancing adjustment if election ceases to apply**

- 7 (1) You must make balancing adjustments under subsection (2) if a  
8 \*fair value election ceases to have effect under subsection 230-  
9 205(1).
- 10 (2) The balancing adjustments under this subsection are the balancing  
11 adjustments you would make under Subdivision 230-G for each of  
12 the \*financial arrangements to which the election applied if you  
13 disposed of the arrangement for its fair value when the election  
14 ceases to have effect.
- 15 (3) You must make a balancing adjustment under subsection (4) if a  
16 \*fair value election ceases to apply to a particular \*financial  
17 arrangement under subsection 230-205(3).
- 18 (4) The balancing adjustment under this subsection is the balancing  
19 adjustment you would make under Subdivision 230-G if you  
20 disposed of the \*financial arrangement for its fair value when the  
21 election ceases to apply to the arrangement.
- 22 (5) If a balancing adjustment is made under subsection (2) or (4) in  
23 relation to a \*financial arrangement, you are taken, for the purposes  
24 of this Division, to have reacquired the arrangement at its fair value  
25 immediately after the election ceased to have effect or ceased to  
26 apply to the arrangement.

## 27 **Subdivision 230-D—Foreign exchange retranslation method**

### 28 **Table of sections**

29	230-215	Objects of this Subdivision
30	230-220	Foreign exchange retranslation election
31	230-225	Financial arrangements to which general election applies
32	230-230	Financial arrangements to which general election does not apply
33	230-235	Balancing adjustment for election in relation to qualifying forex accounts
34	230-240	Applying foreign exchange retranslation method to gains and losses

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54 *Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008* [No. \\_\\_\\_](#)

[20072008No. \\_\\_\\_, 2008](#)

[B08PK338.v05.doc 29/9/2008 9:27 AM](#)

EXPOSURE DRAFT

# EXPOSURE DRAFT

- 1                   230-245   When election ceases to apply  
2                   230-250   Balancing adjustment if election ceases to apply

## 3                   **230-215 Objects of this Subdivision**

4                   The objects of this Subdivision are:

- 5                   (a) to allow you to align the tax treatment of gains and losses  
6                   from foreign exchange rate changes with the accounting  
7                   treatment of profits and losses from such changes; and  
8                   (b) to achieve this without allowing you to obtain an  
9                   inappropriate tax benefit.

## 10                  **230-220 Foreign exchange retranslation election**

11                  *General election*

- 12                  (1) You may make a *foreign exchange retranslation election* under  
13                  this subsection if you are eligible under subsection (2) to make the  
14                  election for the income year in which you make the election.

15                  *Eligibility to make election*

- 16                  (2) You are eligible to make a \*foreign exchange retranslation election  
17                  for an income year if:  
18                  (a) you prepare a financial report for that income year in  
19                  accordance with:  
20                  (i) the \*accounting standards; or  
21                  (ii) if those standards do not apply to the preparation of the  
22                  financial report—comparable accounting standards  
23                  made under a \*foreign law that apply to the preparation  
24                  of the financial report under a foreign law; and  
25                  (b) the financial report is audited in accordance with:  
26                  (i) the \*auditing standards; or  
27                  (ii) if the auditing standards do not apply to the auditing of  
28                  the financial report—comparable auditing standards  
29                  made under a \*foreign law.

30                  Note:        Section 230-435 allows regulations to be made specifying particular  
31                  foreign accounting and auditing standards as ones that are to be treated  
32                  as comparable with Australian accounting and auditing standards for  
33                  the purposes of this Division.

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 Main amendments

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1 (2A) For the purposes of paragraph (2)(a), treat a financial report  
2 prepared by another entity as being prepared by you if:

3 (a) the other entity is a \*connected entity of yours; and

4 (b) the report is a consolidated financial report that deals with  
5 both your affairs and the affairs of the connected entity; and

6 (c) the report properly reflects your affairs.

#### *Election in relation to qualifying forex accounts*

7  
8 (3) You may make a **foreign exchange retranslation election** under  
9 this subsection in relation to a \*financial arrangement if:

10 (a) the arrangement is a \*qualifying forex account; and

11 (b) you have not made a \*foreign exchange retranslation election  
12 under subsection (1) that applies to the account.

13 You may make the election even if you start to have the  
14 arrangement before you make the election.

#### *Financial arrangements to which election in relation to qualifying forex accounts applies*

15 (4) The election under subsection (3) applies to the \*financial  
16 arrangement:

17 (a) from the time when you start to have the arrangement if the  
18 election is made before you start to have the arrangement; or

19 (b) from the start of the income year in which the election is  
20 made if you make the election after you start to have the  
21 arrangement.  
22  
23

#### *Election~~s~~ irrevocable*

24  
25 (5) A \*foreign exchange retranslation election is irrevocable.

26 Note: The election may cease to apply under section 230-245.

### **230-225 Financial arrangements to which general election applies**

27  
28 (1) A \*foreign exchange retranslation election under subsection 230-  
29 220(1) applies to each of your \*financial arrangements:

30 (a) that are \*Division 230 financial arrangements; and

# EXPOSURE DRAFT

- 1 (b) that are recognised in financial reports of a kind referred to in  
2 paragraph 230-220(2)(a) that are audited, or required to be  
3 audited, as referred to in paragraph 230-220(2)(b); and  
4 (c) in relation to which you are required by:  
5 (i) \*accounting standard AASB 121 (or another accounting  
6 standard prescribed by the regulations for the purposes  
7 of this paragraph); or  
8 (ii) if that standard does not apply to the preparation of the  
9 financial report—a comparable accounting standard that  
10 applies to the preparation of the financial report under a  
11 \*foreign law;  
12 to recognise, in the financial reports, amounts in profit or loss  
13 (if any) that are attributable to changes in currency exchange  
14 rates; and  
15 (d) that you start to have in the income year in which you make  
16 the election or in a later income year.

17 This subsection has effect subject to section 230-230.

18 Note: The election also has consequences under Subdivision 775-F for  
19 arrangements that are not Division 230 financial arrangements.

20 (2) If:

21 ~~(a) the \*foreign exchange retranslation election is made by the~~  
22 ~~\*head company of a \*consolidated group or a \*MEC group;~~  
23 ~~and~~

24 ~~(b)~~ but for this subsection, paragraphs (1)(b) and (c) would not be  
25 satisfied in relation to a \*financial arrangement because the  
26 arrangement is an intra-group transaction for the purposes of:  
27 (i) \*accounting standard AASB 127 (or another accounting  
28 standard prescribed by the regulations for the purposes of this  
29 paragraph); or  
30 (ii) if that standard does not apply to the preparation of the  
31 financial report—a comparable accounting standard that  
32 applies to the preparation of the financial report under a  
33 \*foreign law;  
34 paragraphs (1)(b) and (c) are taken to be satisfied in relation to the  
35 arrangement.

36 Note: Financial arrangements between members of a consolidated group or  
37 MEC group are not covered by this subsection because the single

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 Main amendments

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1 entity rule in subsection 701-1(1) operates to treat them as not being  
2 financial arrangements for the purposes of this Division.

3 (3) If:

4 (a) the \*financial arrangement would not be a financial  
5 arrangement if the following provisions were disregarded:

6 (i) Division 9A of Part III of the *Income Tax Assessment*  
7 *Act 1936* (which deals with offshore banking units);

8 (ii) Part IIIB of that Act (which deals with Australian  
9 branches of foreign banks etc.); and

10 (b) paragraphs (1)(b) and (c) would be satisfied in relation to the  
11 financial arrangement if the arrangement had been between 2  
12 separate entities; and

13 (c) the \*foreign exchange retranslation election under subsection  
14 230-220(1) is made by:

15 (i) if section 121EB of the *Income Tax Assessment Act*  
16 *1936* applies—the OBU mentioned in that section  
17 (disregarding the operation of that section); or

18 (ii) if section 160ZZW of that Act applies—the bank  
19 mentioned in that section (disregarding the operation of  
20 that section);

21 paragraphs (1)(b) and (c) are taken to be satisfied in relation to the  
22 arrangement.

### 23 **230-230 Financial arrangements to which general election does not** 24 **apply**

25 (1) For the purposes of this Division, a \*foreign exchange retranslation  
26 election under subsection 230-220(1) does not apply to a \*financial  
27 arrangement if the arrangement is a financial arrangement under  
28 section 230-55 (equity interests etc.).

29 (2) For the purposes of this Division, a \*foreign exchange retranslation  
30 election under subsection 230-220(1) does not apply to a \*financial  
31 arrangement if:

32 (a) you are:

33 (i) an individual; or

34 (ii) an entity (other than an individual) that satisfies  
35 subsection 230-405(2) or (3) for the income year in  
36 which you start to have the arrangement; and

# EXPOSURE DRAFT

- 1 (b) the arrangement is a \*qualifying security; and  
2 (c) you have not made an election under subsection 230-405(5).
- 3 (3) A \*foreign exchange retranslation election under subsection 230-  
4 220(1) does not apply to a \*financial arrangement if:
- 5 (a) the election is made by the \*head company of a \*consolidated  
6 group or a \*MEC group; and  
7 (b) the election specifies that the election is not to apply to  
8 financial arrangements in relation to \*life insurance business  
9 carried on by a member of the consolidated group or MEC  
10 group; and  
11 (c) the arrangement is one that relates to the life insurance  
12 business carried on by a member of the consolidated group or  
13 MEC group.
- 14 (4) A \*foreign exchange retranslation election does not apply to a  
15 \*financial arrangement if the arrangement is associated with a  
16 business of a kind specified in regulations made for the purposes of  
17 this subsection.

## 18 **230-235 Balancing adjustment for election in relation to qualifying** 19 **forex accounts**

- 20 (1) If you make a \*foreign exchange retranslation election under  
21 subsection 230-220(3) in relation to a \*financial arrangement after  
22 you start to have the arrangement, you must make a balancing  
23 adjustment under subsection (2).
- 24 (2) The balancing adjustment under this subsection is the balancing  
25 adjustment you would make under Subdivision 230-G if you  
26 ceased to have the arrangement for its fair value at the time when  
27 the election started to apply to the arrangement (but only to the  
28 extent to which the balancing adjustment is reasonably attributable  
29 to a \*currency exchange rate effect).

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)  
[Part 1 Main amendments](#)

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## 230-240 Applying foreign exchange retranslation method to gains and losses

### *General election*

- (1) You make a gain or loss from a \*financial arrangement for an income year if:
- (a) a \*foreign exchange retranslation election under subsection 230-220(1) applies to the arrangement; and
  - (b) ~~either~~ [any of the following subparagraphs apply](#):
    - (i) the standard referred to in paragraph 230-225(1)(c) requires you to recognise a particular amount in profit or loss in relation to that arrangement for that income year; ~~or~~
    - (ii) if subsection 230-225(2) applies to the arrangement—the standards referred to in paragraph 230-225(1)(c) would have required you to recognise a particular amount in profit or loss in relation to that arrangement for that income year if the arrangement had not been an intra-group transaction for the purposes of the standards referred to in paragraph 230-225(2)(b);
    - (iii) [if subsection 230-225\(3\) applies to the arrangement—the standards referred to in paragraph 230-225\(1\)\(c\) would have required you to recognise a particular amount in profit or loss for the year from the asset or liability mentioned in paragraph 230-225\(1\)\(c\) if the arrangement had been between 2 separate entities.](#)

The amount of the gain or loss is the amount the standard requires, or would have required, you to recognise.

Note: See subsection 230-45(4).

### *Election in relation to qualifying forex accounts*

- (2) You make a gain or loss from a \*financial arrangement for an income year if:
- (a) a \*foreign exchange retranslation election under subsection 230-220(3) applies to the arrangement; and
  - (b) the standard referred to in paragraph 230-225(1)(c):

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60 Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 [No. \\_\\_\\_\\_\\_](#), 2008  
[20072008No. \\_\\_\\_\\_\\_, 2008](#)  
[B08PK338.v05.doc 29/9/2008 9:27 AM](#)

EXPOSURE DRAFT



# EXPOSURE DRAFT

- 1 (i) requires you to recognise a particular amount in profit  
2 or loss in relation to that arrangement for that income  
3 year; or  
4 (ii) would require you to recognise a particular amount in  
5 profit or loss in relation to that arrangement for that  
6 income year if that standard applied to the arrangement;  
7 or  
8 (iii) would require you to recognise a particular amount in  
9 profit or loss in relation to that arrangement for that  
10 income year if the arrangement had not been an intra-  
11 group transaction for the purposes of the standards  
12 referred to in paragraph 230-225(2)(b); or  
13 (iv) would require you to recognise a particular amount in  
14 profit or loss in relation to that arrangement for that  
15 income year if the arrangement had not been an intra-  
16 group transaction for the purposes of the standards  
17 referred to in paragraph 230-225(2)(b) and if that  
18 standard applied to the arrangement.

19 The amount of the gain or loss is the amount the standard requires,  
20 or would require, you to recognise.

## 21 *Subsidiary leaving group*

- 22 (3) Subsection (4) applies if:  
23 (a) a \*head company of a \*consolidated group or \*MEC group  
24 has a \*financial arrangement; and  
25 (b) a \*foreign exchange retranslation election under subsection  
26 230-220(1) or (3) applies to the arrangement; and  
27 (c) a subsidiary member of the group ceases to be a member of  
28 the group at a particular time (the *leaving time*); and  
29 (d) immediately after the leaving time, the subsidiary member  
30 has the arrangement.  
31 (4) The gain or loss the group makes from the arrangement for the  
32 income year in which the leaving time occurs is taken to be the  
33 gain or loss that the standard referred to in paragraph 230-225(1)(c)  
34 would require the group to recognise in profit or loss in relation to  
35 the arrangement for that income year if:

# EXPOSURE DRAFT

- 1 (a) the circumstances that existed in relation to the arrangement  
2 (including its value) immediately before the leaving time had  
3 continued to exist until the end of the income year; and  
4 (b) any circumstances that arise in relation to the arrangement  
5 after the leaving time were disregarded.

## 6 **230-245 When election ceases to apply**

### 7 *General election*

- 8 (1) A \*foreign exchange retranslation election under subsection 230-  
9 220(1) ceases to have effect from the start of an income year if you  
10 cease to be eligible under subsection 230-220(2) to make a foreign  
11 exchange retranslation under subsection 230-220(1) for that  
12 income year.
- 13 (2) Subsection (1) does not prevent you from making a new \*foreign  
14 exchange retranslation election at a later time if you become, at  
15 that later time, eligible under subsection 230-220(2), to make a  
16 foreign exchange retranslation election under subsection 230-  
17 220(1) for that income year.

18 Note: The new election will only apply to financial arrangements you start to  
19 have after the start of the income year in which the new election is  
20 made.

- 21 (3) A \*foreign exchange retranslation election under subsection 230-  
22 220(1) ceases to apply to a \*financial arrangement from the start of  
23 an income year if the arrangement ceases to satisfy a requirement  
24 of paragraph 230-225(1)(b) or (c) during that income year.
- 25 (4) If the election ceases to apply to a particular \*financial arrangement  
26 under subsection (3), the election cannot subsequently reapply to  
27 that arrangement (even if the requirements of paragraphs 230-  
28 225(1)(b) and (c) are satisfied once more in relation to the  
29 arrangement).

### 30 *Election in relation to qualifying forex accounts*

- 31 (5) A \*foreign exchange retranslation election under subsection 230-  
32 220(3) ceases to apply to a \*financial arrangement from the start of  
33 an income year if the arrangement ceases to satisfy a requirement  
34 of subsection 230-220(3) during that income year.

# EXPOSURE DRAFT

- 1 (6) If the election ceases to apply to a particular \*financial arrangement  
2 under subsection (5), the election cannot subsequently reapply to  
3 that arrangement (even if the requirements of subsection 230-  
4 220(3) are satisfied once more in relation to the arrangement).

## 5 **230-250 Balancing adjustment if election ceases to apply**

- 6 (1) You must make balancing adjustments under subsection (2) if a  
7 \*foreign currency retranslation election ceases to have effect under  
8 subsection 230-245(1).
- 9 (2) The balancing adjustments under this subsection are the balancing  
10 adjustments you would make under Subdivision 230-G for each of  
11 the \*financial arrangements to which the election applied if you  
12 disposed of the arrangement for its fair value when the election  
13 ceases to have effect (but only to the extent to which the balancing  
14 adjustment is reasonably attributable to a \*currency exchange rate  
15 effect).
- 16 (3) You must make a balancing adjustment under this section if a  
17 \*foreign currency retranslation election ceases to apply to a  
18 particular \*financial arrangement under subsection 230-245(3) or  
19 (5).
- 20 (4) The balancing adjustment under this subsection is the balancing  
21 adjustment you would make under Subdivision 230-G if you  
22 disposed of the \*financial arrangement for its fair value when the  
23 election ceases to apply to the arrangement (but only to the extent  
24 to which the balancing adjustment is reasonably attributable to a  
25 \*currency exchange rate effect).
- 26 (5) If a balancing adjustment is made under subsection (2) or (4) in  
27 relation to a \*financial arrangement, you are taken, for the purposes  
28 of this Division, to have reacquired the arrangement at its fair value  
29 immediately after the election ceased to have effect or ceased to  
30 apply to the arrangement.

## 31 **Subdivision 230-E—Hedging financial arrangements method**

### 32 **Table of sections**

33	230-255	Objects of this Subdivision
34	230-260	Applying hedging financial arrangement method to gains and losses

# EXPOSURE DRAFT

## [Schedule 1 Amendments](#)

### [Part 1 Main amendments](#)

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1	230-265	Table of events and allocation rules
2	230-270	Aligning tax classification of gain or loss from hedging financial
3		arrangement with tax classification of hedged item
4	230-275	Hedging financial arrangement election
5	230-280	Hedging financial arrangements to which election applies
6	230-285	Hedging financial arrangements to which election <del>applies</del> <a href="#">does not apply</a>
7	230-290	<b><i>Hedging financial arrangement and hedged item</i></b>
8	230-295	Generally whole arrangement must be financial hedging arrangement
9	230-300	Requirements not satisfied because of honest mistake or inadvertence
10	230-305	<b><i>Derivative financial arrangement and foreign currency hedge</i></b>
11	230-310	Recording requirements
12	230-315	Determining basis for allocating gain or loss
13	230-320	Effectiveness of the hedge
14	230-325	When election ceases to apply
15	230-330	Balancing adjustment if election ceases to apply
16	230-335	Where requirements not met
17	230-340	You may be excluded from this <del>Division</del> <a href="#">Subdivision</a> for deliberate failures
18		to comply with requirements

### **230-255 Objects of this Subdivision**

The objects of this Subdivision are:

- (a) to facilitate the efficient management of financial risk by reducing after-tax mismatches and better aligning tax treatment where hedging takes place; and
- (b) to minimise tax deferral and tax motivated practices (including tax deferral arising from such practices as tax advantaged selection from among possible hedges and inappropriate selection of tax treatment).

### **230-260 Applying hedging financial arrangement method to gains and losses**

- (1) If you have a \*hedging financial arrangement to which a \*hedging financial arrangement election applies, the gain or loss you make for an income year from the arrangement is worked out under this section and section 230-270 instead of under Subdivision 230-B, 230-C, 230-D, 230-F or 230-G.
- (2) Except where subsection (3), (4) or (6) applies, the gain or loss you make from the \*hedging financial arrangement is equal to the overall gain or loss you make from the arrangement, and is

# EXPOSURE DRAFT

- 1 allocated over income years according to the determination  
2 referred to in subsection 230-315(1).
- 3 Note 1: The allocation is capable of extending to income years after you cease  
4 to have the hedging financial arrangement (see subsection 230-  
5 315(3)).
- 6 Note 2: The determination must be included in the record made under section  
7 230-310.
- 8 (3) If the \*hedging financial arrangement is a \*foreign currency hedge  
9 and is a \*debt interest:  
10 (a) this section applies to a gain or loss you make from the  
11 arrangement to the extent to which the gain or loss represents  
12 a \*currency exchange rate effect attributable to the  
13 outstanding balance in relation to the debt interest; and  
14 (b) the remainder (if any) of the gain or loss is allocated under  
15 Subdivision 230-B, 230-F or 230-G.  
16 This subsection has effect despite subsections (1) and (2).
- 17 (4) If an event listed in the table in section 230-265 occurs:  
18 (a) the gain or loss you make from the \*hedging financial  
19 arrangement is equal to any gain or loss that you would have  
20 made:  
21 (i) while the arrangement was hedging the \*hedged item or  
22 items; and  
23 (ii) on ceasing to have the arrangement;  
24 if you ceased to have the arrangement for its fair value at the  
25 time of the event; and  
26 (b) this Division further applies as if, just after the event, you had  
27 acquired the arrangement for its fair value at the time of the  
28 event.  
29 The gain or loss referred to in paragraph (a) is allocated over  
30 income years according to the table.
- 31 (5) The regulations may apply subsection (4) and section 230-265  
32 (with the modifications that are provided for in the regulations) to  
33 the situation in which you cease to have one or more, but not all, of  
34 the \*hedged items.
- 35 (6) If the \*hedging financial arrangement:  
36 (a) is a \*financial arrangement under section 230-55 (equity  
37 interests etc.); and

# EXPOSURE DRAFT

## [Schedule 1 Amendments](#)

### [Part 1 Main amendments](#)

1 (b) is a \*foreign currency hedge; and  
2 (c) is one that you issue;  
3 this section applies to the gain or loss that you make from the  
4 arrangement only to the extent to which the gain or loss represents  
5 a \*currency exchange rate effect. ~~The remainder (if any) of the gain~~  
6 ~~or loss is dealt with in accordance with Subdivision 230-B, 230-D,~~  
7 ~~230-F or 230-G.~~

8 (7) Subsection (6) has effect despite subsections (1) and (2).

