

EXPOSURE DRAFT

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Inserts for
**Tax and Superannuation Laws
Amendment (2014 Measures No. 3) Bill
2014: Thin capitalisation and 23AJ**

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Schedule #— Thin capitalisation	The day after this Act receives the Royal Assent.	
2. Schedule #— Foreign dividends	The day after this Act receives the Royal Assent.	

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1 **Schedule #—Thin capitalisation**

2 **Part 1—Safe harbour debt amount**

3 *Income Tax Assessment Act 1997*

4 **1 Section 820-95 (method statement, step 7)**

5 Omit “3/4”, substitute “3/5”.

6 **2 Subsection 820-100(2) (method statement, step 8)**

7 Omit “20/21”, substitute “15/16”.

8 **3 Section 820-195 (method statement, step 5)**

9 Omit “3/4”, substitute “3/5”.

10 **4 Subsection 820-200(2) (method statement, step 6)**

11 Omit “20/21”, substitute “15/16”.

12 **5 Section 820-205 (method statement, step 5)**

13 Omit “3/4”, substitute “3/5”.

14 **6 Subsection 820-210(2) (method statement, step 6)**

15 Omit “20/21”, substitute “15/16”.

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1 **Part 2—Worldwide gearing debt amount for outward**
2 **investing entities (non-ADI)**

3 *Income Tax Assessment Act 1997*

4 **7 Subsection 820-90(1) (note)**

5 Repeal the note, substitute:

6 Note 1: The safe harbour debt amount differs depending on whether the entity
7 is an outward investor (general) or an outward investor (financial), see
8 sections 820-95 and 820-100.

9 Note 2: The worldwide gearing debt amount for an entity that is not also an
10 inward investment vehicle (general) or an inward investment vehicle
11 (financial) differs depending on whether the entity is an outward
12 investor (general) or an outward investor (financial), see
13 section 820-110.

14 **8 Subsection 820-90(2)**

15 Repeal the subsection, substitute:

16 *Entity is also an inward investment vehicle (general) or inward*
17 *investment vehicle (financial)*

18 (2) The entity's **maximum allowable debt** for an income year is the
19 greatest of the following amounts:

- 20 (a) the *safe harbour debt amount;
- 21 (b) the *arm's length debt amount;
- 22 (c) the *worldwide gearing debt amount, unless:
- 23 (i) the entity has *worldwide equity of a negative amount;
- 24 or
- 25 (ii) financial statements meeting the requirements in
- 26 subsection 820-933(4) for the entity for the income year
- 27 do not exist; or
- 28 (iii) 2 or more sets of financial statements meeting the
- 29 requirements in subsection 820-933(4) for the entity for
- 30 the income year exist, and the entities in relation to
- 31 which each set of financial statements have been
- 32 prepared are not identical.

33 Note 1: The safe harbour debt amount differs depending on whether the entity
34 is an outward investor (general) or an outward investor (financial), see
35 sections 820-95 and 820-100.

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Note 2: The worldwide gearing debt amount for an entity that is also an inward investment vehicle (general) or an inward investment vehicle (financial) is in Subdivision 820-C, see sections 820-216 and 820-217.

9 Subsection 820-110(1) (method statement, steps 2, 3 and 4)

Repeal the steps, substitute:

Step 3. Add 1 to the result of step 1.

Step 4. Divide the result of step 1 by the result of step 3.

10 Subsection 820-110(2) (method statement, steps 2, 3 and 4)

Repeal the steps, substitute:

Step 3. Add 1 to the result of step 1.

Step 4. Divide the result of step 1 by the result of step 3.

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1 **Part 3—Worldwide capital amount**

2 *Income Tax Assessment Act 1997*

3 **11 Subsection 820-320(2) (method statement, steps 2 and 3)**

4 Repeal the steps, substitute:

5

Step 3. Multiply the result of step 1 by the entity's worldwide 6 group capital ratio for that year (see subsection (3)).
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1 **Part 4—Safe harbour capital amount**

2 *Income Tax Assessment Act 1997*

3 **12 Subsection 820-310(1) (method statement, step 2)**

4 Omit “4%”, substitute “6%”.

5 **13 Section 820-405 (method statement, step 2)**

6 Omit “4%”, substitute “6%”.

7 **14 Subsection 820-615(3) (method statement, step 2)**

8 Omit “4%”, substitute “6%”.

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1 **Part 5—De minimis threshold**

2 *Income Tax Assessment Act 1997*

3 **15 Section 820-35**

4 Repeal the section, substitute:

5 **820-35 Application—\$2 million threshold**

6 Subdivision 820-B, 820-C, 820-D or 820-E does not apply to
7 disallow any *debt deduction of an entity for an income year if the
8 total debt deductions of that entity and all its *associate entities for
9 that year are \$2 million or less.

