EXPOSURE DRAFT

Inserts for

Treasury Laws Amendment (Tax Reform No. 3) Bill 2026: CGT adjustments (tranche 2)

Commencement information

Column 1	Column 2	Column 3
Provisions	**Commencement**	**Date/Details**
1. Schedule 1	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	

EXPOSURE DRAFT

Schedule 1—CGT adjustments

Part 1—AMITs

Income Tax Assessment Act 1997

1 Subsection 102-6(2) (definition of *post-July 2027 ownership period*)

Repeal the definition, substitute:

post-July 2027 ownership period means the number of days in so much of the following period:

(a) unless paragraph (b) or (c) applies—the period starting on the day you *acquire your *ownership interest in the *CGT asset;

(b) if because of section 115-215 you are taken to have made the *capital gain as a beneficiary of a trust other than an *AMIT—the period starting on the day the trustee acquires the trustee's ownership interest in the CGT asset;

(c) if because of section 276-80 you are taken to have made the capital gain as a *member of a trust that is an AMIT—the period starting on the day the trustee acquires the trustee's ownership interest in the CGT asset;

as:

(d) is on or after 1 July 2027, and as ends on the day the *CGT event happens; and

(e) does not include a day or part of a day for which you can reasonably expect to disregard the capital gain because of Subdivision 118-B (about the main residence exemption).

Note 1: If the CGT event is a realisation event mentioned in paragraph 112-155(1)(b) or 112-165(1)(b), subsection (4) of this section applies to your capital gain for the portion of this ownership period that is before 1 July 2027.

Note 2: If the CGT event happens (on or after 1 July 2027) in relation to a CGT asset that was a pre-CGT asset just before 1 July 2027, your capital gain for the portion of this ownership period that is before 1 July 2027 is disregarded (see subsection 112-175(2)).

2 Subsection 102-6(4) (definition of *pre-July 2027 ownership period*)

Repeal the definition, substitute:

EXPOSURE DRAFT

pre-July 2027 ownership period means the number of days in so much of the following period:

(a) unless paragraph (b) or (c) applies—the period starting on the day you *acquire your *ownership interest in the *CGT asset;

(b) if because of section 115-215 you are taken to have made the *capital gain as a beneficiary of a trust other than an *AMIT—the period starting on the day the trustee acquires the trustee's ownership interest in the CGT asset;

(c) if because of section 276-80 you are taken to have made the capital gain as a *member of a trust that is an AMIT—the period starting on the day the trustee acquires the trustee's ownership interest in the CGT asset;

as:

(d) ends on 30 June 2027; and

(e) does not include a day or part of a day for which you can reasonably expect to disregard the capital gain because of Subdivision 118-B (about the main residence exemption).

3 Paragraph 102-6(5)(b)

After "a trust", insert "other than an *AMIT".

4 After paragraph 102-6(5)(b)

Insert:

; or (c) because of section 276-80, you are taken to have made the capital gain as a *member of a trust that is an AMIT in relation to the trust's deferred gain (within the meaning of paragraph 112-170(3)(a)).

5 Subsection 102-6(5) (note 2)

Repeal the note, substitute:

Note 2: Paragraph (b) or (c) can cover a capital gain taken to have been made by any of the trust's beneficiaries or members, not just those who are individuals and Australian residents.

6 Subsection 110-36(1A) (heading)

Omit "*Australian resident*".

7 After paragraph 110-36(1A)(b)

Insert:

; and (c) a choice under subsection 110-36A(1) does not apply for working out the capital gain.

8 Subsection 110-36(1A) (notes 1 and 2)

Repeal the notes.

9 Subsection 110-36(2) (note 1)

Repeal the note, substitute:

Note 1: Section 103-25 sets out rules for making choices.

10 After section 110-36

Insert:

110-36A Trustee may choose for indexation because of subsection 110-36(1A) not to apply

(1) The trustee of a trust may choose for indexation because of subsection 110-36(1A) not to apply for the purposes of working out a *capital gain made from a *CGT event happening:

(a) in relation to a *CGT asset of the trust; and

(b) in an income year;

if, just before the CGT event, subsection (2) of this section applies to each entity that is:

(c) if the trust is not an *AMIT—a beneficiary of the trust; or

(d) if the trust is an AMIT—a *member of the trust.

Note 1: See subsection (4) for the capital gains to which the choice applies.

Note 2: A choice may cover more than one CGT asset of the trust. Section 103-25 sets out rules for making choices.

(2) This subsection applies to an entity if:

(a) indexation because of subsection 110-36(1A) could not have applied to the *cost base of the *CGT asset had the entity:

(i) made the *capital gain; and

(ii) *acquired and held the CGT asset in the same way as the trust did; or

(b) the entity is the trustee of another trust and, applying this subsection on the assumptions in subsection (3), this subsection would apply to each entity that is:

(i) if the other trust is not an *AMIT—a beneficiary of the other trust; or

(ii) if the other trust is an AMIT—a *member of the other trust.

(3) For the purposes of paragraph (2)(b), assume that:

(a) the other trust made the *capital gain from the *CGT event; and

(b) the other trust *acquired and held the *CGT asset in the same way as the first-mentioned trust did.

(4) A choice under subsection (1) applies for the purposes of working out the following *capital gains in relation to the *CGT event happening in relation to the *CGT asset:

(a) the trust's capital gain from the CGT event (the ***trust's gain***);

(b) for a trust other than an *AMIT—each capital gain that a beneficiary of the trust is treated:

(i) for the purposes of Division 102; and

(ii) because of section 115-215;

as having made in relation to the trust's gain;

(c) for a trust that is an AMIT—each capital gain that a member of the trust is treated, because of section 276-80, as having made in relation to the trust's gain.

