

EXPOSURE DRAFT

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2008-2009-2010

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES



Tax Laws Amendment (Foreign Source Income Deferral) Bill (No. 1) 2010

No. , 2010

(Treasury)

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

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

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Tax Laws Amendment (Foreign*
6 *Source Income Deferral) Act (No. 1) 2010.*

7 **2 Commencement**

8 **3 Schedule(s)**

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10 repealed as set out in the applicable items in the Schedule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

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Repeal of the FIF and deemed present entitlement rules **Schedule 1**
Main amendments **Part 1**

1 **Schedule 1—Repeal of the FIF and deemed**
2 **present entitlement rules**

3 **Part 1—Main amendments**

4 ***Income Tax Assessment Act 1936***

5 **1 Subsection 6(1)**

6 Insert:

7 *approved stock exchange* has the same meaning as in the *Income*
8 *Tax Assessment Act 1997*.

9 **2 Subsection 6(1) (paragraph (l) of the definition of *passive***
10 ***income*)**

11 Omit “, 459A or 529”, substitute “or 459A”.

12 **3 Subsection 6(1)**

13 Insert:

14 *post FIF abolition credit* means a post FIF abolition credit arising
15 under:

- 16 (a) subsection 23AK(6); and
17 (b) subsection 717-220(2) of the *Income Tax Assessment Act*
18 *1997*; and
19 (c) subsection 717-255(2) of that Act.

20 **4 Subsection 6(1)**

21 Insert:

22 *post FIF abolition debit* means a post FIF abolition debit arising
23 under:

- 24 (a) subsection 23AK(2); and
25 (b) subsection 23B(1); and
26 (c) subsection 717-220(3) of the *Income Tax Assessment Act*
27 *1997*; and
28 (d) subsection 717-255(3) of that Act.

29 **5 Subsection 6(1)**

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Schedule 1 Repeal of the FIF and deemed present entitlement rules

Part 1 Main amendments

1 Insert:

2 *post FIF abolition surplus* has the meaning given by
3 section 23AK.

4 **6 Subsection 6AB(1)**

5 Omit “, 459A or 529”, substitute “or 459A”.

6 **7 Section 23AK**

7 Repeal the section, substitute:

8 **23AK Amounts paid out of attributed foreign investment fund** 9 **income not assessable**

10 *When this section applies*

11 (1) This section applies if:

12 (a) either:

13 (i) a FIF attribution account payment of a kind referred to
14 in former paragraph 603(1)(a), (b), (c), (d), (f), (g) or (h)
15 is made to a taxpayer (other than a partnership or
16 taxpayer in the capacity of trustee of a trust); or

17 (ii) a FIF attribution account payment of a kind referred to
18 in former paragraph 603(1)(e) is made to a taxpayer;
19 and

20 (b) on the making of the payment, a post FIF abolition debit
21 arises, for the FIF attribution account entity making the
22 payment, in relation to the taxpayer.

23 *Post FIF abolition debit arises*

24 (2) A post FIF abolition debit arises for a FIF attribution account entity
25 (the *eligible entity*) in relation to a taxpayer if:

26 (a) the eligible entity makes a FIF attribution account payment to
27 the taxpayer or to a FIF attribution account entity; and

28 (b) immediately before the eligible entity makes the FIF
29 attribution account payment, there is a post FIF abolition
30 surplus for the eligible entity in relation to the taxpayer.

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Repeal of the FIF and deemed present entitlement rules **Schedule 1**
Main amendments **Part 1**

1 *Amount of post FIF abolition debit*

- 2 (3) The amount of the post FIF abolition debit is the lesser of:
3 (a) the post FIF abolition surplus; and
4 (b) whichever of the following is applicable:
5 (i) if the attribution account payment is made to the
6 taxpayer—the FIF attribution account payment;
7 (ii) in any other case—the taxpayer’s FIF attribution
8 account percentage (for the FIF attribution account
9 entity to which the payment is made) of the FIF
10 attribution account payment;
11 reduced by any attribution debit that arises under section 372
12 for the entity in relation to the taxpayer as a result of the
13 making of the payment.

14 *When the post FIF abolition debit arises*

- 15 (4) The post FIF abolition debit arises when the FIF attribution
16 account payment is made.

17 *When a post FIF abolition surplus exists*

- 18 (5) A post FIF abolition surplus for a FIF attribution account entity in
19 relation to a taxpayer exists at a particular time (the *relevant time*)
20 if the sum of:
21 (a) the entity’s total FIF attribution credits (within the meaning
22 of former section 605) that arose before the commencement
23 of Schedule 1 to the *Tax Laws Amendment (Foreign Source*
24 *Income Deferral) Act (No. 1) 2010*; and
25 (b) the entity’s total post FIF abolition credits arising before the
26 relevant time in relation to the taxpayer;
27 exceeds the sum of:
28 (c) the entity’s total FIF attribution debits (within the meaning of
29 former section 606) that arose before that commencement in
30 relation to the taxpayer; and
31 (d) the entity’s total post FIF abolition debits arising before the
32 relevant time in relation to the taxpayer.