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1 **Part 6—Worldwide gearing debt amount for inward**
2 **investing entities (non-ADI)**

3 *Income Tax Assessment Act 1997*

4 **16 Section 820-190**

5 Omit “greater”, substitute “greatest”.

6 **17 After paragraph 820-190(b)**

7 Insert:

8 ; (c) the *worldwide gearing debt amount, unless:

- 9 (i) the entity has *worldwide equity of a negative amount;
10 or
11 (ii) financial statements meeting the requirements in
12 subsection 820-933(4) for the entity for the income year
13 do not exist; or
14 (iii) 2 or more sets of financial statements meeting the
15 requirements in subsection 820-933(4) for the entity for
16 the income year exist, and the entities in relation to
17 which each set of financial statements have been
18 prepared are not identical.

19 **18 Section 820-190 (note)**

20 Omit “Note”, substitute “Note 1”.

21 **19 At the end of section 820-190**

22 Add:

23 Note 2: The worldwide gearing debt amount differs depending on whether the
24 entity is an inward investment vehicle (general), inward investment
25 vehicle (financial), inward investor (general) or an inward investor
26 (financial), see sections 820-216 to 820-219.

27 **20 After section 820-215**

28 Insert:

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1 820-216 Worldwide gearing debt amount—inward investment 2 vehicle (general)

3 If the entity is an *inward investment vehicle (general) for the
4 income year, the **worldwide gearing debt amount** is the result of
5 applying the method statement in this section.

6 *Method statement*

7 Step 1. Divide the entity's *worldwide debt for the income year
8 by the entity's *worldwide equity for that year.

9 Step 2. Add 1 to the result of step 1.

10 Step 3. Divide the result of step 1 by the result of step 2.

11 Step 4. Multiply the result of step 3 in this method statement by
12 the result of:

13 (a) if the entity is not also an *outward investing entity
14 (non-ADI)—step 4 in the method statement in
15 section 820-195; or

16 (b) if the entity is also an *outward investing entity
17 (non-ADI)—step 6 in the method statement in
18 section 820-95.

19 Step 5. Add to the result of step 4 the average value, for that
20 year, of the entity's *associate entity excess amount. The
21 result of this step is the **worldwide gearing debt amount**.

22 Example: SJP Limited, a company that is not an Australian entity, has a
23 worldwide debt of \$120 million and worldwide equity of \$40 million.
24 The result of applying step 1 is therefore 3. Dividing 3 by 4 (through
25 applying steps 2 and 3) and multiplying the result by \$75 million
26 (which is the result of step 4 of the method statement in
27 section 820-195) equals \$56.25 million. As the average value of the
28 company's associate entity excess amount is \$4 million, the
29 worldwide gearing debt amount is therefore \$60.25 million.

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820-217 Worldwide gearing debt amount—inward investment vehicle (financial)

If the entity is an *inward investment vehicle (financial) for the income year, the *worldwide gearing debt amount* is the result of applying the method statement in this section.

Method statement

Step 1. Divide the entity's *worldwide debt for the income year by the entity's *worldwide equity for that year.

Step 2. Add 1 to the result of step 1.

Step 3. Divide the result of step 1 by the result of step 2.

Step 4. Multiply the result of step 3 in this method statement by the result of:

(a) if the entity is not also an *outward investing entity (non-ADI)—step 5 in the method statement in subsection 820-200(2); or

(b) if the entity is also an *outward investing entity (non-ADI)—step 7 in the method statement in subsection 820-100(2).

Step 5. Add to the result of step 4 the average value, for that year, of the entity's *zero-capital amount (other than any zero-capital amount that is attributable to the entity's *overseas permanent establishments).

Step 6. Add to the result of step 5 the average value, for that year, of the entity's *associate entity excess amount. The result of this step is the *worldwide gearing debt amount*.

Example: RGR Limited, a company that is not an Australian entity, has a worldwide debt of \$90 million and worldwide equity of \$30 million. The result of applying step 1 is therefore 3. Dividing 3 by 4 (through applying steps 2 and 3) and multiplying the result by \$100 million (which is the result of step 5 of the method statement in subsection 820-200(2)) equals \$75 million. The zero capital amount is \$5 million. Adding that amount to \$75 million results in \$80 million.

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1 As the company does not have any associate entity excess amount, the
2 worldwide gearing debt amount is therefore \$80 million.

3 **820-218 Worldwide gearing debt amount—inward investor** 4 **(general)**

5 If the entity is an *inward investor (general) for the income year,
6 the *worldwide gearing debt amount* is the result of applying the
7 method statement in this section.

8 *Method statement*

9 Step 1. Divide the entity's *worldwide debt for the income year
10 by the entity's *worldwide equity for that year.

11 Step 2. Add 1 to the result of step 1.

12 Step 3. Divide the result of step 1 by the result of step 2.

13 Step 4. Multiply the result of step 3 in this method statement by
14 the result of step 4 in the method statement in
15 section 820-205.