### 9 **230-265 Table of events and allocation rules**

10 For the purposes of paragraph 230-260(4)(a), the following table  
11 lists events and their consequences:  
12

**Table of events and allocation rules**

<b>Item</b>	<b>If this event occurs ...</b>	<b>Your gain or loss is allocated ...</b>
1	(a) you revoke the hedging designation; or (b) you redesignate your *hedging financial arrangement; or (c) you cease to meet the requirement of section 230-320 in relation to your hedging financial arrangement	over income years according to the basis determined under subsection 230-315(1).
2	(a) you cease to have the *hedged item or all of the hedged items; or (b) you cease to expect that the hedged item or items will come into existence; <u>or</u> <u>(c) you cease to expect that you will have the hedged item or items</u>	to the income year in which the event occurs.
3	a risk being hedged by your *hedging financial arrangement ceases to exist	to the income year in which the risk ceases to exist.

13

66 Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 No. ...

~~20072008 No. ... , 2008~~

~~B08PK338.v05.doc 29/9/2008 9:27 AM~~

# EXPOSURE DRAFT

## 230-270 Aligning tax classification of gain or loss from hedging financial arrangement with tax classification of hedged item

- (1) The object of this section is to better align, in particular circumstances, the tax classification of a gain or loss you make from a \*hedging financial arrangement with the tax classification of the \*hedged item.
- (2) This section applies if:
- (a) you make a gain or loss from a \*hedging financial arrangement for an income year; and
  - (b) a \*hedging financial arrangement election applies to the arrangement.
- (3) Subject to subsection (4):
- (a) if you make a gain from the arrangement—your assessable income includes the gain in accordance with subsection 230-15(1); and
  - (b) if you make a loss from the arrangement—you may deduct the loss in accordance with subsections 230-15(2) and (3).
- Note: Subsections 230-260(2) to (7) tell you how to allocate the gain or loss to an income year or years.
- (4) A gain or loss you make from a \*hedging financial arrangement, to the extent to which it is reasonably attributable to a \*hedged item referred to in the following table, is dealt with in the way indicated in that item:

### Special tax classification for gains and losses

Item	For a hedged item that is <a href="#">or produces ...</a>	the gain ...	the loss ...
1	a *CGT asset any *net capital gain in relation to which would be assessable under Parts 3-1 and 3-3 in relation to which a *CGT event (the <i>hedged item CGT event</i> ) occurs	is treated as a *capital gain from a CGT event (but only to the extent to which the gain is reasonably attributable to the hedged item CGT event)	is treated as a *capital loss from a CGT event (but only to the extent to which the loss is reasonably attributable to the hedged item CGT event)

# EXPOSURE DRAFT

## [Schedule 1 Amendments](#)

### [Part 1 Main amendments](#)

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#### Special tax classification for gains and losses

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Item	For a hedged item that is <b>or produces ...</b>	the gain ...	the loss ...
2	a *CGT asset that is *taxable Australian property	is treated as a *capital gain from a *CGT event for a CGT asset that is taxable Australian property	is treated as a *capital loss from a CGT event for a CGT asset that is taxable Australian property
3	a *CGT asset your capital gains and losses in relation to which are disregarded, or reduced by a particular percentage, under Division 855	is disregarded or reduced by the same percentage	is disregarded or reduced by the same percentage
4	*exempt income	is treated as exempt income	is not deductible
5	*non-assessable non-exempt income of an Australian resident	is treated as non-assessable non-exempt income	is not deductible
6	a share in a company that is a foreign resident if the capital gain or loss you make from a *CGT event that happens to the share is reduced by a particular percentage under <del>Division</del> <a href="#">Subdivision</a> 768-G	is treated as a *capital gain from a CGT event that is reduced by the same percentage	is treated as a *capital loss from a CGT event that is reduced by the same percentage
7	*ordinary income or *statutory income from an *Australian source	is treated as ordinary income or statutory income from an Australian source	is treated as a loss incurred in gaining or producing <del>your</del> ordinary income or statutory income from an Australian source
8	*ordinary income or *statutory income from a source out of Australia	is treated as ordinary income or statutory income from a source out of Australia	is treated as a loss incurred in gaining or producing ordinary income or statutory

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68 *Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008* [No. ...](#)

[20072008No. ... , 2008](#)

*B08PK338.v05.doc 29/9/2008 9:27 AM*

EXPOSURE DRAFT



# EXPOSURE DRAFT

[Amendments Schedule 1](#)  
[Main amendments Part 1](#)

## Special tax classification for gains and losses

Item	For a hedged item that is <u>or produces</u> ...	the gain ...	the loss ...
			income from a source out of Australia
9	a loss or outgoing incurred in gaining or producing *ordinary income or *statutory income from a source out of Australia	<del>reduces the amount of the loss or outgoing by the amount of the gain</del> is treated as <u>ordinary income or statutory income from a source out of Australia</u>	<del>increases the amount of the loss or outgoing by the amount of the loss</del> is treated as a loss <u>incurred in gaining or producing ordinary income or statutory income from a source out of Australia</u>
10	a loss or outgoing incurred in gaining or producing *ordinary income or *statutory income from an *Australian source	<del>reduces the amount of the loss or outgoing by the amount of the gain</del> is treated as <u>ordinary income or statutory income from an Australian source</u>	<del>increases the amount of the loss or outgoing by the amount of the loss</del> is treated as a loss <u>incurred in gaining or producing ordinary income or statutory income from an Australian source</u>
11	a loss or outgoing that is not allowed as a deduction	<del>reduces the amount of the loss or outgoing by the amount of the gain</del> is treated as *non-assessable non-exempt <u>income</u>	<del>increases the amount of the loss or outgoing by the amount of the loss</del> is treated as a loss that is <u>not allowed as a deduction</u>
12	a net investment in a foreign operation (within the meaning of the *accounting standards) that is not carried on through: (a) a company in which you hold shares; or (b) a company that is a subsidiary of yours (within the meaning of the <i>Corporations</i>	<del>is treated as</del> (a) to the extent that the net investment would give rise to income that is *non-assessable non-exempt income <u>under section 23AH of the <i>Income Tax Assessment Act 1936</i>—is treated as non-assessable non-exempt income; and</u>	(a) to the extent that the net investment would give rise to income that is non-assessable non-exempt income <u>under section 23AH of the <i>Income Tax Assessment Act 1936</i>—is not deductible; and</u> (b) otherwise—is

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)  
[Part 1 Main amendments](#)

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## Special tax classification for gains and losses

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Item	For a hedged item that is <u>or produces ...</u>	the gain ...	the loss ...
	<del>Act 2001</del> ; to the extent to which the gain or loss does not relate to a *hedged item that is covered by another item in this table).	(b) otherwise—is treated in accordance with the item or items in this table that are applicable to the gain.	treated in accordance with the item or items in this table that are applicable to the loss.

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Note: — In some circumstances, more than one item can apply to the same hedging financial arrangement. For example, item 1 might apply to make the gain on the arrangement a capital gain and item 2 might apply to treat the capital gain as being made on an asset that is taxable Australian property.

(5) If:

- (a) a \*hedged item is your net investment in a foreign operation (within the meaning of the \*accounting standards); and
- (b) the foreign operation is carried on through:
  - (i) a company in which you hold shares; or
  - (ii) a company that is a subsidiary of yours (within the meaning of the *Corporations Act 2001*);

the hedged item is taken, for the purposes of applying the table in subsection (~~4~~), to be the interest you have in the shares of the company.

## 230-275 Hedging financial arrangement election

### *Election*

- (1) You can make a **hedging financial arrangement election** if you are eligible under subsection (2) to make the election for the income year in which you make the election.

*Eligibility to make hedging financial arrangement election for an income year*

- (2) You are eligible to make a **hedging financial arrangement election** for an income year if:

# EXPOSURE DRAFT

- 1 (a) you prepare a financial report for that income year in  
2 accordance with:  
3 (i) the \*accounting standards; or  
4 (ii) if those standards do not apply to the preparation of the  
5 financial report—comparable accounting standards  
6 made under a \*foreign law that apply to the preparation  
7 of the financial report under a foreign law; and  
8 (b) the financial report is audited in accordance with:  
9 (i) the \*auditing standards; or  
10 (ii) if the auditing standards do not apply to the auditing of  
11 the financial report—comparable auditing standards  
12 made under a \*foreign law.

13 Note: Section 230-435 allows regulations to be made specifying particular  
14 foreign accounting and auditing standards as ones that are to be treated  
15 as comparable with Australian accounting and auditing standards for  
16 the purposes of this Division.

- 17 (2A) For the purposes of paragraph (2)(a), treat a financial report  
18 prepared by another entity as being prepared by you if:  
19 (a) the other entity is a \*connected entity of yours; and  
20 (b) the report is a consolidated financial report that deals with  
21 both your affairs and the affairs of the connected entity; and  
22 (c) the report properly reflects your affairs.

## 23 *Election irrevocable*

- 24 (3) The \*hedging financial arrangement election is irrevocable.

25 Note: The election may cease to apply under section 230-340.

## 26 **230-280 Hedging financial arrangements to which election applies**

27 A \*hedging financial arrangement election applies to a \*hedging  
28 financial arrangement if:

- 29 (a) you start to have the arrangement in the income year in which  
30 you make the election or in a later income year; and  
31 (b) the requirements in sections 230-310 to 230-320 are met in  
32 relation to the arrangement.

33 This subsection has effect subject to section 230-285.

# EXPOSURE DRAFT

## [Schedule 1 Amendments](#)

### [Part 1 Main amendments](#)

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1 Note: Paragraph (b)—see section 230-335 for the Commissioner’s discretion  
2 in relation to failures to meet the requirements of sections 230-310 to  
3 230-320.

#### 4 **230-285 Hedging financial arrangements to which election does not** 5 **apply**

- 6 (1) A \*hedging financial arrangement election does not apply to a  
7 \*financial arrangement if the arrangement is a financial  
8 arrangement under section 230-55 (equity interests etc.).
- 9 (2) Subsection (1) does not apply to a \*hedging financial arrangement  
10 if:  
11 (a) the hedging financial arrangement is a \*foreign currency  
12 hedge; and  
13 (b) you issue the hedging financial arrangement.
- 14 (3) A \*hedging financial arrangement election does not apply to a  
15 \*financial arrangement if:  
16 (a) you are:  
17 (i) an individual; or  
18 (ii) an entity (other than an individual) that satisfies  
19 subsection 230-405(2) or (3) for the income year in  
20 which you start to have the arrangement; and  
21 (b) the arrangement is a \*qualifying security; and  
22 (c) you have not made an election under subsection 230-405(5).
- 23 (4) A \*hedging financial arrangement election does not apply to a  
24 \*financial arrangement if:  
25 (a) the election is made by the \*head company of a \*consolidated  
26 group or a \*MEC group; and  
27 (b) the election specifies that the election is not to apply to  
28 financial arrangements in relation to \*life insurance business  
29 carried on by a member of the consolidated group or MEC  
30 group; and  
31 (c) the arrangement is one that relates to the life insurance  
32 business carried on by a member of the consolidated group or  
33 MEC group.
- 34 (5) A \*hedging financial arrangement election does not apply to a  
35 \*financial arrangement if the arrangement is associated with a
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# EXPOSURE DRAFT

1 business of a kind specified in regulations made for the purposes of  
2 this subsection.

## 3 **230-290 Hedging financial arrangement and hedged item**

### 4 *Hedging financial arrangement*

- 5 (1) A \*financial arrangement that you have that is a \*derivative  
6 financial arrangement, or is not a derivative financial arrangement  
7 but is a \*foreign currency hedge, is a ***hedging financial***  
8 ***arrangement*** if:
- 9 (a) you create, acquire or apply the arrangement for the purpose  
10 of hedging a risk or risks in relation to a \*hedged item; and
  - 11 (b) at the time you create, acquire or apply the arrangement, the  
12 arrangement satisfies the requirements of the standards  
13 referred to in paragraph 230-275(2)(a) to be a hedging  
14 instrument; and
  - 15 (c) the arrangement is recorded as a hedging instrument in:
    - 16 (i) your financial report [\(including all documents and](#)  
17 [records on which the report is based\)](#); or
    - 18 (ii) if the arrangement hedges a risk in relation to foreign  
19 currency—the financial report of a consolidated entity  
20 in which you are included [\(including all documents and](#)  
21 [records on which the report is based\)](#);
- 22 for the income year in which the rights and/or obligations are  
23 created, acquired or applied.

24 Note: [For \*\*document and record\*\*, see section 25 of the Acts](#)  
25 [Interpretation Act 1901.](#)

- 26 (2) A \*financial arrangement that is a \*derivative financial  
27 arrangement, or is not a derivative financial arrangement but is a  
28 \*foreign currency hedge, is a ***hedging financial arrangement*** if:
- 29 (a) you create, acquire or apply the arrangement for the purpose  
30 of hedging a risk or risks in relation to something; and
  - 31 (b) one or more of subsections (3), (4), (5) or (6) is satisfied; and
  - 32 (c) the requirements of paragraphs (1)(b) or (c) are not able to be  
33 satisfied:
    - 34 (i) because of the requirements of the standards referred to  
35 in paragraph 230-275(2)(a); and

# EXPOSURE DRAFT

## [Schedule 1 Amendments](#)

### [Part 1 Main amendments](#)

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- 1 (ii) not because of any act or omission on your part to  
2 deliberately fail to satisfy those requirements; and
- 3 (d) you satisfy the additional recording requirements of  
4 subsection 230-310(5); and
- 5 (e) you satisfy the requirements (if any) prescribed by the  
6 regulations for the purposes of this paragraph.
- 7 (3) This subsection is satisfied if:
- 8 (a) the \*financial arrangement hedges a foreign currency risk in  
9 relation to an anticipated dividend from a \*connected entity;  
10 and
- 11 (b) the dividend is \*non-assessable non-exempt income under  
12 section 23AJ of the *Income Tax Assessment Act 1936*.
- 13 (4) This subsection is satisfied if:
- 14 (a) you enter into a \*financial arrangement with a \*connected  
15 entity; and
- 16 (b) the standards referred to in paragraph 230-275(2)(a) require  
17 that a consolidated financial report be prepared that deals  
18 with both your affairs and the affairs of the connected entity;  
19 and
- 20 (ba) the report properly reflects your affairs; and
- 21 (c) the arrangement satisfies the requirements of paragraph ~~230-~~  
22 ~~290~~(1)(a); and
- 23 (d) the arrangement would satisfy the requirements of paragraph  
24 ~~230-290~~(1)(b) or (c) but for the fact that the consolidated  
25 report disregards the arrangement.
- 26 (5) This subsection is satisfied if:
- 27 (a) the period for which the risk or risks are hedged does not  
28 straddle 2 or more income years; and
- 29 (b) the \*financial arrangement satisfies the requirements of  
30 paragraph ~~230-290~~(1)(a); and
- 31 (c) the arrangement would satisfy the requirements of paragraph  
32 ~~230-290~~(1)(c) if the period for which the risk or risks that are  
33 hedged did straddle 2 or more income years.
- 34 (6) This subsection is satisfied if the requirements prescribed by the  
35 regulations for the purposes of this subparagraph are satisfied.
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# EXPOSURE DRAFT

1 *Financial arrangement hedging more than one type of risk*

- 2 (7) A \*financial arrangement that hedges more than one type of risk  
3 may only be a **hedging financial arrangement** if the standards  
4 referred to in paragraph (1)(b) allow the arrangement to be  
5 designated as a hedge of those risks.

6 *More than one financial arrangement hedging the ~~one~~ same risk or*  
7 *risks*

- 8 (8) If 2 or more \*financial arrangements hedge the same risk or risks,  
9 each of the arrangements may only be a **hedging financial**  
10 **arrangement** if the standards referred to in paragraph (1)(b) allow  
11 those arrangements to be viewed in combination and jointly  
12 designated as hedging that risk or those risks.

13 *Hedged item*

- 14 (9) If a \*~~hedging~~ financial arrangement that you have hedges a risk in  
15 relation to:  
16 (a) an asset or a part of an asset; or  
17 (b) a liability or a part of a liability; or  
18 (c) a firm commitment (within the meaning of the \*accounting  
19 standards) or a part of such a commitment; or  
20 (d) a highly probable forecast transaction (within the meaning of  
21 the accounting standards) or a part of such a transaction; or  
22 (e) a net investment in a foreign operation (within the meaning  
23 of the \*accounting standards) or a part of such an investment;  
24 or  
25 (f) something prescribed by the regulations for the purposes of  
26 this paragraph;  
27 the asset (or that part of the asset), the liability (or that part of the  
28 liability), the commitment (or that part of the commitment), the  
29 transaction (or that part of the transaction) or the investment (or  
30 that part of the investment) is a **hedged item** for the arrangement.
- 31 (10) If a \*financial arrangement is a \*hedging financial arrangement  
32 because of paragraph (3)(a), the anticipated dividend referred to in  
33 that subparagraph is a **hedged item** for the arrangement even if  
34 subsection (9) is not satisfied in relation to the anticipated  
35 dividend.

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)

[Part 1 Main amendments](#)

---

1     **230-295 Generally whole arrangement must be financial hedging**  
2             **arrangement**

- 3             (1) Subject to subsections (2), (3) and (4), the whole of a \*financial  
4                     arrangement must satisfy the requirements of subsection 230-  
5                     290(1) or (2) for the arrangement to be a *hedging financial*  
6                     *arrangement*.

7                     *Partial hedges*

- 8             (2) If a \*financial arrangement:  
9                     (a) is an options contract; and  
10                     (b) hedges risk only in part by reference to changes in the  
11                         intrinsic value of the options [contract](#);  
12                     the arrangement may be treated as a *hedging financial*  
13                     *arrangement* to the extent to which the part of the arrangement  
14                     referred to in paragraph (b) satisfies the requirements of subsection  
15                     230-290(1) or (2).

- 16             (3) If a \*financial arrangement:  
17                     (a) is a forward contract; and  
18                     (b) has a spot price element and an interest element;  
19                     the arrangement may be treated as a *hedging financial*  
20                     *arrangement* to the extent to which the spot price element satisfies  
21                     the requirements of subsection 230-290(1) or (2).

22                     *Proportionate hedges*

- 23             (4) A specified proportion of a \*financial arrangement may be treated  
24                     as a *hedging financial arrangement* to the extent to which that  
25                     proportion of the arrangement satisfies the requirements of  
26                     subsection 230-290(1) or (2).

27                     *Separate financial arrangements if partial or proportionate hedge*

- 28             (5) If a part (or parts), or a proportion (or proportions), of a \*financial  
29                     arrangement is (or are) treated as a \*hedging financial arrangement  
30                     under subsection (2), (3) or (4):  
31                     (a) the part (or each of the parts), or the proportion (or each of  
32                         the proportions), of the arrangement that is (or are) treated as

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76             Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008     No.     .

[20072008No. —, 2008](#)

[B08PK338.v05.doc 29/9/2008 9:27 AM](#)

EXPOSURE DRAFT



# EXPOSURE DRAFT

- 1 a hedging financial arrangement is taken to be a separate  
2 financial arrangement for the purposes of this Division; and  
3 (b) the remaining part or proportion (if any) of the arrangement  
4 is taken to be a separate financial arrangement for the  
5 purposes of this Division.
- 6 (6) Subsection (5) has effect even if there would not be separate  
7 \*arrangements under subsection 230-60(4).

## 8 **230-300 Requirements not satisfied because of honest mistake or** 9 **inadvertence**

- 10 If a \*derivative financial arrangement, or a \*foreign currency  
11 hedge, that you have would not be a \*hedging financial  
12 arrangement only because the requirements of paragraph 230-  
13 290(1)(b) or (c), or both, are not satisfied because of an honest  
14 mistake or inadvertence, it is nevertheless a **hedging financial**  
15 **arrangement** if the Commissioner considers this appropriate  
16 having regard to:
- 17 (a) your documented risk management practices and policies;  
18 and
  - 19 (b) your record keeping practices; and
  - 20 (c) your accounting systems and controls; and
  - 21 (d) your internal governance processes; and
  - 22 (e) the circumstances surrounding the mistake or inadvertence  
23 (including the steps (if any) taken to correct or address the  
24 mistake or inadvertence and the steps (if any) taken to  
25 prevent a recurrence); and
  - 26 (f) the extent to which the requirements of paragraphs 230-  
27 290(1)(b) and (c) have been met; and
  - 28 (g) the objects of this Subdivision.

## 29 **230-305 Derivative financial arrangement and foreign currency hedge**

### 30 *Derivative financial arrangement*

- 31 (1) A **derivative financial arrangement** is a \*financial arrangement  
32 that you have where:
- 33 (a) its value changes in response to changes in a specified  
34 variable or variables; and

# EXPOSURE DRAFT

## [Schedule 1 Amendments](#)

### [Part 1 Main amendments](#)

---

- 1 (b) there is no requirement for a net investment, or there is such a  
2 requirement but the net investment is smaller than would be  
3 required for other types of financial arrangement that would  
4 be expected to have a similar response to changes in market  
5 factors.

6 Note: Paragraph (a)—A specified variable includes an interest rate,  
7 foreign exchange rate, credit rating, index or commodity or  
8 financial instrument price.

#### 9 *Foreign currency hedge*

- 10 (2) A *foreign currency hedge* is a \*financial arrangement that you  
11 have if:  
12 (a) paragraph (1)(a) is satisfied but paragraph (1)(b) is not; and  
13 (b) the arrangement hedges a risk in relation to movements in  
14 currency exchange rates.

### 15 **230-310 Recording requirements**

- 16 (1) The requirement of this section is that you must make, or have in  
17 place, a record that:  
18 (a) contains a description of the following:  
19 (i) the \*hedging financial arrangement in relation to which  
20 the election is made;  
21 (ii) the nature of the risk or risks being hedged;  
22 (iii) the \*hedged item or items;  
23 (iv) how you will assess the effectiveness of hedging the  
24 risk in reducing your exposure to changes in the fair  
25 value of the hedged item or items or cash flows or  
26 foreign currency exposure attributable to them;  
27 (v) the risk management objective for, and the risk  
28 management strategy to be followed in, acquiring,  
29 creating or applying the arrangement; and  
30 (b) contains any further details that the \*accounting standards  
31 require, by way of documentation, for an arrangement to be  
32 recorded in a financial report as a hedging instrument; and  
33 (c) sets out the terms of the determinations you make under  
34 section 230-315.

