



**Tax Laws Amendment (2010 Measures  
No. 3) Act 2010**

**No. 90, 2010**

**An Act to amend the law relating to taxation and  
superannuation, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



---

## Contents

1	Short title .....	1
2	Commencement .....	2
3	Schedule(s) .....	2
<b>Schedule 1—Government co-contribution for low income earners</b>		3
	<i>Superannuation (Government Co-contribution for Low Income Earners) Act 2003</i>	3
<b>Schedule 2—Thin capitalisation</b>		5
	<i>Income Tax Assessment Act 1997</i>	5
<b>Schedule 3—Exempting certain transactions involving security agencies</b>		8
	<i>Taxation Administration Act 1953</i>	8
<b>Schedule 4—Special disability trusts</b>		11
	<i>Income Tax Assessment Act 1936</i>	11
	<i>Income Tax Assessment Act 1997</i>	12
<b>Schedule 5—Managed investment trusts</b>		13
	<i>Income Tax Assessment Act 1997</i>	13
	<i>Taxation Administration Act 1953</i>	14





# **Tax Laws Amendment (2010 Measures No. 3) Act 2010**

**No. 90, 2010**

---

---

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

[Assented to 29 June 2010]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Tax Laws Amendment (2010  
Measures No. 3) Act 2010*.

---

## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	29 June 2010
2. Schedule 1	1 July 2010.	1 July 2010
3. Schedules 2 to 5	The day this Act receives the Royal Assent.	29 June 2010

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

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

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

---

## Schedule 1—Government co-contribution for low income earners

### *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*

#### 1 Paragraphs 9(1)(c), (d) and (e)

Repeal the paragraphs, substitute:

- (c) for the 2009-10 income year or a later income year—an amount equal to the sum of the eligible personal superannuation contributions the person makes during the income year.

#### 2 Subsections 10(1B), (1C) and (1D)

Repeal the subsections, substitute:

- (1B) The amount of the Government co-contribution in respect of a person for the 2009-10 income year or a later income year must not exceed the maximum amount worked out using the following table:

<b>Maximum Government co-contribution</b>		
<b>Item</b>	<b>Person's total income for the income year</b>	<b>Maximum amount</b>
1	the lower income threshold or less	\$1,000
2	more than the lower income threshold but less than the higher income threshold	\$1,000 reduced by 3.333 cents for each dollar by which the person's total income for the income year exceeds the lower income threshold

#### 3 Subsection 10(2)

Omit “Subsections (1), (1A), (1B), (1C) and (1D)”, substitute “Subsections (1), (1A) and (1B)”.

#### 4 Paragraph 10A(1)(a)

After “later income years”, insert “(apart from the 2010-11 and 2011-12 income years)”.

**5 Paragraph 10A(1)(b)**

After “each later income year”, insert “(apart from the 2010-11 and 2011-12 income years)”.

**6 After subsection 10A(5)**

Insert:

(5A) Despite subsection (5), the *indexation factor* for the 2010-11 and 2011-12 income years is 1.

**7 Application provision**

The amendments made by this Schedule apply to the 2009-10 income year and later income years.



---

## Schedule 2—Thin capitalisation

### *Income Tax Assessment Act 1997*

#### **1 At the end of section 820-300**

Add:

- (4) For the purposes of paragraph (3)(a), treat treasury shares (within the meaning of \*accounting standard AASB 132) in the entity as included in the \*ADI equity capital of the entity, to the extent that those shares are part of the entity's eligible tier 1 capital (within the meaning of the \*prudential standards).

#### **2 Section 820-310**

Before “The *safe harbour capital amount* is”, insert “(1)”.

#### **3 Section 820-310 (method statement, step 1)**

Omit all the words before paragraph (a), substitute:

Step 1. Work out the average value, for the income year, of all the entity's:

(aa) \*risk-weighted assets; and

(ab) intangible assets comprising capitalised software expenses;

that are attributable to none of the following:

#### **4 Section 820-310 (method statement, step 3)**

Repeal the step, substitute:

Step 3. Add to the result of step 2 the average value, for that year, of all the \*tier 1 prudential capital deductions for the entity, to the extent that they are not attributable to:

(a) any of the entity's \*overseas permanent establishments; or

(b) any \*Australian controlled foreign entities of which the entity is an \*Australian controller; or

(c) any of the entity's goodwill or intangible assets which relate to the excess mentioned in paragraph 5.3 of \*accounting standard AASB 1038, as issued on 17 November 1998, to the extent that the excess is referable to \*VBIF; or

Note: Paragraph 5.3 of that accounting standard applies to any excess of the net market values of an interest in a subsidiary over the net amount of that subsidiary's assets and liabilities.