16 Step 5. Add to the result of step 4 the average value, for that
17 year, of the entity's *associate entity excess amount. The
18 result of this step is the *worldwide gearing debt amount*.

19 Example: MLO Corporation, a company that is not an Australian entity, has a
20 worldwide debt of \$120 million and worldwide equity of \$40 million.

21 The result of applying step 1 is therefore 3. Dividing 3 by 4 (through
22 applying steps 2 and 3) and multiplying the result by \$75 million
23 (which is the result of step 4 of the method statement in
24 section 820-205) equals \$56.25 million. As the average value of the
25 company's associate entity excess amount is \$4 million, the
26 worldwide gearing debt amount is therefore \$60.25 million.

27 **820-219 Worldwide gearing debt amount—inward investor** 28 **(financial)**

29 If the entity is an *inward investor (financial) for the income year,
30 the *worldwide gearing debt amount* is the result of applying the
31 method statement in this section.

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Method statement

Step 1. Divide the entity's *worldwide debt for the income year by the entity's *worldwide equity for that year.

Step 2. Add 1 to the result of step 1.

Step 3. Divide the result of step 1 by the result of step 2.

Step 4. Multiply the result of step 3 in this method statement by the result of step 5 in the method statement in subsection 820-210(2).

Step 5. Add to the result of step 4 the average value, for that year, of the entity's *zero-capital amount that has arisen because of the Australian investments mentioned in step 1 of the method statement in subsection 820-210(2).

Step 6. Add to the result of step 5 the average value, for that year, of the entity's *associate entity excess amount. The result of this step is the ***worldwide gearing debt amount***.

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Example: MSR Limited, a company that is not an Australian entity, has a worldwide debt of \$90 million and worldwide equity of \$30 million. The result of applying step 1 is therefore 3. Dividing 3 by 4 (through applying steps 2 and 3) and multiplying the result by \$105 million (which is the result of step 5 of the method statement in subsection 820-210(2)) equals \$78.75 million. The zero-capital amount is \$5 million. Adding that amount to \$78.75 million results in \$83.75 million. As the company does not have any associate entity excess amount, the worldwide gearing debt amount is therefore \$83.75 million.

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21 After Subdivision 820-J

Insert:

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1 Subdivision 820-JA—Worldwide debt and worldwide equity

2 Guide to Subdivision 820-JA

3 820-931 What this Subdivision is about

4 This Subdivision provides for the meanings of worldwide debt and
5 worldwide equity for the purposes of this Division.

6 820-932 Worldwide debt and worldwide equity—outward investing 7 entities

- 8 (1) This section applies to an *outward investing entity (non-ADI) that
9 is not also an *inward investment vehicle (general) or an *inward
10 investment vehicle (financial) for all or any part of the relevant
11 year.

12 *Worldwide debt*

- 13 (2) For the purposes of this Division, the entity's *worldwide debt* at a
14 particular time, means the total of the following amounts:
- 15 (a) all the *debt interests issued by the entity:
 - 16 (i) to entities other than any *Australian controlled foreign
17 entities (the *controlled entities*) of which the entity is an
18 *Australian controller at that time; and
 - 19 (ii) that are still *on issue at that time;
 - 20 (b) all the debt interests issued by the controlled entities:
 - 21 (i) to entities other than the entity or other controlled
22 entities; and
 - 23 (ii) that are still on issue at that time.

24 *Worldwide equity*

- 25 (3) For the purposes of this Division, the entity's *worldwide equity* at a
26 particular time, means the total of the following amounts:
- 27 (a) all the *equity capital of the entity as at that time, but worked
28 out disregarding *equity interests in the entity held at that
29 time by *Australian controlled foreign entities (the *controlled*
30 *entities*) of which the entity is an *Australian controller at
31 that time;

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1 (b) all the equity capital of the controlled entities as at that time,
2 but worked out disregarding equity interests in the controlled
3 entities held at that time by:

- 4 (i) the entity; or
5 (ii) other controlled entities.

6 **820-933 Worldwide debt and worldwide equity—inward investing** 7 **entities**

8 (1) This section applies to an *inward investing entity (non-ADI).

9 *Worldwide debt*

10 (2) The entity's *worldwide debt* for an income year is the result of
11 applying the method statement in this subsection. In applying the
12 method statement, use the amounts shown as mentioned in
13 paragraph 820-933(4)(b) in the audited consolidated financial
14 statements for the entity for the income year.

15 *Method statement*

16 Step 1. Start with the total amount of liabilities.

17 Step 2. Reduce the result of step 1 by the amount of provisions
18 and contingent liabilities.

19 Step 3. Reduce the result of step 2 by the amount of liabilities in
20 relation to distributions to equity participants.

