

EXPOSURE DRAFT

1 Inserts for
2 **Tax Laws Amendment (2010 Measures**
3 **No. 4) Bill 2010: Taxation of financial**
4 **arrangements**
5

6 **EXPOSURE DRAFT (07/04/2010)**

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details

1. Schedule TOFA, Part 1, items 1 to 130	Immediately after the commencement of Part 1 of Schedule 1 to the <i>Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009</i> .
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2. Schedule TOFA, Part 1, item 131	Immediately after the commencement of Part 2 of Schedule 3 to the <i>Tax Laws Amendment (Transfer of Provisions) Act 2010</i> .
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3. Schedule TOFA, Part 1, items 132 to 133	Immediately after the commencement of Part 1 of Schedule 1 to the <i>Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009</i> .
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4. Schedule TOFA, Part 2	The day this Act receives the Royal Assent.
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8 **Schedule TOFA—Taxation of financial**
9 **arrangements**

10 **Part 1—Amendments**

11 ***Income Tax Assessment Act 1936***

12 **1 Before paragraph 102AAW(2)(a)**

13 Insert:

14 (aa) Division 230 of the *Income Tax Assessment Act 1997*; and

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2 Paragraph 102AAW(2)(b)

Omit “that Division”, substitute “a provision mentioned in paragraph (aa) or (a)”.

Income Tax Assessment Act 1997

3 Section 118-27 (heading)

Repeal the heading, substitute:

118-27 Division 230 financial arrangements and financial arrangements to which Subdivision 250-E applies

4 At the end of section 118-27

Add:

- (4) A *capital gain or *capital loss you make from a *CGT asset is disregarded if, at the time of the *CGT event, the asset is, or is part of, a *financial arrangement to which Subdivision 250-E applies.

5 Subparagraph 230-5(2)(a)(ii)

After “superannuation entity” insert “or fund”.

6 After subsection 230-15(4)

Insert:

- (4A) A *dividend paid or provided on a *debt interest is a loss you can deduct to the extent to which it would have been a deductible loss under subsection (2) if:
- (a) the payment of the amount of the dividend were the incurring of a liability to pay the same amount as interest; and
 - (b) that interest were incurred in respect of the finance raised by you and in respect of which the dividend was paid or provided; and
 - (c) the debt interest retained its character as a debt interest for the purposes of subsection (4).

7 Subparagraph 230-45(3)(c)(i)

Omit “change”, substitute “decrease”.

8 At the end of section 230-45

Add:

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1 (4) You also have a financial arrangement if you have a *debt interest.
2 The debt interest constitutes the financial arrangement.

3 **9 Paragraph 230-70(1)(b)**

4 Omit “*ceases”, substitute “ceases”.

5 **10 Paragraph 230-75(1)(b)**

6 Omit “*ceases”, substitute “ceases”.

7 **11 Paragraph 230-110(1)(c)**

8 Omit “*ceases”, substitute “ceases”.

9 **12 Subsection 230-115(1)**

10 Omit the subsection, substitute:

11 (1) In deciding for the purposes of this Subdivision whether it is
12 sufficiently certain at a particular time that you will make a gain or
13 loss from a *financial arrangement:

14 (a) have regard only to:

15 (i) *financial benefits that you are sufficiently certain to
16 receive; and

17 (ii) financial benefits that you are sufficiently certain to
18 provide; and

19 (b) have regard to those financial benefits only to the extent that
20 the amount or value of the benefits is, at that time, fixed or
21 determinable with reasonable accuracy.