11 After subsection 112-5(6A)

Insert:

(6B) Subdivision 112-F contains operative provisions setting out special rules modifying the time *CGT assets are *acquired.

Note: These special rules can be relevant for:

(a) indexation of the cost base of CGT assets (see subsection 960-275(1D)); and

(b) deemed sales and reacquisitions under Subdivision 112-E.

12 Before section 112-155

Insert:

112-152 Meaning of *deferral realisation event* and *deferral exemption*

(1) A ***deferral realisation event***, for a *CGT asset, is a *realisation event for the CGT asset other than any of *CGT events C3, D1, D2, D3, E9, F1, F3, F5, H1, H2, K1, K2, K5, K6, K9, K10, K11, K12 or L1 to L8.

(2) A ***deferral exemption*** means an exemption under any of the following provisions:

(a) section 118-10, 118-12, 118-20, 118-24, 118-27, 118-30, 118-35, 118-60, 118-65, 118-70 or 118-80;

(b) Subdivision 152-B;
(c) section 855-10.

13 Section 112-155 (heading)

Repeal the heading, substitute:

112-155 Individuals—deemed sale just before, and reacquisition on, 1 July 2027

14 Paragraphs 112-155(1)(b) to (d)

Repeal the paragraphs, substitute:

(b) you are an individual who holds the asset when a *realisation event happens in relation to the asset:
(i) on or after 1 July 2027; and
(ii) that is a *deferral realisation event; and

(c) the period (***your ownership period***):
(i) starting on the day you *acquired the asset; and
(ii) ending just before the realisation event happens;
starts on or before 30 June 2027; and

(d) you are an Australian resident (but not a *temporary resident) during:
(i) all of your ownership period; or
(ii) some of your ownership period, and the asset is *taxable Australian property; and

15 At the end of subsection 112-155(1)

Add:

Note 1: Your ownership period could start earlier than subparagraph (c)(i) suggests (see section 112-190).

Note 2: The residency status of other individuals may be relevant for paragraph (d) (see section 112-195).

16 Subsection 112-155(4) (note 3)

Omit “(1)(c)”, substitute “(1)(b)”.

17 Section 112-160 (heading)

Repeal the heading, substitute:

112-160 Individuals—defer a gain or loss from the deemed sale until the later realisation event happens

18 Subsection 112-160(3) (note 1)

Omit "112-155(1)(c)", substitute "112-155(1)(b)".

19 At the end of section 112-160

Add:

Working out if certain exemptions apply

(7) For the purpose of working out whether a *deferral exemption applies to a *capital gain or *capital loss you make from the *realisation event, disregard the sale and *acquisition under subsection 112-155(2).

Note 1: This has the effect that, for this purpose, the deferred gain and gain from the realisation event (or deferred loss and loss from the realisation event) are treated as a single gain or loss made from the realisation event.

Note 2: The realisation event is the CGT event referred to in paragraph 112-155(1)(b).

Exemption disregards gain or loss

(8) If after applying subsection (7) the *deferral exemption disregards the *capital gain or *capital loss you make from the *realisation event, any capital gain or capital loss you make from the deemed CGT event is also disregarded.

Note: The deemed CGT event is the CGT event that happens under paragraph 112-155(2)(a) (see subparagraph (3)(a)(i) of this section).

Exemption reduces gain or loss

(9) If, after applying subsection (7), a *deferral exemption reduces a *capital gain you make from the *realisation event by an amount that exceeds the amount of that capital gain, the excess:

(a) in the case of a capital gain you make from the deemed CGT event—reduces that capital gain, but not below nil; or

(b) in the case of a *capital loss you make from the deemed CGT event—increases that capital loss.

(10) If, after applying subsection (7), a *deferral exemption reduces a *capital loss you make from the *realisation event by an amount that exceeds the amount of that capital loss, the excess:

(a) in the case of a capital loss you make from the deemed CGT event—reduces that capital loss, but not below nil; or

(b) in the case of a *capital gain you make from the deemed CGT event—increases that capital gain.

20 Paragraphs 112-165(1)(b) to (e)

Repeal the paragraphs, substitute:

(b) the trustee holds the asset when a *realisation event happens in relation to the asset:

(i) on or after 1 July 2027; and

(ii) that is a *deferral realisation event; and

(c) the period (the ***trustee's ownership period***):

(i) starting on the day the trustee *acquired the asset; and

(ii) ending just before the realisation event happens;

starts on or before 30 June 2027; and

(d) there is at least one individual who, in the way described in paragraph 112-200(1)(c), is a *member of the trust just before the realisation event happens and who is an Australian resident (but not a *temporary resident) during:

(i) all of the member's *membership testing period that is within the trustee's ownership period; or

(ii) some of the member's membership testing period that is within the trustee's ownership period; and

(e) if subparagraph (d)(i) does not apply but subparagraph (d)(ii) does—the asset is *taxable Australian property; and

(f) the asset is not an asset for which either:

(i) section 115-103 (about new residential dwellings); or

(ii) section 115-126 (about affordable housing);

applies in relation to any *capital gain of the trust resulting from the realisation event.

Note 1: The trustee's ownership period could start earlier than subparagraph (c)(i) suggests (see section 112-190).

Note 2: A membership testing period can start earlier than subsection 112-200(1) suggests (see section 112-190).

Note 3: The residency status of other individuals may be relevant for paragraph (d) (see subsection 112-200(2)).

21 Subsection 112-165(2)

After "Part 3-3", insert ", Division 276".