21 Step 4. Reduce the result of step 3 by the amount of liabilities
22 relating to employee benefits. The result of this step is the
23 entity's *worldwide debt* for the income year.

24 Example: MLO Corporation is a company that is not an Australian entity, and
25 has a subsidiary that is an Australian entity. MLO Corporation
26 prepares audited consolidated financial statements in accordance with
27 International Financial Reporting Standards. The financial statements
28 state that MLO Corporation's total liabilities are \$150 million.

29 The amount of provisions, contingent liabilities, liabilities relating to
30 distributions to equity participants and liabilities relating to employee
31 benefits are \$5 million, \$5 million, \$10 million and \$10 million
32 respectively. Deducting these amounts from the result of step 1
33 (through applying steps 2 to 4) equals \$120 million, which is the
34 worldwide debt.

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Worldwide equity

- 1
- 2 (3) The entity's **worldwide equity** for an income year means the
- 3 amount of net assets shown as mentioned in
- 4 paragraph 820-933(4)(b) in the audited consolidated financial
- 5 statements for the entity for the income year.

Audited consolidated financial statements

- 6
- 7 (4) Financial statements meet the requirements in this subsection for
- 8 an entity and an income year if:
- 9 (a) the statements have been prepared on a consolidated basis in
- 10 relation to the entity and one or more other entities in
- 11 accordance with standards covered by
- 12 subsection 820-219E(1); and
- 13 (b) the statements show each of the following amounts (however
- 14 described) on that consolidated basis and in accordance with
- 15 those standards:
- 16 (i) liabilities;
- 17 (ii) provisions and contingent liabilities;
- 18 (iii) liabilities in relation to distributions to equity
- 19 participants;
- 20 (iv) liabilities relating to employee benefits;
- 21 (v) net assets; and
- 22 (c) the statements have been audited in accordance with a
- 23 requirement in a *foreign law and the auditor's report is
- 24 unqualified; and
- 25 (d) the statements are for an annual period that ends no later than
- 26 12 months before the start of the income year; and
- 27 (e) if statements for more than one period meet the other
- 28 requirements in this subsection—the statements are for the
- 29 most recent such period.

Recognised overseas accounting standards

- 30
- 31 (5) This subsection covers the following standards:
- 32 (a) the standards (however described) that apply to the
- 33 preparation of financial statements and are made, or adopted,
- 34 by the responsible body in:
- 35 (i) the European Union; or
- 36 (ii) the United States of America; or
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- 1 (iii) Canada; or
2 (iv) Japan; or
3 (v) a jurisdiction specified in an instrument under
4 subsection (6);
5 (b) the international financial reporting standards that are made
6 or adopted by the International Accounting Standards Board.
- 7 (6) The Minister may, by legislative instrument, specify one or more
8 jurisdictions for the purposes of subparagraph (5)(a)(v).

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Part 7—Consequential amendments

Income Tax Assessment Act 1997

22 Section 820-10 (after table item 7)

Insert:

7A Subdivision 820-JA the meaning of worldwide debt and worldwide equity for the purposes of this Division.

23 Subsection 820-85 (note 1)

Omit “\$250,000”, substitute “\$2 million”.

24 Section 820-95 (example)

Repeal the example, substitute:

Example: AK Pty Ltd, a company that is an Australian entity, has an average value of assets (other than assets attributable to its overseas permanent establishments) of \$100 million.

The average values of its excluded equity interests, associate entity debt, associate entity equity, controlled foreign entity debt, controlled foreign entity equity and non-debt liabilities are \$5 million, \$10 million, \$8 million, \$5 million, \$2 million and \$5 million respectively. Deducting these amounts from the result of step 1 (through applying steps 1A to 6) leaves \$65 million. Multiplying \$65 million by $\frac{3}{5}$ results in \$39 million. As the average value of the company’s associate entity excess amount is \$4.5 million, the safe harbour debt amount is therefore \$43.5 million.

25 Subsection 820-100(2) (example)

Repeal the example, substitute:

Example: GLM Limited, a company that is an Australian entity, has an average value of assets (other than assets attributable to its overseas permanent establishments) of \$160 million.

The average values of its relevant excluded equity interests, associate entity debt, associate entity equity, controlled foreign entity debt, controlled foreign entity equity, non-debt liabilities and zero-capital amount are \$5 million, \$5 million, \$5 million, \$9 million, \$6 million, \$5 million and \$4 million respectively. Deducting these amounts from the result of step 1 (through applying steps 1A to 7) leaves \$121 million. Multiplying \$121 million by $\frac{15}{16}$ results in \$113.4375 million. Adding the average zero-capital amount of \$4 million results in \$117.4375 million. As the company does not have any associate

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1 entity excess amount, the total debt amount is therefore \$117.4375
2 million.