35 To avoid doubt, paragraph (b) applies even if the arrangement is  
36 not recorded in your financial report as a hedging instrument.

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# EXPOSURE DRAFT

- 1 (2) The record may consist of a single document or 2 or more  
2 documents.
- 3 (3) The record must be made or in place:  
4 (a) at, or soon after, the time when you create, acquire or apply  
5 the \*hedging financial arrangement; or  
6 (b) at such other time as is provided for in the regulations for the  
7 purposes of this paragraph.
- 8 (4) The description must be sufficiently precise and detailed that the  
9 following are clear:  
10 (a) that the risk in respect of the particular \*hedged item or items  
11 was the one hedged by the \*hedging financial arrangement;  
12 (b) the extent to which the risk was hedged;  
13 (c) that the rights and/or obligations comprising the hedging  
14 financial arrangement were in fact those created, acquired or  
15 applied for the purpose of hedging the risk.
- 16 (5) If a \*financial arrangement is a \*hedging financial arrangement  
17 under subsection 230-290(2), the following requirements must be  
18 met in addition to the requirements of subsections (1), (3) and (4):  
19 (a) you must make or have in place, at, or soon before or soon  
20 after, the time when you create, acquire or apply the  
21 arrangement, a record that sets out:  
22 (i) a statement of why, and the way in which, the  
23 arrangement operates commercially or economically as  
24 a hedge of the \*hedged item or items; and  
25 (ii) the reasons why the arrangement does not satisfy the  
26 requirements of the standards referred to in paragraph  
27 230-275(2)(a) to be a hedging instrument;  
28 (b) you must, at the end of each income year during which you  
29 have the arrangement, make a record of the accumulated  
30 gains and/or losses (whether realised or unrealised) as at the  
31 end of that income year from the arrangement or  
32 arrangements relating to the hedged item or items that are yet  
33 to be included in your assessable income or allowed to you as  
34 deductions;  
35 (c) you must have, at the time when you create, acquire or apply  
36 the arrangement, a record that sets out your risk management  
37 policies and practices;

# EXPOSURE DRAFT

## [Schedule 1 Amendments](#)

### [Part 1 Main amendments](#)

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1 (d) you must have in place, at the time when you create, acquire  
2 or apply the arrangement, internal risk management systems  
3 and controls that record the arrangement and the hedged item  
4 or items.

5 (6) For the purposes of paragraph (5)(b), you must assume that:

6 (a) all the gains from the ~~hedged item or items~~<sup>\*</sup> [financial](#)  
7 [arrangement](#) would be assessable income; and

8 (b) all the losses from the ~~hedged item or items~~<sup>\*</sup> [financial](#)  
9 [arrangement](#) would be allowed to you as deductions.

#### 10 **230-315 Determining basis for allocating gain or loss**

11 (1) A requirement of this section is that you must determine the basis  
12 on which your gain or loss from the <sup>\*</sup>hedging financial  
13 arrangement is to be allocated to an income year, or over 2 or more  
14 income years, for the purposes of this Division.

15 (2) It is also a requirement of this section that the basis that you  
16 determine must:

17 (a) fairly and reasonably correspond with the basis on which  
18 gains, losses or other amounts in relation to the <sup>\*</sup>hedged item  
19 or items are recognised or allocated under this Act; and

20 (b) be objective; and

21 (c) be sufficiently precise and detailed that, when your gain, loss  
22 or other amount from the <sup>\*</sup>hedged item or items is taken into  
23 account for the purposes of this Act, the following will be  
24 clear from the record made under section 230-310:

25 (i) the time at which the gain or loss from the <sup>\*</sup>hedging  
26 financial arrangement is to be taken into account for the  
27 purposes of this Division;

28 (ii) the way in which that gain or loss will be dealt with  
29 under section 230-270.

30 Note: Paragraph (a) refers to an amount in relation to the hedged item or  
31 items being recognised or allocated under this Act. This would include  
32 an amount being allowed as a deduction or an amount being included  
33 in assessable income. If the hedged item were an asset, an amount  
34 referable to a part of the cost of the asset might, for example, be  
35 allowed as a deduction for a particular income year.

# EXPOSURE DRAFT

- 1 (3) To avoid doubt, the income years over which your gain or loss is to  
2 be allocated may include an income year that starts after you cease  
3 to have the \*hedging financial arrangement.

## 4 **230-320 Effectiveness of the hedge**

5 The requirement of this section is that:

- 6 (a) hedging the risk must be expected to be highly effective  
7 (within the meaning of the ~~\*accounting~~-standards [referred to](#)  
8 [in paragraph 230-275\(2\)\(a\)](#)), for the period for which you  
9 expect to have the \*hedging financial arrangement, in  
10 reducing your exposure to changes in the fair value of the  
11 \*hedged item or items or cash flows attributable to your  
12 hedged risk; and  
13 (b) the fair value of the hedged item or items or cash flows  
14 relating to them and the fair value of the arrangement must be  
15 able to be reliably measured; and  
16 (c) you must assess the hedging of the risk by the arrangement:  
17 (i) on a regular basis in accordance with the \*accounting  
18 standards; and  
19 (ii) at least once in each 12 month period;  
20 and your assessment must be that it will be highly effective  
21 (within the meaning of the ~~accounting~~-standards [referred to in](#)  
22 [paragraph 230-275\(2\)\(a\)](#)) in reducing your exposure to  
23 changes in the fair value of the hedged item or items or cash  
24 flows attributable to the hedged risk throughout the  
25 remainder of the period for which you expect to have the  
26 arrangement.

## 27 **230-325 When election ceases to apply**

- 28 (1) A \*hedging financial arrangement election ceases to have effect  
29 from the start of an income year if you cease to be eligible under  
30 subsection 230-275(2) to make the hedging financial arrangement  
31 election for that income year.  
32 (2) Subsection (1) does not prevent you from making a new \*hedging  
33 financial arrangement election at a later time if you become, at that  
34 later time, eligible under subsection 230-275(2) to make a hedging  
35 financial arrangement election for an income year.

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)

[Part 1 Main amendments](#)

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1 Note: The new election will only apply to financial arrangements you start to  
2 have after the start of the income year in which the new election is  
3 made.

## 4 **230-330 Balancing adjustment if election ceases to apply**

5 (1) This section applies if a \*hedging financial arrangement election  
6 ceases to have effect under subsection 230-325(1).

7 (2) You are taken, for the purposes of this Division, to have:

8 (a) disposed of each \*hedging financial arrangement to which the  
9 election applies for its fair value immediately before the  
10 election ceases to have effect; and

11 (b) reacquired the arrangement at its fair value immediately after  
12 the election ceases to have effect.

13 (3) To avoid doubt, this Subdivision applies, for the purposes [of](#)  
14 working out the consequences of the disposal referred to in  
15 paragraph (2)(a), as if the \*hedging financial arrangement were one  
16 to which the \*hedging financial arrangement election applied at the  
17 time of the disposal.

## 18 **230-335 Where requirements not met**

19 *Commissioner may determine that requirement met*

20 (1) If a \*hedging financial arrangement that you have would not meet  
21 the requirements of sections 230-310 to 230-320, it nevertheless  
22 meets the requirements if the Commissioner considers this  
23 appropriate having regard to:

24 (a) the respects in which it would not do so; and

25 (b) the extent to which it would not do so; and

26 (c) the reasons why it would not do so; and

27 (d) if the Commissioner is considering whether to impose  
28 conditions under subsection (2)—the likelihood that you will  
29 comply with those conditions; and

30 (e) the objects of this Subdivision.

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82 Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 [No. \\_\\_\\_](#)

[20072008No. \\_\\_\\_, 2008](#)

[B08PK338.v05.doc 29/9/2008 9:27 AM](#)

# EXPOSURE DRAFT

# EXPOSURE DRAFT

1 *Commissioner may impose additional record keeping requirements*

2 (2) The Commissioner may make a determination under subsection (1)  
3 conditional on your keeping records in addition to those required  
4 by section 230-310.

5 (3) A determination under subsection (1) ceases to have effect if you  
6 breach a condition imposed under subsection (2).

7 (4) Subsection (3) ceases to apply to you if the Commissioner  
8 determines that that subsection ceases to apply to you. The  
9 determination takes effect from the date specified in the  
10 determination.

11 (5) In deciding whether to make the determination under subsection  
12 (4), the Commissioner must have regard to:

- 13 (a) your record keeping practices; and  
14 (b) your compliance history; and  
15 (c) any changes that have been made to:  
16 (i) your accounting systems and controls; and  
17 (ii) your internal governance processes;  
18 to ensure that breaches of the kind referred to in subsection  
19 (3) do not happen again; and  
20 (d) any other relevant matter.

21 *Commissioner may determine matter under section 230-315*

- 22 (6) If:  
23 (a) the Commissioner makes a determination under subsection  
24 (1) in relation to a \*hedging financial arrangement; and  
25 (b) either or both of the following applies:  
26 (i) you fail to determine a matter in relation to the  
27 arrangement under section 230-315;  
28 (ii) you determine a matter in relation to the arrangement  
29 under section 230-315 but the determination does not  
30 satisfy the requirements of subsection 230-~~50~~315(2);  
31 the Commissioner may determine that matter and the  
32 Commissioner's determination has effect as if you had made the  
33 determination and recorded it under that section.

# EXPOSURE DRAFT

1     **230-340 You may be excluded from this Subdivision for deliberate**  
2             **failures to comply with requirements**

3             *When section applies*

- 4             (1) This section applies if:
- 5                 (a) you start to have a \*hedging financial arrangement to which
  - 6                 your \*hedging financial arrangement election applies; and
  - 7                 (b) you do not meet a requirement of section 230-310 or 230-315
  - 8                 in relation to the arrangement; and
  - 9                 (c) you deliberately fail to meet that requirement in order to have
  - 10                this Subdivision not apply to the arrangement.

11            *Hedging financial arrangement election ceases to apply*

- 12            (2) The \*hedging financial arrangement election does not apply to a
- 13            \*hedging financial arrangement you start to have after you fail to
- 14            meet the requirement referred to in paragraph (1)(b).

15            *Commissioner may determine that hedging financial arrangement*  
16            *is to reapply*

- 17            (3) Subsection (2) ceases to apply to you if the Commissioner
- 18            determines that that subsection ceases to apply to you. The
- 19            determination takes effect from the date specified in the
- 20            determination.
- 21            (4) The Commissioner may make the determination under subsection
- 22            (3) only if satisfied that you are unlikely to deliberately fail again
- 23            to meet a requirement of section 230-310 or 230-315 in order to
- 24            have this Subdivision not apply to a \*hedging financial
- 25            arrangement.
- 26            (5) In deciding whether to make the determination under subsection
- 27            (3), the Commissioner must have regard to:
- 28                 (a) your record keeping practices; and
  - 29                 (b) your compliance history; and
  - 30                 (c) any changes that have been made to:
    - 31                     (i) your accounting systems and controls; and
    - 32                     (ii) your internal governance processes;



# EXPOSURE DRAFT

1 to ensure that failures of the kind referred to in paragraph  
2 (1)(c) do not happen again; and  
3 (d) any other relevant matter.

4 (6) If the Commissioner makes a determination under subsection (3),  
5 the \*hedging financial arrangement election applies to a \*hedging  
6 financial arrangement only if you start to have the arrangement  
7 after the determination takes effect.

8 *Commissioner may still exercise powers under section 230-335*

9 (7) This section does not prevent the Commissioner from exercising  
10 the Commissioner's powers under section 230-335 in relation to  
11 the \*hedging financial arrangement referred to in paragraph (1)(a).

## 12 **Subdivision 230-F—Reliance on financial reports**

### 13 **Table of sections**

14	230-345	Objects of this Subdivision
15	230-350	Election to rely on financial reports
16	230-355	Commissioner discretion to waive requirements in paragraphs 230-
17		350(2)(c) and (e)
18	230-360	Financial arrangements to which the election applies
19	230-365	Financial arrangements not covered by election
20	230-370	Effect of election to rely on financial reports
21	230-375	When election ceases to apply
22	230-380	Balancing adjustment if election ceases to apply

### 23 **230-345 Objects of this Subdivision**

24 The objects of this Subdivision are:

- 25 (a) to reduce administration and compliance costs by allowing  
26 you to align the tax treatment of your gains and losses from a  
27 \*financial arrangement with the accounting treatment that  
28 applies to the arrangement; and  
29 (b) to achieve those objects without your obtaining inappropriate  
30 tax benefits.

# EXPOSURE DRAFT

1     **230-350 Election to rely on financial reports**

2                     *Election*

3             (1) You may make an *election to rely on financial reports* if you are  
4                 eligible under subsection (2) to make the election for the income  
5                 year in which you make the election.

6                     *Eligibility to make election*

7             (2) You are eligible to make an election to rely on financial reports for  
8                 an income year if:

9                 (a) you prepare a financial report for that income year in  
10                     accordance with:

11                         (i) the \*accounting standards; or

12                         (ii) if those standards do not apply to the preparation of the  
13                             financial report—comparable accounting standards  
14                             made under a \*foreign law that apply to the preparation  
15                             of the financial report under a foreign law; and

16                 (b) the financial report is audited in accordance with:

17                         (i) the \*auditing standards; or

18                         (ii) if the auditing standards do not apply to the auditing of  
19                             the financial report—comparable auditing standards  
20                             made under a \*foreign law; and

21                 (c) your auditor has not qualified the auditor's report on your  
22                     financial report for that income year or any of the last 4  
23                     financial years in a respect that is relevant to the taxation  
24                     treatment of \*financial arrangements; and

25                 (d) your accounting systems and controls and your internal  
26                     governance processes are reliable; and

27                 (e) no report of an audit or review conducted in the income year,  
28                     or any of the preceding 4 income years, has included an  
29                     adverse assessment of your accounting systems in a respect  
30                     that is relevant to the taxation treatment of financial  
31                     arrangements.

32             Note 1:     Paragraph (b)—Section 230-435 allows regulations to be made  
33                             specifying particular foreign accounting and auditing standards as  
34                             ones that are to be treated as comparable with Australian accounting  
35                             and auditing standards for the purposes of this Division.

# EXPOSURE DRAFT

1 Note 2: For the purposes of paragraphs (c) and (e), a qualification or  
2 assessment may be relevant to the taxation treatment of financial  
3 arrangements even though it does not deal with the amount or timing  
4 of recognition of gains or losses (but relates, for example, to the  
5 reliability of the accounting systems through which information about  
6 financial arrangements is recorded).

7 (2A) For the purposes of paragraph (2)(a), treat a financial report  
8 prepared by another entity as being prepared by you if:

9 (a) the other entity is a \*connected entity of yours; and

10 (b) the report is a consolidated financial report that deals with  
11 both your affairs and the affairs of the connected entity; and

12 (c) the report properly reflects your affairs.

13 (3) Paragraph (e) does not apply to a report of:

14 (a) an internal audit or review that you conduct; or

15 (b) an audit or review of a kind prescribed by the regulations for  
16 the purposes of this paragraph.

17 *Election irrevocable*

18 (4) An election under subsection (1) is irrevocable.

19 Note: The election may cease to apply under section 230-375.

## 20 **230-355 Commissioner discretion to waive requirements in** 21 **paragraphs 230-350(2)(c) and (e)**

22 (1) Paragraph 230-350(2)(c) or (e) does not apply in relation to your  
23 \*election to rely on financial reports for a particular income year or  
24 income years if the Commissioner determines that the paragraph  
25 does not apply to the election for that income year or those income  
26 years.

27 (2) In deciding whether to make the determination under subsection  
28 (1), the Commissioner must have regard to:

29 (a) the reasons for the non-compliance with the standards  
30 concerned; and

31 (b) the remedial action (if any) that you have undertaken to  
32 ensure that non-compliance with those standards does not  
33 occur in future (such as changes to your accounting systems  
34 and controls or to your internal governance structures); and

# EXPOSURE DRAFT

- 1 (c) if you, or your activities, are subject to regulatory oversight  
2 or review—any opinions expressed by the regulator about the  
3 adequacy of remedial action of the kind referred to in  
4 paragraph (b); and  
5 (d) any other relevant matter.

## 6 **230-360 Financial arrangements to which the election applies**

- 7 (1) An \*election to rely on financial reports applies in relation to a  
8 \*financial arrangement that you have if:  
9 (a) the arrangement is a \*Division 230 financial arrangement;  
10 and  
11 (b) you start to have the arrangement in the income year in which  
12 you make the election or in a later income year; and  
13 (c) the arrangement is recognised in financial reports of the kind  
14 referred to in paragraph 230-350(2)(a) that are audited as  
15 referred to in paragraph 230-350(2)(b); and  
16 (d) if the arrangement is a financial arrangement under section  
17 230-55—the arrangement is an asset or liability that you are  
18 required (whether or not as a result of a choice you make) by:  
19 (i) the \*accounting standards; or  
20 (ii) if those standards do not apply to the preparation of the  
21 financial report—comparable accounting standards that  
22 apply to the preparation of the financial report under a  
23 \*foreign law;  
24 to classify or designate, in the financial reports, as at fair  
25 value through profit or loss; and  
26 (e) it is reasonably expected that the following is, or will be, the  
27 same:  
28 (i) the amount of the overall gain or loss you make from  
29 the arrangement (as determined in accordance with the  
30 financial reports);  
31 (ii) the amount of the overall gain or loss you make from  
32 the arrangement (as determined in accordance with the  
33 provisions of this Division if the election under  
34 subsection (1) did not apply to the arrangement); and  
35 (f) the differences between the results of the following methods  
36 would reasonably be expected not to be substantial:

# EXPOSURE DRAFT

- 1 (i) the method used in your financial reports to work out  
2 the amounts of the gain or loss you make from the  
3 arrangement for each income year;  
4 (ii) the method that would be applied by this Division to  
5 work out the amounts of those gains or losses if the  
6 election did not apply to the arrangement.

7 This subsection has effect subject to section 230-365.

- 8 (2) In applying paragraph (1)(f) at the time when you start to have the  
9 <sup>\*</sup>financial arrangement, disregard any differences between the  
10 results of the methods referred to in subparagraphs (1)(f)(i) and (ii)  
11 that are attributable solely to the provision for the possible  
12 impairment of debts required by the standards referred to in  
13 paragraph 230-350(2)(a).

- 14 (3) Subsections (4), (5) and (6) apply if:

15 ~~(a) the <sup>\*</sup>election to rely on financial reports is made by the <sup>\*</sup>head~~  
16 ~~company of a <sup>\*</sup>consolidated group or a <sup>\*</sup>MEC group; and~~

17 ~~(b)~~ but for this subsection, paragraphs (1)(c) and (d) would not be  
18 satisfied in relation to a <sup>\*</sup>financial arrangement because the  
19 arrangement is an intra-group transaction for the purposes of:

- 20 (i) <sup>\*</sup>accounting standard AASB 127 (or another accounting  
21 standard prescribed by the regulations for the purposes of this  
22 paragraph); or  
23 (ii) if that standard does not apply to the preparation of the  
24 financial report—a comparable accounting standard that  
25 applies to the preparation of the financial report under a  
26 <sup>\*</sup>foreign law.

27 Note: Financial arrangements between members of a consolidated group or  
28 MEC group are not covered by this subsection because the single  
29 entity rule in subsection 701-1(1) operates to treat them as not being  
30 financial arrangements for the purposes of this Division.

- 31 (4) Paragraphs (1)(c) and (d) are taken to be satisfied in relation to the  
32 <sup>\*</sup>financial arrangement.

- 33 (5) Paragraph (1)(e) applies as if the reference in subparagraph  
34 (1)(e)(i) to the amount of the overall gain or loss you make from  
35 the <sup>\*</sup>financial arrangement (as determined in accordance with the  
36 financial reports) were a reference to the amount of that overall  
37 gain or loss (as would be determined in accordance with the

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 Main amendments

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- 1 financial reports if the arrangement had not been an intra-group  
2 transaction for the purposes of the standards referred to in  
3 paragraph (3)(b)).
- 4 (6) Paragraph (1)(f) applies as if the reference in subparagraph (1)(f)(i)  
5 to the method used in your financial reports to work out the  
6 amounts of the gain or loss you make from the arrangement for  
7 each income year were a reference to the method that would be  
8 used in your financial reports to work out those amounts if the  
9 arrangement had not been an intra-group transaction for the  
10 purposes of the standards referred to in paragraph (3)(b).
- 11 (7) For the purposes of applying subparagraphs (1)(e)(ii) and (f)(ii) to  
12 a \*financial arrangement, assume that you had made any election  
13 that:  
14 (a) you could make under Subdivision 230-C or 230-D; and  
15 (b) could apply to the arrangement.
- 16 (8) If:  
17 (a) the \*financial arrangement would not be a financial  
18 arrangement if the following provisions were disregarded:  
19 (i) Division 9A of Part III of the *Income Tax Assessment*  
20 *Act 1936* (which deals with offshore banking units);  
21 (ii) Part IIIB of that Act (which deals with Australian  
22 branches of foreign banks etc.); and  
23 (b) paragraphs (1)(c) and (d) would be satisfied in relation to the  
24 financial arrangement if the arrangement had been between 2  
25 separate entities; and  
26 (c) the \*election to rely on financial reports is made by:  
27 (i) if section 121EB of the *Income Tax Assessment Act*  
28 *1936* applies—the OBU mentioned in that section  
29 (disregarding the operation of that section); or  
30 (ii) if section 160ZZW of that Act applies—the bank  
31 mentioned in that section (disregarding the operation of  
32 that section);  
33 paragraphs (1)(c) and (d) are taken to be satisfied in relation to the  
34 arrangement.
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# EXPOSURE DRAFT

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## 230-365 Financial arrangements not covered by election

- 1
- 2 (1) An \*election to rely on financial reports does not apply to a  
3 \*financial arrangement if:  
4 (a) the arrangement is an \*equity interest; and  
5 (b) you are the issuer of the equity interest.
- 6 (2) An \*election to rely on financial reports does not apply to a  
7 \*financial arrangement if:  
8 (a) you are:  
9 (i) an individual; or  
10 (ii) an entity (other than an individual) that satisfies  
11 subsection 230-405(2) or (3) for the income year in  
12 which you start to have the arrangement; and  
13 (b) the arrangement is a \*qualifying security; and  
14 (c) you have not made an election under subsection 230-405(5).
- 15 (3) An \*election to rely on financial reports does not apply to a  
16 \*financial arrangement if:  
17 (a) the election is made by the \*head company of a \*consolidated  
18 group or \*MEC group; and  
19 (b) the election specifies that the election is not to apply to  
20 financial arrangements in relation to \*life insurance business  
21 carried on by a \*member of the consolidated group or MEC  
22 group; and  
23 (c) the arrangement is one that relates to the life insurance  
24 business carried on by a member of the consolidated group or  
25 MEC group.
- 26 (4) An \*election to rely on financial reports does not apply to a  
27 \*financial arrangement if the arrangement is associated with a  
28 business of a kind specified in regulations made for the purposes of  
29 this subsection.