(d) any of the entity's intangible assets comprising capitalised software expenses.

The result of this step is the *safe harbour capital amount*.

## 5 Section 820-310 (example)

Omit "risk-weighted assets is \$150 million (having discounted those risk-weighted assets)", substitute "risk-weighted assets and intangible assets comprising capitalised software expenses is \$150 million (having discounted those assets)".

## 6 At the end of section 820-310

Add:

(2) **VBIF** is the value of business in force at the time of acquisition of the relevant subsidiary (within the meaning of paragraph 5.3 of \*accounting standard AASB 1038, as issued on 17 November 1998) of the entity.

(3) \*VBIF is taken to be nil at all times unless the value of VBIF at the time of acquisition of the relevant subsidiary was worked out by an \*actuary according to Australian actuarial practice.

## 7 Subsection 820-680(1) (note)

After "sections", insert "820-310,".

## 8 Subsection 995-1(1)

---

Insert:

**VBIF** (short for value of business in force) has the meaning given by section 820-310.

## **9 Application provision**

The amendments made by this Schedule apply to assessments for each income year starting on or after 1 January 2009.

## **Schedule 3—Exempting certain transactions involving security agencies**

### *Taxation Administration Act 1953*

#### **1 At the end of Chapter 5 in Schedule 1**

Add:

### **Part 5-100—Miscellaneous**

#### **Division 850—Transactions exempt from application of taxation laws**

##### **Table of Subdivisions**

850-A Declaration relating to security or intelligence agency

##### **Subdivision 850-A—Declaration relating to security or intelligence agency**

##### **Table of sections**

850-100 Declaration relating to security or intelligence agency

#### **850-100 Declaration relating to security or intelligence agency**

##### *Object*

- (1) The object of this section is to remove the possibility of a conflict arising between Australia's national security interests and Australia's taxation laws.

##### *Making a declaration*

- (2) The Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979* may declare that this section applies to one or more specified entities (the Australian Security Intelligence Organisation itself may be specified) in relation to one or more specified transactions.

- (3) The Director-General of the Australian Secret Intelligence Service (*ASIS*) may declare that this section applies to one or more specified entities (*ASIS* itself may be specified) in relation to one or more specified transactions.
- (4) A declaration under this section may only be made if the relevant Director-General is satisfied that the making of the declaration is necessary for the proper performance of the functions of:
- (a) for the Director-General of Security—the Australian Security Intelligence Organisation; or
  - (b) for the Director-General of *ASIS*—*ASIS*.
- (5) A declaration under this section must be in writing, signed by the relevant Director-General.
- Note 1: A declaration may specify an entity or transaction by reference to a class of entities or transactions (see subsection 46(3) of the *Acts Interpretation Act 1901*). For example, a declaration may specify the subsidiaries of a specified company, or the parties to a specified transaction.
- Note 2: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.
- (6) A declaration may be made even though:
- (a) a transaction it specifies has already been entered into or carried out; or
  - (b) an entity it specifies has died or ceased to exist;
- (whether before or after the commencement of this section).
- (7) A written document signed by the relevant Director-General purporting to be a declaration is prima facie evidence that this section has been complied with in making the declaration, but this subsection does not affect the performance of the functions of the Inspector-General of Intelligence and Security.

*Effect of declaration*

- (8) For an entity specified in a declaration in relation to a specified transaction, the transaction is to be disregarded in determining any of the following:
- (a) the existence or amount of a liability of the entity relating to taxation under any \*Commonwealth law, even if the law requires express words to be used to exempt an entity or transaction from liability to taxation under that law;

**Schedule 3** Exempting certain transactions involving security agencies

---

Example: Examples of liabilities covered by paragraph (a) are a liability to GST (despite section 177-5 of the *A New Tax System (Goods and Services Tax) Act 1999*), and amounts required to be paid by Part 2-5 in this Schedule (Pay as you go (PAYG) withholding).

- (b) the existence or amount of any kind of benefit (however the benefit is expressed) relating to taxation under any Commonwealth law;

Example: Examples of benefits covered by paragraph (b) are deductions, credits and offsets under the *Income Tax Assessment Act 1997*, and input tax credits under the *A New Tax System (Goods and Services Tax) Act 1999*.