3 **26 Subsection 820-100(3) (method statement, step 7)**

4 Omit “³/₄”, substitute “³/₅”.

5 **27 Subsection 820-100(3) (example)**

6 Repeal the example, substitute:

7 Example: GLM Limited, a company that is an Australian entity, has an average
8 value of assets (other than assets attributable to its overseas permanent
9 establishments) of \$160 million.

10 The average values of its relevant excluded equity interests, associate
11 entity equity, controlled foreign entity debt, controlled foreign entity
12 equity, non-debt liabilities and on-lent amount are \$5 million, \$5
13 million, \$9 million, \$6 million, \$5 million and \$35 million
14 respectively. Deducting these amounts from the result of step 1
15 (through applying steps 1A to 6) leaves \$95 million. Multiplying \$95
16 million by ³/₅ results in \$57 million. Adding the average on-lent
17 amount of \$35 million results in \$92 million. Reducing the result of
18 step 8 by the associate entity debt amount of \$5 million equals \$87
19 million. As the company does not have any associate entity excess
20 amount, the adjusted on-lent amount is therefore \$87 million.

21 **28 Subsection 820-110(1) (heading)**

22 Repeal the heading, substitute:

23 *Outward investor (general) that is not also an inward investment*
24 *vehicle (general)*

25 **29 Subsection 820-110(1)**

26 After “the income year,”, insert “and not also an *inward investment
27 vehicle (general) for all or any part of that year,”.

28 **30 Subsection 820-110(1) (example)**

29 Repeal the example, substitute:

30 Example: AK Pty Ltd, a company that is an Australian entity, has an average
31 value of worldwide debt of \$90 million and an average value of
32 worldwide equity of \$30 million. The result of applying step 1 is
33 therefore 3. Dividing 3 by 4 (through applying steps 3 and 4) and
34 multiplying the result by \$65 million (which is the result of step 6 in
35 the method statement in section 820-95) equals \$48.75 million. As the
36 average value of the company’s associate entity excess amount is \$4.5
37 million, the worldwide gearing debt amount is therefore \$53.25
38 million.

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31 Subsection 820-110(2) (heading)

Repeal the heading, substitute:

Outward investor (financial) that is not also an inward investment vehicle (financial)

32 Subsection 820-110(2)

After “that year,”, insert “and not also an *inward investment vehicle (financial) for all or any part of that year,”.

33 Subsection 820-110(2) (example)

Repeal the example, substitute:

Example: GLM Limited, a company that is an Australian entity, has an average value of worldwide debt of \$120 million and an average value of worldwide equity of \$40 million. The result of applying step 1 is therefore 3. Dividing 3 by 4 (through applying steps 3 and 4) and multiplying the result by \$121 million (which is the result of step 7 of the method statement in subsection 820-100(2)) equals \$90.75 million. The average value of zero-capital amount (see step 7 of the method statement in subsection 820-100(2)) is \$4 million. Adding that amount to \$90.75 million results in \$94.75 million. As the company does not have any associate entity excess amount, the worldwide gearing debt amount is therefore \$94.75 million.

34 Subsection 820-185 (note 1)

Omit “\$250,000”, substitute “\$2 million”.

35 Section 820-195 (example)

Repeal the example, substitute:

Example: ALWZ Ltd, a company that is an Australian entity, has an average value of assets of \$100 million.

The average values of its excluded equity interests, associate entity debt, associate entity equity and non-debt liabilities are \$5 million, \$10 million, \$5 million and \$5 million respectively. Deducting these amounts from the result of step 1 (through applying steps 1A to 4) leaves \$75 million. Multiplying \$75 million by $\frac{3}{5}$ results in \$45 million. As the average value of the company’s associate entity excess amount is \$2 million, the safe harbour debt amount is therefore \$47 million.

36 Subsection 820-200(2) (example)

Repeal the example, substitute:

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1 Example: KJW Finance Pty Ltd, a company that is an Australian entity, has an
2 average value of assets of \$120 million.

3 The average values of its excluded equity interests, associate entity
4 debt, associate entity equity, its non-debt liabilities and its zero-capital
5 amount are \$5 million, \$5 million, \$3 million, \$2 million and \$5
6 million respectively. Deducting these amounts from the result of step
7 1 (through applying steps 1A to 5) leaves \$100 million. Multiplying
8 \$100 million by $\frac{15}{16}$ results in \$93.75 million. Adding the
9 zero-capital amount of \$5 million to \$93.75 million results in \$98.75
10 million. As the company does not have any associate entity excess
11 amount, the total debt amount is therefore \$98.75 million.

12 **37 Subsection 820-200(3) (method statement, step 5)**

13 Omit “ $\frac{3}{4}$ ”, substitute “ $\frac{3}{5}$ ”.

14 **38 Subsection 820-200(3) (example)**

15 Repeal the example, substitute:

16 Example: KJW Finance Pty Ltd, a company that is an Australian entity, has an
17 average value of assets of \$120 million.