## 230-370 Effect of election to rely on financial reports

- 30
- 31 (1) If an \*election to rely on financial reports applies to a \*financial  
32 arrangement, the gain or loss you make from the arrangement for  
33 an income year is:

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 Main amendments

- 1 (a) the gain or loss that the standards referred to in paragraph  
2 230-350(2)(a) require you to recognise in profit or loss from  
3 that arrangement for that income year; or  
4 (b) if subsection 230-360(3) applies to the arrangement—the  
5 gain or loss that the standards referred to in paragraph 230-  
6 350(2)(a) would have required you to recognise in profit or  
7 loss from that arrangement for that income year if the  
8 arrangement had not been an intra-group transaction for the  
9 purposes of the standards referred to in paragraph 230-  
10 360(3)(b); or

11 ~~Note: Subsection 230-45(5) provides that this Division does not apply to a~~  
12 ~~gain or loss from a financial arrangement to the extent to which~~  
13 ~~Subdivision 230-E (hedging financial arrangements method) applies to~~  
14 ~~the arrangement.~~

15 ~~(2) Subsection (1) does not apply to a gain if the gain is in the form of:~~

16 ~~(a) a \*franked distribution (including a franked distribution that~~  
17 ~~\*flows indirectly to you); or~~

18 ~~(b) a right to receive a franked distribution (including a franked~~  
19 ~~distribution that will flow indirectly to you). (c) if~~  
20 ~~subsection 230-360(8) applies to the arrangement—the gain~~  
21 ~~or loss that the standards referred to in paragraph 230-~~  
22 ~~360(1)(d) would have required you to recognise in profit or~~  
23 ~~loss for the year from the asset or liability mentioned in~~  
24 ~~paragraph 230-360(1)(d) if the arrangement had been~~  
25 ~~between 2 separate entities.~~

26 ~~Note: Subsection 230-45(5) provides that this Subdivision does not apply to~~  
27 ~~a gain or loss from a financial arrangement to the extent to which~~  
28 ~~Subdivision 230-E (hedging financial arrangements method) applies to~~  
29 ~~the arrangement.~~

30 (3) Subsection (4) applies if:

- 31 (a) a \*head company of a \*consolidated group or \*MEC group  
32 has a \*financial arrangement; and  
33 (b) an \*election to rely on financial reports applies to the  
34 arrangement; and  
35 (c) a subsidiary member of the group ceases to be a member of  
36 the group at a particular time (the *leaving time*); and  
37 (d) immediately after the leaving time, the subsidiary member  
38 has the arrangement.



# EXPOSURE DRAFT

- 1 (4) The gain or loss the group makes from the arrangement for the  
2 income year in which the leaving time occurs is taken to be the  
3 gain or loss that the standards referred to in paragraph 230-  
4 350(2)(a) would require the group to recognise in profit or loss  
5 from the arrangement for that income year if:  
6 (a) the circumstances that existed in relation to the arrangement  
7 (including its value) immediately before the leaving time had  
8 continued to exist until the end of the income year; and  
9 (b) any circumstances that arise in relation to the arrangement  
10 after the leaving time were disregarded.

## 11 **230-375 When election ceases to apply**

- 12 (1) An election under subsection 230-350(1) ceases to have effect  
13 from the start of an income year if you cease to be eligible to make  
14 an \*election to rely on financial reports for that income year.
- 15 (2) Subsection (1) does not prevent you from making a new election  
16 under subsection 230-350(1) at a later time if you become, at that  
17 later time, eligible to make an \*election to rely on financial reports  
18 for an income year.

19 Note: The new election will only apply to financial arrangements you start to  
20 have after the start of the income year in which the new election is  
21 made.

- 22 (3) An election under subsection 230-350(1) ceases to apply to a  
23 \*financial arrangement from the start of an income year if the  
24 arrangement ceases to satisfy a requirement of paragraph 230-  
25 360(1)(c), (d), (e) or (f) during that income year.
- 26 (4) If the election ceases to apply to a particular \*financial arrangement  
27 under subsection (3), the election cannot subsequently apply to that  
28 arrangement (even if the requirements of paragraphs 230-  
29 360(1)(c), (d), (e) and (f) are satisfied once more in relation to the  
30 arrangement).

## 31 **230-380 Balancing adjustment if election ceases to apply**

- 32 (1) You must make balancing adjustments under subsection (2) if an  
33 election under subsection 230-350(1) ceases to have effect under  
34 subsection 230-375(1).

# EXPOSURE DRAFT

- 1 (2) The balancing adjustments under this subsection are the balancing  
2 adjustments you would make under Subdivision 230-G in relation  
3 to each of the \*financial arrangements to which the election applied  
4 if you disposed of the arrangement for its fair value when the  
5 election ceases to have effect.
- 6 (3) You must make balancing adjustments under subsection (5) if an  
7 election under subsection 230-350(1) ceases to apply to a particular  
8 \*financial arrangement under subsection 230-375(3).
- 9 (4) Subsection (3) does not apply to a \*financial arrangement if:  
10 (a) the arrangement is not one that you are required (whether or  
11 not as a result of a choice you make) by the standards  
12 referred to in paragraph 230-350(2)(a) to classify or  
13 designate, in your financial reports, as at fair value through  
14 profit or loss; and  
15 (b) the election under subsection 230-350(1) ceases to apply to  
16 the arrangement because the arrangement fails to satisfy the  
17 requirements of paragraph 230-360(1)(e) or (f); and  
18 (c) the arrangement ceases to satisfy the requirements of that  
19 paragraph because the arrangement becomes impaired for the  
20 purposes of those standards.
- 21 (5) The balancing adjustment under this subsection is the balancing  
22 adjustment you would make under Subdivision 230-G if you  
23 disposed of the \*financial arrangement for its fair value when the  
24 election ceases to apply to the arrangement.
- 25 (6) If a balancing adjustment is made under subsection (2) or (5) in  
26 relation to a \*financial arrangement, you are taken, for the purposes  
27 of this Division, to have reacquired the arrangement at its fair value  
28 immediately after the election ceased to have effect or ceased to  
29 apply to the arrangement.

## 30 **Subdivision 230-G—Balancing adjustment on ceasing to have a** 31 **financial arrangement**

### 32 **Table of sections**

33	230-385	When balancing adjustment made
34	230-390	Exceptions
35	230-395	Balancing adjustment

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# EXPOSURE DRAFT

## 230-385 When balancing adjustment made

### *When balancing adjustment made*

(1) A balancing adjustment is made under this Subdivision if:

(a) you transfer to another entity all of your rights and/or obligations under a \*financial arrangement; or

(b) all of your rights and/or obligations under a financial arrangement otherwise cease; or

(c) you transfer to another entity:

(i) a proportionate share of all of your rights and/or obligations under a financial arrangement; or

(ii) a right or obligation that you have under a financial arrangement to a specifically identified \*financial benefit; or

(iii) a proportionate share of a right or obligation that you have under a financial arrangement to a specifically identified financial benefit; or

(d) an \*arrangement that is a \*Division 230 financial arrangement ceases to be a financial arrangement.

(2) Paragraphs (1)(a), (b) and (c) do not apply to a right or obligation under a \*financial arrangement unless that right or obligation is one of the rights or obligations that constitute the financial arrangement.

Note: See subsections 230-50(1) and 230-55(1) and (2) for the rights and/or obligations that constitute a financial arrangement.

### *Modifications for arrangements that are assets*

(3) ~~The following modifications are made if~~ If the \*financial arrangement is an asset of yours at the time the event referred to in subsection (1) occurs:

~~(a)~~ paragraphs (1)(a) and (c) do not apply unless the effect of the transfer is to transfer to the other entity substantially all the risks and rewards of ownership of the interest transferred;

~~(b)~~ 3A) If a \*financial arrangement is an asset of yours, for the purposes of applying this Subdivision to the arrangement, you are

# EXPOSURE DRAFT

## [Schedule 1 Amendments](#)

### [Part 1 Main amendments](#)

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- 1 treated as transferring a right under the arrangement to another  
2 entity if:
- 3 (i)a you retain the right but assume a new obligation; and
  - 4 (ii)b your assumption of the new obligation has the same effect, in  
5 substance, as transferring the right to another entity; and
  - 6 (iii)c the new obligation arises only to the extent to which the right  
7 to \*financial benefits under the arrangement is satisfied; and
  - 8 (iv)d you cannot sell or pledge the right (other than as security in  
9 relation to the new obligation); and
  - 10 (v)e you must, under the new obligation, provide financial  
11 benefits you receive in relation to the right to the entity to  
12 which you owe the new obligation without delay.

#### 13 *Historic rate rollover of derivative financial arrangement*

- 14 (4) For the purposes of paragraph (1)(b), all of your rights and/or  
15 obligations under a \*financial arrangement that is a \*derivative  
16 financial arrangement are taken to \*cease if there is an historic rate  
17 rollover of the arrangement.

## 18 **230-390 Exceptions**

#### 19 *Equity interests etc.*

- 20 (1) Balancing adjustments are not made under this Subdivision in  
21 relation to a \*financial arrangement if:
- 22 (a) the arrangement is a financial arrangement under section  
23 230-55 (equity interests etc.); and
  - 24 (b) neither Subdivision 230-C nor Subdivision 230-F apply to  
25 the arrangement immediately before the balancing  
26 adjustment is made.

#### 27 *Financial arrangements to which hedging financial arrangement 28 elections apply*

- 29 (2) Balancing adjustments are not made under this Subdivision in  
30 relation to a \*financial arrangement in relation to which a \*hedging  
31 financial arrangement election applies.

# EXPOSURE DRAFT

1 *Bad debts, margining and conversion into, or exchange for,*  
2 *ordinary shares*

3 (3) A balancing adjustment is not made under this Subdivision in  
4 relation to the following events:

5 (a) a \*financial arrangement being written off [in whole or part](#) as  
6 a bad debt;

7 (b) a financial arrangement that is a \*derivative financial  
8 arrangement being settled or closed out for margining  
9 purposes;

10 (c) the ceasing of obligations or rights under a financial  
11 arrangement that is a \*traditional security if:

12 (i) the ceasing occurs because the traditional security is  
13 converted into ordinary shares in, or transferred to, a  
14 company that is the issuer of the traditional security or a  
15 \*connected entity; and

16 (ii) the traditional security was issued on the basis that it  
17 will or may convert into ordinary shares in, or be  
18 transferred to, the issuer of the traditional security or the  
19 connected entity;

20 (d) the ceasing of obligations or rights under a financial  
21 arrangement that is a traditional security if:

22 (i) the ceasing occurs because the traditional security is  
23 exchanged for ordinary shares in a company that is  
24 neither the issuer of the traditional security nor a  
25 connected entity; and

26 (ii) if the ceasing of the obligations or rights occurs because  
27 of a disposal—the disposal is to the issuer of the  
28 traditional security or a connected entity; and

29 (iii) the traditional security was issued on the basis that it  
30 will or may be exchanged for ordinary shares in the  
31 company.

32 Note: Paragraph (a)—For the treatment of bad debts, see paragraph 230-  
33 160(2)(c).

34 *Subsidiary member leaving consolidated group or MEC group*

35 (4) A balancing adjustment is not made under this Subdivision in  
36 relation to a subsidiary member of a \*consolidated group or a

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)

[Part 1 Main amendments](#)

1                   \*MEC group that has a \*financial arrangement ceasing to be a  
2                   member of the group.

## 3       **230-395 Balancing adjustment**

4                   *Complete cessation or transfer*

5                   (1) Use the following method statement to make the balancing  
6                   adjustment if paragraph 230-385(1)(a), (b) or (d) applies:

### 7                   *Method statement for balancing adjustment*

8                   *Step 1.* Add up the following:

9                   (a) the total of all the \*financial benefits you have  
10                  received under the \*financial arrangement;

11                  Note:        This would include financial benefits you receive in  
12                                relation to the transfer or cessation (see paragraph 230-  
13                                65(2)(c)).

14                  (b) the total of the amounts that have been allowed to  
15                                you as deductions, because of circumstances that  
16                                have occurred before the transfer or cessation, for  
17                                losses from the arrangement;

18                  (c) the total of the other amounts that would have been  
19                                allowed to you as deductions, because of  
20                                circumstances that have occurred before the  
21                                transfer or cessation, for losses from the  
22                                arrangement if all your losses from the  
23                                arrangement were allowable as deductions;

24                  Note:        The losses from the arrangement here include losses made in gaining  
25                                or producing exempt income or non-assessable non-  
26                                exempt income.

27                  (d) the total of the amounts that will be allowed to you  
28                                as deductions after the transfer or cessation  
29                                because of a balancing adjustment under subitems  
30                                99121(9) to (15) of the *Tax Laws Amendment*  
31                                (*Taxation of Financial Arrangements*) Act

98                  Tax Laws Amendment (*Taxation of Financial Arrangements*) Bill 2008        No.     

~~20072008~~No. , 2008

B08PK338.v05.doc 29/9/2008 9:27 AM

EXPOSURE DRAFT

# EXPOSURE DRAFT

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~~2007~~2008 to the extent to which those amounts are attributable to the arrangement.

*Step 2.* Add up the following:

- (a) the total of all the \*financial benefits you have provided under the \*financial arrangement;

Note: This would include financial benefits you provide in relation to the transfer or cessation (see paragraph 230-65(1)(c)).

- (b) the total of the amounts that have been included in your assessable income, because of circumstances that have occurred before the transfer or cessation, as gains from the arrangement;

- (c) the total of the other amounts that would have been included in your assessable income, because of circumstances that have occurred before the transfer or cessation, as gains from the arrangement if all your gains from the arrangement were assessable;

Note: [The gains from the arrangement here include amounts of exempt income or non-assessable non-exempt income.](#)

- (d) the total of the amounts that will be included in your assessable income after the transfer or cessation because of a balancing adjustment under subitems 99121(9) to (15) of the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2007* to the extent to which those amounts are attributable to the arrangement.

*Step 3.* Compare the amount obtained under step 1 (the *step 1 amount*) with the amount obtained under step 2 (the *step 2 amount*). If the step 1 amount exceeds the step 2 amount, an amount equal to the excess is taken, as a balancing adjustment, to be a gain you make from the \*financial arrangement for the purposes of this Division. If the step 2 amount exceeds the step 1 amount, an amount equal to the excess is taken, as a balancing

# EXPOSURE DRAFT

adjustment, to be a loss that you make from the arrangement. If the step 1 amount and the step 2 amount are equal, no balancing adjustment is made.

*Proportionate transfer of all rights and/or obligations under financial arrangement*

(2) If subparagraph 230-385(1)(c)(i) applies, you make the balancing adjustment by applying the method statement in subsection (1) but reduce:

(a) the amounts referred to in step 1; and

(b) the amounts referred to in step 2;

by applying the proportion referred to in subparagraph 230-385(1)(c)(i) to them.

*Transfer of specifically identified right or obligation under financial arrangement*

(3) If subparagraph 230-385(1)(c)(ii) applies, you make the balancing adjustment by applying the method statement in subsection (1) as if the references to:

(a) the amounts referred to in step 1; and

(b) the amounts referred to in step 2;

were references to those amounts to the extent to which they are reasonably attributable to the right or obligation referred to in subparagraph 230-385(1)(c)(ii).

*Proportionate transfer of specifically identified right or obligation under financial arrangement*

(4) If subparagraph 230-385(1)(c)(iii) applies, you make the balancing adjustment by applying the method statement:

(a) as if the references to:

(i) the amounts referred to in step 1; and

(ii) the amounts referred to in step 2;

were references to those amounts to the extent to which they are reasonably attributable to the right or obligation referred to in subparagraph 230-385(1)(c)(iii); and

(b) by reducing those amounts by applying the proportion referred to in subparagraph 230-385(1)(c)(iii) to them.



# EXPOSURE DRAFT

1 *Attribution must reflect appropriate and commercially accepted*  
2 *valuation principles*

- 3 (5) Any attribution made under subsection (3) or paragraph (4)(a) must  
4 reflect appropriate and commercially accepted valuation principles  
5 that properly take into account:  
6 (a) the nature of the rights and obligations under the \*financial  
7 arrangement; and  
8 (b) the risks associated with each \*financial benefit, right and  
9 obligation under the arrangement; and  
10 (c) the time value of money.

11 *Income year for which gain or loss is made*

- 12 (6) The gain or loss you are taken to make under subsection (1), (2),  
13 (3) or (4) is a gain or loss for the income year in which the event  
14 referred to in subsection 230-385(1) occurs.

15 *Treatment of bad debts in relation to financial arrangements*

- 16 (7) For the purposes of applying paragraph (b) of step 1 of the method  
17 statement in subsection (1) to a \*financial arrangement, a bad debt  
18 deduction in relation to the arrangement to which subsection 230-  
19 25(5) applies is taken to be a deduction for a loss from the  
20 arrangement.

## 21 **Subdivision 230-H—Exceptions**

### 22 **Table of sections**

23	230-400	Short-term arrangements where non-money amount involved
24	230-405	Certain taxpayers where no significant deferral
25	230-410	Various rights and/or obligations
26	230-415	Ceasing to have a financial arrangement in certain circumstances
27	230-420	Forgiveness of commercial debts
28	230-425	Clarifying exceptions
29	<a href="#">230-427</a>	<a href="#">Disregard gains or losses covered by value shifting regime</a>

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)  
[Part 1 Main amendments](#)

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1     **230-400 Short-term arrangements where non-money amount**  
2             **involved**

3             This Division does not apply in relation to your gains and losses  
4             from a \*financial arrangement if:

- 5             (a) the arrangement is a financial arrangement under section  
6                 230-50; and  
7             (b) either:  
8                 (i) you acquired goods or other property (other than goods  
9                     that are, or property that is, money or a \*money  
10                     equivalent) or services (other than services that are a  
11                     money equivalent) from another entity and the  
12                     \*financial benefits you are to provide under the  
13                     arrangement are consideration for those goods, that  
14                     property or those services; or  
15                 (ii) you provided goods or other property (other than goods  
16                     that are, or other property that is, money or a money  
17                     equivalent) or services (other than services that are a  
18                     money equivalent) to another entity and the financial  
19                     benefits you are to receive under the arrangement are  
20                     consideration for those goods, that property or those  
21                     services; and  
22             (c) the period between the following is not more than 12 months:  
23                 (i) the time when you are to provide or receive the  
24                     consideration (or a substantial proportion of it);  
25                 (ii) the time when you acquired or provided the property,  
26                     goods or services (or a substantial proportion of them);  
27                     and  
28             (d) the arrangement is not a \*derivative financial arrangement for  
29                 any income year; and  
30             (e) a \*fair value election does not apply to the arrangement.

31     **230-405 Certain taxpayers where no significant deferral**

- 32             (1) This Division does not apply in relation to your gains or losses  
33             from a \*financial arrangement for any income year if:  
34             (a) you are:  
35                 (i) an individual; or

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102             Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008     No.       ,  
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EXPOSURE DRAFT

# EXPOSURE DRAFT

- 1 (ii) an entity (other than an individual) that satisfies  
2 subsection (2) or (3) for the income year in which you  
3 start to have the arrangement; and  
4 (b) either:  
5 (i) the arrangement is to end not more than 12 months after  
6 you start to have it; or  
7 (ii) the arrangement is not a \*qualifying security.
- 8 (2) An entity satisfies this subsection for an income year if:  
9 (a) the entity is:  
10 (i) an \*ADI; or  
11 (ii) a \*securitisation vehicle; or  
12 (iii) an entity that is required to register under the *Financial*  
13 *Sector (Collection of Data) Act 2001*; or  
14 (iv) an entity that would be required to register under that  
15 Act if it were a corporation; and  
16 (b) either:  
17 (i) the entity's \*aggregated turnover for the income year  
18 (worked out at the end of the income year) is less than  
19 \$20 million if the income year is the one in which the  
20 entity comes into existence; or  
21 (ii) the entity's aggregated turnover for the immediately  
22 preceding income year (worked out at the end of that  
23 immediately preceding income year) is less than \$20  
24 million if the income year is an income year after the  
25 one in which the entity comes into existence.
- 26 (3) An entity satisfies this subsection for an income year if:  
27 (a) the entity is not an entity to which paragraph (2)(a) applies;  
28 and  
29 (b) either:  
30 (i) the entity's \*aggregated turnover for the income year  
31 (worked out at the end of the income year) is less than  
32 \$100 million if the income year is the one in which the  
33 entity comes into existence; or  
34 (ii) the entity's aggregated turnover for the immediately  
35 preceding income year (worked out at the end of that  
36 immediately preceding income year) is less than \$100

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)

[Part 1 Main amendments](#)

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1 million if the income year is an income year after the  
2 one in which the entity comes into existence.

3 (4) Subsection (1) does not apply to your gains or losses from a  
4 \*financial arrangement for an income year if:

5 (a) you have made an election under subsection (5) in that  
6 income year or an earlier income year; and

7 (b) you start to have the arrangement after the beginning of the  
8 income year in which you make the election.

9 (5) An election under this subsection is an election to have this  
10 Division apply to all of the \*financial arrangements that you start to  
11 have in the income year in which the election is made or a later  
12 income year.

13 (6) An election under subsection (5) is irrevocable.