- (c) the existence or extent of any other obligation (or right) of the entity relating to a liability or benefit of a kind mentioned in paragraph (a) or (b).

Example: Examples of obligations covered by paragraph (c) include the following:

- (a) an obligation to withhold money from a payment;
- (b) an obligation to lodge a return, or to provide information, to the Commissioner of Taxation;
- (c) an obligation to become registered under a taxation law.

- (9) A declaration under this section is not a legislative instrument.

## **Schedule 4—Special disability trusts**

### ***Income Tax Assessment Act 1936***

#### **1 Subsection 6(1)**

Insert:

*principal beneficiary* of a special disability trust has the same meaning as in the *Income Tax Assessment Act 1997*.

#### **2 Subsection 6(1)**

Insert:

*special disability trust* has the same meaning as in the *Income Tax Assessment Act 1997*.

#### **3 After section 95AA**

Insert:

#### **95AB Modifications for special disability trusts**

- (1) This Division applies with the modifications set out in this section in relation to a year of income in relation to a trust estate that is a special disability trust at the end of the year of income.
- (2) Treat the principal beneficiary of the trust estate as being presently entitled to all of the income of the trust estate of the year of income.
- (3) If the principal beneficiary of the trust estate is a resident of Australia at the end of the year of income treat that person as being under a legal disability throughout the year of income.
- (4) If there is no income of the trust estate assume that:
  - (a) there is income of the trust estate of the year of income; and
  - (b) the principal beneficiary of the trust estate is presently entitled to all of the income of the trust estate of the year of income.

- (5) If the amount to be deducted under subsection 100(2) from the income tax assessed against the principal beneficiary is greater than the amount of the income tax assessed against the principal beneficiary, the Commissioner must pay to the principal beneficiary an amount equal to the difference between those 2 amounts.

Note: The tax offset is subject to the refundable tax offset rules: see section 67-23 of the *Income Tax Assessment Act 1997*.

**4 After paragraph 102AC(2)(d)**

Insert:

- (da) the minor is the principal beneficiary of a special disability trust;

***Income Tax Assessment Act 1997***

**5 Section 67-23 (before table item 5)**

Insert:

- |   |  |  |
|---|--|--|
| 3 | *principal beneficiary of a<br>*special disability trust | the *tax offset available under subsection<br>95AB(5) of the <i>Income Tax Assessment Act</i><br><i>1936</i> |
|---|--|--|

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

Insert:

*principal beneficiary* of a special disability trust has the meaning given by section 1209M of the *Social Security Act 1991*.

**7 Subsection 995-1(1)**

Insert:

*special disability trust* has the meaning given by section 1209L of the *Social Security Act 1991*.

**8 Application provision**

The amendments made by this Schedule apply to assessments for the 2008-09 income year and later income years.



---

## Schedule 5—Managed investment trusts

### *Income Tax Assessment Act 1997*

#### **1 Before section 275-15**

Insert:

##### **275-5 Treatment of trading trusts etc.**

For the purposes of this Division, treat a trust in the same way as a \*managed investment trust in relation to an income year if it would be a managed investment trust in relation to the income year if paragraph 12-400(2)(a) in Schedule 1 to the *Taxation Administration Act 1953* were disregarded.

Note: If a trading trust is treated as a managed investment trust for the purposes of this Division for an income year, sections 275-100 (CGT to be primary code for calculating MIT gains or losses) and 275-120 (revenue account treatment) will not apply to the trust for the year (see subsections 275-100(1), 275-110(1) and 275-120(1)).

##### **275-10 Trust with investment management activities outside Australia**

For the purposes of this Division, treat a trust in the same way as a \*managed investment trust in relation to an income year if it would be a managed investment trust in relation to the income year if paragraph 12-400(1)(c) in Schedule 1 to the *Taxation Administration Act 1953* were disregarded.

#### **2 Paragraphs 275-15(1)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) the condition in paragraph 12-400(1)(a) in Schedule 1 to the *Taxation Administration Act 1953* is satisfied; and
- (b) either:
  - (i) the only \*member of the trust is an entity covered by subsection 12-402(3) of that Schedule (other than an entity mentioned in paragraph (e) of that subsection); or

- (ii) the only member of the trust is an entity treated in the same way as a managed investment trust in relation to the income year because of this Subdivision; and
- (c) the trust satisfies the licensing requirements in section 12-403 of that Schedule in relation to the income year.