EXPOSURE DRAFT

22 Subsection 112-165(2) (note 2)

After "beneficiaries", insert "or members".

23 Subsection 112-165(4) (note 3)

Omit "(1)(c)", substitute "(1)(b)".

24 Subsection 112-170(3)

Omit "and Subdivision 115-C", substitute ", Subdivision 115-C and Division 276".

25 Subsection 112-170(3) (note 1)

Omit "112-165(1)(c)", substitute "112-165(1)(b)".

26 Subsection 112-170(3) (note 4)

Repeal the note, substitute:

Note 4: For a trust other than an AMIT, a beneficiary of the trust may also be taken to have made, because of section 115-215, a capital gain in relation to the trust's deferred gain.

Note 5: For a trust that is an AMIT, a member of the trust may also be taken to have made, because of section 276-80, a capital gain in relation to the trust's deferred gain.

27 Subsection 112-170(4) (note 3)

Repeal the note, substitute:

Note 3: The trust's deferred loss, and any separate capital loss referred to in note 2, are taken into account to work out whether the trust estate has a net capital gain or net capital loss for the income year in which the realisation event happens.

28 Subsection 112-170(6) (note 2)

Repeal the note, substitute:

Note 2: For a trust other than an AMIT, a beneficiary of the trust may also be taken to have made, because of section 115-215, a capital gain in relation to the capital gain of the trust estate referred to in subsections (5) and (6).

Note 3: For a trust that is an AMIT, a member of the trust may also be taken to have made, because of section 276-80, a capital gain in relation to the capital gain of the trust estate referred to in subsections (5) and (6).

29 At the end of section 112-170

Add:

Working out if certain exemptions apply

(7) For the purpose of working out whether a *deferral exemption applies to a *capital gain or *capital loss made from the *realisation event, disregard the sale and *acquisition under subsection 112-165(2).

Note 1: This has the effect that, for this purpose, the deferred gain and gain from the realisation event (or deferred loss and loss from the realisation event) are treated as a single gain or loss made from the realisation event.

Note 2: The realisation event is the CGT event referred to in paragraph 112-165(1)(b).

Exemption disregards gain or loss

(8) If, after applying subsection (7), the *deferral exemption disregards the *capital gain or *capital loss made from the *realisation event, any capital gain or capital loss made from the deemed CGT event is also disregarded.

Note: The deemed CGT event is the CGT event that happens under paragraph 112-165(2)(a) (see subparagraph (3)(a)(i) of this section).

Exemption reduces gain or loss

(9) If, after applying subsection (7), a *deferral exemption reduces a *capital gain made from the *realisation event by an amount that exceeds the amount of that capital gain, the excess:

(a) in the case of a *capital gain made from the deemed CGT event—reduces that capital gain, but not below nil; or

(b) in the case of a *capital loss made from the deemed CGT event—increases that capital loss.

(10) If, after applying subsection (7), a *deferral exemption reduces a *capital loss made from the *realisation event by an amount that exceeds the amount of that capital loss, the excess:

(a) in the case of a *capital loss made from the deemed CGT event—reduces that capital loss, but not below nil; or

(b) in the case of a *capital gain made from the deemed CGT event—increases that capital gain.

30 Paragraph 112-175(1)(b)

Repeal the paragraph, substitute:

(b) you continue to hold the asset until a *realisation event happens in relation to the asset:

(i) on or after 1 July 2027; and

(ii) that is a *deferral realisation event.

31 Paragraph 112-180(1)(d)

Repeal the paragraph, substitute:

(d) you continue to hold the shares or interest until a *realisation event happens in relation to them:

(i) on or after 1 July 2027; and

(ii) that is a *deferral realisation event.

32 Subsection 112-180(3) (note 2)

Repeal the note, substitute:

Note 2: For a trust other than an AMIT, a beneficiary of the trust may also be taken to have made, because of section 115-215, a capital gain in relation to the deferred gain.

Note 3: For a trust that is an AMIT, a member of the trust may also be taken to have made, because of section 276-80, a capital gain in relation to the deferred gain.

33 Paragraph 112-185(1)(a)

Repeal the paragraph, substitute:

(a) *realisation events happening in relation to *CGT assets:

(i) on or after 1 July 2027; and

(ii) that are *deferral realisation events; and

34 At the end of Division 112

Add:

Subdivision 112-F—Special rules about time of acquisition

Table of sections

EXPOSURE DRAFT

112-190 Special rules about time of acquisition

Entity is treated as acquiring some CGT assets early

(1) Sections 112-155, 112-165, 112-195 and 112-200 and subsection 960-275(1D) (the ***affected provisions***) apply as if an entity (the ***acquirer***) had acquired a *CGT asset described in an item of the following table at the time mentioned in the item:

When the acquirer is treated as having acquired a CGT asset

Item	The affected provisions apply as if the acquirer had acquired this CGT asset:	At this time:
1	A *CGT asset the acquirer *acquired in circumstances giving rise to a *same-asset roll-over	(a) when the entity that owned the CGT asset before the roll-over acquired it; or (b) if the asset has been involved in an unbroken series of roll-overs—when the entity that owned it before the first roll-over in the series acquired it
2	A *CGT asset that the acquirer *acquired as a replacement asset for a *replacement-asset roll-over (other than a roll-over covered by paragraph 115-34(1)(c))	(a) when the acquirer acquired the original asset involved in the roll-over; or (b) if the acquirer acquired the replacement asset for a roll-over that was the last in an unbroken series of replacement-asset roll-overs (other than roll-overs covered by paragraph 115-34(1)(c))—when the acquirer acquired the original asset involved in the first roll-over in the series
3	A *CGT asset the acquirer *acquired as the *legal personal representative of a deceased individual, except one that was a *pre-CGT asset of the deceased immediately before the deceased's death	When the deceased acquired the asset