## 14 **230-410 Various rights and/or obligations**

15 *Rights and/or obligations subject to an exception*

16 (1) This Division does not apply to your gains and losses from a  
17 \*financial arrangement for any income year to the extent that your  
18 rights and/or obligations under the arrangement are the subject of  
19 an exception under any of the following subsections.

20 Note: Further exceptions are also provided for in section 230-425.

21 *Leasing or property arrangement*

22 (2) A right or obligation arising under:

23 (a) an \*arrangement to which Division 42A (about leases of  
24 luxury cars) of Schedule 2E to the *Income Tax Assessment*  
25 *Act 1936* applies; or

26 (b) an arrangement to which Division 240 of this Act (about  
27 arrangements treated as a sale and loan) applies; or

28 (ba) an arrangement that is an asset to which Division 250 of this  
29 Act (about assets put to tax preferred use) applies; or

30 (c) an arrangement that, in substance or effect, depends on the  
31 use of a specific asset that is:

32 (i) real property; or

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104 Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 No. \_\_\_\_\_

~~20072008 No. \_\_\_\_\_, 2008~~

~~B08PK338.v05.doc 29/9/2008 9:27 AM~~

EXPOSURE DRAFT

# EXPOSURE DRAFT

- 1 (ii) goods or a personal chattel (other than money or a  
2 \*money equivalent); or  
3 (iii) intellectual property;  
4 and gives a right to control the use of the asset; or  
5 (d) an arrangement that is a licence to use:  
6 (i) real property; or  
7 (ii) goods or a personal chattel (other than money or a  
8 \*money equivalent); or  
9 (iii) intellectual property;  
10 is the subject of an exception.

## *Interest in partnership or trust*

- 12 (3) A right carried by an interest in a partnership or a trust, or an  
13 obligation that corresponds to such a right, ~~is the subject of an~~  
14 ~~exception~~ if:  
15 (a) there is only one class of interest in the partnership or trust;  
16 or  
17 (b) the interest is an \*equity interest in the partnership or trust; or  
18 (c) ~~the interest is an interest in a trust, for a right~~ or an obligation  
19 ~~that corresponds relating to such a right, and:~~  
20 ~~(i) the trust—the trust~~ is managed by a class, funds  
21 manager or ~~there are classes, of interest~~ custodian, or a  
22 responsible entity (as defined in the ~~trust; and~~  
23 ~~(ii) the trust is managed by a funds manager, custodian or~~  
24 ~~\*responsible entity~~ Corporations Act 2001 of a \*registered  
25 scheme (as so defined).
- 26 (4) Subsection (3) does not apply if a \*fair value election, or an  
27 \*election to rely on financial reports, applies to the \*financial  
28 arrangement.

## *Certain insurance policies*

- 30 (5) A right or obligation under a \*life insurance policy is the subject of  
31 an exception unless:  
32 (a) you are not a \*life insurance company that is the insurer  
33 under the policy; and  
34 (b) the policy is an annuity that is a \*qualifying security.

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)

[Part 1 Main amendments](#)

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- 1 (6) A right or obligation under a \*general insurance policy is the  
2 subject of an exception unless:  
3 (a) you are not a \*general insurance company; and  
4 (b) the policy is a \*derivative financial arrangement.

5 *Certain workers' compensation arrangements*

- 6 (7) A right or obligation in relation to a liability for workers'  
7 compensation claims to which Division 323 of Schedule J to the  
8 *Income Tax Assessment Act 1936* applies is the subject of an  
9 exception.

10 *Certain guarantees and indemnities*

- 11 (8) A right or obligation under a guarantee or indemnity is the subject  
12 of an exception unless:  
13 (a) the \*financial arrangement is the subject of a \*fair value  
14 election or an \*election to rely on financial reports; or  
15 (b) the financial arrangement is a \*derivative financial  
16 arrangement; or  
17 (c) the guarantee or indemnity is given in relation to a financial  
18 arrangement.

19 *Personal arrangements and personal injury*

- 20 (9) The following rights and obligations are the subject of an  
21 exception:  
22 (a) a right to receive, or an obligation to provide, consideration  
23 for providing personal services;  
24 (b) a right, or obligation, arising from the administration of a  
25 deceased person's estate;  
26 (c) a right to receive, or an obligation to provide, a gift under a  
27 deed;  
28 (d) a right to receive, or an obligation to provide, a \*financial  
29 benefit by way of maintenance:  
30 (i) to an individual who is or has been the \*spouse of the  
31 person liable to provide the benefit; or  
32 (ii) to or for the benefit of an individual who is or has been  
33 a child of the person liable to provide the benefit; or

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106 Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 [No. \\_\\_\\_](#)

[20072008No. \\_\\_\\_, 2008](#)

[B08PK338.v05.doc 29/9/2008 9:27 AM](#)

EXPOSURE DRAFT

# EXPOSURE DRAFT

- 1 (iii) to or for the benefit of an individual who is or has been  
2 a child of an individual who is or has been a spouse of  
3 the person liable to provide the benefit;  
4 (e) a right to receive, or an obligation to provide, a financial  
5 benefit in relation to personal injury to an individual;  
6 (f) a right to receive, or an obligation to provide, a financial  
7 benefit in relation to an injury to an individual's reputation.

- 8 (10) Without limiting paragraph (9)(e), that paragraph applies:  
9 (a) even if the person to whom the \*financial benefit is to be  
10 provided is not the individual who was injured; and  
11 (b) even if the personal injury to the individual takes the form of:  
12 (i) a wrong to the individual; or  
13 (ii) illness of the individual.

14 Note: The person referred to in paragraph (a) may, for example, be a relative  
15 of the individual who was injured.

## 16 *Superannuation and pension income*

- 17 (11) A right to receive, or an obligation to provide, \*financial benefits is  
18 the subject of an exception if the right or obligation arises from a  
19 person's membership of a superannuation or pension scheme,  
20 including:  
21 (a) a right of a dependant of a member to receive financial  
22 benefits or an obligation to provide financial benefits to a  
23 dependant of a member; and  
24 (b) a right or obligation arising from an interest in:  
25 (i) a \*complying superannuation fund or \*non-complying  
26 superannuation fund; or  
27 (ii) a \*pooled superannuation trust; or  
28 (iii) an \*approved deposit fund.

## 29 *Interest in certain foreign companies, foreign trusts and FLPs*

- 30 (12) A right or obligation that arises under an interest (within the  
31 meaning of Part XI of the *Income Tax Assessment Act 1936*) in a  
32 \*FIF or \*FLP is the subject of an exception.

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)

[Part 1 Main amendments](#)

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1

## *Proceeds from certain business sales*

2

(13) A right to receive, or an obligation to provide, \*financial benefits arising from the sale of:

3

4

(a) a business; or

5

(b) shares in a company that operates a business; or

6

(c) interests in a trust that operates a business;

7

is the subject of an exception if the amounts, or the values, of those benefits are contingent only on the economic performance of the business after the sale.

8

9

10

## *Infrastructure borrowings*

11

(14) A right to receive, or an obligation to provide, \*financial benefits is the subject of an exception if the right or obligation arises under an \*arrangement to which Division 16L of the *Income Tax Assessment Act 1936* applies.

12

13

14

15

## *Farm Management Deposits*

16

(15) A right to receive, or an obligation to provide, \*financial benefits is the subject of an exception if the right or obligation is the right or obligation of an owner of a \*farm management deposit.

17

18

19

## *Rights and obligations to which section 121EK of the Income Tax Assessment Act 1936 applies*

20

21

(16) A right or obligation that arises because of a payment of an amount to which section 121EK of the *Income Tax Assessment Act 1936* applies is the subject of an exception.

22

23

24

## *Forestry managed investment scheme interests*

25

(17) A right or obligation under a \*forestry interest in a \*forestry managed investment scheme in relation to which you can claim deductions under Division 394 is the subject of an exception.

26

27

28

## *Regulations may provide for exceptions*

29

(18) A right or obligation of a kind specified in the regulations for the purposes of this subsection is the subject of an exception.

30

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108 Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 [No. \\_\\_\\_\\_\\_](#)

[20072008No. \\_\\_\\_\\_\\_, 2008](#)

[B08PK338.v05.doc 29/9/2008 9:27 AM](#)

# EXPOSURE DRAFT



# EXPOSURE DRAFT

## 230-415 Ceasing to have a financial arrangement in certain circumstances

- (1) This section applies if:
- (a) you cease to have a \*financial arrangement (or part of a financial arrangement); and
  - (b) you make a loss from ceasing to have the arrangement (or that part of the arrangement); and
  - (c) if the arrangement is a marketable security (within the meaning of section 70B of the *Income Tax Assessment Act 1936*):
    - (i) you did not acquire the arrangement in the ordinary course of trading on a securities market (within the meaning of that section); and
    - (ii) at the time you acquired the arrangement, it was not open to you to acquire an identical financial arrangement in the ordinary course of trading on a securities market; and
  - (d) if the arrangement is a marketable security—you did not dispose of the arrangement in the course of trading on a securities market; and
  - (e) it would be concluded that you ceased to have the arrangement wholly or partly because there was an apprehension or belief that the other party or other parties to the arrangement were, or would be likely to be, unable or unwilling to discharge all their liabilities to pay amounts under the arrangement.
- (2) The amount of the loss is reduced by so much of that amount as is a loss of capital or a loss of a capital nature.
- Note: However, the amount by which the loss is reduced is a capital loss.
- (3) In applying paragraph (1)(e), you must have regard to:
- (a) the financial position of the other party or parties to the \*financial arrangement; and
  - (b) the perceptions of the financial position of the other party or parties to the arrangement; and
  - (c) other relevant matters.

# EXPOSURE DRAFT

1     **230-420 Forgiveness of commercial debts**

2             If a gain that you make from a \*financial arrangement arises from  
3             the forgiveness of a debt (as defined in Subdivision 245-B of  
4             Schedule 2C to the *Income Tax Assessment Act 1936*), the gain is  
5             reduced by:

- 6             (a) if section 245-90 (about agreements to forgo capital losses or  
7             revenue reductions) of that Schedule does not apply—the  
8             debt’s net forgiven amount as defined in paragraph 245-  
9             85(2)(a) of that Schedule; or  
10            (b) if that section does apply—the debt’s provisional net  
11            forgiven amount as defined in paragraph 245-85(2)(b) of that  
12            Schedule.

13            Note:       Section 51AAA (about a net capital gains limit) of the *Income Tax*  
14                        *Assessment Act 1936* also has the effect of preventing you from  
15                        deducting losses.

16     **230-425 Clarifying exceptions**

17             *Exceptions*

- 18            (1) To avoid doubt, this Division does not apply to your gains and  
19            losses from a \*financial arrangement for any income year to the  
20            extent that your rights and/or obligations are the subject of an  
21            exception under any of the following subsections.  
  
22            (2) This section is not intended to limit, expand or otherwise affect the  
23            operation of sections 230-50 to 230-60 (which tell you what is  
24            covered by the concept of *financial arrangement*) in relation to  
25            rights and/or obligations other than those dealt with in this section.

26             *Retirement village arrangements*

- 27            (3) The following rights and obligations are the subject of an  
28            exception:  
29            (a) a right or obligation arising under a \*retirement village  
30            residence contract;  
31            (b) a right or obligation arising under a \*retirement village  
32            services contract;  
33            (c) a right or obligation arising under an \*arrangement under  
34            which \*residential care or \*flexible care is provided.

# EXPOSURE DRAFT

[Amendments Schedule 1](#)  
[Main amendments Part 1](#)

(4) For the purposes of subsection (3):

- (a) a *retirement village residence contract* is a contract that gives rise to a right to occupy \*residential premises in a \*retirement village; and
- (b) a *retirement village services contract* is a contract under which a resident of a retirement village is provided with general or personal services in the retirement village.

## 230-427 Disregard gains or losses covered by value shifting regime

(1) Disregard a gain or loss under this Division from a \*financial arrangement to the extent that it is attributable to:

- (a) a shifting of value that has consequences under Division 723;  
or  
(b) a \*value shift that has consequences under Division 725; or  
(c) an \*indirect value shift that has consequences under Division 727; or  
(d) a shifting of value that has consequences analogous to those under Division 723, 725 or 727 under a repealed provision of this Act or of the *Income Tax Assessment Act 1936*.

(2) Determine whether a shift of value has the consequences mentioned in paragraph (1)(a) or (d) on the assumption that a \*realisation event in respect of all or part of the \*financial arrangement happens in the income year for the gain or loss.

## Subdivision 230-I—Other provisions

### Table of sections

230-429	<a href="#">Effect of change of residence—rules for particular methods</a>
230-430	<a href="#">Effect of change of residence—disposal and reacquisition etc. after ceasing to be Australian resident where no further recognised gains or losses from arrangement</a>
230-431	<a href="#">Effect of change of accounting standards</a>
230-435	Comparable foreign accounting and auditing standards
230-440	Financial arrangement <del>received or provided</del> as consideration

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 Main amendments

#### **~~230-430 Effect of change of residence~~**

##### *~~Becoming an Australian resident~~*

~~(1) If:~~

~~( for provision or acquisition of a ) you become an Australian resident at a particular time; and thing~~

~~(b) immediately before that time:~~

~~(i) you have a <sup>\*</sup>financial arrangement; and~~

~~(ii) the gains and losses you make from the arrangement are not assessable or deductible under this Division;~~

~~you are taken for the purposes of this Division to start to have the arrangement when you become an Australian resident and to have acquired your interest in the arrangement at that time for its <sup>\*</sup>market value at that time.~~

##### *~~Ceasing to be an Australian resident~~*

230-441 Non-arm's length dealings in relation to financial arrangement

230-442 Arm's length dealings in relation to financial arrangement—adjustment to gain or loss in certain situations

#### **230-429 Effect of change of residence—rules for particular methods**

(1) The object of this section is to deal with your gains and losses for an income year in which you change residence by:

(a) allocating the gains and losses to your periods of Australian and foreign residence in that income year; and

(b) determining the assessability of the gains and the deductibility of the losses according to your residency in each period, the sources of the gains and the connection of the losses with your assessable income.

~~(2) If:~~ This section applies if:

~~(a) you cease to be an Australian resident at a particular time; and~~

~~(b) immediately (a) disregarding this section and subsection 230-45(1A):~~

(i) a gain is included in your assessable income under section 230-15 for an income year; or

# EXPOSURE DRAFT

- 1 (ii) you can deduct a loss under section 230-15 for the  
2 income year; and  
3 (b) you are a foreign resident for part of the income year (the  
4 *foreign residency period*) and an Australian resident for the  
5 other part of the income year (the *Australian residency*  
6 *period*); and  
7 (c) section 230-430 does not apply in respect of the change of  
8 residence.

9 Note: See section 230-430 if you change residence, and after ~~that time:~~

- 10 ~~(i) you have a <sup>\*</sup>financial arrangement; and~~  
11 ~~(ii) the change the gains and losses you make from the~~  
12 ~~arrangement are not assessable or deductible under this Division;~~  
13 ~~you are taken for the purposes of this Division to cease to have the~~  
14 ~~arrangement when you cease to be an Australian resident and to~~  
15 ~~have disposed of your interest in the arrangement at that time for~~  
16 ~~its <sup>\*</sup>market value at that time.~~

## *Accruals and hedging financial arrangement methods*

- 17  
18 (3) If (disregarding this section) you apply the accruals or hedging  
19 financial arrangement method to determine the amount of the gain  
20 or loss mentioned in paragraph (2)(a), apply that method by  
21 apportioning the gain or loss on a reasonable basis between those  
22 periods so as to work out:  
23 (a) a gain or loss from the arrangement for the foreign residency  
24 period; and  
25 (b) a gain or loss from the arrangement for the Australian  
26 residency period.

## *Fair value, foreign exchange retranslation and financial reports methods*

- 27  
28  
29 (4) If (disregarding this section) you apply the fair value or foreign  
30 exchange retranslation method or the method of relying on your  
31 financial reports to determine the amount of the gain or loss  
32 mentioned in paragraph (2)(a), apply that method to work out:  
33 (a) a gain or loss from the arrangement for the foreign residency  
34 period; and  
35 (b) a gain or loss from the arrangement for the Australian  
36 residency period.

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 Main amendments

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#### *Realisation method*

(5) Subsection (6) applies if:

(a) you have a \*financial arrangement at the time (the *residence change time*):

(i) you cease to be an Australian resident; or

(ii) you become an Australian resident; and

(b) you apply the realisation method to determine the amount of gains or losses you make from the arrangement.

(6) You are taken for the purposes of this Division:

(a) to have disposed of the arrangement just before the residence change time for its fair value just before that time; and

(b) to have acquired the arrangement again at the residence change time for its fair value at that time.

#### **230-430 Effect of change of residence—disposal and reacquisition etc. after ceasing to be Australian resident where no further recognised gains or losses from arrangement**

(1) This section applies if:

(a) you cease to be an Australian resident at a particular time (the *residence change time*); and

(b) you have a \*financial arrangement at the residence change time; and

(c) at the residence change time you expect that any gains and losses you make from the arrangement after that time will not be assessable or deductible under this Division.

(2) You are taken for the purposes of this Division:

(a) to have disposed of the arrangement just before that time for its fair value just before that time; and

(b) to have acquired the arrangement again at the residence change time for its fair value at that time.

#### **230-431 Effect of change of accounting standards**

(1) This section applies if:

(a) one of these methods apply to take account of a gain or loss you make from a \*financial arrangement:

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# EXPOSURE DRAFT

- 1 (i) the fair value method provided for in Subdivision 230-  
2 C; or  
3 (ii) the foreign exchange retranslation method provided for  
4 in Subdivision 230-D; or  
5 (iii) the method of relying on your financial reports provided  
6 for in Subdivision 230-F; and  
7 (b) there is a change in, or in the application of, the relevant  
8 standards (as mentioned in section 230-195 (fair value  
9 method), 230-240 (foreign exchange retranslation method) or  
10 230-370 (method of relying on financial reports)) that apply  
11 in relation to the arrangement; and  
12 (c) that change applies to a particular income year and later  
13 years; and  
14 (d) as a result of the change, those standards require you to  
15 recognise in your statement of financial position an amount  
16 (the *equity amount*), in order to avoid the need to increase or  
17 decrease gains or losses recognised in profit or loss from the  
18 financial arrangement in respect of previous income years.  
19 (2) If the equity amount is positive, include in your assessable income  
20 for the particular income year mentioned in paragraph (1)(c) so  
21 much of it as relates to the \*financial arrangement mentioned in  
22 paragraph (1)(a).  
23 (3) If the equity amount is negative, you are entitled to a deduction for  
24 the particular income year mentioned in paragraph (1)(c) equal to  
25 so much of it as relates to the \*financial arrangement mentioned in  
26 paragraph (1)(a).

## 27 **230-435 Comparable foreign accounting and auditing standards**

28 The regulations may:

- 29 (a) specify that particular standards that apply under a \*foreign  
30 law are to be taken for the purposes of this Division to be  
31 comparable to the \*accounting standards; and  
32 (b) specify that particular standards that apply under a foreign  
33 law are to be taken for the purposes of this Division to be  
34 comparable to the \*auditing standards.

# EXPOSURE DRAFT

Schedule 1 Amendments  
Part 1 Main amendments

1 **230-440 Financial arrangement ~~received or provided~~ as**  
2 **consideration for provision or acquisition of a thing**

3 (1) ~~If:~~

4 ~~(a) this Division This section applies ~~in relation to your gains~~~~  
5 ~~and losses from if you start or cease to have a <sup>\*</sup>Division 230~~  
6 ~~financial arrangement; and~~

7 ~~(b) you start to have the arrangement (or a part of the arrangement) as~~  
8 ~~consideration ~~(for the provision or as part of the consideration)~~~~  
9 ~~for acquisition of a thing.~~

10 ~~(i) something (the *thing provided*) that you provided, or are~~  
11 ~~to provide, to someone else or that you ceased to have,~~  
12 ~~or are to cease to have; or~~

13 ~~(ii) something (the *thing acquired*) that someone else has~~  
14 ~~provided, or is to provide, to you or that someone else~~  
15 ~~has ceased to have or is to cease to have; and~~

16 ~~(c) the thing provided or the thing acquired is not money;~~  
17 ~~the amount of the benefit (or that part of the benefit) that you~~  
18 ~~obtained for the thing provided, or provided for the thing acquired,~~  
19 ~~is taken, for the purposes of applying this Act to you, to be the~~  
20 ~~<sup>\*</sup>market value of the arrangement (or that part of the arrangement)~~  
21 ~~at the time when the you started to have the arrangement.~~

22 (2) For the purposes of applying this Act to you, treat the amount that:

23 (a) you obtain for providing the thing; or

24 (b) you provide for acquiring the thing;

25 as the <sup>\*</sup>market value of the thing at the time at which you (in fact)  
26 provide or acquire it.

