

EXPOSURE DRAFT

1 Inserts for
2 **Tax Laws Amendment (2011 Measures**
3 **No. 7) Bill 2011: Taxation of Financial**
4 **Arrangements**

5

EXPOSURE DRAFT

6

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Schedule 1	The day after this Act receives the Royal Assent.	
2. Schedule 2	The day this Act receives the Royal Assent.	
3.		

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EXPOSURE DRAFT

Schedule 1—Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009

1 At the end of subitem 104(5) of Schedule 1

Add:

Note: The Commissioner may, in limited circumstances, extend the time on or before which the election must be notified to the Commissioner. See item 104A.

2 After item 104 of Schedule 1

Insert:

104A Application of financial arrangement amendments (financial arrangements)—late notices

- (1) A reference in paragraph 104(5)(b) to the lodgment date is to be treated, in relation to an election under subitem 104(2), as being a reference to a later date specified in a notice the Commissioner gives to you under this item, if the Commissioner gives you such a notice in relation to the election.
- (2) The Commissioner may give you a notice in relation to the election if:
 - (a) the Commissioner is satisfied that the election was not notified to the Commissioner on or before the lodgment date because of:
 - (i) an honest mistake of yours; or
 - (ii) an inadvertence of yours; or
 - (b) the Commissioner is satisfied that:
 - (i) the election was not notified to the Commissioner on or before the lodgment date because of circumstances outside of your control; and
 - (ii) you took all reasonable steps to notify the Commissioner of the election on or before the lodgment date, or there were no such steps you could have taken.
- (3) The later date specified in the notice must be a date that occurred no later than 3 months after the lodgment date mentioned in paragraph 104(5)(b) (disregarding this item).

3 Subitem 105(1) of Schedule 1

EXPOSURE DRAFT

1 Omit “item 104 applies to arrangements that are not financial
2 arrangements in the same way that it applies”, substitute “items 104 and
3 104A apply to arrangements that are not financial arrangements in the
4 same way that those items apply”.

5 **4 Application provision**

6 The amendments made by this Schedule apply in relation to lodgment
7 dates mentioned in paragraph 104(5)(b) of Schedule 1 to the *Tax Laws*
8 *Amendment (Taxation of Financial Arrangements) Act 2009*, whether
9 the lodgment dates occur before, on or after the commencement of this
10 item.
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EXPOSURE DRAFT

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2 **Schedule 2—Taxation of financial**
3 **arrangements and PAYG instalments**

4 **Part 1—Amendments**

5 *Taxation Administration Act 1953*

6 **1 After subsection 45-120(2B) in Schedule 1**

7 Insert:

8 *Effect of Division 230 of the Income Tax Assessment Act 1997 on*
9 *instalment income*

10 (2C) Your instalment income for a period also includes the difference
11 between:

12 (a) a gain (or gains) you make from a *financial arrangement to
13 the extent to which it is (or they are):

14 (i) assessable under Division 230 of the *Income Tax*
15 *Assessment Act 1997*; and

16 (ii) reasonably attributable to that period; and

17 (b) a loss (or losses) you make from a financial arrangement to
18 the extent to which it is (or they are):

19 (i) allowable to you as a deduction under Division 230 of
20 the *Income Tax Assessment Act 1997*; and

21 (ii) reasonably attributable to that period.

22 This is so only if the gain (or gains) referred to in paragraph (a)
23 equals or exceeds the loss (or losses) referred to in paragraph (b).

24 (2D) However, your instalment income for a period is worked out
25 disregarding subsection (2C) if any of the following apply:

26 (a) you are an individual;

27 (b) the only gains and losses that would be taken into account
28 under subsection (2C) for the period are from *financial
29 arrangements that are *qualifying securities.

30 (2E) A gain or loss that is taken into account under subsection (2C) in
31 working out an amount (including a nil amount) to be included in
32 your instalment income for a period is not to be, to any extent,
33 taken into account again under another provision of this section in
34 calculating your instalment income for the same or any other
35 period.

EXPOSURE DRAFT

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2 Part 2—Application provision

3 2 Definitions

4 In this Part:

5 ***amended instalment income definition*** means section 45-120 in
6 Schedule 1 to the *Taxation Administration Act 1953* as amended by this
7 Schedule.

8 ***first TOFA year*** means the first income year commencing on or after
9 1 July 2010 for which:

10 (a) either or both of the following applies:

11 (i) a gain (or gains) from a financial arrangement is
12 included in your assessable income under Division 230
13 of the *Income Tax Assessment Act 1997*;

14 (ii) a loss (or losses) from a financial arrangement is
15 allowable to you as a deduction under that Division; and

16 (b) at least one gain or loss referred to in paragraph (a) is from a
17 financial arrangement other than a qualifying security.