18 The average values of its excluded equity interests, associate entity
19 equity, non-debt liabilities and on-lent amount are \$5 million, \$3
20 million, \$2 million and \$35 million respectively. Deducting these
21 amounts from the result of step 1 (through applying steps 1A to 4)
22 leaves \$75 million. Multiplying \$75 million by $\frac{3}{5}$ results in \$45
23 million. Adding the average on-lent amount of \$35 million results in
24 \$80 million. Reducing \$80 million by the associate entity debt amount
25 of \$5 million results in \$75 million. As the company does not have
26 any associate entity excess amount, the adjusted on-lent amount is
27 therefore \$75 million.

28 **39 Section 820-205 (example)**

29 Repeal the example, substitute:

30 Example: RJ Corporation is a company that is not an Australian entity. The
31 average value of its Australian investments is \$100 million.

32 The average value of its relevant excluded equity interests, associate
33 entity debt, associate entity equity and non-debt liabilities is \$5
34 million, \$10 million, \$5 million and \$5 million respectively.
35 Deducting those amounts from the result of step 1 leaves \$75 million.
36 Multiplying \$75 million by $\frac{3}{5}$ results in \$45 million. As the company
37 does not have any associate entity excess amount, the safe harbour
38 debt amount is therefore \$45 million.

39 **40 Subsection 820-210(2) (example)**

40 Repeal the example, substitute:

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1 Example: FXS Financial SA is a company that is not an Australian entity. The
2 average value of its Australian investments is \$120 million.

3 The average value of its relevant excluded equity interests, associate
4 entity debt, associate entity equity, non-debt liabilities and zero-capital
5 amount are \$5 million, \$5 million, \$2 million, \$3 million and \$5
6 million respectively. Deducting those amounts from the result of step
7 1 (through applying steps 1A to 5) leaves \$100 million. Multiplying
8 \$100 million by $\frac{15}{16}$ results in \$93.75 million. Adding the average
9 zero-capital amount of \$5 million results in \$98.75 million. As the
10 company does not have any associate entity excess amount, the total
11 debt amount is therefore \$98.75 million.

12 **41 Subsection 820-210(3) (method statement, step 5)**

13 Omit “ $\frac{3}{4}$ ”, substitute “ $\frac{3}{5}$ ”.

14 **42 Subsection 820-210(3) (example)**

15 Repeal the example, substitute:

16 Example: FXS Financial SA is a company that is not an Australian entity. The
17 average value of its Australian investments is \$120 million.

18 The average value of its relevant excluded equity interests, associate
19 entity equity, non-debt liabilities and on-lent amount are \$5 million,
20 \$2 million, \$3 million and \$35 million respectively. Deducting those
21 amounts from the result of step 1 (through applying steps 1A to 4)
22 leaves \$75 million. Multiplying \$75 million by $\frac{3}{5}$ results in \$45
23 million. Adding the average on-lent amount of \$35 million results in
24 \$80 million. Reducing the result of step 6 by the associate entity debt
25 amount of \$5 million results in \$75 million. As the company does not
26 have any associate entity excess amount, the adjusted on-lent amount
27 is therefore \$75 million.

28 **43 Subsection 820-300(1) (note 1)**

29 Omit “\$250,000”, substitute “\$2 million”.

30 **44 Subsection 820-310(1) (example)**

31 Repeal the example, substitute:

32 Example: The Southern Cross Bank is an Australian bank that carries on its
33 banking business through its overseas permanent establishments and
34 through foreign entities that it controls. For the income year, its
35 average value of risk-weighted assets and intangible assets comprising
36 capitalised software expenses is \$150 million (having discounted
37 those assets that are excluded by step 1) and the average value of its
38 relevant tier 1 prudential capital deductions is \$2 million. Multiplying
39 \$150 million by 6% equals \$9 million, which is the result of step 2.
40 Adding \$2 million to \$9 million equals \$11 million, which is the safe
41 harbour capital amount.

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45 Subsection 820-320(2) (example)

Repeal the example, substitute:

Example: Southern Cross Bank has an average value of risk-weighted assets of \$150 million (having discounted those risk-weighted assets that are excluded by step 1) and the average value of its relevant tier 1 prudential capital deductions is \$2 million. The entity's worldwide group capital ratio is 0.0875. Multiplying \$150 million by 0.0875 equals \$13.125 million, which is the result of step 3. Adding that amount to the average value of the relevant tier 1 prudential capital deductions equals \$15.125 million, which is the worldwide capital amount.

46 Subsection 820-395(1) (note 1)

Omit "\$250,000", substitute "\$2 million".