22 **13 Subsection 230-115(8)**

23 Omit “foreign currency”, substitute “*foreign currency”.

24 **14 Subparagraph 230-130(5)(b)(ii)**

25 Omit “*ceasing”, substitute “ceasing”.

26 **15 Subsection 230-145(5)**

27 Repeal the subsection.

28 **16 Subparagraph 230-150(1)(a)(i)**

29 Omit “*accounting standards”, substitute “*accounting principles”.

30 **17 Subparagraph 230-150(1)(a)(ii)**

31 Omit “those standards”, substitute “the accounting principles”.

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- 1 **18 Subparagraph 230-150(1)(a)(ii)**
2 Omit “comparable accounting standards”, substitute “comparable
3 standards for accounting”.
- 4 **19 Subparagraph 230-150(1)(b)(i)**
5 Omit “*auditing standards”, substitute “*auditing principles”.
- 6 **20 Subparagraph 230-150(1)(b)(ii)**
7 Omit “auditing standards”, substitute “auditing principles”.
- 8 **21 Subparagraph 230-150(1)(b)(ii)**
9 Omit “comparable auditing standards”, substitute “comparable
10 standards for auditing”.
- 11 **22 Subsection 230-155(5)**
12 Repeal the subsection.
- 13 **23 Subparagraph 230-185(2)(e)(i)**
14 Omit “*accounting standards”, substitute “*accounting principles”.
- 15 **24 Subparagraph 230-185(2)(e)(ii)**
16 Omit “those standards”, substitute “the accounting principles”.
- 17 **25 Subparagraph 230-185(2)(e)(ii)**
18 Omit “comparable accounting standards”, substitute “comparable
19 standards for accounting”.
- 20 **26 Paragraph 230-185(2)(e)**
21 Omit “those standards”, substitute “those principles or standards”.
- 22 **27 Subsection 230-190(8)**
23 Omit “*accounting standards”, substitute “*accounting principles”.
- 24 **28 Subparagraph 230-210(2)(a)(i)**
25 Omit “*accounting standards”, substitute “*accounting principles”.
- 26 **29 Subparagraph 230-210(2)(a)(ii)**
27 Omit “those standards”, substitute “the accounting principles”.
- 28 **30 Subparagraph 230-210(2)(a)(ii)**
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1 Omit “comparable accounting standards”, substitute “comparable
2 standards for accounting”.

3 **31 Subparagraph 230-210(2)(b)(i)**

4 Omit “*auditing standards”, substitute “*auditing principles”.

5 **32 Subparagraph 230-210(2)(b)(ii)**

6 Omit “auditing standards”, substitute “auditing principles”.

7 **33 Subparagraph 230-210(2)(b)(ii)**

8 Omit “comparable auditing standards”, substitute “comparable
9 standards for auditing”.

10 **34 Subsection 230-210(2) (note)**

11 Omit “Australian accounting and auditing standards”, substitute
12 “Australian accounting and auditing principles”.

13 **35 Subparagraph 230-220(1)(c)(i)**

14 Omit “*accounting standards”, substitute “*accounting principles”.

15 **36 Subparagraph 230-220(1)(c)(ii)**

16 Omit “those standards”, substitute “the accounting principles”.

17 **37 Subparagraph 230-220(1)(c)(ii)**

18 Omit “comparable accounting standards”, substitute “comparable
19 standards for accounting”.

20 **38 Paragraph 230-230(1)(a)**

21 Omit “the standards”, substitute “the principles or standards”.

22 **39 Paragraph 230-230(1)(b)**

23 Omit “the standards”, substitute “the principles or standards”.

24 **40 Paragraph 230-230(1)(c)**

25 Omit “the standards”, substitute “the principles or standards”.

26 **41 Subsection 230-230(3)**

27 Omit “the standards”, substitute “the principles or standards”.

28 **42 Subparagraph 230-255(2)(a)(i)**

29 Omit “*accounting standards”, substitute “*accounting principles”.

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43 Subparagraph 230-255(2)(a)(ii)

Omit “those standards”, substitute “the accounting principles”.

44 Subparagraph 230-255(2)(a)(ii)

Omit “comparable accounting standards”, substitute “comparable standards for accounting”.

45 Subparagraph 230-255(2)(b)(i)

Omit “*auditing standards”, substitute “*auditing principles”.

46 Subparagraph 230-255(2)(b)(ii)

Omit “auditing standards”, substitute “auditing principles”.

47 Subparagraph 230-255(2)(b)(ii)

Omit “comparable auditing standards”, substitute “comparable standards for auditing”.

48 Subsection 230-255(2) (note)

Omit “Australian accounting and auditing standards”, substitute “Australian accounting and auditing principles”.

49 Subsections 230-275(1) and (2)

Repeal the subsections, substitute:

- (1) If you make a *foreign exchange retranslation election under subsection 230-255(3) in relation to a *financial arrangement after you start to have the arrangement, you must make a balancing adjustment under subsection (2).