33 *Post FIF abolition credit arises*

- 34 (6) A post FIF abolition credit arises for a FIF attribution account
35 entity (the *eligible entity*) in relation to a taxpayer if a FIF
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Schedule 1 Repeal of the FIF and deemed present entitlement rules

Part 1 Main amendments

1 attribution account payment that requires a post FIF abolition debit
2 for another entity in relation to the taxpayer is made to the eligible
3 entity.

4 *Amount of post FIF abolition credit*

5 (7) The amount of the post FIF abolition credit is equal to the amount
6 of the post FIF abolition debit for the other entity.

7 *When the post FIF abolition credit arises*

8 (8) The post FIF abolition credit arises when the FIF attribution
9 account payment referred to in subsection (6) is made.

10 *Effect of this section applying*

11 (9) If this section applies, the following provisions have effect:

- 12 (a) if the payment is of a kind referred to in former paragraph
13 603(1)(a) or (b)—the payment is not assessable income, and
14 is not exempt income, to the extent of the debit;
- 15 (b) if the payment is of a kind referred to in former paragraph
16 603(1)(c) and, apart from this section, an amount would be
17 included in the taxpayer's assessable income under
18 section 92 in respect of an individual interest in the net
19 income of the partnership of the year of income referred to in
20 that paragraph—that amount is not assessable income, and is
21 not exempt income, to the extent of the debit;
- 22 (c) if the payment is of a kind referred to in former paragraph
23 603(1)(d) and, apart from this section, an amount would be
24 included in the taxpayer's assessable income under
25 section 97, 98A or 100 in respect of a share of the net income
26 of the trust of the year of income referred to in that
27 paragraph—that amount is not assessable income, and is not
28 exempt income, to the extent of the debit;
- 29 (d) if the payment is of a kind referred to in former paragraph
30 603(1)(d) and, apart from this section, an amount would be
31 assessable to the trustee of the trust referred to in that
32 paragraph under section 98 in respect of a share of the net
33 income of the trust of the year of income referred to in that
34 paragraph—that amount is not so assessable to the extent of
35 the debit;

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Repeal of the FIF and deemed present entitlement rules **Schedule 1**
Main amendments **Part 1**

- 1 (e) if the payment is of a kind referred to in former paragraph
2 603(1)(e)—the payment is not, to the extent of the debit,
3 assessable to the taxpayer as mentioned in that paragraph;
4 (f) if the payment is of a kind referred to in former paragraph
5 603(1)(f) and, apart from this section, an amount would be
6 included in the taxpayer's assessable income, of the year of
7 income referred to in that paragraph, under section 99B in
8 respect of the trust property referred to in that paragraph—
9 that amount is not assessable income, and is not exempt
10 income, to the extent of the debit;
11 (g) if the payment is of a kind referred to in former paragraph
12 603(1)(g)—the payment is not assessable income, and is not
13 exempt income, to the extent of the debit;
14 (h) if the payment is of a kind referred to in former paragraph
15 603(1)(h)—the payment is not assessable income, and is not
16 exempt income, to the extent of the debit.

17 (10) This section is to be disregarded for the purposes of applying any
18 other provision of this Act to determine allowable deductions.

19 (11) In this section:

20 *FIF attribution account entity* has the same meaning as in former
21 Part XI.

22 *FIF attribution account payment* has the same meaning as in
23 former Part XI.

24 *FIF attribution account percentage* has the same meaning as in
25 former Part XI.

26 *trust* has the same meaning as in former Part XI, but does not
27 include a trust covered by former subsection 605(11).

28 **23B Reduction of disposal consideration if FIF attributed income** 29 **not distributed**

30 (1) If:

- 31 (a) it is necessary, for the purposes of applying a provision of
32 this Act in the assessment of a taxpayer for a year of income,
33 to take into account:

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Schedule 1 Repeal of the FIF and deemed present entitlement rules