When the acquirer is treated as having acquired a CGT asset

Item	The affected provisions apply as if the acquirer had acquired this CGT asset:	At this time:
4	A *CGT asset that *passed to the acquirer as the beneficiary of a deceased individual's estate, except one that was a *pre-CGT asset of the deceased immediately before the deceased's death	When the deceased acquired the asset
5	A *CGT asset that: (a) the acquirer *acquired as the *legal personal representative of a deceased individual; and (b) was a *pre-CGT asset of the deceased immediately before the deceased's death	When the deceased died
6	A *CGT asset that: (a) *passed to the acquirer as the beneficiary of a deceased individual's estate; and (b) was a *pre-CGT asset of the deceased immediately before the deceased's death	When the deceased died
7	The interest (or share of an interest) the acquirer is taken under section 128-50 to have *acquired in another *CGT asset that the acquirer and another individual held as joint tenants immediately before the other individual died	When that individual acquired their interest in the other CGT asset

When the acquirer is treated as having acquired a CGT asset		
Item	**The affected provisions apply as if the acquirer had acquired this CGT asset:**	**At this time:**
8	A *CGT asset that: (a) is a *membership interest in the receiving trust involved in a roll-over under Subdivision 126-G; and (b) is held by the acquirer just after the transfer time for the roll-over	(a) when the acquirer *acquired the corresponding membership interest (or membership interests) in the transferring trust involved in the roll-over; or (b) if the roll-over asset for the roll-over has been involved in an unbroken series of roll-overs under Subdivision 126-G—when the acquirer acquired the corresponding membership interest (or membership interests) in the transferring trust involved in the first roll-over in the series
9	A *share the acquirer *acquires by exercising an *ESS interest if: (a) section 83A-33 (about start ups) reduces the amount to be included in the acquirer's assessable income in relation to the ESS interest; and (b) exercising the ESS interest causes Subdivision 130-B or Division 134 to apply	When the acquirer acquired the ESS interest
10	A *CGT asset that the acquirer *acquired as a received asset for a roll-over under Subdivision 310-D	(a) when the transferring entity for the roll-over acquired the corresponding original asset for the roll-over; or (b) if that original asset (or any asset corresponding to it) has been involved in an unbroken series of roll-overs—when the entity that owned the applicable asset before the first roll-over in the series acquired it

Note: Under section 128-50, the acquirer is taken to acquire the interest of a deceased individual in a CGT asset the acquirer and the deceased held as joint tenants immediately before the deceased's death (or an equal share of that interest if there are other surviving joint tenants).

(2) For the purposes of the affected provisions, item 2 of the table in subsection (1) applies in relation to all *replacement-asset roll-overs, including those covered by paragraph 115-34(1)(c).

Relationship with Subdivision 109-A and Division 128

(3) This section has effect despite Subdivision 109-A and Division 128 (which contain rules about the time when you *acquire a *CGT asset).

112-195 Foreign or temporary residents—individuals with direct gains

For the purposes of section 112-155 and subsection 960-275(1D) (the ***affected provisions***), if:

- (a) you are an individual; and
- (b) the affected provision refers to a period during which you held a *CGT asset, which:
  - (i) starts on the day you *acquired the asset or a later day; and
  - (ii) ends just before a *CGT event happens; and
- (c) another individual owned the CGT asset at a time before that period ends; and
- (d) at that time, that individual was one of the following (that individual's ***residency status***):
  - (i) an Australian resident (but not a *temporary resident);
  - (ii) a temporary resident;
  - (iii) a foreign resident; and
- (e) section 112-190 treats you as having acquired the CGT asset when that individual, or an earlier owner of the CGT asset, acquired it;

you are treated as having the same residency status at that time as that individual had at that time.

Note: Section 112-190 has special rules about when assets are acquired.

112-200 Foreign or temporary residents—individuals with trust gains

Meaning of ***membership testing period***

(1) For the purposes of section 112-165 (the ***affected provision***), if:

(a) you are an individual; and

(b) a *CGT event mentioned in the affected provision happens at a particular time (the ***realisation time***) in relation to a *CGT asset of a trust; and

(c) just before the realisation time, you are a *member of the trust (***your trust***) because you are:

(i) if your trust is not an *AMIT—a beneficiary of the trust; or

(ii) if your trust is an AMIT—a member of the AMIT;

the period worked out from the following table is your ***membership testing period*** in relation to your trust.

Working out your *membership testing period*

Item	Column 1 If this is the case:	Column 2 the *membership testing period* is:
1	your trust is a *fixed trust	the period: (a) starting on the most recent day (before the realisation time) that you became a *member of your trust in the way described in paragraph (1)(c); and (b) ending at the realisation time.
2	your trust is not a *fixed trust and the relevant trust gain: (a) is made because a *CGT event happened in relation to a *CGT asset *acquired by the trustee of your trust; or (b) is referable: (i) directly; or (ii) indirectly through one or more interposed trusts that are not fixed trusts; to a *capital gain made by the trustee of another trust that is	the period: (a) starting on the day of that acquisition; and (b) ending at the realisation time.