50 Subsection 230-275(3)

Repeal the subsection.

51 Subsection 230-300(5)

Omit “section 230-305”, substitute “subsection 230-305(1)”.

52 Subsection 230-300(6)

Repeal the subsection.

53 Subsection 230-300(11)

Omit “section 230-305”, substitute “subsection 230-305(1)”.

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54 Section 230-305

Before “For the purposes of”, insert “(1)”.

55 Section 230-305 (after table item 2)

Insert:

- | | | |
|----|---|---|
| 2A | (a) you cease to have one or more (but not all) of the *hedged items; or | (a) to the extent to which the gain or loss is reasonably attributable to those one or more hedged items—to the income year in which the event occurs; and |
| | (b) you cease to expect that one or more (but not all) of the hedged items will come into existence; or | (b) to the extent to which the gain or loss is reasonably attributable to the remaining hedged item or items—over income years according to the basis determined under subsection 230-360(1). |
| | (c) you cease to expect that you will have one or more (but not all) of the hedged items | |

56 At the end of section 230-305

Add:

- (2) For the purposes of table item 2A, determine the extent to which the gain or loss is reasonably attributable to a particular *hedged item having regard to the following:
- (a) the fair value of the hedged item;
 - (b) the length of the period over which you have held the hedged item;
 - (c) commercially accepted valuation principles;
 - (d) any other relevant factors.

57 Subsection 230-310(4) (cell at table item 12, column 1)

Omit “*accounting standards”, substitute “*accounting principles”.

58 Paragraph 230-310(5)(a)

Omit “*accounting standards”, substitute “*accounting principles”.

59 Subparagraph 230-315(2)(a)(i)

Omit “*accounting standards”, substitute “*accounting principles”.

60 Subparagraph 230-315(2)(a)(ii)

Omit “those standards”, substitute “the accounting principles”.

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61 Subparagraph 230-315(2)(a)(ii)

Omit “comparable accounting standards”, substitute “comparable standards for accounting”.

62 Subparagraph 230-315(2)(b)(i)

Omit “*auditing standards”, substitute “*auditing principles”.

63 Subparagraph 230-315(2)(b)(ii)

Omit “auditing standards”, substitute “auditing principles”.

64 Subparagraph 230-315(2)(b)(ii)

Omit “comparable auditing standards”, substitute “comparable standards for auditing”.

65 Subsection 230-315(2) (note)

Omit “Australian accounting and auditing standards”, substitute “Australian accounting and auditing principles”.

66 Paragraph 230-335(1)(a)

After “*hedged item”, insert “or items”.

67 Paragraph 230-335(1)(b)

Omit “the standards”, substitute “the principles or standards”.

68 Subsection 230-335(1)(c)(ii)

Omit “foreign currency”, substitute “*foreign currency”.

69 Subparagraph 230-335(1)(c)(ii)

Before “the financial report”, insert “your financial report or”.

70 Subparagraph 230-335(3)(c)(i)

Omit “the standards”, substitute “the principles or standards”.

71 Paragraph 230-335(5)(b)

Omit “the standards”, substitute “the principles or standards”.

72 Subsection 230-335(8)

Omit “the standards”, substitute “the principles or standards”.

73 Subsection 230-335(9)

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1 Omit “the standards”, substitute “the principles or standards”.

2 **74 Paragraph 230-335(10)(c)**

3 Omit “*accounting standards”, substitute “*accounting principles”.

4 **75 Paragraph 230-335(10)(d)**

5 Omit “accounting standards”, substitute “accounting principles”.

6 **76 Paragraph 230-335(10)(e)**

7 Omit “accounting standards”, substitute “accounting principles”.

8 **77 Section 230-340 (heading)**

9 Repeal the heading, substitute:

10 **230-340 Generally whole arrangement must be hedging financial**
11 **arrangement**

12 **78 Paragraph 230-355(1)(b)**

13 Omit “*accounting standards”, substitute “*accounting principles”.

14 **79 Subparagraph 230-355(5)(a)(ii)**

15 Omit “the standards”, substitute “the principles or standards”.

16 **80 Paragraph 230-365(a)**

17 Omit “the standards”, substitute “the principles or standards”.

18 **81 Subparagraph 230-365(c)(i)**

19 Omit “*accounting standards”, substitute “*accounting principles”.

20 **82 Paragraph 230-365(c)**

21 Omit “the standards”, substitute “the principles or standards”.

22 **83 Subsection 230-380(1)**

23 Repeal the subsection, substitute:

24 (1) If a *hedging financial arrangement that you have does not (apart
25 from this section) meet the requirements of sections 230-355 to
26 230-365, treat it as meeting those requirements if the
27 Commissioner makes a determination under subsection (1A) in
28 relation to the arrangement.