Part 1 Main amendments

- 1 (i) the amount of consideration received, entitled to be
2 received or taken to have been received, by the taxpayer
3 in respect of the disposal of an asset; or
4 (ii) the capital proceeds from a CGT event happening in
5 relation to a CGT asset;
6 being an asset that is an interest in a FIF attribution account
7 entity; and
8 (b) immediately before the disposal or CGT event takes place
9 there is a post FIF abolition surplus for the FIF attribution
10 account entity in relation to the taxpayer;
11 then, for the purposes of this Act:
12 (c) the consideration or capital proceeds that, apart from this
13 section, would be taken into account under the provision
14 referred to in paragraph (a) in respect of the disposal or CGT
15 event is taken to be reduced by so much of the amount of the
16 post FIF abolition surplus as does not exceed the
17 consideration or capital proceeds; and
18 (d) a post FIF abolition debit arises at the time of the disposal or
19 the CGT event under this paragraph, in relation to the
20 taxpayer, for the FIF attribution account entity; and
21 (e) the amount of the post FIF abolition debit is equal to so much
22 of the surplus as is taken into account under paragraph (c).
- 23 (2) For the purposes of paragraph (1)(c), if the disposal of the asset or
24 the CGT event causes the taxpayer's FIF attribution account
25 percentage for the FIF attribution account entity to be reduced by a
26 proportion, then only that proportion of the post FIF abolition
27 surplus for the entity is to be taken into account under that
28 paragraph.
- 29 (3) In this section:
- 30 *FIF attribution account entity* has the same meaning as in former
31 Part XI.
- 32 *FIF attribution account percentage* has the same meaning as in
33 former Part XI.

8 Subsection 82KZL(1) (definition of *approved stock exchange*)

34 Repeal the definition.
35
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Repeal of the FIF and deemed present entitlement rules **Schedule 1**
Main amendments **Part 1**

1 **9 Sections 96A, 96B and 96C**

2 Repeal the sections.

3 **10 Paragraph 102AAU(1)(b)**

4 Repeal the paragraph, substitute:

5 (b) if the non-resident trust estate is a listed country trust estate
6 in relation to the year of income—the amount that would
7 have been the net income of the non-resident trust estate of
8 the year of income if the exempt income of the trust estate
9 included all income and profits of the trust estate, other than
10 eligible designated concession income in relation to any
11 listed country in relation to the year of income;

12 **11 Sub-subparagraph 102AAU(1)(c)(viii)(B)**

13 Omit “; or”, substitute “; and”.

14 **12 Subparagraph 102AAU(1)(c)(ix)**

15 Repeal the subparagraph.

16 **13 Subsections 102AAU(7), (8) and (9)**

17 Repeal the subsections.

18 **14 Subsection 317(1) (definition of *FIF attribution account***
19 ***entity*)**

20 Repeal the definition.

21 **15 Subsection 317(1) (definition of *FIF attribution account***
22 ***payment*)**

23 Repeal the definition.

24 **16 Subsection 317(1) (definition of *FIF attribution debit*)**

25 Repeal the definition.

26 **17 Subsection 317(1) (definition of *grossed-up amount*)**

27 Repeal the definition, substitute:

28 *grossed-up amount*, in relation to an attribution debit, has the
29 meaning given by section 373.

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Schedule 1 Repeal of the FIF and deemed present entitlement rules

Part 1 Main amendments

1 **18 Subparagraph 356(4B)(b)(ii)**

2 Omit “a FIF”, substitute “a company”.

3 **19 Subparagraph 356(4C)(b)(ii)**

4 Omit “in FIFs”, substitute “in companies”.

5 **20 Paragraphs 371(1)(aa) and (ab)**

6 Repeal the paragraphs.

7 **21 Subsection 371(2)**

8 Omit “subsections (2A), (2B), (3) and (4)”, substitute “subsection (4)”.

9 **22 Subsections 371(2A), (2B), (2C) and (2D)**

10 Repeal the subsections.

11 **23 Paragraphs 371(5)(aa) and (ab)**

12 Repeal the paragraphs.

13 **24 Paragraph 384(2)(ca)**

14 Repeal the paragraph.

15 **25 Subparagraph 384(2)(d)(iii)**

16 Omit “; and”, substitute “.”.

17 **26 Subparagraph 384(2)(d)(iv)**

18 Repeal the subparagraph.

19 **27 Paragraphs 385(2)(a) and (b)**

20 Omit “to E”, substitute “to D”.

21 **28 Paragraph 385(2)(ca)**

22 Repeal the paragraph.

23 **29 Paragraph 385(2)(d)**

24 Omit “to E” (wherever occurring), substitute “to D”.

25 **30 Sub-subparagraph 385(2)(d)(iv)(B)**

26 Omit “; and”, substitute “.”.

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Repeal of the FIF and deemed present entitlement rules **Schedule 1**
Main amendments **Part 1**

1 **31 Subparagraph 385(2)(d)(v)**

2 Repeal the subparagraph.

3 **32 Subsection 385(4)**

4 Omit “paragraphs (2)(a) and (ca)”, substitute “paragraph (2)(a)”.

5 **33 Paragraph 389(a)**

6 Omit “, 461 and 605”, substitute “and 461”.

7 **34 Subsections 402(2A), (2B) and (2C)**

8 Repeal the subsections.

9 **35 Subsection 402(4)**

10 Repeal the subsection, substitute:

11 (4) If:

12 (a) a FIF attribution account entity (within the meaning of
13 former Part XI) makes a FIF attribution account payment
14 (within the meaning of former Part XI) to the eligible CFC in
15 the eligible period; and

16 (b) apart from this subsection, the whole or part of the FIF
17 attribution account payment would be included in the
18 notional assessable income of the eligible CFC in relation to
19 the eligible taxpayer for the eligible period; and

20 (c) on the making of the FIF attribution account payment, a post
21 FIF abolition debit arises under section 23AK for the FIF
22 attribution account entity in relation to the eligible taxpayer;

23 so much (if any) of the whole or the part of the FIF attribution
24 account payment as does not exceed the grossed-up amount of the
25 post FIF abolition debit is notional exempt income of the eligible
26 CFC for the eligible period.

27 (5) For the purposes of subsection (4), the grossed-up amount of the
28 post FIF abolition debit is:

29 (a) where subparagraph 23AK(3)(b)(i) applied in relation to the
30 debit—the amount of the debit; or

31 (b) where subparagraph 23AK(3)(b)(ii) applied in relation to the
32 debit—the amount of the debit, divided by the FIF attribution
33 account percentage referred to in that subparagraph.

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Schedule 1 Repeal of the FIF and deemed present entitlement rules

Part 1 Main amendments

1 **36 Subdivision E of Division 7 of Part X**

2 Repeal the Subdivision.

3 **37 Part XI**

4 Repeal the Part.

5 **38 Subsection 272-140(1) in Schedule 2F (definition of**
6 ***approved stock exchange*)**

7 Repeal the definition.

8 **39 Schedules 3, 4 and 5**

9 Repeal the Schedules.

10 ***Income Tax Assessment Act 1997***

11 **40 Section 10-5 (table item headed “attributable income”)**

12 Omit “*and foreign investment funds*”.

13 **41 Section 10-5 (table item headed “FIFs”)**

14 Repeal the item.

15 **42 Section 10-5 (table item headed “foreign investment funds**
16 **(FIFs)”)**

17 Repeal the item.

18 **43 Section 10-5 (table item headed “insurance”)**

19 Omit:

foreign life assurance policy 529

20 **44 Section 11-55 (table item headed “foreign aspects of**
21 **income taxation”)**

22 Omit:

attributed controlled foreign company income 23AI

attributed foreign investment fund income 23AK

23 Substitute:

attributed controlled foreign company income, amounts

paid out of 23AI

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Repeal of the FIF and deemed present entitlement rules **Schedule 1**
Main amendments **Part 1**

attributed foreign investment fund income, amounts paid
out of **23AK**

1 **45 Section 12-5 (table item headed “foreign investment funds**
2 **(FIFs)”**

3 Repeal the item.

4 **46 Section 12-5 (table item headed “foreign life assurance**
5 **policies”**

6 Repeal the item.

7 **47 Section 70-70**

8 Repeal the section.

9 **48 Subsection 116-10(7) (note 1)**

10 Repeal the note, substitute:

11 Note 1: Also, these provisions of the *Income Tax Assessment Act 1936* modify
12 capital proceeds:

- 13 (a) section 23B (undistributed FIF attribution income on disposal of
14 an interest in a FIF);
15 (b) sections 159GZZZF and 159GZZZG (cancellation of shares in a
16 holding company);
17 (c) sections 159GZZZQ and 159GZZZS (buy-backs of shares);
18 (d) sections 401, 422, 423 and 461 (CFCs).

19 **49 Subsection 230-460(12)**

20 Repeal the subsection, substitute:

21 *Interest in controlled foreign companies*

22 (12) A right or obligation that arises under a *direct participation
23 interest of an *attributable taxpayer in a *controlled foreign
24 company is the subject of an exception.

25 **50 Subsection 703-75(4) (note)**

26 Omit “and FIF rules in Parts X and XI”, substitute “rules in Part X”.

27 **51 Subsection 715-660(1) (table items 1 and 2)**

28 Repeal the table items, substitute:

1 A provision of Part X of the Attribution of income in respect of controlled

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Schedule 1 Repeal of the FIF and deemed present entitlement rules

Part 1 Main amendments

Income Tax Assessment Act 1936 foreign companies
for an irrevocable
declaration, election, choice
or selection

1 **52 Subdivision 717-D of Division 717 of Part 3-90 (heading)**

2 Repeal the heading, substitute:

3 **Subdivision 717-D—Transfer of certain surpluses under CFC**
4 **provisions and former FIF and FLP provisions: entry**
5 **rules**

6 **53 Paragraph 717-205(c)**

7 Repeal the paragraph, substitute:

- 8 (b) the post FIF abolition surplus (if any) (within the meaning of
9 the *Income Tax Assessment Act 1936*) for a FIF attribution
10 account entity (within the meaning of former Part XI of that
11 Act) in relation to the joining company just before the joining
12 time.