### 3 Subsection 995-1(1)

Insert:

*MIT participation interest* has the meaning given by section 12-404 in Schedule 1 to the *Taxation Administration Act 1953*.

## *Taxation Administration Act 1953*

### 4 Section 12-400 in Schedule 1

Repeal the section, substitute:

#### **12-400 Meaning of *managed investment trust***

- (1) A trust is a *managed investment trust* in relation to an income year if:
  - (a) at the time the trustee of the trust makes the first \*fund payment in relation to the income year, or at an earlier time in the income year:
    - (i) the trustee of the trust was an Australian resident; or
    - (ii) the central management and control of the trust was in Australia; and
  - (b) the trust is not a trust covered by subsection (2) (trading trust etc.) in relation to the income year; and
  - (c) a substantial proportion of the investment management activities carried out in relation to the trust in respect of all of the following assets of the trust are carried out in Australia throughout the income year:
    - (i) assets that are situated in Australia at any time in the income year;
    - (ii) assets that are \*taxable Australian property at any time in the income year;
    - (iii) assets that are \*shares, units or interests listed for quotation in the official list of an \*approved stock

- 
- exchange in Australia at any time in the income year;  
and
  - (d) at the time the payment is made, the trust is a managed investment scheme (within the meaning of section 9 of the *Corporations Act 2001*); and
  - (e) at the time the payment is made:
    - (i) the trust is covered by section 12-401 (trusts with wholesale membership); or
    - (ii) if the trust is *not* covered by section 12-401—the trust is registered under section 601EB of the *Corporations Act 2001*; and
  - (f) the trust satisfies, in relation to the income year:
    - (i) if, at the time the payment is made, the trust is registered under section 601EB of the *Corporations Act 2001* and is covered by section 12-401—either or both of the widely-held requirements in subsections 12-402(1) and 12-402A(1); or
    - (ii) if, at the time the payment is made, the trust is so registered and is *not* covered by section 12-401—either or both of the widely-held requirements in subsections 12-402(1A) and 12-402A(1); or
    - (iii) if, at the time the payment is made, the trust is *not* so registered and is covered by section 12-401—the widely-held requirements in subsection 12-402(1); and
  - (g) the trust satisfies the closely-held restrictions in subsection 12-402B(1) in relation to the income year; and
  - (h) if the trust is covered by section 12-401 at the time the payment is made—it satisfies the licensing requirements in section 12-403 in relation to the income year.

*Trading unit trust or other trust carrying on trading business etc. cannot be managed investment trust*

- (2) A trust is covered by this subsection in relation to an income year if:
  - (a) in the case of a unit trust—the trust is a trading trust for the purposes of Division 6C in Part III of the *Income Tax Assessment Act 1936* in relation to the income year; or
  - (b) in any other case—the trust at any time in the income year:

- (i) carried on a trading business (within the meaning of that Division); or
- (ii) controlled, or was able to control, directly or indirectly, the affairs or operations of another person in respect of the carrying on by that other person of a trading business (within the meaning of that Division).

*Crown entities, etc.*

- (3) For the purposes of paragraphs (1)(e) and (f), treat an entity as registered under section 601EB of the *Corporations Act 2001* at the time the payment is made if at that time the trust is operated by:
  - (a) an entity that would, but for subsection 5A(4) of that Act (about the Crown not being bound by Chapter 6CA or 7 of that Act), be required under that Act to be a financial services licensee (within the meaning of section 761A of that Act) whose licence would cover operating such a managed investment scheme; or
  - (b) an entity that:
    - (i) is a \*wholly-owned subsidiary of an entity of a kind mentioned in paragraph (a); and
    - (ii) would, but for any instrument issued by ASIC under that Act that has effect in relation to the entity and operation of the scheme mentioned in paragraph 12-400(1)(d), be required under that Act to be a financial services licensee (within the meaning of section 761A of that Act) whose licence would cover operating such a managed investment scheme.

*Start-up and wind-down phases*

- (4) Treat the requirements in paragraphs (1)(f) and (g) as being satisfied if:
  - (a) the trust is created during the period:
    - (i) starting 6 months before the start of the income year; and
    - (ii) ending at the end of the income year; or
  - (b) the trust ceases to exist during the income year, and was a \*managed investment trust (disregarding paragraph (a)) in relation to the previous income year.