27 Note 1: The amount may be relevant, for example, for the purposes of  
28 applying the provisions of this Act dealing with capital gains, capital  
29 allowances or trading stock to the thing ~~provided or the thing~~  
30 ~~acquired.~~

31 Note 2: ~~The market value is to be used instead of the nominal value of~~  
32 ~~This subsection does not affect~~ the financial benefits ~~to be received or~~  
33 ~~provided under the financial arrangement.~~

34 ~~(2) If subsection (1) applies, from you ~~are taken to have~~~~  
35 ~~received, or provided, as consideration for starting to have the~~  
36 ~~<sup>\*</sup>financial arrangement (or the part of the financial arrangement),~~  
37 ~~<sup>\*</sup>financial benefits whose value is equal to the <sup>\*</sup>market value of the~~  
38 ~~arrangement (or that part of the arrangement) at the time when the you~~



# EXPOSURE DRAFT

- 1 ~~started to have the arrangement, or ceasing to have it (except in the~~  
2 ~~circumstances described in Note 3). However:~~
- 3 ~~(3) If, but for this subsection:~~
- 4 ~~(a) subsection (2) would apply to your starting to have a~~  
5 ~~<sup>2</sup>financial arrangement; and~~
- 6 ~~(b) subsection (1) or (4) would also apply to your starting to have~~  
7 ~~the arrangement;~~
- 8 ~~subsection (2) applies to your starting to have the arrangement and~~  
9 ~~subsection (1) or (4) does not.~~
- 10 ~~(4) If:~~
- 11 ~~(a) this Division applies in relation to your gains and losses from~~  
12 ~~a <sup>2</sup>financial arrangement; and~~
- 13 ~~(b) you cease to have the arrangement (or a part of the~~  
14 ~~arrangement) as consideration (or as part of the~~  
15 ~~consideration) for:~~
- 16 ~~(i) something (the *thing acquired*) that someone else~~  
17 ~~provides, or is to provide, to you or that you start to~~  
18 ~~have, or are to start to have; or~~
- 19 ~~(ii) something (the *thing provided*) that you provided, or are~~  
20 ~~to provide, to someone else or that someone else starts~~  
21 ~~to have, or is to start to have; and~~
- 22 ~~(c) the thing acquired or the thing provided is not money;~~
- 23 ~~the amount of the benefit (or that part of the benefit) that you provided for~~  
24 ~~the thing acquired, or obtained for the thing provided, is taken,~~  
25 ~~for the purposes of applying this Act to you, to be the <sup>2</sup>market~~  
26 ~~value of the arrangement (or that part of the arrangement) at the~~  
27 ~~time when you cease to have the arrangement (or that (a) the~~  
28 ~~market value of the thing will be, or form part of, those financial~~  
29 ~~benefits for the purposes of section 230-395; and~~
- 30 ~~(b) in the case of a non arm's length transaction, the amount of those~~  
31 ~~financial benefits may be affected by section 230-441.~~
- 32 ~~Note 3: If the thing is itself a Division 230 financial arrangement and~~  
33 ~~subsection (3) does not apply, this subsection will determine the~~  
34 ~~financial benefits received or provided under the financial~~  
35 ~~arrangement from you starting or ceasing to have it.~~
- 36 (3) Subsection (2) does not apply if:
- 37 (a) you start or cease to have the financial arrangement as  
38 mentioned in subsection (1) under an arrangement (the  
39 *starting or ceasing arrangement*); and

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 Main amendments

1 (b) the thing is itself a \*Division 230 financial arrangement; and

2 (c) the starting or ceasing arrangement is *not* itself a \*Division  
3 230 financial arrangement.

4 Example: An arrangement for exchanging a share subject to Subdivision 230-C  
5 for another share subject to Subdivision 230-C, where the arrangement  
6 itself is not a Division 230 financial arrangement.

7 (4) For the purposes of this section:

8 (a) treat yourself as providing a thing to another entity if:

9 (i) you have provided, or are to provide, the thing to the  
10 other entity; or

11 (ii) you cease to have, have ceased to have or are to cease to  
12 have, the thing; or

13 (iii) the other entity starts to have, has started having or is to  
14 start to have, the thing; and

15 (b) treat yourself as acquiring a thing if:

16 (i) another entity has provided, or is to provide, the thing to  
17 you; or

18 (ii) another entity ceases to have, has ceased to have or is to  
19 cease to have, the thing; or

20 (iii) you start to have, have started to have or are to start to  
21 have, the thing.

22 (5) For the purposes of this section, treat part of ~~the~~  
23 arrangement).

24 ~~Note 1: This amount may be relevant, for example, for the purposes of~~  
25 ~~applying the provisions of this Act dealing with capital gains, capital~~  
26 ~~allowances or trading stock to the thing acquired or the thing~~  
27 ~~provided.~~

28 ~~Note 2: The market value is to be used instead of the nominal value of the~~  
29 ~~financial benefits to be provided under the financial arrangement.~~

30 ~~(5) If subsection (4) applies, you are taken to have provided, or~~  
31 ~~received, as consideration for ceasing to have the <sup>\*</sup>a \*Division 230~~  
32 ~~financial arrangement (or the part of the ~~as a Division 230~~ financial~~  
33 ~~arrangement), <sup>\*</sup>financial benefits whose value is equal to the~~  
34 ~~<sup>\*</sup>market value of the arrangement (or that part of the arrangement)~~  
35 ~~at the time when the you ceased to have the arrangement.~~

36 (6) ~~If, but for this subsection:~~

37 ~~(a) subsection (5) would apply to your ceasing to have a~~  
38 ~~<sup>\*</sup>financial arrangement; and~~

# EXPOSURE DRAFT

- 1 ~~(b) subsection (1) or (4) would also apply to your ceasing to have~~  
2 ~~the arrangement;~~  
3 ~~subsection (4) applies to your ceasing to have the arrangement and~~  
4 ~~subsection (1) or (4) does not.~~
- 5 ~~(7) Without limiting subsections (1) and (4) [subsection \(1\)](#), the thing~~  
6 ~~provided, or the thing acquired, need not be a tangible thing and~~  
7 ~~may take the form of services, conferring a right, incurring an~~  
8 ~~obligation or extinguishing or varying a right or obligation.~~
- 9 ~~(8) The <sup>\*</sup>market value of a <sup>\*</sup>financial arrangement is to be worked out~~  
10 ~~for the purposes of this section:~~
- 11 ~~(a) by discounting, in accordance with subsections (9) and (10),~~  
12 ~~the amount of the <sup>\*</sup>financial benefits to be provided or~~  
13 ~~received under the financial arrangement to work out their~~  
14 ~~present values as at the time (the *exchange time*) when the~~  
15 ~~financial arrangement starts or ceases to be held; or~~
- 16 ~~(b) if regulations provide a method for working out the market~~  
17 ~~value of the financial arrangement for the purposes of this~~  
18 ~~section in accordance with those regulations.~~
- 19 ~~(9) The amounts of the <sup>\*</sup>financial benefits are to be discounted using~~  
20 ~~the discount rate provided for in subsection (10) increased by 200~~  
21 ~~basis points.~~
- 22 ~~(10) The discount rate to be used in working out the amounts of the~~  
23 ~~<sup>\*</sup>financial benefits under subsection (9) is:~~
- 24 ~~(a) the average, expressed as a decimal fraction, of the assessed~~  
25 ~~secondary market yields in respect of 10-year non-rebate~~  
26 ~~Treasury bonds published by the Reserve Bank during the~~  
27 ~~<sup>\*</sup>financial year immediately before the financial year in~~  
28 ~~which the exchange time occurs; or~~
- 29 ~~(b) if no assessed secondary market yield in respect of bonds of~~  
30 ~~that kind was published by the Reserve Bank during the~~  
31 ~~year the decimal fraction determined by the Treasurer for~~  
32 ~~the purposes of the definition of long-term bond rate in~~  
33 ~~section 2 of the *Petroleum Resource Rent Tax Assessment Act*~~  
34 ~~1987 in relation to the financial year immediately before the~~  
35 ~~financial year in which the exchange time occurs.~~
- 36 [\(7\) To avoid doubt, this section applies even if your starting or ceasing](#)  
37 [to have the financial arrangement mentioned in subsection \(1\) is](#)

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 Main amendments

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1                   only part of the consideration for the provision or acquisition of the  
2                   thing.

3                   (8) For the purposes of this section, treat your starting or ceasing to  
4                   have the financial arrangement mentioned in subsection (1) as  
5                   consideration for the provision or acquisition of the thing if that  
6                   starting or ceasing is, in substance or effect, done for the provision  
7                   or acquisition of the thing.

8                   Example: Starting to have a financial arrangement in satisfaction of an  
9                   obligation, where the obligation itself was incurred as consideration  
10                   for the thing.

### **230-441 Non-arm's length dealings in relation to financial arrangement**

13                   (1) This section applies if:

14                   (a) a balancing adjustment is made under Subdivision 230-G in  
15                   relation to a \*Division 230 financial arrangement you have;  
16                   and

17                   (b) if the balancing adjustment was made because of paragraph  
18                   230-385(1)(b) or (d) (cessations without transfer)—the  
19                   arrangement is not a \*debt interest or loan.

20                   *Non-arm's length transaction resulting in you starting to have the*  
21                   *arrangement*

22                   (2) Subsection (3) applies if the parties to the dealing that resulted in  
23                   you starting to have the arrangement were not dealing at \*arm's  
24                   length in relation to the dealing.

25                   (3) For the purposes of this Division:

26                   (a) disregard the amount of the \*financial benefit (if any) that  
27                   you provided or received in relation to you starting to have  
28                   the arrangement; and

29                   (b) instead, treat yourself as having provided or received a  
30                   financial benefit in relation to you starting to have the  
31                   arrangement that is equal to the amount of the financial  
32                   benefit that you would have provided or received if the  
33                   parties to the dealing mentioned in subsection (2) were  
34                   dealing at \*arm's length in relation to the dealing.

# EXPOSURE DRAFT

1 Non-arm's length transaction resulting in change of an amount of  
2 a financial benefit that you provided or received under the  
3 financial arrangement

4 (4) Subsection (5) applies if the parties to a dealing that resulted in a  
5 change of an amount of a \*financial benefit that you provide or  
6 receive under the financial arrangement were not dealing at \*arm's  
7 length in relation to the dealing.

8 (5) For the purposes of this Division:

9 (a) disregard the amount of the \*financial benefit (if any) that  
10 you provide or receive under the financial arrangement as a  
11 result of the dealing; and

12 (b) instead, treat yourself as providing or receiving a financial  
13 benefit under the financial arrangement as a result of the  
14 dealing that is equal to the amount of the financial benefit  
15 that you would have provided or received if the parties to the  
16 dealing were dealing at \*arm's length in relation to the  
17 dealing.

18 Non-arm's length transaction resulting in balancing adjustment

19 (6) Subsection (7) applies if the parties to the dealing that resulted in  
20 the balancing adjustment mentioned in subsection (1) being made  
21 were not dealing at \*arm's length in relation to the dealing.

22 (7) For the purposes of this Division:

23 (a) disregard the amount of the \*financial benefit (if any) that  
24 you provide or receive in relation to the balancing  
25 adjustment; and

26 (b) instead, treat yourself as providing or receiving a financial  
27 benefit in relation to the balancing adjustment that is equal to  
28 the amount of the financial benefit that you would have  
29 provided or received if the parties to the dealing mentioned in  
30 subsection (6) were dealing at \*arm's length in relation to the  
31 dealing.

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)

[Part 1 Main amendments](#)

1 **230-442 Arm's length dealings in relation to financial**  
2 **arrangement—adjustment to gain or loss in certain**  
3 **situations**

4 (1) This section applies if:

5 (a) disregarding this Division, a provision mentioned in  
6 subsection (2) makes an adjustment to an amount (the  
7 *relevant amount*); and

8 (b) the relevant amount is relevant in determining the amount of  
9 a gain or loss you make from a \*Division 230 financial  
10 arrangement.

11 (2) The provisions are as follows:

12 (a) section 52A of the *Income Tax Assessment Act 1936*;

13 (b) section 73B of the *Income Tax Assessment Act 1936*;

14 (c) Division 16K of Part III of the *Income Tax Assessment Act*  
15 *1936*;

16 (d) subsection 245-65(2) of the *Income Tax Assessment Act*  
17 *1997*;

18 (e) section 775-40 of the *Income Tax Assessment Act 1997*.

19 (3) In determining the amount of the gain or loss, treat the relevant  
20 amount as having been adjusted by the provision mentioned in  
21 subsection (2).

22 (4) However, if the circumstances that give rise to the adjustment  
23 result in section 230-441 having the effect of altering the amount  
24 of the gain or loss, do not treat the relevant amount as having been  
25 adjusted under subsection (3) to the extent of that alteration.

26 **Subdivision 230-J—Additional operation of Division**

27 **Table of sections**

28 230-445 Additional operation of Division

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122 Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 No. \_\_\_\_\_

20072008No. \_\_\_\_\_, 2008

B08PK338.v05.doc 29/9/2008 9:27 AM

EXPOSURE DRAFT

# EXPOSURE DRAFT

## 230-445 Additional operation of Division

### *Foreign currency*

- (1) This Division also applies to foreign currency as if the currency were a right that constituted a \*financial arrangement.

### *Non-equity shares*

- (2) This Division also applies to a \*non-equity share in a company as if the share were a right that constituted a \*financial arrangement.

### *Commodities held by traders*

- (3) This Division also applies to a commodity that you hold as if the commodity were a right that constituted a \*financial arrangement if:
- (a) you are an entity that trades or deals both in:
    - (i) that commodity; and
    - (ii) financial arrangements whose values change in response to changes in the price or value of that commodity; and
  - (b) you hold that commodity for the purposes of dealing in the commodity; and
  - (c) a \*fair value election or an \*election to rely on financial reports applies to financial arrangements that you start to have when you start to have the commodity; and
  - (d) the commodity is an asset that you are required (whether or not as a result of a choice you make) by:
    - (i) the \*accounting standards; or
    - (ii) if those standards do not apply to the preparation of the financial report—comparable accounting standards that apply to the preparation of the financial report under a \*foreign law;to classify or designate, in your financial reports, as at fair value through profit or loss.

### *Offsetting commodity contracts held by traders*

- (4) This Division also applies to a contract to which you are a party as if the contract were a \*financial arrangement if:

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 Main amendments

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- 1 (a) you have a right to receive or an obligation to provide a  
2 commodity under the contract; and
- 3 (b) you have a practice of dealing in the commodity through the  
4 performance of offsetting contracts to receive and provide the  
5 commodity; and
- 6 (c) you do not have, as your sole or dominant purpose for  
7 entering into the contract, the purpose of receiving or  
8 delivering the commodity as part of your expected purchase,  
9 sale or usage requirements; and
- 10 (d) a \*fair value election or an \*election to rely on financial  
11 reports applies to financial arrangements that you start to  
12 have when you enter into the contract; and
- 13 (e) the contract is an asset or liability that you are required  
14 (whether or not as a result of a choice you make) by:  
15 (i) the \*accounting standards; or  
16 (ii) if those standards do not apply to the preparation of the  
17 financial report—comparable accounting standards that  
18 apply to the preparation of the financial report under a  
19 \*foreign law;  
20 to classify or designate, in your financial reports, as at fair  
21 value through profit or loss.

## **2 At the end of subsection 775-15(4)**

22 Add:

23 Note: Under section 230-20 foreign exchange gains from a Division 230  
24 financial arrangement are dealt with under Division 230 and not under  
25 this Division.  
26

## **3 At the end of subsection 775-30(4)**

27 Add:

28 Note: Under section 230-20 foreign exchange losses from a Division 230  
29 financial arrangement are dealt with under Division 230 and not under  
30 this Division.  
31

## **4 Section 775-200**

32 After “4”, insert “or 9”.

## **5 After subsection 775-270(1)**

33 Insert:  
34  
35

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124 Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 No. \_\_\_\_\_

20072008 No. \_\_\_\_\_, 2008

B08PK338.v05.doc 29/9/2008 9:27 AM

EXPOSURE DRAFT



# EXPOSURE DRAFT

[Amendments Schedule 1](#)  
[Main amendments Part 1](#)

1 (1A) A choice under subsection (1) does not apply to a \*qualifying forex  
2 account held by you if a \*foreign exchange retranslation election  
3 by you is in effect in relation to the account under Subdivision 230-  
4 D.

## 5 **6 At the end of Division 775**

6 Add:

### 7 **Subdivision 775-F—Retranslation under foreign exchange** 8 **retranslation election under Subdivision 230-D**

#### 9 **Guide to Subdivision 775-F**

#### 10 **775-290 What this Subdivision is about**

11 If you have made a foreign exchange retranslation election under  
12 Subdivision 230-D:

- 13 (a) a forex realisation gain or a forex realisation loss  
14 you make in relation to an arrangement that is not a  
15 Division 230 financial arrangement as a result of  
16 forex realisation event 1 to 5 or 8 is disregarded;  
17 and  
18 (b) forex realisation event 9 enables any gains or  
19 losses to be worked out on a retranslation basis.

#### 20 **Table of sections**

21	775-295	When this Subdivision applies
22	775-300	Tax consequences of choosing retranslation for arrangement
23	775-305	Retranslation of gains and losses relating to arrangement to which foreign 24 exchange retranslation election applies—forex realisation event 9
25	775-310	When election ceases to apply to arrangement
26	775-315	Balancing adjustment when election ceases to apply to arrangement

#### 27 **775-295 When this Subdivision applies**

- 28 (1) A \*foreign exchange retranslation election applies to an  
29 \*arrangement for the purposes of this Subdivision if:

*Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008* [No. ., 20072008No.](#)  
[-2008](#) 125

*BOSP338.v05.doc 29/9/2008 9:27 AM*

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 1 Main amendments

---

- 1 (a) you start to have the arrangement after the start of the income  
2 year in which the election is made; and
- 3 (b) the arrangement is recognised in financial reports of a kind  
4 referred to in paragraph 230-220(2)(a) that are audited, or  
5 required to be audited, as referred to in paragraph 230-  
6 220(2)(b); and
- 7 (c) the arrangement is one in relation to which you are required  
8 by:
- 9 (i) \*accounting standard AASB 121 (or another accounting  
10 standard prescribed for the purposes of paragraph 230-  
11 225(1)(c)); or
- 12 (ii) if that standard does not apply to the preparation of the  
13 financial report—a comparable accounting standard that  
14 applies to the preparation of the financial report under a  
15 \*foreign law;
- 16 to recognise, in the financial reports referred to in paragraph  
17 230-220(1)(a), amounts in profit or loss (if any) that are  
18 attributable to changes in currency exchange rates.
- 19 (2) The \*foreign exchange retranslation election does not apply to an  
20 \*arrangement for the purposes of this Subdivision if:
- 21 (a) the election is made by the \*head company of a \*consolidated  
22 group or a \*MEC group; and
- 23 (b) the election specifies that the election is not to apply to  
24 \*financial arrangements in relation to \*life insurance business  
25 carried on by a member of the consolidated group or MEC  
26 group; and
- 27 (c) the arrangement is one that relates to the life insurance  
28 business carried on by a member of the consolidated group or  
29 MEC group.
- 30 (3) The \*foreign exchange retranslation election does not apply to an  
31 \*arrangement for the purposes of this Subdivision if the  
32 arrangement is associated with a business of a kind specified in  
33 regulations made for the purposes of subsection 230-230(5).

# EXPOSURE DRAFT

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## 775-300 Tax consequences of choosing retranslation for arrangement

- (1) A \*forex realisation gain or \*forex realisation loss you make as a result of forex realisation event 1, 2, 3, 4, 5 or 8 is disregarded if:
- (a) the event happens in relation to an \*arrangement that you hold; and
  - (b) you have made a \*foreign exchange retranslation election that applies to the arrangement; and
  - (c) the election is in effect when the event happens.

(2) If:

- (a) CGT event C1 or C2 happens in relation to an \*arrangement that you hold at the time of the event; and
  - (b) you have made a \*foreign exchange retranslation election that applies to the arrangement; and
  - (c) the election is in effect when the event happens;
- disregard so much of any \*capital gain or \*capital loss you make as a result of the event as is attributable to a \*currency exchange rate effect.

Note: For *currency exchange rate effect*, see section 775-105.

## 775-305 Retranslation of gains and losses relating to arrangement to which foreign exchange retranslation election applies—forex realisation event 9

### *Forex realisation event 9*

- (1) ***Forex realisation event 9*** happens in relation to an \*arrangement during an income year if:
- (a) you have made a \*foreign exchange retranslation election that applies to the arrangement; and
  - (b) you are required by:
    - (i) \*accounting standard AASB 121 (or another accounting standard prescribed for the purposes of paragraph 230-225(1)(c)); or
    - (ii) if that standard does not apply to the preparation of the financial report—a comparable accounting standard that

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)

[Part 1 Main amendments](#)

---

1 applies to the preparation of the financial report under a  
2 \*foreign law;  
3 to recognise, in the financial report referred to in paragraph  
4 230-220(1)(a) for that income year, amounts in profit or loss  
5 (if any) in relation to the arrangement that are attributable to  
6 changes in currency exchange rates.

7 The **forex realisation event 9** is taken to have happened in the  
8 income year.

9 *Forex realisation gain*

10 (2) You make a **forex realisation gain** if the standard referred to in  
11 paragraph (1)(b) requires you to recognise an amount in profit in  
12 relation to the arrangement. That amount of the **forex realisation**  
13 **gain** is the amount the standard requires you to recognise.

14 *Forex realisation loss*

15 (3) You make a **forex realisation loss** if the \*accounting standard  
16 referred to in paragraph (1)(c) requires you to recognise an amount  
17 in loss in relation to the arrangement. That amount of the **forex**  
18 **realisation loss** is the amount that the accounting standard requires  
19 you to recognise.

20 *Section does not apply to amounts previously recognised in equity*

21 (4) Subsections (1), (2) and (3) do not apply to amounts that have  
22 previously been required by the standards referred to in paragraph  
23 230-220(1)(a) to be recognised in equity.

## 24 **775-310 When election ceases to apply to arrangement**

25 (1) For the purposes of this Division, a \*foreign exchange retranslation  
26 election under subsection 230-220(1) ceases to apply to an  
27 \*arrangement from the start of an income year if the arrangement  
28 ceases to satisfy a requirement of paragraph 775-295(1)(b) or (c)  
29 during that income year.

30 (2) If the election ceases to apply to an \*arrangement under subsection  
31 (1), the election cannot subsequently reapply to that arrangement  
32 (even if the requirements of paragraphs 775-295(1)(b) and (c) are  
33 satisfied once more in relation to the arrangement).

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128 Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 [No. \\_\\_\\_](#)

[20072008No. \\_\\_\\_](#), 2008

[B08PK338.v05.doc](#) 29/9/2008 9:27 AM

# EXPOSURE DRAFT

# EXPOSURE DRAFT

1 **775-315 Balancing adjustment when election ceases to apply to**  
2 **arrangement**

3 (1) This section applies if:

- 4 (a) you make a \*foreign exchange retranslation election; and  
5 (b) the election ceases to have effect or ceases to apply to an  
6 \*arrangement.