13 **54 Section 717-220**

14 Repeal the section, substitute:

15 **717-220 FIF surpluses**

- 16 (1) This section operates for the purposes of sections 23AK and 23B
17 of the *Income Tax Assessment Act 1936* if:
18 (a) a company (the *joining company*) becomes a *subsidiary
19 member of a *consolidated group at a time (the *joining time*);
20 and
21 (b) just before the joining time there was a post FIF abolition
22 surplus for a FIF attribution account entity in relation to the
23 joining company for the purposes of those sections; and
24 (c) just before the joining time, the joining company's FIF
25 attribution account percentage in relation to the FIF
26 attribution account entity for the purposes of those sections
27 was more than nil.

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Repeal of the FIF and deemed present entitlement rules **Schedule 1**
Main amendments **Part 1**

1 *Credit in relation to the head company*

2 (2) A post FIF abolition credit arises at the joining time for the FIF
3 attribution account entity in relation to the *head company of the
4 group. The credit is equal to the post FIF abolition surplus.

5 *Debit in relation to the joining company*

6 (3) A post FIF abolition debit arises at the joining time for the FIF
7 attribution account entity in relation to the joining company. The
8 debit is equal to the post FIF abolition surplus.

9 *Definitions*

10 (4) In this section:

11 *FIF attribution account entity* has the same meaning as in former
12 Part XI of the *Income Tax Assessment Act 1936*.

13 *FIF attribution account percentage* has the same meaning as in
14 former Part XI of the *Income Tax Assessment Act 1936*.

15 *post FIF abolition credit* has the same meaning as in the *Income*
16 *Tax Assessment Act 1936*.

17 *post FIF abolition debit* has the same meaning as in the *Income*
18 *Tax Assessment Act 1936*.

19 *post FIF abolition surplus* has the same meaning as in the *Income*
20 *Tax Assessment Act 1936*.

21 **55 Section 717-230**

22 Repeal the section.

23 **56 Subdivision 717-E of Division 717 of Part 3-90 (heading)**

24 Repeal the heading, substitute:

25 **Subdivision 717-E—Transfer of certain surpluses under CFC**
26 **provisions and former FIF and FLP provisions: exit**
27 **rules**

28 **57 Paragraph 717-240(c)**

29 Repeal the paragraph, substitute:

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Schedule 1 Repeal of the FIF and deemed present entitlement rules

Part 1 Main amendments

- 1 (b) the post FIF abolition surplus (if any) (within the meaning of
2 the *Income Tax Assessment Act 1936*) for a FIF attribution
3 account entity (within the meaning of former Part XI of that
4 Act) in relation to the head company just before the leaving
5 time.

6 **58 Section 717-255**

7 Repeal the section, substitute:

8 **717-255 FIF surpluses**

- 9 (1) This section operates for the purposes of sections 23AK and 23B
10 of the *Income Tax Assessment Act 1936* (the **1936 Act**) if:
11 (a) a company (the **leaving company**) ceases to be a *subsidiary
12 member of a *consolidated group at a time (the **leaving time**);
13 and
14 (b) just before the leaving time, there was a post FIF abolition
15 surplus for a FIF attribution account entity in relation to the
16 *head company of the group for the purposes of those
17 sections; and
18 (c) at the leaving time, the leaving company's FIF attribution
19 account percentage in relation to the FIF attribution account
20 entity for the purposes of those sections is more than nil.

21 *Credit in relation to the leaving company*

- 22 (2) A post FIF abolition credit arises at the leaving time for the FIF
23 attribution account entity in relation to the leaving company. The
24 credit is the amount worked out under subsection (4).

25 *Debit in relation to head company*

- 26 (3) A post FIF abolition debit arises at the leaving time for the FIF
27 attribution account entity in relation to the company that was the
28 *head company of the group just before the leaving time. The debit
29 is the amount worked out under subsection (4).

30 *Amount of credit and debit*

- 31 (4) The amount of the credit and debit is worked out using the
32 formula:

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$$\frac{\text{Leaving company's FIF attribution account percentage in relation to the FIF attribution account entity at the leaving time}}{\text{*Head company's FIF attribution account percentage in relation to the FIF attribution account entity just before the leaving time}} \times \text{Post FIF abolition surplus for the FIF attribution account entity in relation to the *head company just before the leaving time}$$

2 *Definitions*

3 (5) In this section:

4 ***FIF attribution account entity*** has the same meaning as in former
5 Part XI of the *Income Tax Assessment Act 1936*.