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- 1 (1A) The Commissioner may make the determination if the
2 Commissioner considers that this is appropriate, having regard to:
3 (a) the respects in which the arrangement does not meet those
4 requirements; and
5 (b) the extent to which it does not meet those requirements; and
6 (c) the reasons why it does not meet those requirements; and
7 (d) if the Commissioner is considering whether to impose
8 conditions under subsection (2)—the likelihood that you will
9 comply with those conditions; and
10 (e) the objects of this Subdivision.

11 **84 Subparagraph 230-395(2)(a)(i)**

12 Omit “*accounting standards”, substitute “*accounting principles”.

13 **85 Subparagraph 230-395(2)(a)(ii)**

14 Omit “those standards”, substitute “the accounting principles”.

15 **86 Subparagraph 230-395(2)(a)(ii)**

16 Omit “comparable accounting standards”, substitute “comparable
17 standards for accounting”.

18 **87 Subparagraph 230-395(2)(b)(i)**

19 Omit “*auditing standards”, substitute “*auditing principles”.

20 **88 Subparagraph 230-395(2)(b)(ii)**

21 Omit “auditing standards”, substitute “auditing principles”.

22 **89 Subparagraph 230-395(2)(b)(ii)**

23 Omit “comparable auditing standards”, substitute “comparable
24 standards for auditing”.

25 **90 Subsection 230-395(2) (note 1)**

26 Omit “Australian accounting and auditing standards”, substitute
27 “Australian accounting and auditing principles”.

28 **91 Paragraph 230-405(2)(a)**

29 Omit “standards”, substitute “principles or standards”.

30 **92 Paragraph 230-405(2)(b)**

31 Omit “standards”, substitute “principles or standards”.

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1 **93 Subparagraph 230-410(1)(d)(i)**

2 Omit “*accounting standards”, substitute “*accounting principles”.

3 **94 Subparagraph 230-410(1)(d)(ii)**

4 Omit “those standards”, substitute “the accounting principles”.

5 **95 Subparagraph 230-410(1)(d)(ii)**

6 Omit “comparable accounting standards”, substitute “comparable
7 standards for accounting”.

8 **96 Subsection 230-410(2)**

9 Omit “the standards”, substitute “the principles or standards”.

10 **97 Paragraph 230-420(1)(a)**

11 Omit “the standards”, substitute “the principles or standards”.

12 **98 Paragraph 230-420(1)(b)**

13 Omit “the standards”, substitute “the principles or standards”.

14 **99 Paragraph 230-420(1)(c)**

15 Omit “the standards”, substitute “the principles or standards”.

16 **100 Subsection 230-420(3)**

17 Omit “the standards”, substitute “the principles or standards”.

18 **101 Paragraph 230-430(4)(a)**

19 Omit “the standards”, substitute “the principles or standards”.

20 **102 Paragraph 230-430(4)(c)**

21 Omit “those standards”, substitute “those principles or standards”.

22 **103 Subsection 230-435(2) (note)**

23 Omit “subsections 230-45(1) and”, substitute “subsections 230-45(1)
24 and (4) and”.

25 **104 Subsection 230-435(5)**

26 Omit “*cease”, substitute “cease”.

27 **105 Subparagraph 230-455(1)(a)(ii)**

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1 After “a superannuation entity (within the meaning of section 10 of the
2 *Superannuation Industry (Supervision) Act 1993*),”, insert “a
3 *superannuation fund that is not such an entity,”.

4 **106 Paragraph 230-455(5)(b)**

5 Omit “accounting standards”, substitute “*accounting principles”.

6 **107 Subsection 230-460(4)**

7 Repeal the subsection, substitute:

8 (4) Subsection (3) does not apply if, assuming that the *financial
9 arrangement were a *Division 230 financial arrangement, a *fair
10 value election, or an *election to rely on financial reports, would
11 apply to it.