18 3 Application provision

19 *Main rule*

20 (1) Subitem (2) applies to you if:

21 (a) the Commissioner gives you an instalment rate under
22 section 45-15 in Schedule 1 to the *Taxation Administration*
23 *Act 1953* at a time that is:

24 (i) after this Act receives the Royal Assent; and

25 (ii) in the first instalment quarter in an income year (the
26 ***commencing year***); and

27 (b) the base year that applies in working out that rate is your first
28 TOFA year, or a later year.

29 (2) Subject to subitems (4) and (6), the amended instalment income
30 definition applies to you in working out:

31 (a) your base assessment instalment income for the base year
32 mentioned in paragraph (1)(b), and later years; and

33 (b) your instalment income for periods in the commencing year,
34 and later years.

EXPOSURE DRAFT

Partnerships

- 1
- 2 (3) Subitem (4) applies in relation to your instalment income for a period if:
- 3 (a) the period starts after this Act receives the Royal Assent; and
- 4 (b) you are a partner in a partnership at any time during the
- 5 period; and
- 6 (c) in working out the amount to be included in your instalment
- 7 income for the period under section 45-260 in Schedule 1 to
- 8 the *Taxation Administration Act 1953*, the last income year
- 9 mentioned in the numerator of the formula in subsection
- 10 45-260(1) in that Schedule is:
- 11 (i) the first TOFA year for the partnership; or
- 12 (ii) a later year.
- 13 (4) For the purpose of working out the amount to be included in your
- 14 instalment income for the period (the **current period**) under
- 15 section 45-260 in Schedule 1 to the *Taxation Administration Act 1953*,
- 16 the amended instalment income definition applies in working out the
- 17 instalment income of the partnership for:
- 18 (a) the last income year mentioned in the numerator of the
- 19 formula in subsection 45-260(1) in that Schedule; and
- 20 (b) the current period.

Trusts

- 21
- 22 (5) Subitem (6) applies in relation to your instalment income for a period if:
- 23 (a) the period starts after this Act receives the Royal Assent; and
- 24 (b) you are a beneficiary of a trust at any time during the period;
- 25 and
- 26 (c) in working out the amount to be included in your instalment
- 27 income for the period under section 45-280 in Schedule 1 to
- 28 the *Taxation Administration Act 1953*, the last income year
- 29 mentioned in the numerator of the formula in subsection
- 30 45-280(1) in that Schedule is:
- 31 (i) the first TOFA year for the trust; or
- 32 (ii) a later year.
- 33 (6) For the purpose of working out the amount to be included in your
- 34 instalment income for the period (the **current period**) under
- 35 section 45-280 in Schedule 1 to the *Taxation Administration Act 1953*,
- 36 the amended instalment income definition applies in working out the
- 37 instalment income of the trust for:
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EXPOSURE DRAFT

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- 1 (a) the last income year mentioned in the numerator of the
2 formula in subsection 45-280(1) in that Schedule; and
3 (b) the current period.

4 *Early opt-in for amended instalment income definition*

- 5 (7) Subitem (8) applies to you if:
- 6 (a) the Commissioner gives you an instalment rate under
7 section 45-15 in Schedule 1 to the *Taxation Administration*
8 *Act 1953* at a time that is:
9 (i) after this Act receives the Royal Assent; and
10 (ii) in the first instalment quarter in an income year (the
11 *commencing year*); and
12 (b) the base year that applies in working out that rate is an
13 income year before your first TOFA year; and
14 (c) you elect to have subitem (8) apply to you; and
15 (d) the Commissioner, having regard to the object of Part 2-10 in
16 Schedule 1 to the *Taxation Administration Act 1953*, is of the
17 opinion that it is reasonable for that subitem to apply to you.
- 18 (8) Despite subitems (1) and (2), the amended instalment income definition
19 applies to you in working out:
20 (a) your base assessment instalment income for the base year
21 mentioned in paragraph (7)(b), and later years; and
22 (b) your instalment income for periods in the commencing year,
23 and later years.
- 24 (9) If subitem (8) applies to you, in working out your base assessment
25 instalment income for the base year (or a later income year that ends
26 before your first TOFA year) (a *pre-TOFA year*), the financial
27 arrangement amendments (within the meaning of Part 3 of Schedule 1
28 to the *Tax Laws Amendment (Taxation of Financial Arrangements) Act*
29 *2009*) are taken to apply:
30 (a) to you in a pre-TOFA year in the same way they apply to you
31 in your first TOFA year; and
32 (b) to financial arrangements you have in a pre-TOFA year in the
33 same way they apply to financial arrangements you have in
34 your first TOFA year.