47 Section 820-405 (example)

Repeal the example, substitute:

Example: The Global Bank is a foreign bank that carries on its banking business in Australia through a permanent establishment. The average value of its relevant risk-weighted assets is \$140 million. Multiplying that amount by 6% results in \$8.4 million, which is the safe harbour capital amount.

48 Paragraph 820-910(2)(b)

Omit "\$250,000", substitute "\$2 million".

49 Subsection 820-920(3) (method statement, step 4, paragraph (a))

Omit "²⁰/₂₁", substitute "¹⁵/₁₆".

50 Subsection 820-920(3) (method statement, step 4, paragraphs (b) and (c))

Omit "³/₄", substitute "³/₅".

51 Paragraph 820-946(1)(c)

Omit "\$250,000", substitute "\$2 million".

52 Subsection 995-1(1) (definition of *worldwide debt*)

Repeal the definition, substitute:

worldwide debt:

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- 1 (a) for an *outward investing entity (non-ADI) that is not also an
2 *inward investment vehicle (general) or an *inward
3 investment vehicle (financial) for all or any part of the
4 relevant year—has the meaning given by
5 subsection 820-932(2); and
6 (b) for an *inward investing entity (non-ADI)—has the meaning
7 given by subsection 820-933(2).

8 **53 Subsection 995-1(1) (definition of *worldwide equity*)**

9 Repeal the definition, substitute:

worldwide equity:

- 10
11 (a) for an *outward investing entity (non-ADI) that is not also an
12 *inward investment vehicle (general) or an *inward
13 investment vehicle (financial) for all or any part of the
14 relevant year—has the meaning given by
15 subsection 820-932(3); and
16 (b) for an *inward investing entity (non-ADI)—has the meaning
17 given by subsection 820-933(3).

18 **54 Subsection 995-1(1) (definition of *worldwide gearing debt* 19 *amount*)**

20 Repeal the definition, substitute:

worldwide gearing debt amount:

- 21
22 (a) for an *outward investing entity (non-ADI) that is not also an
23 *inward investment vehicle (general) or an *inward
24 investment vehicle (financial) for all or any part of the
25 relevant year—has the meaning given by section 820-110;
26 and
27 (b) for an inward investment vehicle (general)—has the meaning
28 given by section 820-216; and
29 (c) for an inward investment vehicle (financial)—has the
30 meaning given by section 820-217; and
31 (d) for an *inward investor (general)—has the meaning given by
32 section 820-218; and
33 (e) for an *inward investor (financial)—has the meaning given
34 by section 820-219.

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1 **Part 8—Application**

2 **55 Application**

3 The amendments made by this Schedule apply to assessments for
4 income years starting on or after 1 July 2014.

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Schedule #—Foreign dividends

Part 1—Foreign equity distributions on participation interests

Income Tax Assessment Act 1936

1 Section 23AJ

Repeal the section.

Income Tax Assessment Act 1997

2 Paragraph 25-90(b)

Repeal the paragraph, substitute:

- (b) the income is *non-assessable non-exempt income under section 768-5, or section 23AI or 23AK of the *Income Tax Assessment Act 1936*; and

3 Division 768 (heading)

Repeal the heading, substitute:

Division 768—Foreign non-assessable income and gains

4 Before Subdivision 768-B

Insert:

Subdivision 768-A—Returns on foreign investment

Guide to Subdivision 768-A

768-1 What this Subdivision is about

If:

- (a) an Australian corporate tax entity receives a foreign equity distribution from a foreign company, either directly or indirectly through one or more interposed trusts or partnerships; and

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(b) the Australian corporate tax entity holds a participation interest of at least 10% in the foreign company; the distribution is non-assessable non-exempt income for the Australian corporate tax entity.

Table of sections

Foreign equity distributions on participation interests

768-5	Foreign equity distributions on participation interests
768-10	Meaning of <i>foreign equity distribution</i>
768-15	Participation test—minimum 10% participation

Foreign equity distributions on participation interests

768-5 Foreign equity distributions on participation interests

Foreign equity distributions received directly

- (1) A ^{*}foreign equity distribution is not assessable income, and is not ^{*}exempt income, of the entity to which it is made if:
- (a) the entity is an Australian resident and a company; and
 - (b) at the time the distribution is made, the entity satisfies the participation test in section 768-15 in relation to the company that made the distribution; and
 - (c) the entity does not receive the distribution in the capacity of a trustee.