6 ***FIF attribution account percentage*** has the same meaning as in
7 former Part XI of the *Income Tax Assessment Act 1936*.

8 ***post FIF abolition credit*** has the same meaning as in the *Income*
9 *Tax Assessment Act 1936*.

10 ***post FIF abolition debit*** has the same meaning as in the *Income*
11 *Tax Assessment Act 1936*.

12 ***post FIF abolition surplus*** has the same meaning as in the *Income*
13 *Tax Assessment Act 1936*.

14 **59 Section 717-265**

15 Repeal the section.

16 **60 Section 768-900**

17 Omit “controlled foreign company and foreign investment fund rules”,
18 substitute “controlled foreign company rules”.

19 **61 Section 768-965**

20 Repeal the section.

21 **62 Section 768-975**

22 Repeal the section.

23 **63 section 770-135 (heading)**

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Schedule 1 Repeal of the FIF and deemed present entitlement rules

Part 1 Main amendments

1 Repeal the heading, substitute:

2 **770-135 Foreign income tax paid by CFCs on attributed amounts**

3 **64 Subsection 770-135(1)**

4 Omit “or a *FIF”.

5 **65 Subsection 770-135(2)**

6 Repeal the subsection, substitute:

7 (2) An amount is included in an entity’s assessable income as
8 described in this subsection if the entity is a company and the
9 amount is included under:

10 (a) section 456 (a *section 456 case*) of the 1936 Act in relation to
11 a *CFC and a statutory accounting period; or

12 (b) section 457 (a *section 457 case*) of that Act in relation to a
13 CFC.

14 Note: Section 456 of the 1936 Act includes, in the assessable income of
15 certain Australian shareholders, amounts that are attributable to the
16 profits of an Australian-controlled foreign company.

17 Section 457 does likewise when a controlled foreign company changes
18 residence from an unlisted to a listed country or to Australia.

19 **66 Paragraph 770-135(3)(b)**

20 Omit “; or”, substitute “.”.

21 **67 Paragraph 770-135(3)(c)**

22 Repeal the paragraph.

23 **68 Paragraph 770-135(5)(b)**

24 Omit “; or”, substitute “.”.

25 **69 Paragraph 770-135(5)(c)**

26 Repeal the paragraph.

27 **70 Subsection 770-135(5) (note)**

28 Repeal the note.

29 **71 Subsections 770-135(6), (7) and (8)**

30 Repeal the subsections, substitute:

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Amount of foreign income tax

(7) The amount worked out under this subsection is:

- (a) for a section 456 case—the sum of all the tax amounts for the statutory accounting period multiplied by the company's *attribution percentage in relation to the *CFC at the time mentioned in paragraph (5)(a); or
- (b) for a section 457 case—the sum of all the tax amounts to the extent they are attributable to the amount included in the company's assessable income under section 457 of the 1936 Act.

Grossing-up of attributed amount

(8) For the purposes of this Act except this section and section 371 of the 1936 Act (for a section 456 case or a section 457 case), the amount included in the entity's assessable income as described in subsection (2) is taken to be increased by the amount of tax worked out under subsection (7).

Note: Section 371 of the 1936 Act records an amount in an attribution account when the amount is included in the assessable income of an attributable taxpayer in relation to a CFC.

72 Subsection 830-10(2)

Repeal the subsection, substitute:

- (2) If a partner in a *limited partnership that satisfies paragraphs (1)(a) to (d):
 - (a) has made an election under former section 485AA of the *Income Tax Assessment Act 1936*; or
 - (b) makes an election under this paragraph;
in relation to the partner's interest in the partnership, then, for the purpose of applying the *Income Tax Assessment Act 1936* and this Act in relation to the partner's interest, the limited partnership is a ***foreign hybrid limited partnership*** in relation to any income year during which the election is in force.
- (3) An election under paragraph (2)(b) must be made:
 - (a) on or before the day on which the partner lodges the partner's income tax return for the income year; or
 - (b) within a further time allowed by the Commissioner.

EXPOSURE DRAFT

Schedule 1 Repeal of the FIF and deemed present entitlement rules

Part 1 Main amendments

- 1 (4) The election:
2 (a) is in force during the income year and all later income years;
3 and
4 (b) is irrevocable.