Working out your *membership testing period*		
Item	**Column 1** **If this is the case:**	**Column 2** **the *membership testing period* is:**
	not a fixed trust because a CGT event happened in relation to a CGT asset acquired by that trustee	
3	your trust is not a *fixed trust and the relevant trust gain is referable: (a) directly; or (b) indirectly through one or more interposed trusts that are not fixed trusts; to a *capital gain made by a fixed trust	the period: (a) starting on the most recent day (before the realisation time) that the trust whose capital gain is directly referable to the capital gain made by the fixed trust became: (i) if the fixed trust is not an *AMIT—a beneficiary of the fixed trust; or (ii) if the fixed trust is an AMIT—a *member of the fixed trust; and (b) ending at the realisation time.

Note: Section 112-190 has special rules about when assets (including membership interests in trusts) are acquired.

Changed residency status

(2) For the purposes of section 112-165, if:

(a) your trust is a *fixed trust and another individual owned your *membership interest (see paragraph (1)(c)) in your trust at a time before your *membership testing period ends; and

(b) at that time, that individual was one of the following (that individual's ***residency status***):

(i) an Australian resident (but not a *temporary resident);

(ii) a temporary resident;

(iii) a foreign resident; and

(c) section 112-190 treats you as having *acquired your membership interest in your trust when that individual, or an earlier owner of that membership interest, acquired it;

you are treated as having the same residency status at that time as that individual had at that time.

35 Section 114-25

Repeal the section.

36 Section 114-30

Repeal the section, substitute:

114-30 Asset requirements for indexation to apply for a cost base worked out under subsection 110-36(1A)

(1) This section sets out requirements for indexation to be included under subsection 110-36(1A) in the *cost base of a *CGT asset for the purposes of working out an individual's or trust's *capital gain from a *CGT event happening in relation to the CGT asset.

Note: In the case of an individual, the individual could have made the capital gain:
(a) directly; or
(b) indirectly, because of section 115-215, as a beneficiary of a trust other than an AMIT; or
(c) indirectly, because of section 276-80, as a member of an AMIT.

(2) The *CGT asset must not be an asset for which any of the following sections applies in relation to the *capital gain:
(a) section 115-102 or 115-103 (about new residential dwellings);
(b) section 115-125 or 115-126 (about affordable housing).

Note 1: If any of those sections applies, the capital gain may instead be discounted.

Note 2: The trustee of a trust can choose under any of those sections for that section not to apply. If the trustee does so, indexation included in the cost base of the CGT asset will flow through to working out the capital gain of the trust's beneficiaries or members who are Australian resident individuals (see section 115-215 or 276-80).

37 Section 115-1 (paragraph beginning "Special rules apply to the net income")

After "beneficiaries", insert "or members".

38 At the end of section 115-45

Add:

Disregard certain deemed sales and reacquisitions

(8) Disregard subsections 112-155(2), 112-165(2) and 112-175(2) for the purposes of applying:

(a) the 12-month rule in subsection (4) of this section; and

(b) the 12-month rule in paragraph (6)(a) of this section.

39 Paragraph 115-100(a)

After “115-102”, insert “or 115-103”.

40 Paragraph 115-100(e)

After “115-125”, insert “or 115-126 (about affordable housing)”.

41 Section 115-102 (heading)

Repeal the heading, substitute:

115-102 New residential dwellings—gains made by individuals

42 Paragraphs 115-102(1)(c) and (d)

Repeal the paragraphs, substitute:

(c) one of the following subparagraphs applies:

(i) you make the discount capital gain from a *CGT event happening on or after 1 July 2027 in relation to a *CGT asset that is a *new residential dwelling, but not because you are a member of a trust that is an *AMIT;

(ii) you make the discount capital gain because you are a member of a trust that is an AMIT and that has made a discount capital gain;

(iii) because of section 115-215, Division 102 applies to you as if you had made the discount capital gain for a *capital gain of a trust covered by subsection (4); and

(d) where subparagraph (c)(ii) or (iii) applies—the trust’s capital gain was made:

(i) directly; or

(ii) indirectly through one or more entities that are all covered by subsection (4);

from a CGT event happening on or after 1 July 2027 in relation to a CGT asset that is a new residential dwelling.

43 Subsection 115-102(1) (note)

Omit “Note”, substitute “Note 1”.

44 At the end of subsection 115-102(1)

Add:

Note 2: This section can apply to a discount capital gain you make as a member of an AMIT (see subsection 276-80(2)). For this section to so apply, section 115-105 must not apply (see paragraph (b)).

45 Subsection 115-102(2)

Repeal the subsection.

46 Subsection 115-102(5)

Repeal the subsection (including the note), substitute:

Indexation may be able to be chosen as an alternative

(5) Despite subsection (1), the following person may choose for this section not to apply to the *discount capital gain:

(a) if you make the discount capital gain in the way described in subparagraph (1)(c)(i)—you;

(b) if you make the discount capital gain in the way described in subparagraph (1)(c)(ii) or (iii), and the trust's *capital gain was made directly—the trustee of the trust;

(c) if you make the discount capital gain in the way described in subparagraph (1)(c)(ii) or (iii), and the trust's capital gain was made indirectly—the trustee of the earliest trust described in subparagraph (1)(d)(ii).

Such a choice by a trustee applies to you in a similar way to a choice made by you for a gain covered by paragraph (a).

Note: Instead, the cost base of the CGT asset may be able to be indexed (see subsection 110-36(1A)).