---

**12-401 Trusts with wholesale membership**

A trust is covered by this section at a time if, at that time:

- (a) the trust is not required to be registered in accordance with section 601ED of the *Corporations Act 2001* (whether or not it is actually so registered) because of subsection 601ED(2) of that Act (no product disclosure statement required) or because it is operated or managed by an entity covered by subsection 12-403(2) (Crown entities); and
- (b) the total number of entities that had become a \*member of the trust because a financial product or a financial service was provided to, or acquired by, the entity as a retail client (within the meaning of sections 761G and 761GA of the *Corporations Act 2001*) is no more than 20; and
- (c) the entities mentioned in paragraph (b) have a total \*MIT participation interest in the trust of no more than 10%.

**12-402 Widely-held requirements—ordinary case**

- (1) The trust satisfies the requirements in this subsection in relation to the income year if, at the time the payment mentioned in paragraph 12-400(1)(a) is made, the trust has at least 25 \*members.
- (1A) The trust satisfies the requirements in this subsection in relation to the income year if, at the time the payment mentioned in paragraph 12-400(1)(a) is made:
  - (a) units in the trust are listed for quotation in the official list of an \*approved stock exchange in Australia; or
  - (b) the trust has at least 50 \*members (ignoring objects of a trust).
- (2) For the purposes of subsection (1) and paragraph (1A)(b), determine the number of \*members of the trust as follows:
  - (a) first, by applying the rules in subsection (4), identify:
    - (i) the members of the trust that are not entities covered by subsection (3); and
    - (ii) the members of the trust that are entities covered by subsection (3);
  - (b) next, work out the number of members mentioned in subparagraph (a)(i);
  - (c) next:

- (i) work out the \*MIT participation interest in the trust of each entity mentioned in subparagraph (a)(ii); and
  - (ii) for each of those entities, multiply the total of its MIT participation interest in the trust by 50 and round the result upwards to the nearest whole number; and
  - (iii) work out the total of the results of subparagraph (ii) for all of those entities;
  - (d) next, work out the total of the results of paragraphs (b) and (c).
- (3) This subsection covers the following kinds of entity:
- (a) a \*life insurance company;
  - (b) a \*complying superannuation fund, a \*complying approved deposit fund or a \*foreign superannuation fund, being a fund that has at least 50 \*members;
  - (c) a \*pooled superannuation trust that has at least one member that is a complying superannuation fund that has at least 50 members;
  - (d) a \*managed investment trust in relation to the income year;
  - (e) an entity that is recognised under a \*foreign law as being used for collective investment by means of pooling the contributions of at least 50 members of the entity as consideration to acquire rights to benefits produced by the entity, if the members of the entity do not have day-to-day control over the operation of the entity;
  - (f) an entity, the principal purpose of which is to fund pensions (including disability and similar benefits) for the citizens or other contributors of a foreign country, if:
    - (i) the entity is a fund established by an \*exempt foreign government agency; or
    - (ii) the entity is established under a foreign law for an exempt foreign government agency; or
    - (iii) the entity is a \*wholly-owned subsidiary of an entity mentioned in subparagraph (i) or (ii);
  - (g) an investment entity that satisfies all of these requirements:
    - (i) the entity is wholly-owned by one or more \*foreign government agencies, or is a wholly-owned subsidiary of one or more foreign government agencies;
    - (ii) the entity is established using only the public money or public property of the foreign government concerned;
-

- 
- (iii) all economic benefits obtained by the entity have passed, or are expected to pass, to the foreign government concerned;
  - (h) an entity established and wholly-owned by an \*Australian government agency, if the capital of the entity, and returns from the investment of that capital, are used for the primary purpose of meeting statutory government liabilities or obligations (such as superannuation liabilities and liabilities arising from compensation or workcover claims);
  - (i) an entity of a kind similar to an entity mentioned in the preceding paragraphs of this subsection as specified in the regulations.
- (4) The rules are as follows:
- (a) if an entity that is not a trust holds interests in the trust indirectly, through a \*chain of trusts:
    - (i) treat the entity as a member of the trust; and
    - (ii) do not treat a trust in the chain of trusts as a member of the trust;
  - (b) do not treat an object of the trust as a member of the trust;
  - (ba) if the trust is mentioned in subparagraph 12-400(1)(e)(i) (trusts with wholesale membership)—do not treat an individual as a member of the trust (other than an individual who became a member of the trust because a financial product or a financial service was provided to, or acquired by, the individual as a wholesale client (within the meaning of section 761G of the *Corporations Act 2001*));
  - (c) the rules in subsection (6).
- (5) For the purposes of paragraph (4)(a), treat an entity covered by subsection (3) as an entity that is not a trust.
- (6) The rules are as follows:
- (a) treat the following entities as together being one entity:
    - (i) an individual;
    - (ii) each of his or her relatives;
    - (iii) each entity acting in the capacity of nominee of an individual mentioned in subparagraph (i) or (ii);
  - (b) treat the following entities as together being one entity (the ***notional entity***):
-