73 Subsection 830-15(5)

6 Repeal the subsection, substitute:

- 7 (5) If a shareholder in a company that satisfies paragraphs (1)(a) to (c):
8 (a) has made an election under former section 485AA of the
9 *Income Tax Assessment Act 1936*; or
10 (b) makes an election under this paragraph;
11 in relation to the shareholder's share or shares in the company,
12 then, for the purpose of applying the *Income Tax Assessment Act*
13 *1936* and this Act in relation to the shareholder's share or shares,
14 the company is a **foreign hybrid company** in relation to any
15 income year during which the election is in force.
- 16 (6) An election under paragraph (5)(b) must be made:
17 (a) on or before the day on which the shareholder lodges the
18 shareholder's income tax return for the income year; or
19 (b) within a further time allowed by the Commissioner.
- 20 (7) The election:
21 (a) is in force during the income year and all later income years;
22 and
23 (b) is irrevocable.

74 Paragraph 855-10(1)(a)

25 Omit “, or the trustee of a *foreign trust for CGT purposes,”.

75 Paragraph 960-50(10)(c)

27 Omit “;”, substitute “.”.

76 Paragraph 960-50(10)(d)

29 Repeal the paragraph.

77 Subsection 995-1(1) (definition of **approved stock exchange**)

32 Repeal the definition, substitute:

EXPOSURE DRAFT

Repeal of the FIF and deemed present entitlement rules **Schedule 1**
Main amendments **Part 1**

1 *approved stock exchange* means a stock exchange named in
2 regulations made for the purposes of this definition.

3 **78 Subsection 995-1(1) (definition of *attribution percentage*)**

4 Repeal the definition, substitute:

5 *attribution percentage*, in relation to a *CFC or a *CFT, has the
6 meaning given by Part X of the *Income Tax Assessment Act 1936*.

7 **79 Subsection 995-1(1) (definition of *FIF*)**

8 Repeal the definition.

9 **80 Subsection 995-1(1) (definition of *FLP*)**

10 Repeal the definition.

11 **81 Subsection 995-1(1) (definition of *foreign investment fund*)**

12 Repeal the definition.

13 **82 Subsection 995-1(1) (definition of *notional accounting***
14 ***period*)**

15 Repeal the definition.

16 ***Superannuation Industry (Supervision) Act 1993***

17 **83 Subsection 66(5) (paragraph (b) of the definition of *listed***
18 ***security*)**

19 Omit “section 470 of the *Income Tax Assessment Act 1936*”, substitute
20 “the *Income Tax Assessment Act 1997*”.

21

EXPOSURE DRAFT

Schedule 1 Repeal of the FIF and deemed present entitlement rules

Part 2 Sunsetting

1 **Part 2—Sunsetting**

2 ***Income Tax Assessment Act 1936***

3 **84 Subsection 6(1) (definition of *post FIF abolition credit*)**

4 Repeal the definition.

5 **85 Subsection 6(1) (definition of *post FIF abolition debit*)**

6 Repeal the definition.

7 **86 Subsection 6(1) (definition of *post FIF abolition surplus*)**

8 Repeal the definition.

9 **87 Section 23AK**

10 Repeal the section.

11 **88 Section 23B**

12 Repeal the section.

13 ***Income Tax Assessment Act 1997***

14 **89 Section 11-55 (table item headed “foreign aspects of**
15 **income taxation”)**

16 Omit:

attributed foreign investment fund income, amounts paid
out of **23AK**

17 **90 Subsection 116-10(7) (paragraph (a) of note 1)**

18 Repeal the paragraph.

19 **91 Subparagraph 118-12(2)(b)(iv)**

20 Repeal the subparagraph.

21

EXPOSURE DRAFT

Repeal of the FIF and deemed present entitlement rules **Schedule 1**
Other amendments **Part 3**

Part 3—Other amendments

Income Tax Assessment Act 1936

92 Subsection 461(1)

Repeal the subsection, substitute:

(1) If:

- (a) it is necessary, for the purposes of applying a provision of this Act in the assessment of a taxpayer for a year of income, to take into account:
 - (i) the amount of consideration received, entitled to be received or taken to have been received, by the taxpayer in respect of the disposal of an asset; or
 - (ii) the capital proceeds from a CGT event happening in relation to a CGT asset;
being an asset that is an interest in an attribution account entity (the *disposal entity*); and
- (b) immediately before the disposal or CGT event takes place, either or both of the following conditions are satisfied:
 - (i) there is an attribution surplus for the disposal entity in relation to the taxpayer;
 - (ii) there is an attribution surplus for one or more other attribution account entities in relation to the taxpayer, where each such entity is one in which the taxpayer has an indirect attribution account interest held through the disposal entity;

then, for the purposes of this Act:

- (c) the consideration or capital proceeds that, apart from this section, would be taken into account under the provision referred to in paragraph (a) in respect of the disposal or CGT event is, subject to subsection (3), taken to be reduced by so much of the amount of the attribution surplus, or sum of the attribution surpluses, as the case requires; and
- (d) an attribution debit is taken to arise at the time of the disposal or the CGT event under section 372, in relation to the taxpayer, for each attribution account entity (the *surplus entity*) in relation to which there is a surplus to which paragraph (c) applies; and

EXPOSURE DRAFT

Schedule 1 Repeal of the FIF and deemed present entitlement rules

Part 3 Other amendments

- 1 (e) the amount of the attribution debit is equal to so much of the
2 surplus as is taken into account under paragraph (c); and
3 (f) there is no grossed-up amount in relation to the attribution
4 debit under section 373.