7 (2) You are taken, for the purposes of this Division, to have:

- 8 (a) disposed of the \*arrangement for its fair value immediately  
9 before the election ceases to have effect or ceases to apply to  
10 the arrangement; and  
11 (b) reacquired the arrangement at its fair value immediately after  
12 the election ceases to have effect or ceases to apply to the  
13 arrangement.

14 Note: Paragraph (a) means that there would be a forex realisation event 9 in  
15 relation to the arrangement.

16 **7 Subsection 820-930(1)**

17 After “this Division”, insert “and Division 230”.

18 **8 Subsection 995-1(1)**

19 Insert:

20 *auditing standard* has the same meaning as in the *Corporations*  
21 *Act 2001*.

22 **9 Subsection 995-1(1) (definition of *cash settlable*)**

23 Omit “250-165(2)”, substitute “230-50(2)”.

24 **10 Subsection 995-1(1)**

25 Insert:

26 *derivative financial arrangement* has the meaning given by  
27 subsection 230-305(1).

28 **11 Subsection 995-1(1)**

29 Insert:

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)

[Part 1 Main amendments](#)

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1                    *Division 230 financial arrangement*: a \*financial arrangement is a  
2                    *Division 230 financial arrangement* if Division 230 applies in  
3                    relation to your gains and losses from the arrangement.

## 4                    **12 At the end of subsection 995-1(1)**

5                    Add:

6                    *election to rely on financial reports* has the meaning given by  
7                    section 230-350.

## 8                    **13 Subsection 995-1(1)**

9                    Insert:

10                    *fair value election* has the meaning given by subsection 230-  
11                    180(1).

## 12                    **14 Subsection 995-1(1) (definition of *financial arrangement*)**

13                    Omit “sections 250-165 to 250-175”, substitute “sections 230-50 to  
14                    230-60”.

## 15                    **15 Subsection 995-1(1)**

16                    Insert:

17                    *flexible care* has the same meaning as in the *Aged Care Act 1997*.

## 18                    **16 Subsection 995-1(1)**

19                    Insert:

20                    *foreign currency hedge* has the meaning given by subsection 230-  
21                    305(2).

## 22                    **17 Subsection 995-1(1)**

23                    Insert:

24                    *foreign exchange retranslation election* has the meaning given by  
25                    subsections 230-220(1) and (3).

## 26                    **18 Subsection 995-1(1)**

27                    Insert:

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130                    *Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008*    [No. \\_\\_\\_](#)

[20072008No. \\_\\_\\_](#), 2008

[B08PK338.v05.doc](#) 29/9/2008 9:27 AM

EXPOSURE DRAFT

# EXPOSURE DRAFT

1                    *hedged item* has the meaning given by subsections 230-290(9) and  
2                    (10).

## 3                    **19 Subsection 995-1(1)**

4                    Insert:

5                    *hedging financial arrangement* has the meaning given by  
6                    subsections 230-290(1) to (8) and sections 230-295 and 230-300.

## 7                    **20 Subsection 995-1(1)**

8                    Insert:

9                    *hedging financial arrangement election* has the meaning given by  
10                    section 230-275.

## 11                    **21 Subsection 995-1(1) (definition of *money equivalent*)**

12                    Repeal the definition, substitute:

13                    *money equivalent* means:

- 14                    (a) a right to receive money or something that is a \*money  
15                    equivalent under this definition; or  
16                    (b) a \*financial arrangement (within the meaning of section 230-  
17                    50).

## 18                    **22 Subsection 995-1(1) (paragraph (b) of the definition of** 19                    ***qualifying forex account*)**

20                    Repeal the paragraph.

## 21                    **23 Subsection 995-1(1)**

22                    Insert:

23                    *qualifying security* has the same meaning as in Division 16E of  
24                    Part III of the *Income Tax Assessment Act 1936*.

## 25                    **24 Subsection 995-1(1)**

26                    Insert:

27                    *residential care* has the same meaning as in the *Aged Care Act*  
28                    *1997*.

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)

[Part 1 Main amendments](#)

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1     **25 Subsection 995-1(1)**

2             Insert:

3                     *residential premises* has the same meaning as in the *A New Tax*  
4                     *System (Goods and Services Tax) Act 1999*.

5     **26 Subsection 995-1(1)**

6             Insert:

7                     *retirement village* has the same meaning as in the *A New Tax*  
8                     *System (Goods and Services Tax) Act 1999*.

9     **27 Subsection 995-1(1)**

10            Insert:

11                    *retirement village residence contract* has the meaning given by  
12                    paragraph 230-425(4)(a).

13     **28 Subsection 995-1(1)**

14            Insert:

15                    *retirement village services contract* has the meaning given by  
16                    paragraph 230-425(4)(b).

17     **29 Subsection 995-1(1) (paragraph (aa) of the definition of**  
18            ***special accrual amount*)**

19            Repeal the paragraph, substitute:

- 20                    (aa) Subdivision 230-A of this Act (which deals with gains and  
21                    losses from financial arrangements) if:
- 22                            (i) the accruals method provided for in Subdivision 230-B  
23                            of this Act is applied to take account of the gain or loss  
24                            concerned; and
  - 25                            (ii) all the \*financial benefits provided and received under  
26                            the \*financial arrangement concerned are denominated  
27                            in a particular foreign currency;

28     **30 Subsection 995-1(1)**

29            Insert:

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132            Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008     No.     .

~~20072008~~No. , 2008

~~B08PK338.v05.doc 29/9/2008 9:27 AM~~

EXPOSURE DRAFT



# EXPOSURE DRAFT

[Amendments Schedule 1](#)  
[Main amendments Part 1](#)

1                    *Subdivision 230-G assessable gain* from a \*financial arrangement  
2                    means an amount that is taken, as a balancing adjustment under  
3                    Subdivision 230-G, to be a gain you make from the arrangement  
4                    for the purposes of Division 230.

## 5    **31 Subsection 995-1(1)**

6                    Insert:

7                    *Subdivision 230-G loss* from a \*financial arrangement means an  
8                    amount that is taken, as a balancing adjustment under Subdivision  
9                    230-G, to be a loss you make from the arrangement for the  
10                    purposes of Division 230.

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)

[Part 2 Consequential amendments](#)

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1

2

## Part 2—Consequential amendments

3

### *Income Tax Assessment Act 1936*

4

#### **32 Subsection 6(1)**

5

Insert:

6

*Division 230 financial arrangement* has the same meaning as in the *Income Tax Assessment Act 1997*.

7

8

#### **33 Subsection 51AAA(2) (at the end of the table)**

9

Add:

10

14	Division 230	Financial arrangements
----	--------------	------------------------

11

12

#### **3334 Paragraph 82KZLA(a)**

13

Repeal the paragraph, substitute:

14

(a) a Division 230 financial arrangement (within the meaning of the *Income Tax Assessment Act 1997*); or

15

16

#### **3435 Before paragraph 96C(5A)(a)**

17

Insert:

18

(aa) Division 230 of the *Income Tax Assessment Act 1997*; and

19

#### **3536 At the end of subsection 102CA(2)**

20

Add:

21

; or (c) the right is, or is part of, a Division 230 financial arrangement (within the meaning of the *Income Tax Assessment Act 1997*).

22

23

24

#### **3637 Subsection 121D(8)**

25

Omit “contract”, substitute “financial arrangement (within the meaning of the *Income Tax Assessment Act 1997*)”.

26

27

#### **3738 At the end of ~~subsection 121EB(1)~~**

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134 Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 No. \_\_\_\_\_

~~20072008 No. \_\_\_\_\_, 2008~~

~~B08PK338.v05.doc 29/9/2008 9:27 AM~~

EXPOSURE DRAFT

# EXPOSURE DRAFT

1 Add:

2 ~~Note: See also~~ (3) To avoid doubt, this section applies for the purposes of  
3 applying Subdivision 230-40A of the Income Tax Assessment Act  
4 ~~1936 (which deals with financial arrangements).~~ 1997 to a financial  
5 arrangement (within the meaning of that Act).

6 ~~38~~Note: This means that it is possible for financial arrangements to be entered  
7 into between the bank and the branch and for the bank or the branch to  
8 have a gain or loss from such an arrangement dealt with under  
9 Division 230 of the Income Tax Assessment Act 1997.

## 10 **39 Section 160ZZV (definition of *derivative transaction*)**

11 Omit “means a transaction”, substitute “means a Division 230 financial  
12 arrangement (within the meaning of the *Income Tax Assessment Act*  
13 *1997*) that is”.

## 14 **3940 Section 160ZZV (definition of *derivative transaction*)**

15 After “does not include a transaction”, insert “entered into”.

## 16 **4041 After subsection 160ZZW(1)**

17 Insert:

18 (1A) To avoid doubt, subsections ~~(2), (3), (4) and (5) apply~~ applies for  
19 the purposes of applying ~~Division~~Subdivision 230-A of the *Income*  
20 *Tax Assessment Act 1997* to a financial arrangement (within the  
21 meaning of that Act).

22 Note: This means that it is possible for financial arrangements to be entered  
23 into between the bank and the branch and for the bank or the branch to  
24 have a gain or loss from such an arrangement dealt with under  
25 Division 230 of the *Income Tax Assessment Act 1997*.

## 26 **4142 Section 160ZZX**

27 Before “All”, insert “(1)”.

## 28 **4243 At the end of section 160ZZX**

29 Add:

30 (2) All gains from a Divisions 230 financial arrangement (within the  
31 meaning of the *Income Tax Assessment Act 1997*) made by a  
32 foreign bank through its Australian branch is taken, for the  
33 purposes of this Act, to be from an \*Australian source.

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 2 Consequential amendments

#### **4344 Section 128NBA**

Omit “net Division 16E amount” (wherever occurring), substitute “net financial arrangement amount”.

Note: The heading to section 128NBA is replaced by the heading “Credits in respect of amounts assessed in relation to certain financial arrangements”.

#### **45 Paragraph 128NBA(1)(a)**

After “a qualifying security”, insert “or a Division 230 financial arrangement”.

#### **46 Subsection 128NBA(5)**

Repeal the subsection, substitute:

*Net financial arrangement amount*

(5) For the purposes of this section, if:

(a) in the case of a qualifying security—the sum of all amounts (if any) included in the assessable income of the taxpayer of any years of income in relation to the qualifying security, attributable agreement payment or payment of interest under section 159GQ; or

(b) in the case of a Division 230 financial arrangement—the sum of all amounts (if any) included in the assessable income of the taxpayer of any years of income in relation to the arrangement under Division 230 of the *Income Tax Assessment Act 1997*;

exceeds:

(c) in the case of a qualifying security—the sum of all amounts (if any) allowable as deductions from the assessable income of the taxpayer of any years of income in relation to the security or the payment, as the case may be, under that section; or

(d) in the case of a Division 230 financial arrangement—the sum of:

(i) all amounts (if any) allowable as deductions from the assessable income of the taxpayer of any years of income in relation to the arrangement under Division 230 of the *Income Tax Assessment Act 1997*; and

# EXPOSURE DRAFT

1 (ii) all amounts (if any) of interest paid under the  
2 arrangement before the year of income in which the  
3 interest mentioned in paragraph (1)(a) is paid;  
4 there is a net financial arrangement amount equal to the excess.

## 5 47 After subsection 262A(2AAC)

6 Insert:

7 (2AAD) Subsection (1) applies to a person who has a Division 230 financial  
8 arrangement even if the person is not carrying on a business in  
9 relation to the arrangement.

10 (2AAE) To avoid doubt, for the purposes of subsection (4), if the records  
11 mentioned in that subsection relate to a Division 230 financial  
12 arrangement that a person has, the transactions or acts mentioned  
13 in that subsection are taken to be completed at:

14 (a) the end of the year of income in which the person ceases to  
15 have the arrangement; or

16 (b) if:

17 (i) the person applies the hedging financial arrangement  
18 method in Subdivision 230-E of the *Income Tax*  
19 *Assessment Act 1997* to determine the amount of one or  
20 more gains or losses the person makes from the  
21 arrangement; and

22 (ii) determining the way in which those gains or losses are  
23 dealt with in accordance with subsection 230-270(4) of  
24 that Act is possible only at a time after the end of the  
25 income year mentioned in paragraph (a);

26 the end of the year of income in which that time occurs.

## 27 48 After paragraph 262A(3)(c)

28 Insert:

29 (ca) for records required to be kept under section 230-310 of the  
30 *Income Tax Assessment Act 1997*—comply with the  
31 applicable provisions of that section; and

## 32 49 Subsection 317(1) (paragraph (b) of the definition of

33 *tainted interest income*)

34 After “Part III”, insert “(or would be so included if Division 230 of the

35 *Income Tax Assessment Act 1997* did not apply)”.

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)  
[Part 2 Consequential amendments](#)

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1 **[50](#) After paragraph 389(b)**

2 Insert:

3 (ba) Division 230 of the *Income Tax Assessment Act 1997*;

4 **[4451](#) At the end of section 557A**

5 Add:

6 ; and (c) Division 230 of the *Income Tax Assessment Act 1997*.

7 **[52 Subsection 57-25\(6\) of Schedule 2D \(after table item 6\)](#)**

8 Insert:

6A Division 230

---

9 ***Income Tax Assessment Act 1997***

10 **[4553](#) Section 10-5 (after table item headed “films”)**

11 Insert:

**financial arrangements**

gains from ..... 230-15(1)

12 **[4654](#) Section 12-5 (table item headed “financial**  
13 **arrangements”)**

14 Repeal the item, substitute:

**financial arrangements**

losses from ..... 230-15(2) and (3)

see also *borrowing expenses, infrastructure borrowings,*  
*interest, leases and securities*

15 **[4755](#) At the end of subsection 25-35(5)**

16 Add:

17 Note: Subsections 230-150(3), (5) and (6) and 230-165(3), (5) and (6)  
18 provide that in certain circumstances a deduction for a loss in relation  
19 to a financial arrangement is to be treated, for the purposes of this Act,  
20 as a deduction of a bad debt. The rules referred to in this subsection  
21 apply to that deduction.

22 **[4856](#) After subsection 25-85(4)**

23 Insert:

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138 *Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008* [No. ...](#)  
[20072008No. ... , 2008](#)  
*B08PK338.v05.doc 29/9/2008 9:27 AM*

# EXPOSURE DRAFT

[Amendments Schedule 1](#)  
[Consequential amendments Part 2](#)

1 (4A) Subsections (2) and (3) do not apply to a \*return on a \*debt interest  
2 that is a \*Division 230 financial arrangement.

3 **[4957](#) At the end of section 25-90**

4 Add:

5 Note: This section does not apply to a Division 230 financial arrangement.

6 **[5058](#) Subsection 40-180(1) (note)**

7 Omit “Note”, substitute “Note 1”.

8 **[5159](#) At the end of subsection 40-180(1)**

9 Add:

10 Note 2: Section 230-440 provides special rules for working out the amount of  
11 consideration for an asset if the asset is a Division 230 financial  
12 arrangement or a Division 230 financial arrangement is involved in  
13 that consideration.

14 **[5260](#) Subsection 40-185(1) (note)**

15 Omit “Note”, substitute “Note 1”.

16 **[5361](#) At the end of subsection 40-185(1)**

17 Add:

18 Note 2: Section 230-440 provides special rules for working out the amount of  
19 consideration for an asset if the asset is a Division 230 financial  
20 arrangement or a Division 230 financial arrangement is involved in  
21 that consideration.

22 **[5462](#) At the end of subsection 40-300(1)**

23 Add:

24 Note: Section 230-440 provides special rules for working out the amount of  
25 consideration for an asset if the asset is a Division 230 financial  
26 arrangement or a Division 230 financial arrangement is involved in  
27 that consideration.

28 **[5563](#) Subsection 40-305(1) (note)**

29 Omit “Note”, substitute “Note 1”.

30 **[5664](#) At the end of subsection 40-305(1)**

31 Add:

# EXPOSURE DRAFT

## [Schedule 1 Amendments](#)

### [Part 2 Consequential amendments](#)

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1 Note 2: Section 230-440 provides special rules for working out the amount of  
2 consideration for an asset if the asset is a Division 230 financial  
3 arrangement or a Division 230 financial arrangement is involved in  
4 that consideration.

#### 5 **5765 Section 70-10**

6 Repeal the section, substitute:

#### 7 **70-10 Meaning of *trading stock***

8 *Trading stock* includes:

9 (a) anything produced, manufactured or acquired that is held for  
10 purposes of manufacture, sale or exchange in the ordinary  
11 course of a \*business; and

12 (b) \*live stock;

13 but does not include a \*Division 230 financial arrangement.

14 Note 1: Shares in a PDF are not trading stock. See section 124ZO of the  
15 *Income Tax Assessment Act 1936*.

16 Note 2: If a company becomes a PDF, its shares are taken not to have been  
17 trading stock before it became a PDF. See section 124ZQ of the  
18 *Income Tax Assessment Act 1936*.

#### 19 **5866 At the end of section 102-20**

20 Add:

21 Note 5: Under subsection 230-270(4) gains and losses are taken to arise from a  
22 CGT event in particular circumstances.

#### 23 **5967 At the end of section 104-5**

24 Add:

25 Note: Subsection 230-270(4) (which deals with hedging financial  
26 arrangements) provides that in certain circumstances a CGT event is  
27 taken to have occurred in relation to a hedging financial arrangement  
28 at the same time as a CGT event actually occurs in relation to a  
29 hedged item covered by the arrangement.

#### 30 **6068 At the end of subsection 110-25(1)**

31 Add:

32 ~~Note 3: Section 230-440 provides special rules for working out the amount of~~  
33 ~~consideration for an asset if the asset is a Division 230 financial~~  
34 ~~arrangement or a Division 230 financial arrangement is involved in~~  
35 ~~that consideration.~~

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140 Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 [No. \\_\\_\\_\\_\\_](#)

[20072008No. \\_\\_\\_\\_\\_, 2008](#)

[B08PK338.v05.doc 29/9/2008 9:27 AM](#)

EXPOSURE DRAFT



# EXPOSURE DRAFT

1 ~~61~~Note 3: The amount of a benefit that makes up all or part of an element of cost  
2 base of an asset may be determined under section 230-440, if the  
3 benefit is provided for acquiring a thing, and you start or cease to have  
4 a Division 230 financial arrangement as consideration for the  
5 acquisition of the thing.

## 6 69 Section 112-97 (after table item 22A)

7 Insert:

8 22B You start or cease to have a All elements of cost base section 230-440  
9 \*Division 230 financial and reduced cost base  
10 arrangement as consideration  
11 for the provision or  
12 acquisition of a thing

## 13 70 Subsection 116-10(7) (note)

14 Omit "Note", substitute "Note 1".

## 15 71 At the end of subsection 116-10(7)

16 Add:

17 Note 2: Section 230-440 of this Act (Division 230 financial arrangement as  
18 consideration for provision or acquisition of a thing) also modifies  
19 capital proceeds.

## 20 72 At the end of section 112-5

21 Add:

22 (7) Section 230-440 provides special rules for working out the amount  
23 of consideration for an asset if the asset is a \*Division 230 financial  
24 arrangement or a Division 230 financial arrangement is involved in  
25 that consideration.

## 26 ~~62~~73 Section 118-27

27 Repeal the section, substitute:

### 28 118-27 Division 230 financial arrangements

- 29 (1) A \*capital gain or \*capital loss you make:
- 30 (a) from a \*CGT asset; or
  - 31 (b) in creating a CGT asset; or
  - 32 (c) from the discharge of a liability;

# EXPOSURE DRAFT

## [Schedule 1 Amendments](#)

### [Part 2 Consequential amendments](#)

---

1 is disregarded if, at the time of the \*CGT event, the asset or  
2 liability is, or is part of, a \*Division 230 financial arrangement.

3 Note 1: Paragraph (b) is relevant for CGT event D1.

4 Note 2: Paragraph (c) is relevant for CGT event L7.

5 (2) Subsection (1) does not apply to [the following](#):

6 [\(a\)](#) a gain or loss that subsection 230-270(4) (which deals with  
7 hedging financial arrangements) provides is to be treated as a  
8 \*capital gain or \*capital loss;

9 ~~63~~ [\(b\)](#) a loss that is reduced under subsection 230-415(2), to the  
10 extent of that reduction (this is the extent to which the loss is  
11 of a capital nature).

#### **[74](#) Section 130-100**

12 After “a \*traditional security”, insert “or \*qualifying security”.

#### **~~64~~[75](#) Paragraph 130-100(a)**

13 After “the traditional security” (wherever occurring), insert “or the  
14 qualifying security”.

#### **~~65~~[76](#) Section 250-1**

15 Omit “Subdivision 250-E”, substitute “Division 230”.

#### **~~66~~[77](#) Subsection 250-155(1) (note)**

16 Omit “Subdivision 250-E”, substitute “Division 230”.

#### **~~67~~[78](#) Subsection 250-155(8) (heading)**

17 Omit “*Subdivision 250-E*”, substitute “*Division 230*”.

#### **~~68~~[79](#) Subsection 250-155(8)**

18 Omit “Subdivision 250-E”, substitute “Division 230”.

#### **~~69~~[80](#) Before paragraph 250-155(8)(a)**

19 Insert:

20 (aa) the loan is taken to be a \*Subdivision 250 financial  
21 arrangement; and  
22

# EXPOSURE DRAFT

- 1 (ab) the obligations to provide the \*financial benefits that are  
2 subject to deemed loan treatment are taken to be \*cash  
3 settlable; and  
4 (ac) the financial benefits that are subject to deemed loan  
5 treatment are taken to be sufficiently certain at the start of the  
6 \*arrangement period; and

7 **[7081](#) Paragraph 250-155(8)(c)**

8 Omit “\*arrangement period”, substitute “arrangement period”.

9 **[7182](#) After paragraph 250-155(8)(g)**

10 Insert:

- 11 (ga) subject to paragraphs (i) and (j), the gains and losses in  
12 relation to the loan during the arrangement period are to be  
13 worked out using the accruals method provided for in  
14 Subdivision 230-B; and  
15 (gb) without limiting paragraph (ga):  
16 (i) sections 230-160, 230-165 and 230-170 (re-estimation  
17 of gain or loss) apply to the loan; and  
18 (ii) Subdivision 230-G (balancing adjustment when you  
19 cease to have financial arrangement) applies to the loan  
20 at the end of the arrangement period; and

21 **[7283](#) Paragraph 250-155(8)(h)**

22 Omit “sections 250-265 to 250-275”, substitute “Subdivision 230-G”.

23 **[7384](#) At the end of subsection 250-155(8)**

24 Add:

- 25 ; and (i) the realisation method provided for in Subdivision 230-B  
26 does not apply to a gain or loss you have from the loan; and  
27 (j) sections 230-145 and 230-155 do not apply to the loan.