47 After section 115-102

Insert:

115-103 New residential dwellings—gains made by trusts

(1) This section applies to a *discount capital gain if:

(a) you are the trustee of a trust; and

(b) one of the following subparagraphs applies:

(i) the trust makes the discount capital gain directly from a *CGT event happening on or after 1 July 2027 in

EXPOSURE DRAFT

relation to a *CGT asset that is a *new residential dwelling;

(ii) the trust makes the discount capital gain because the trust is a member of another trust that is an *AMIT and that has made a discount capital gain;

(iii) because of section 115-215, Division 102 applies to the trust as if the trust had made the discount capital gain for a *capital gain of another trust covered by subsection (2); and

(c) where subparagraph (b)(ii) or (iii) applies—the other trust's capital gain was made:

(i) directly; or

(ii) indirectly through one or more entities that are all covered by subsection (2);

from a CGT event happening on or after 1 July 2027 in relation to a CGT asset that is a new residential dwelling.

Note 1: The discount percentage for the discount capital gain is 50% (see paragraph 115-100(a)).

Note 2: This section can apply to a discount capital gain the trust makes as a member of another trust that is an AMIT (see subsection 276-80(2)).

Relevant trusts and interposed entities

(2) This subsection covers the following:

(a) a trust, other than a *superannuation fund or a public unit trust (within the meaning of section 102P of the *Income Tax Assessment Act 1936*);

(b) a partnership.

Note: For paragraph (a), a trust includes a managed investment trust.

Indexation may be able to be chosen as an alternative

(3) Despite subsection (1), the following person may choose for this section not to apply to the *discount capital gain:

(a) if the trust makes the discount capital gain in the way described in subparagraph (1)(b)(i)—you;

(b) if the trust makes the discount capital gain in the way described in subparagraph (1)(b)(ii) or (iii), and the other trust's *capital gain was made directly—the trustee of the other trust;

(c) if the trust makes the discount capital gain in the way described in subparagraph (1)(b)(ii) or (iii), and the trust's capital gain was made indirectly—the trustee of the earliest trust described in subparagraph (1)(c)(ii).

Such a choice by another trustee applies to you in a similar way to a choice made by you for a gain covered by paragraph (a).

Note: Instead, the cost base of the CGT asset may be able to be indexed (see subsection 110-36(1A)).

48 Section 115-125 (heading)

Repeal the heading, substitute:

115-125 Investors disposing of property used for affordable housing—gains made by individuals

49 Paragraphs 115-125(2)(b) and (c)

Repeal the paragraphs, substitute:

(b) one of the following subparagraphs applies:

(i) you make the discount capital gain from a *CGT event happening in relation to a *CGT asset that is your *ownership interest in a *dwelling, but not because you are a member of a trust that is an *AMIT;

(ii) you make the discount capital gain because you are a member of a trust that is an AMIT and that has made a discount capital gain;

(iii) because of section 115-215, Division 102 applies to you as if you had made the discount capital gain for a *capital gain of a trust covered by subsection (3); and

(c) where subparagraph (b)(ii) or (iii) applies—the trust's capital gain was made:

(i) directly; or

(ii) indirectly through one or more entities that are all covered by subsection (3);

from a CGT event happening in relation to a CGT asset that is an ownership interest in a dwelling; and

50 Subsection 115-125(5) (formula)

Repeal the formula, substitute:

$$\frac{\text{Percentage applying under paragraph (4)(a)}}{5} \times \frac{\text{Affordable housing days}}{\text{Total ownership days}}$$

51 Subsection 115-125(6)

Repeal the subsection, substitute:

Indexation may be able to be chosen as an alternative

(6) If the percentage that would result from this section for you and the *discount capital gain is more than nil, then, despite subsection (2), the following person may choose for this section not to apply to the discount capital gain:

(a) if you make the discount capital gain in the way described in subparagraph (2)(b)(i)—you;

(b) if you make the discount capital gain in the way described in subparagraph (2)(b)(ii) or (iii), and the trust's *capital gain was made directly—the trustee of the trust;

(c) if you make the discount capital gain in the way described in subparagraph (2)(b)(ii) or (iii), and the trust's capital gain was made indirectly—the trustee of the earliest trust described in subparagraph (2)(c)(ii).

Such a choice by a trustee applies to you in a similar way to a choice made by you for a gain covered by paragraph (a).

Note: Instead, the cost base of the CGT asset may be able to be indexed (see subsection 110-36(1A)).

52 At the end of Subdivision 115-B

Add:

115-126 Investors disposing of property used for affordable housing—gains made by trusts

Object

(1) The object of this section is to increase the discount percentage to the extent that the *discount capital gain relates to a *dwelling used to *provide affordable housing.

When this section applies

(2) This section applies to a *discount capital gain if:

(a) you are the trustee of a trust; and

(b) one of the following subparagraphs applies:

(i) the trust makes the discount capital gain directly from a *CGT event happening on or after 1 July 2027 in relation to a *CGT asset that is your *ownership interest in a *dwelling;

EXPOSURE DRAFT

(ii) the trust makes the discount capital gain because the trust is a member of another trust that is an *AMIT and that has made a discount capital gain;

(iii) because of section 115-215, Division 102 applies to the trust as if the trust had made the discount capital gain for a *capital gain of another trust covered by subsection (3); and

(c) where subparagraph (b)(ii) or (iii) applies—the other trust's capital gain was made:

(i) directly; or

(ii) indirectly through one or more entities that are all covered by subsection (3);

from a CGT event happening on or after 1 July 2027 in relation to a CGT asset that is an ownership interest in a dwelling; and

(d) the dwelling was used to *provide affordable housing on at least 1095 days:

(i) before the CGT event; and

(ii) during your, or the relevant trustee's or partner's, *ownership period of that dwelling; and

(iii) on or after 1 January 2018.

The days mentioned in paragraph (d) need not be consecutive.

Note 1: 1095 days is the same as 3 years.