12 **108 Paragraph 230-460(8)(a)**

13 Repeal the paragraph, substitute:

14 (a) assuming that the *financial arrangement were a
15 *Division 230 financial arrangement, it would be the subject
16 of a *fair value election or an *election to rely on financial
17 reports; or

18 **109 Section 230-495 (heading)**

19 Repeal the heading, substitute:

20 **230-495 Effect of change of accounting standards or principles**

21 **110 Paragraph 230-495(1)(b)**

22 Omit “the relevant standards”, substitute “the relevant standards or
23 principles”.

24 **111 Paragraph 230-495(1)(d)**

25 Omit “those standards”, substitute “those standards or principles”.

26 **112 Paragraph 230-500(a)**

27 Omit “*accounting standards”, substitute “*accounting principles”.

28 **113 Paragraph 230-500(b)**

29 Omit “*auditing standards”, substitute “*auditing principles”.

30 **114 Paragraph 230-520(1)(b)**

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1 Omit “*value shift”, substitute “*direct value shift”.

2 **115 Paragraph 230-520(1)(d)**

3 Omit “723,”

4 **116 Subsection 230-520(2)**

5 Omit “or (d)”

6 **117 Subsection 230-530(1)**

7 Omit “foreign currency”, substitute “*foreign currency”.

8 **118 Subsection 230-530(2)**

9 Repeal the subsection.

10 **119 Subparagraph 230-530(3)(d)(i)**

11 Omit “*accounting standards”, substitute “*accounting principles”.

12 **120 Subparagraph 230-530(3)(d)(ii)**

13 Omit “those standards”, substitute “the accounting principles”.

14 **121 Subparagraph 230-530(3)(d)(ii)**

15 Omit “comparable accounting standards”, substitute “comparable
16 standards for accounting”.

17 **122 Subparagraph 230-530(4)(e)(i)**

18 Omit “*accounting standards”, substitute “*accounting principles”.

19 **123 Subparagraph 230-530(4)(e)(ii)**

20 Omit “those standards”, substitute “the accounting principles”.

21 **124 Subparagraph 230-530(4)(e)(ii)**

22 Omit “comparable accounting standards”, substitute “comparable
23 standards for accounting”.

24 **125 Paragraph 775-295(1)(c)**

25 Omit “paragraph 230-255(1)(a)”, substitute “paragraph 230-255(2)(a)”.

26 **126 Paragraph 775-305(1)(b)**

27 Omit “paragraph 230-255(1)(a)”, substitute “paragraph 230-255(2)(a)”.

28 **127 Subsection 775-305(2)**

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1 Omit “an amount in profit”, substitute “an amount of gain in profit or
2 loss”.

3 **128 Subsection 775-305(3)**

4 Omit “an amount in loss”, substitute “an amount of loss in profit or
5 loss”.

6 **129 Subsection 995-1(1)**

7 Insert:

8 *auditing principles*: A matter is in accordance with auditing
9 principles if it is in accordance with:

- 10 (a) *auditing standards; or
11 (b) if there are no auditing standards applicable to the matter—
12 authoritative pronouncements of the Auditing and Assurance
13 Standards Board that apply to the preparation of financial
14 statements.

15 **130 Subsection 995-1(1) (paragraph (aa) of the definition of**
16 ***special accrual amount*)**

17 Repeal the paragraph, substitute:

- 18 (aa) Subdivision 250-E of this Act if all the *financial benefits
19 provided and received under the *financial arrangement
20 concerned are denominated in a particular *foreign currency;
21 (ab) Subdivision 230-A of this Act (which deals with gains and
22 losses from financial arrangements) if:
23 (i) the accruals method provided for in Subdivision 230-B
24 of this Act is applied to take account of the gain or loss
25 concerned; and
26 (ii) all the *financial benefits provided and received under
27 the financial arrangement concerned are denominated in
28 a particular foreign currency;

29 **131 Subsection 995-1(1) (after paragraph (d) of the definition**
30 ***of special accrual amount*)**

31 Insert:

- 32 (da) Subdivision 250-E of this Act if all the financial benefits
33 provided and received under the financial arrangement
34 concerned are denominated in a particular foreign currency;