5 Note: The heading to section 461 is replaced by the heading “**Reduction of disposal**
6 **consideration if attributed income not distributed**”.

7 **93 Subsection 461(3)**

8 Repeal the subsection, substitute:

9 (3) For the purposes of paragraph (1)(c):

- 10 (a) if the disposal of the asset or the CGT event causes the
11 taxpayer’s attribution account percentage for a surplus entity
12 to be reduced by a proportion, then only that proportion of
13 the attribution surplus for the entity is, subject to this
14 subsection, to be taken into account under that paragraph;
15 and
16 (b) if there is only one attribution surplus referred to in that
17 paragraph and (after any application of paragraph (a) of this
18 subsection) it exceeds the consideration from the disposal or
19 the capital proceeds from the CGT event, then only so much
20 of the surplus as does not exceed that consideration or those
21 capital proceeds is to be taken into account under
22 paragraph (1)(c); and
23 (c) where there are 2 or more attribution surpluses referred to in
24 paragraph (1)(c) and (after any application of paragraph (a)
25 of this subsection) their sum exceeds the consideration from
26 the disposal or the capital proceeds from the CGT event,
27 then:
28 (i) if the taxpayer makes an election that, for the purposes
29 of this paragraph, a part of each surplus (after any
30 application of paragraph (a)) such that the sum of the
31 amounts to which the election relates equals that
32 consideration or those capital proceeds—only the part to
33 which the election relates of each surplus is to be taken
34 into account under paragraph (1)(c); or
35 (ii) if subparagraph (i) does not apply—only a proportion of
36 each surplus (after any application of paragraph (a)) is
37 to be taken into account under paragraph (1)(c), being
38 the proportion calculated using the formula:
-

EXPOSURE DRAFT

Schedule 1 Repeal of the FIF and deemed present entitlement rules

Part 3 Other amendments

- 1 (d) a FIF attribution debit is taken to arise at the time of the
2 disposal or the CGT event under section 606, in relation to
3 the taxpayer, for the FIF attribution account entity; and
4 (e) the amount of the FIF attribution debit is equal to so much of
5 the surplus as is taken into account under paragraph (c).
- 6 (2) For the purposes of paragraph (1)(c), if the disposal of the asset or
7 the CGT event causes the taxpayer's FIF attribution account
8 percentage for the FIF attribution account entity to be reduced by a
9 proportion, then only that proportion of the FIF attribution surplus
10 for the entity is to be taken into account under that paragraph.
11

EXPOSURE DRAFT

Repeal of the FIF and deemed present entitlement rules **Schedule 1**
Application and saving provisions **Part 4**

1 **Part 4—Application and saving provisions**

2 **95 Application of Part 1 amendments**

- 3 (1) The amendments made by items 2 to 7, 9, 37, 39, 47 to 49, 51, 54, 55,
4 58 to 73, 75 and 76, and 78 to 83 of this Schedule apply in relation to
5 the [xxxx] year of income for a taxpayer and later years of income.
- 6 (2) The amendments made by items 10 to 13 of this Schedule apply in
7 relation to the [xxxx] year of income for a trust estate and later years of
8 income.
- 9 (3) The amendments made by items 14 to 36 of this Schedule apply in
10 relation to statutory accounting periods ending in the [xxxx] year of
11 income and later years of income.
- 12 (4) The amendment made by item 74 of this Schedule applies to CGT
13 events that happen in the [xxxx] income year or later income years.

14 **96 Application of Part 2 amendments**

15 The amendments made by Part 2 of this Schedule apply in relation to
16 the [xxxx] year of income for a taxpayer and later years of income.

17 **97 Application of Part 3 amendment**

18 The amendments made by Part 3 of this Schedule apply to assessments
19 for the 2006-07 income year and later income years.

20 **98 Saving of regulations relating to stock exchanges**

21 Despite the repeal of the definition of *approved stock exchange* in
22 section 470 of the *Income Tax Assessment Act 1936* by item 37 of this
23 Schedule, regulations made for the purposes of that definition that were
24 in force immediately before this item commences continue in force on
25 and after that commencement as if those regulations had been made for
26 the purposes of the definition of *approved stock exchange* in the
27 *Income Tax Assessment Act 1997* as inserted by item 77 of this
28 Schedule.