Note 2: It may be possible to choose indexation as an alternative to a discount under this section (see subsection (5)).

(3) This subsection covers the following:

(a) a trust, other than a *superannuation fund or a public unit trust (within the meaning of section 102P of the *Income Tax Assessment Act 1936*);

(b) a partnership.

Note: For paragraph (a), a trust includes a managed investment trust.

Discount percentage

(4) The percentage resulting from this section is 50%.

Indexation may be able to be chosen as an alternative

(5) Despite subsection (2), the following person may choose for this section not to apply to the *discount capital gain:

(a) if the trust makes the discount capital gain in the way described in subparagraph (2)(b)(i)—you;

(b) if the trust makes the discount capital gain in the way described in subparagraph (2)(b)(ii) or (iii), and the other trust's *capital gain was made directly—the trustee of the other trust;

(c) if the trust makes the discount capital gain in the way described in subparagraph (2)(b)(ii) or (iii), and the trust's capital gain was made indirectly—the trustee of the earliest trust described in subparagraph (2)(c)(ii).

Such a choice by another trustee applies to you in a similar way to a choice made by you for a gain covered by paragraph (a).

Note: Instead, the cost base of the CGT asset may be able to be indexed (see subsection 110-36(1A)).

53 Paragraph 115-215(4)(a)

Omit "(disregarding section 115-20)".

54 Paragraph 115-225(4)(b)

Repeal the paragraph, substitute:

(b) is being worked out for the purposes of subsection 115-215(3) in connection with you having a resultant *discount capital gain to which any of the following sections applies:

(i) section 115-102 or 115-103 (about new residential dwellings);

(ii) section 115-125 or 115-126 (about affordable housing); or

55 Paragraph 115-225(4)(d)

Repeal the paragraph, substitute:

(d) is being worked out for the purposes of subsection 115-220(2) in connection with a beneficiary having a resultant discount capital gain to which any of the following sections applies:

(i) section 115-102 or 115-103 (about new residential dwellings);

(ii) section 115-125 or 115-126 (about affordable housing); or

56 Subsection 115-225(4) (note 1)

Omit "In addition, residency requirements for individuals apply under section 114-25.".

57 Subsection 115-225(4) (note 2)

Omit "subsections 115-102(5) and 115-125(6)", substitute "subsections 115-102(5), 115-103(3), 115-125(6) and 115-126(5)".

58 Subsection 119-5(2)

Omit ", including because of section 115-215 (about attribution of trust gains to beneficiaries),", substitute ", including as described in subsection (3),".

59 Paragraphs 119-5(2)(b) and (c)

Repeal the paragraphs, substitute:

(b) neither section 115-102 nor 115-103 (about new residential dwellings) applies to the capital gain; and

(c) neither section 115-125 nor 115-126 (about affordable housing) applies to the capital gain; and

(d) section 119-20 does not apply to the capital gain.

60 At the end of section 119-5

Add:

(3) Subsection (2) can cover a *capital gain you made during the income year because of:

(a) section 115-215 (about attribution of gains of trusts (other than AMITs) to beneficiaries); or

(b) section 276-80 (about attribution of gains of AMITs to members).

Note: Paragraphs (2)(a) to (d) still need to be met for the capital gain.

61 At the end of Division 119

Add:

119-20 Exception for gains relating to certain trusts and deceased estates

(1) This section applies to a *capital gain if any of subsections (2), (3) and (4) applies to the capital gain.

Testamentary trusts

(2) This subsection applies to a *capital gain if:

(a) you make the capital gain as a beneficiary of a trust estate; and

(b) you make the capital gain in relation to assessable income of the trust estate that is excepted trust income because of paragraph 102AG(2)(a) of the *Income Tax Assessment Act 1936* in relation to you; and

(c) neither subsection (5) nor (6) of this section applies in relation to the assessable income.

Deceased estates

(3) This subsection applies to a *capital gain if:

(a) you make the capital gain as a beneficiary of a deceased estate; and

(b) you make the capital gain in relation to assessable income of the deceased estate that, if the deceased estate were a trust estate that resulted from a thing described in subparagraph 102AG(2)(a)(i) or (ii) of the *Income Tax Assessment Act 1936*, would be excepted trust income because of paragraph 102AG(2)(a) of that Act in relation to you; and

(c) neither subsection (5) nor (6) of this section applies in relation to the assessable income.

Special disability trusts

(4) This subsection applies to a *capital gain if you make the capital gain as a beneficiary of a trust that is a *special disability trust at the end of the income year.

Income injection

(5) This subsection applies in relation to assessable income if the assessable income was derived directly or indirectly under or as a result of a *scheme that was entered into or carried out by any person for the purpose, or for purposes that include the purpose, of securing that subsection (2) or (3) would apply to a *capital gain made in relation to the assessable income.

Schemes involving property of deceased estates

(6) This subsection applies in relation to assessable income if:

(a) the assessable income is derived from property that:

(i) satisfies paragraph 102AG(2AA)(b) of the *Income Tax Assessment Act 1936*; or

(ii) would satisfy that paragraph on the assumption mentioned in paragraph (3)(b) of this section; and

(b) the Commissioner is satisfied, having regard to the circumstances in which the property came into the possession of the deceased person concerned and any other relevant matters, that:

(i) the property, or property from which the property is ultimately derived, became property of the deceased person concerned as a result of a *scheme; and

(ii) the scheme was entered into or carried out for the purpose, or for purposes that include the purpose, of causing the property, or property derived from it, to form part of the estate of the deceased person concerned; and

(iii) the scheme was entered into or carried out for the purpose, or for purposes that include the purpose, of securing that subsection (2) or (3) would apply to a *capital gain made in relation to assessable income derived from the property or property derived from it.