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1 *Tax Laws Amendment (Taxation of Financial Arrangements)*
2 *Act 2009*

3 **132 Subitem 104(7) of Schedule 1**

4 Omit “paragraph 230-160(1)(b)”, substitute “paragraphs 230-160(1)(b)
5 and 230-165(1)(b)”.

6 **133 After subitem 104(7) of Schedule 1**

7 Insert:

- 8 (7A) An election that you make under section 230-150 of the *Income Tax*
9 *Assessment Act 1997* extends to a financial arrangement referred to in
10 subitem (2) only if:
- 11 (a) that election is made on or before the first lodgment date that
12 occurs after the start of the first applicable income year; and
 - 13 (b) for financial arrangements to which section 230-160 of that
14 Act applies:
 - 15 (i) before any fees in respect of the financial arrangement
16 fall due, you made determinations that satisfy the
17 requirements of subsection 230-160(3) and (4) (other
18 than paragraphs 230-160(3)(b) and (4)(b)); and
 - 19 (ii) at, or soon after, the time you make the election, you
20 have in place records in relation to the arrangement that
21 satisfy the requirements of paragraphs 230-160(3)(b)
22 and (4)(b); and
 - 23 (c) for financial arrangements to which section 230-165 of that
24 Act applies:
 - 25 (i) before you start to have the financial arrangement, you
26 made determinations that satisfy the requirements of
27 subsection 230-165(3) and (4) (other than paragraphs
28 230-165(3)(b) and (4)(b)); and
 - 29 (ii) at, or soon after, the time you make the election, you
30 have in place records in relation to the arrangement that
31 satisfy the requirements of paragraphs 230-165(3)(b)
32 and (4)(b).
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EXPOSURE DRAFT

Part 2—Extension of debt and equity transitional arrangements for Upper Tier 2 capital instruments

134 Extension of debt and equity transitional arrangements for Upper Tier 2 capital instruments

Definitions

(1) In this item:

CGT amendments has the same meaning as in item 118 of the *New Business Tax System (Debt and Equity) Act 2001*.

debt and equity test amendments means the amendments made by Schedule 1 of the *New Business Tax System (Debt and Equity) Act 2001* (other than the CGT amendments), as amended from time to time.

Upper Tier 2 capital instruments

(2) This item applies to an interest:

- (a) that is issued before 1 July 2001; and
- (b) that is an instrument known as an Upper Tier 2 capital instrument; and
- (c) to which an election under paragraph 118(6)(b) of the *New Business Tax System (Debt and Equity) Act 2001* does not apply.

(3) For the purposes of subitem (2), an interest is taken to be issued on or after 1 July 2001 if:

- (a) the interest is issued on or after that date; or
- (b) the interest is issued before that date; and
 - (i) the terms of the interest are altered on or after that date; or
 - (ii) the interest is rolled over on or after that date; or
 - (iii) the original term of the interest is extended on or after that date.

In applying subparagraph (b)(i), disregard:

- (a) minor alterations that do not affect rights and obligations in relation to the interest; and
- (b) alterations that permit or require any deferred payments under the interest to accumulate.

EXPOSURE DRAFT

Application of debt and equity test amendments

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- (4) Despite subitem 118(6) of the *New Business Tax System (Debt and Equity) Act 2001*, the debt and equity test amendments apply only to transactions that take place in relation to the interest on or after 1 July 2010.
- (5) If subitem (4) applies to an interest:
- (a) the interest is disregarded for the purposes of paragraph 164-10(1)(b) and subsection 164-15(3) of the *Income Tax Assessment Act 1997*; and
 - (b) section 164-15 of the *Income Tax Assessment Act 1997* applies to the interest as if references in paragraph 164-15(3)(b) and subsection 164-15(4) to 1 July 2001 were references to 1 July 2010.
- (6) A reference in this item to a ***transaction*** includes a reference to:
- (a) making a return; and
 - (b) paying a dividend or unit trust dividend; and
 - (c) making a distribution in relation to a unit trust; and
 - (d) paying, crediting or lending an amount; and
 - (e) making a non-share distribution; and
 - (f) forgiving a debt; and
 - (g) redeeming, cancelling or buying back an interest; and
 - (h) converting an interest.