28 **[7485](#) Sections 250-165 to 250-175**

29 Repeal the sections.

30 **[7586](#) Subdivision 250-E**

31 Repeal the Subdivision.

# EXPOSURE DRAFT

## [Schedule 1 Amendments](#)

### [Part 2 Consequential amendments](#)

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1 **[7687](#) Paragraph 250-285(2)(c)**  
2 Omit “Subdivision 250-E”, substitute “Division 230”.

3 **[7788](#) Paragraph 250-285(3)(c)**  
4 Omit “Subdivision 250-E”, substitute “Division 230”.

5 **[7889](#) Paragraph 250-285(4)(c)**  
6 Omit “Subdivision 250-E”, substitute “Division 230”.

7 **[7990](#) Paragraph 250-285(5)(c)**  
8 Omit “Subdivision 250-E”, substitute “Division 230”.

9 **[8091](#) After paragraph 295-85(2)(a)**  
10 Insert:  
11 (aa) section 230-15 (about financial arrangements);

12 **[8192](#) Section 320-45**  
13 Before “If”, insert “(1)”.

14 **[8293](#) At the end of section 320-45**  
15 Add:  
16 (2) Subsection (1) has effect despite anything in Division 230.

17 **[8394](#) After paragraph 396-30(1)(b)**  
18 Insert:  
19 \_\_\_\_\_ ; or (c) an amount allowable as a deduction to the borrower under  
20 Division 230, to the extent that, if that Division did not apply,  
21 the amount would be allowable as a deduction to the  
22 borrower in the circumstances mentioned in paragraph (b).

23 **[95](#) After paragraph 396-30(2)(b)**  
24 Insert:  
25 \_\_\_\_\_ ; or (c) an amount included in the assessable income of the lender  
26 under Division 230, to the extent that, if that Division did not  
27 apply, the amount would be included in the assessable  
28 income of the lender in the circumstances mentioned in  
29 paragraph (b).

# EXPOSURE DRAFT

## 96 After subsection 701-55(5)

Insert:

*Division 230 (financial arrangements)*

(5A) If Division 230 is to apply in relation to the asset, the expression means that the Division applies as if the asset were acquired at the particular time for a payment equal to:

(a) unless paragraph (b) applies—the asset’s \*tax cost setting amount; or

(b) if the asset’s tax cost is set because an entity becomes a \*subsidiary member of a \*consolidated group, and Subdivision 230-C (fair value method), Subdivision 230-D (foreign exchange retranslation method) or Subdivision 230-F (reliance on financial reports method) is to apply in relation to the asset—the asset’s \*Division 230 starting value.

(5B) To avoid doubt, for the purposes of paragraph (5A)(b), determine the asset’s \*Division 230 starting value by reference to the relevant standards that apply in relation to the head company’s financial report for the income year in which the entity becomes a subsidiary member of the group.

## 97 Subsection 701-58(2)

Omit “subsections 701-55(2), (3), (4), (5) and (6)”, substitute “subsections 701-55(2), (3), (4), (5), (5A) and (6)”.

## 98 After section 701-60

Insert:

### 701-61 Assets in relation to Division 230 financial arrangement— head company’s assessable income or deduction

(1) This section applies if:

(a) an entity (the *joining entity*) becomes a \*subsidiary member of a \*consolidated group; and

(b) paragraph 701-55(5A)(b) applies in relation to one or more assets of the joining entity.

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 2 Consequential amendments

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1 (2) Work out if the total of the \*Division 230 starting values for those  
2 assets exceeds or falls short of the total of their \*tax cost setting  
3 amounts.

4 (3) If there is an excess, an amount equal to 25% of that excess is  
5 included in the \*head company's assessable income for:

6 (a) the income year in which the particular time occurs; and

7 (b) each of the 3 subsequent income years.

8 (4) If there is a shortfall, the \*head company is entitled to a deduction  
9 equal to 25% of that shortfall for:

10 (a) the income year in which the particular time occurs; and

11 (b) each of the 3 subsequent income years.

### 99 After subsection 705-30(3A)

12 Insert:

13 *Division 230 financial arrangements*

14  
15 (3B) If an asset of the joining entity is or is part of a \*Division 230  
16 financial arrangement, the joining entity's terminating value for the  
17 asset is equal to the amount of consideration that the joining entity  
18 would need to receive, if it were to dispose of the asset just before  
19 the joining time, without an amount being assessable income of, or  
20 deductible to, the joining entity under Division 230.

### 100 After Subdivision 715-D

21 Insert:

22  
23 **Subdivision 715-F—Interactions with Division 230 (financial**  
24 **arrangements)**

### Table of sections

25 715-380 Exit history rule not to affect transitional balancing adjustment

26  
27 **715-380 Exit history rule not to affect transitional balancing**  
28 **adjustment**

29 (1) Subsection (2) applies if:

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# EXPOSURE DRAFT

1 (a) an entity (the *leaving entity*) ceases to be a \*subsidiary  
2 member of a \*consolidated group at a time (the *leaving time*):  
3 and

4 (b) but for the cessation of membership and section 701-40 (the  
5 exit history rule), the \*head company of the group would be  
6 subject to a balancing adjustment under item 121 of Schedule  
7 1 to the *Tax Laws Amendment (Taxation of Financial*  
8 *Arrangements) Act 2008* for an income year ending after the  
9 leaving time.

10 (2) Despite section 701-40 (the exit history rule), the \*head company  
11 of the \*consolidated group continues to be subject to the balancing  
12 adjustment for income years ending after the leaving time.

## 13 101 Subsection 715-660(1) (after table item 3)

14 Insert:

15  
3A section 230-180, 230-220, 230-275 Choice about treatment of gains and  
or 230-350 losses from \*Division 230 financial  
arrangement

16

## 17 84102 Subsection 715-665(1) (after table item 1)

18 Insert:

19  
1A section 230-180, 230-220, 230-275 Choice about treatment of gains and  
or 230-350 losses from \*Division 230 financial  
arrangement

20

## 21 85103 At the end of Division 719

22 Add:

23 How Division 230 applies to a MEC group

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 2 Consequential amendments

1 **719-850 Election of head company of MEC group of method to**  
2 **calculate gains and losses from Division 230 financial**  
3 **arrangement—requirements for financial report**

4 (1) This section applies for the purposes of determining whether the  
5 financial report for an income year of the \*head company of a  
6 \*MEC group satisfies the requirements for making an election  
7 under any of these provisions:

8 (a) section 230-180 (fair value method);

9 (b) section 230-220 (foreign exchange retranslation method);

10 (c) section 230-275 (hedging financial arrangements method);

11 (d) section 230-350 (reliance on financial reports method).

12 (2) Treat the \*head company's financial report for that year as  
13 satisfying those requirements if:

14 (a) to the extent that the financial arrangements of the group for  
15 that year are taken into account and properly reflected in the  
16 head company's financial report for that year—the financial  
17 report for that year of the head company of the group satisfies  
18 those requirements; and

19 (b) to the extent that the financial arrangements of the group for  
20 that year are *not* taken into account and properly reflected in  
21 the head company's financial report for that year—the  
22 financial report for that year of the \*top company of the  
23 group satisfies those requirements.

24 **104 Section 775-170**

25 Before “This”, insert “(1)”.

26 **86105 At the end of section 775-170**

27 Add:

28 (2) This Division does not apply to a \*forex realisation gain or a \*forex  
29 realisation loss made by:

30 (a) a \*securitisation vehicle; or

31 (b) an entity that satisfies the requirements of subsection 820-  
32 39(3).

33 **87106 Section 775-170**



# EXPOSURE DRAFT

1 Repeal the section.

2 **[88107](#) At the end of section 775-195**

3 Add:

- 4 (9) The following are not entitled to make a choice under this section:
- 5 (a) a \*securitisation vehicle;
- 6 (b) an entity that satisfies the requirements of subsection 820-
- 7 39(3).

8 **[89108](#) Subsections 775-195(8) and (9)**

9 Repeal the subsections.

10 **[90109](#) At the end of section 960-55**

11 Add:

- 12 (4) Despite subsection (1), section 960-50 does not apply for the
- 13 purposes of working out the assessable income, deductions or tax
- 14 offsets of:
- 15 (a) a \*securitisation vehicle; or
- 16 (b) an entity that satisfies the requirements of subsection 820-
- 17 39(3).

18 **[91110](#) Subsections 960-55(3) and (4)**

19 Repeal the subsections.

20 **[92111](#) At the end of section 960-60**

21 Add:

- 22 (6) The following are not entitled to make a choice under this section:
- 23 (a) a \*securitisation vehicle;
- 24 (b) an entity that satisfies the requirements of subsection 820-
- 25 39(3).

26 **[93112](#) Subsections 960-60(5) and (6)**

27 Repeal the subsections.

28 **[113](#) Subsection 995-1(1)**

29 [Insert:](#)

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 2 Consequential amendments

1 Division 230 starting value: the Division 230 starting value of an  
2 asset that is or is part of a \*Division 230 financial arrangement  
3 (other than an arrangement to which Subdivision 230-B (accruals  
4 and realisation methods) or Subdivision 230-E (hedging financial  
5 arrangements method) applies) is:

6 (a) if Subdivision 230-C (fair value method) applies in relation  
7 to the arrangement—the value of the asset according to the  
8 relevant standards mentioned in section 230-195 that apply in  
9 relation to the arrangement; or

10 (b) if Subdivision 230-D (foreign exchange retranslation  
11 method) applies in relation to the arrangement—the value of  
12 the asset according to the relevant standards mentioned in  
13 section 230-240 that apply in relation to the arrangement; or

14 (c) if Subdivision 230-F (reliance on financial reports method)  
15 applies in relation to the arrangement—the value of the asset  
16 according to the relevant standards mentioned in section 230-  
17 370 that apply in relation to the arrangement.

#### 114 Subsection 995-1(1) (after paragraph (b) of the definition of special accrual amount)

18 Insert:

19 (ba) Division 230 (other than Subdivision 230-B) of this Act;

#### Income Tax (Transitional Provisions) Act 1997

#### 115 Subsection 295-390(5) (subparagraph (a)(iii) of the definition of fixed interest complying ADF)

22 After “Income Tax Assessment Act 1936”, insert “(or would be so  
23 included if Division 230 of the Income Tax Assessment Act 1997 did not  
24 apply)”.  
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26  
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#### *New Business Tax System (Taxation of Financial* *Arrangements) Act (No. 1) 2003*

#### **94116** Paragraph 77(1)(b) of Schedule 4

28 Repeal the paragraph, substitute:

29 (b) for the purposes of working out the assessable income or  
30 allowable deductions of:  
31  
32  
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# EXPOSURE DRAFT

- 1 (i) an ADI or a non-ADI financial institution (within the  
2 meaning of the *Income Tax Assessment Act 1997*); or  
3 (ii) a securitisation vehicle (within the meaning of that Act);  
4 or  
5 (iii) an entity that satisfies the requirements of subsection  
6 820-39(3) of that Act;

7 **95117 Paragraph 77(1)(b) of Schedule 4**

8 Repeal the paragraph.

9 ***Taxation Administration Act 1953***

10 **96118 Subsection 45-120(2B) in Schedule 1**

11 Repeal the subsection (including the heading), substitute:

12 *Net gains under Division 230 included in instalment income*

13 (2B) Your *instalment income* for a period also includes the difference  
14 between:

15 (a) a gain (or gains) you make from a \*financial arrangement to  
16 the extent to which it is (or they are):

17 (i) assessable under Division 230; and

18 (ii) reasonably attributable to that period; and

19 (b) a loss (or losses) you make from a \*financial arrangement to  
20 the extent to which it is (or they are):

21 (i) allowable to you as a deduction under Division 230; and

22 (ii) reasonably attributable to that period.

23 This is so only if the gain (or gains) referred to in paragraph (a)  
24 exceeds the loss (or losses) referred to in paragraph (b).

# EXPOSURE DRAFT

[Schedule 1 Amendments](#)

[Part 3 Application and transitional provisions](#)

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## 2 **Part 3—Application and transitional provisions**

### 3 **97119 Definitions**

4 In this Part:

5 *financial arrangement amendments* means the amendments made by  
6 Parts 1 and 2 of this Schedule.

7 *first applicable income year* means the first income year for which the  
8 financial arrangement amendments apply to you under item 98.

9 *lodgment date* means the due date for you to lodge an income tax  
10 return.

### 11 **98120 Application of financial arrangement amendments** 12 **(income years)**

13 \_\_\_\_\_ (1) Subject to subitem (2), the financial arrangement amendments  
14 apply to you for income years commencing on or after 1 July  
15 ~~2009~~2010.

16 \_\_\_\_\_ (2) The financial arrangement amendments apply to you for income  
17 years commencing on or after 1 July ~~2008~~2009 if you elect to have  
18 this subitem apply to you.

19 Note: For a consolidated group, it is the head entity that would make the  
20 election.

21 \_\_\_\_\_ (3) An election under subitem (2) must be made on or before the first  
22 lodgment date that occurs on or after [the start of the first income](#)  
23 [year commencing on or after](#) 1 July ~~2008~~2009.

### 24 **99121 Application of financial arrangement amendments** 25 **(financial arrangements)**

26 *Future financial arrangements*

27 (1) The financial arrangement amendments apply to financial arrangements  
28 that you start to have in the first applicable income year or a later  
29 income year.

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152 Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008 [No. \\_\\_\\_\\_\\_](#)

~~20072008~~[No. \\_\\_\\_\\_\\_, 2008](#)

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EXPOSURE DRAFT

# EXPOSURE DRAFT

1 *Existing financial arrangements*

- 2 (2) The financial arrangement amendments apply to all financial  
3 arrangements that:  
4 (a) you started to have before the start of the first applicable  
5 income year; and  
6 (b) you have at the start of that income year;  
7 only if you elect to have this subitem apply to you.
- 8 (3) The financial arrangement amendments do not apply under subitem (2)  
9 to a financial arrangement that arose from a disposal of property  
10 (including a disposal of a capital asset, a revenue asset, a depreciating  
11 asset or trading stock).
- 12 (4) An election under subitem (2) must:  
13 (a) be made on or before the first lodgment date that occurs on or  
14 after the start of the first applicable income year; and  
15 (b) be notified to the Commissioner on or before the lodgment  
16 date referred to in paragraph (a).
- 17 (4A) If you make an election under subitem (2), treat subsection 230-405(5)  
18 of the *Income Tax Assessment Act 1997* as allowing you to make an  
19 election under that subsection that applies to:  
20 (a) in any case—all of the financial arrangements that you start  
21 to have in the income year in which the election is made or a  
22 later income year; or  
23 (b) if you make the election at the same time as you make the  
24 election under subitem (2)—all of your financial  
25 arrangements to which the financial arrangements  
26 amendments apply.
- 27 (4B) If you make an election under subitem (2), treat section 230-137 of the  
28 *Income Tax Assessment Act 1997* as allowing you to make an election  
29 under that section that, despite paragraph 230-138(1)(b), applies to a  
30 financial arrangement that:  
31 (a) you started to have before the start of the first applicable  
32 income year; and  
33 (b) you have at the start of that income year.
- 34 (5) An election that you make under Subdivision 230-C, 230-D or 230-F of  
35 the *Income Tax Assessment Act 1997* extends to financial arrangements
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# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 3 Application and transitional provisions

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- 1 referred to in subitem (2) only if that election is made on or before the  
2 first lodgment date that occurs after the start of the first applicable  
3 income year.
- 4 (6) An election that you make under Subdivision 230-E of the *Income Tax*  
5 *Assessment Act 1997* extends to a financial arrangement referred to in  
6 subitem (2) only if:
- 7 (a) that election is made on or before the first lodgment date that  
8 occurs after the start of the first applicable income year; and  
9 (b) the requirements of section 230-290 were satisfied in relation  
10 to the arrangement at the time the arrangement was created,  
11 acquired or applied; and  
12 (c) ~~when~~at, or soon after, the time you make the election, you  
13 have in place records in relation to the arrangement that  
14 satisfy the requirements of section 230-310 and section 230-  
15 315 (other than subparagraph 230-315(2)(c)(ii)); and  
16 (d) the requirements of section 230-320 have been satisfied at all  
17 times since the arrangement was created, acquired or applied  
18 for the purpose of hedging a risk in relation to a hedged item.
- 19 (7) To avoid doubt, subsection 230-270(4) does not apply to a financial  
20 arrangement that you started to have before the start of the first  
21 applicable income year and that you have at the start of that income  
22 year.
- 23 (8) To avoid doubt, the election referred to in subitem (5) or (6) applies to  
24 the financial arrangements referred to in subitem (2) even though you  
25 started to have the arrangements before the election is made.
- 26 (9) If you make an election under subitem (2), balancing adjustments must  
27 be made under subitem (10).
- 28 (10) Use the following method statement to make the balancing adjustments  
29 under this subitem:

30 *Balancing adjustment method statement*

31 *Step 1.* Work out the total of all the amounts that relate to the  
32 financial arrangements and that would have been  
33 included in your assessable income if Division 230 of the  
34 *Income Tax Assessment Act 1997* had applied to gains

# EXPOSURE DRAFT

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- and losses from the arrangements from the time when you started to have them: the result is the ***notional assessable amount***.
- Step 2.* Work out the total of all the amounts that relate to the financial arrangements and that would have been allowable to you as deductions if that Division had applied to gains and losses from the arrangements from the time when you started to have them: the result is the ***notional deductible amount***.
- Step 3.* Work out the total of all the amounts that relate to the financial arrangements and have been included in your assessable income from the time when you started to have them: the result is the ***actual assessed amount***.
- Step 4.* Work out the total of all the amounts that relate to the financial arrangements and that have been allowable as deductions for you from the time when you started to have them: the result is the ***actual deducted amount***.
- Step 5.* Add the notional assessable amount to the actual deducted amount: the result is the ***step 5 amount***.
- Step 6.* Add the actual assessed amount to the notional deductible amount: the result is the ***step 6 amount***.
- Step 7.* Compare the step 5 amount with the step 6 amount. If the step 5 amount exceeds the step 6 amount, the excess is included in your assessable income as a balancing adjustment. If the step 6 amount exceeds the step 5 amount, the excess is allowable as a deduction as a balancing adjustment. If the step 5 amount and the step 6 amount are equal there is no balancing adjustment.

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- (11) If:
- (a) an amount is recorded in a deferred tax asset account in accordance with:
    - (i) accounting standard AASB 112 (or another accounting standard prescribed by the regulations for the purposes of this paragraph); or

# EXPOSURE DRAFT

## Schedule 1 Amendments

### Part 3 Application and transitional provisions

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1 (ii) if that standard does not apply to the preparation of your  
2 financial reports—a comparable accounting standard  
3 that applies to the preparation of your financial reports  
4 under a foreign law;

5 ~~when the election under subitem (2) is made; and~~  
6 immediately before the start of the first applicable income  
7 year; and

8 (b) the whole or a part of that amount (the *attributable*  
9 *assessable amount*) is attributable to a financial arrangement  
10 referred to in subitem (2); and

11 (ba) the method of relying on financial reports provided for in  
12 Subdivision 230-F applies to take account of a gain or loss  
13 you make from the financial arrangement;

14 the following provisions have effect:

15 (c) the financial arrangement is to be disregarded for the  
16 purposes of steps 1 to 4 of the method statement in subitem  
17 (10); and

18 (d) the attributable assessable amount is to be reduced to the  
19 extent to which it represents unused tax credits and then  
20 grossed up under subitem (13); and

21 (e) the step ~~5~~6 amount is to be increased by the amount obtained  
22 under paragraph (d).

23 (12) If:

24 (a) an amount is recorded in a deferred tax liability account in  
25 accordance with:

26 (i) accounting standard AASB 112 (or another accounting  
27 standard prescribed by the regulations for the purposes  
28 of this paragraph); or

29 (ii) if that standard does not apply to the preparation of your  
30 financial reports—a comparable accounting standard  
31 that applies to the preparation of your financial reports  
32 under a foreign law;

33 ~~when the election under subitem (2) is made; and~~  
34 immediately before the start of the first applicable income  
35 year; and

36 (b) the whole or a part of that amount (the *attributable*  
37 *deductible amount*) is attributable to a financial arrangement  
38 referred to in subitem (2); and

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# EXPOSURE DRAFT

1 (ba) the method of relying on financial reports provided for in  
2 Subdivision 230-F applies to take account of a gain or loss  
3 you make from the financial arrangement;

4 the following provisions have effect:

- 5 (c) the financial arrangement is to be disregarded for the  
6 purposes of steps 1 to 4 of the method statement in subitem  
7 (10);  
8 (d) the attributable deductible amount is to be reduced to the  
9 extent to which it represents unused tax credits and then  
10 grossed up under subitem (13);  
11 (e) the step ~~6~~5 amount is to be increased by the amount obtained  
12 under paragraph (d).

- 13 (13) An amount is to be grossed up for the purposes of subitems (11) and  
14 (12) by multiplying the amount by:

15 
$$\frac{1}{\text{Tax rate taken into account in working out}} \\ \text{the attributable assessable amount or} \\ \text{attributable deductible amount}}$$

- 16 (14) A balancing adjustment under subitem (10) is to be spread evenly over  
17 the first applicable income year and the next 3 income years.

- 18 (15) In applying steps 1 and 2 in the method statement in subitem (10) to  
19 financial arrangements, assume that any election that extends to the  
20 arrangements under subitem (4~~5~~) had applied to those financial  
21 arrangements from the time when you started to have them.

- 22 (16) In applying section 121EH of the *Income Tax Assessment Act 1936*,  
23 disregard any balancing adjustment under subitem (10).

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