- (i) an entity that is not an individual;
  - (ii) each entity acting in the capacity of nominee of the entity mentioned in subparagraph (i).
- (7) For the purposes of subsection (4), if the entity mentioned in subparagraph (6)(b)(i) is an entity covered by subsection (3), treat the notional entity as an entity covered by subsection (3).

**12-402A Widely-held requirements for registered MIT—special case for entities covered by subsection 12-402(3)**

- (1) The trust satisfies the requirements in this subsection in relation to the income year if:
- (a) one or more entities covered by subsection 12-402(3) have a total \*MIT participation interest in the trust of more than 25% at the time the payment mentioned in paragraph 12-400(1)(a) is made; and
  - (b) at no time in the income year does an entity (other than an entity covered by subsection 12-402(3)) have a MIT participation interest in the trust of more than 60%.
- (2) For the purposes of paragraphs (1)(a) and (b):
- (a) if:
    - (i) an entity covered by subsection 12-402(3) has a \*MIT participation interest (the *first interest*) in the trust; and
    - (ii) another entity covered by subsection 12-402(3) also has a MIT participation interest (the *second interest*) in the trust;  
disregard the second interest to the extent that it arises through the existence of the first interest; and
  - (b) if an entity that is not a trust has a MIT participation interest in the trust because it holds interests in the trust indirectly, through a \*chain of trusts—do not treat a trust in the chain of trusts as having a MIT participation interest in the trust.
- (3) For the purposes of paragraph (2)(b), treat an entity covered by subsection 12-402(3) as an entity that is not a trust.
- (4) For the purposes of paragraphs (1)(a) and (b), apply the rules in subsection 12-402(6).



---

**12-402B Closely-held restrictions**

- (1) The trust satisfies the requirements in this subsection in relation to the income year unless, at any time in the income year, any of the following situations exist:
  - (a) for a trust mentioned in subparagraph 12-400(1)(e)(i) (trusts with wholesale membership)—10 or fewer persons have a total \*MIT participation interest in the trust of 75% or more;
  - (b) if paragraph (a) does not apply—20 or fewer persons have a total MIT participation interest in the trust of 75% or more;
  - (c) a foreign resident individual has a MIT participation interest in the trust of 10% or more.
- (2) For the purposes of paragraphs (1)(a) and (b):
  - (a) if an entity covered by subsection 12-402(3) has a \*MIT participation interest in the trust—treat that entity as *not* having a MIT participation interest in the trust; and
  - (b) if an entity that is not a trust has a MIT participation interest in the trust because it holds interests in the trust indirectly, through a \*chain of trusts:
    - (i) if the entity is covered by subsection 12-402(3)—do not treat it as having a MIT participation interest in the trust; and
    - (ii) do not treat a trust in the chain of trusts as having a MIT participation interest in the trust.
- (3) For the purposes of paragraph (2)(b), treat an entity covered by subsection 12-402(3) as an entity that is not a trust.
- (4) For the purposes of paragraphs (1)(a) and (b), apply the rules in subsection 12-402(6).

**12-403 Licensing requirements for unregistered MIS**

- (1) The trust satisfies the requirements in this section in relation to the income year if, at the time the payment mentioned in paragraph 12-400(1)(a) is made (the time of the first fund payment for the income year):
  - (a) the trust is operated or managed by:
    - (i) a financial services licensee (within the meaning of section 761A of the *Corporations Act 2001*) holding an Australian financial services licence whose licence