Foreign equity distributions received through interposed trusts and partnerships

- (2) An amount is not assessable income, and is not ^{*}exempt income, of an entity if:
- (a) the entity is a beneficiary of a trust or a partner in a partnership, an Australian resident and a company; and
 - (b) the amount is all or part of the net income of the trust or partnership that would, apart from this subsection, be included in the entity's assessable income because of Division 5 or 6 of Part III of the *Income Tax Assessment Act 1936*; and
 - (c) the amount can be attributed (either directly or indirectly through one or more interposed trusts or partnerships that are

EXPOSURE DRAFT

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- 1 not *corporate tax entities) to a *foreign equity distribution;
2 and
3 (d) at the time the distribution is made, the entity satisfies the
4 participation test in section 768-15 in relation to the company
5 that made the distribution; and
6 (e) the entity does not receive the distribution in the capacity of a
7 trustee.
- 8 (3) An amount that is *non-assessable non-exempt income under
9 subsection (2) is taken, for the purpose of section 25-90 (about
10 deductions relating to foreign non-assessable non-exempt income)
11 to be derived from the same source as the *foreign equity
12 distribution.

13 **768-10 Meaning of *foreign equity distribution***

14 A *foreign equity distribution* is a *distribution or *non-share
15 dividend made by a company that is a foreign resident in respect of
16 an *equity interest in the company.

17 **768-15 Participation test—minimum 10% participation**

18 An entity satisfies the participation test in this section in relation to
19 another entity at a time if, at that time, the sum of the following is
20 at least 10%:

- 21 (a) the *direct participation interest the entity would have in the
22 other entity if rights on winding-up were disregarded;
23 (b) the *indirect participation interest the entity would have in
24 the other entity if:
25 (i) rights on winding-up were disregarded; and
26 (ii) section 960-185 only applied to intermediate entities
27 that are not *corporate tax entities.

28 **5 Subsection 995-1(1)**

29 Insert:

30 *foreign equity distribution* has the meaning given by
31 section 768-10.

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1 **Part 2—Repeal of portfolio dividend exemption for**
2 **CFCs**

3 *Income Tax Assessment Act 1936*

4 **6 Section 404**

5 Repeal the section.

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1 **Part 3—Consequential amendments**

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

3 **7 Subsection 44(1) (note 1)**

4 Repeal the note, substitute:

5 Note 1: Some other provisions that expressly deal with dividends are
6 sections 23AI, 23AK and 128D of this Act and section 768-5 of the
7 *Income Tax Assessment Act 1997*.

8 **8 Subparagraph 47A(2)(a)(ii)**

9 Omit “section 23AI or 23AJ”, substitute “section 23AI or section 768-5
10 of the *Income Tax Assessment Act 1997*”.

11 **9 Paragraph 47A(7)(b)**

12 Omit “section 23AJ”, substitute “section 768-5 of the *Income Tax*
13 *Assessment Act 1997*”.

14 **10 Subsection 320(1) (definition of *section 404 country*)**

15 Repeal the definition.

16 **11 Section 332A**

17 Repeal the section.

18 **12 Subsection 399(2) (definition of *excluded modifications*)**

19 Omit “404 and”.

20 ***Income Tax Assessment Act 1997***

21 **13 Section 11-15 (note)**

22 Omit “sections 403 and 404”, substitute “section 403”.

23 **14 Section 11-55 (table item headed “foreign aspects of
24 income taxation”)**

25 Omit:
dividend from a foreign country, non-portfolio **23AJ**

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1 **15 Section 11-55 (table item headed “foreign aspects of**
2 **income taxation”)**

3 After:

distributions of conduit foreign income 802-20

4 insert:

foreign equity distributions on participation interests 768-5

5 **16 After subparagraph 118-12(2)(a)(via)**

6 Insert:

7 (vib) section 768-5 (foreign equity distributions on
8 participation interests);

9 **17 Subparagraph 118-12(2)(b)(iii)**

10 Repeal the subparagraph.

11 **18 Subsection 118-20(6)**

12 Omit “section 23AJ (about exempting certain non-portfolio dividends
13 paid by non-resident companies) of the *Income Tax Assessment Act*
14 *1936* because a company pays a *dividend to you”, substitute
15 “section 768-5 (about foreign equity distributions on participation
16 interests) because a company pays a *foreign equity distribution”.

17 **19 Paragraph 220-350(1)(c)**

18 Omit “section 23AI, 23AJ or 23AK of the *Income Tax Assessment Act*
19 *1936*”, substitute “section 768-5, or section 23AI or 23AK of the
20 *Income Tax Assessment Act 1936*”.

21 **20 Paragraph 230-15(3)(c)**

22 Repeal the paragraph, substitute:

23 (c) the income is *non-assessable non-exempt income under
24 section 768-5, or section 23AI or 23AK of the *Income Tax*
25 *Assessment Act 1936*; and

26 **21 Paragraphs 230-335(4)(a) and (b)**

27 Repeal the paragraphs, substitute:

28 (a) the *financial arrangement hedges a foreign currency risk in
29 relation to an anticipated *foreign equity distribution from a
30 *connected entity; and

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(b) the distribution is *non-assessable non-exempt income under section 768-5.

22 Paragraph 802-30(3)(c)

Omit “section 23AJ of the *Income Tax Assessment Act 1936*”, substitute “section 768-5”.