- covers it providing financial services (within the meaning of section 766A of that Act) to wholesale clients (within the meaning of section 761G of that Act); or
- (ii) an authorised representative (within the meaning of section 761A of that Act) of such a financial services licensee; or
- (b) the trust is operated or managed by an entity covered by subsection (2); or
- (c) the trust is operated or managed by an entity that:
- (i) is a \*wholly-owned subsidiary of an entity covered by subsection (2); and
- (ii) is an entity covered by subsection (3).
- (2) An entity is covered by this subsection if it would, but for subsection 5A(4) of that Act (about the Crown not being bound by Chapter 6CA or 7 of that Act), be required under the *Corporations Act 2001* to be a financial services licensee (within the meaning of section 761A of that Act).
- (3) An entity is covered by this subsection if it would, but for any instrument issued by ASIC under that Act that has effect in relation to the entity and the operation of the scheme mentioned in paragraph 12-400(1)(d), be required under the *Corporations Act 2001* to be a financial services licensee (within the meaning of section 761A of that Act).

#### **12-404 MIT participation interest**

- (1) An entity has a ***MIT participation interest*** in a trust if the entity, directly or indirectly:
- (a) holds, or has the right to \*acquire, interests representing a percentage of the value of the interests in the trust; or
- (b) has the control of, or the ability to control, a percentage of the rights attaching to \*membership interests in the trust; or
- (c) has the right to receive a percentage of any distribution of income that the trust may make.
- (2) The ***MIT participation interest*** of the entity in the trust is the greatest of the percentages mentioned in paragraphs (1)(a), (b) and (c).

---

**5 Paragraph 45-286(b) in Schedule 1**

Omit “the condition in item 1 of the table in subsection 12-400(1)”, substitute “the condition in paragraph 12-400(1)(a)”.

**6 Application provision**

- (1) Subject to this item, the amendments made by this Schedule apply to fund payments made in relation to the first income year starting on or after the first 1 July after the day on which this Act receives the Royal Assent and later income years.
- (2) Subject to items 7 and 8, the amendments made by this Schedule apply in relation to Division 275 of the *Income Tax Assessment Act 1997* in the same way as the amendments made by Schedule 3 to the *Tax Laws Amendment (2010 Measures No. 1) Act 2010* apply in relation to that Division.
- (3) Subject to items 7 and 8, the amendments made by this Schedule apply in relation to Subdivision 126-G of the *Income Tax Assessment Act 1997* in relation to CGT events happening on or after 1 November 2008.

**7 Transitional—trusts that were managed investment trusts etc. for income year starting before 26 May 2010**

- (1) This item applies if:
  - (a) apart from this item, a trust is not a managed investment trust in relation to an income year; and
  - (b) the income year is the 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 or 2016-17 income year.
- (2) The trust is a managed investment trust in relation to the income year if:
  - (a) the trust is a managed investment trust (within the meaning of section 12-400 in Schedule 1 to the *Taxation Administration Act 1953* immediately before the commencement of this Schedule) in relation to the income year; and
  - (b) in relation to an income year starting before 26 May 2010, the trust:
    - (i) was a managed investment trust (within that meaning); or
    - (ii) would have been a managed investment trust (within that meaning) if the trustee of the trust had made the

first fund payment in relation to the income year in that income year and before 26 May 2010.

## 8 Transitional—substituted accounting periods

- (1) This item applies if the first income year mentioned in subitem 6(1) starts after the first 1 July after the day on which this Act receives the Royal Assent.
- (2) For the purposes of working out liabilities to pay amounts in accordance with Subdivision 840-M of the *Income Tax Assessment Act 1997*, apply the following rules:
  - (a) treat the income year of an entity (the **actual income year**) ending immediately before that first income year as being the following 2 income years of the entity:
    - (i) an income year (the **first notional income year**) that starts at the start of the actual income year and ends immediately before that 1 July;
    - (ii) an income year (the **second notional income year**) that starts on that 1 July and ends at the end of the actual income year;
  - (b) do *not* apply the amendments made by this Schedule in determining whether the entity is a managed investment trust in relation to the first notional income year;
  - (c) apply the amendments made by this Schedule in determining whether the entity is a managed investment trust in relation to the second notional income year;
  - (d) for the purposes of determining rates of taxation applicable for the purposes of that Subdivision, treat the first notional income year and the second notional income year as both being the income year following the first income year mentioned in subparagraph 4(1)(a)(i) of the *Income Tax (Managed Investment Trust Withholding Tax) Act 2008*.

---

*[Minister's second reading speech made in—  
House of Representatives on 26 May 2010  
Senate on 24 June 2010]*

(106/10)

---