(7) In determining whether subsection (5) or subparagraph (6)(b)(ii) or (iii) applies, disregard a purpose that is merely incidental.

62 After subsection 276-85(4)

Insert:

Special rule relating to indexation

(4A) Subsection (4B) applies if (apart from that subsection) the *member has, for the income year, a *determined member component of a character relating to a *capital gain of the *AMIT where that capital gain of the AMIT is worked out:

(a) using a *cost base that includes indexation because of subsection 110-36(1A); and

(b) in circumstances where, had the member:

(i) made the capital gain; and

(ii) *acquired and held any relevant *CGT asset in the same way as the AMIT did;

that indexation could not have applied to the cost base.

(4B) For the purposes of section 276-80, in working out the amount of the *determined member component, work out the amount of the *AMIT's *capital gain remaining assuming that:

(a) in working out the amount of the capital gain before any reductions under the method statement in subsection 102-5(1) were applied, the *cost base was adjusted to remove the effect of indexation on its calculation; and

(b) the assumption in paragraph (a) did not result in any changes to the application of *capital losses, previously unapplied *net capital losses or quarantined amounts (including how much of each of those was applied) under that method statement to reduce the capital gain.

63 At the end of section 276-105

Add:

Special rule relating to indexation

(9) Subsection (10) applies if the *determined member component is of a character relating to a *capital gain of the *AMIT where that capital gain of the AMIT is worked out:

(a) using a *cost base that includes indexation because of subsection 110-36(1A); and

(b) in circumstances where, had the *member:

(i) made the capital gain; and

(ii) *acquired and held any relevant *CGT asset in the same way as the AMIT did;

that indexation could not have applied to the cost base.

(10) For the purposes of this section, in working out the amount of the *determined member component, work out the amount of the *AMIT's *capital gain remaining assuming that:

(a) in working out the amount of the capital gain before any reductions under the method statement in subsection 102-5(1) were applied, the *cost base was adjusted to remove the effect of indexation on its calculation; and

(b) the assumption in paragraph (a) did not result in any changes to the application of *capital losses, previously unapplied *net capital losses or quarantined amounts (including how much of each of those was applied) under that method statement to reduce the capital gain.

64 At the end of section 276-345

Add:

Law to be applied

(6) To avoid doubt, the discovery year amount and the base year running balance are to be worked out in accordance with the law applying for the purposes of assessments for the base year.

Example: A capital gain arising in the base year that, under the law applying for the base year, is a discount capital gain, continues to be a discount capital gain when the capital gain is reconsidered under this section at the discovery time.

65 At the end of section 276-415

Add:

Special rule relating to indexation

(5) Subsection (6) applies if a *determined member component of a character relating to a *capital gain of the *AMIT exceeds what the component would otherwise be because the assumptions in subsection 276-85(4B) apply.

Note: A determined member component may be adjusted to remove the effect of indexation if the component relates to a capital gain of the AMIT (see subsections 276-85(4A) and (4B)).

(6) For the purposes of paragraph (1)(b), treat the *determined trust component of that character of the *AMIT as if it were increased by an amount equal to the excess.

66 At the end of section 276-810

Add:

(3) In working out for the purposes of subsection (2) whether the trust has an *under or *over in the discovery year of a character relating to a *capital gain of the trust in the earlier income year, if:

(a) a *determined member component for the earlier income year is of a character relating to that capital gain; and

EXPOSURE DRAFT

(b) the determined member component exceeds what the component would otherwise be because the assumptions in subsection 276-85(4B) apply;

treat the trust's *determined trust component of that character for the earlier income year as if it were increased by an amount equal to the excess.

Note: A determined member component may be adjusted to remove the effect of indexation if the component relates to a capital gain of the trust (see subsections 276-85(4A) and (4B)).

67 Before subsection 960-275(1)

Insert:

Indexing amounts on an annual basis

68 Before subsection 960-275(1B)

Insert:

Indexation under subsection 110-36(1A) of a CGT asset's cost base—general

69 After subsection 960-275(1C)

Insert:

Indexation under subsection 110-36(1A) of a CGT asset's cost base—apportioned indexation factor for mixed residency cases

(1D) Despite subsection (1B) or (1C), in working out an indexation factor under that subsection for the purposes of working out the *capital gain of an individual, that subsection applies as if its formula were instead the formula in subsection (1E) if:

(a) the individual held the *CGT asset during the period:

(i) starting at the later of 1 July 2027 and the day the individual *acquired the asset; and

(ii) ending just before the *CGT event happens; and

(b) during some or all of that period the individual is not an Australian resident of a kind that is not a *temporary resident.

Note 1: For the purposes of this subsection, the ownership period could start earlier than subparagraph (a)(i) suggests (see section 112-190), but not before 1 July 2027.

Note 2: The residency status of other individuals may be relevant for paragraph (b) (see section 112-195).

(1E) The substitute formula for subsection (1B) or (1C) is:

$$1 + \left[(\text{Default IF} - 1) \times \frac{\text{Australian resident days}}{\text{Ownership period days}}\right]$$

where:

Australian resident days means:

(a) if the *CGT asset is *taxable Australian property—the number of ownership period days for which the individual is an Australian resident (but not a *temporary resident); or

(b) otherwise—nil.

default IF means the indexation factor that would otherwise apply under that subsection.

ownership period days means the number of days during the period mentioned in paragraph (1D)(a).

Note: If, on each ownership period day, the individual is a foreign resident or a temporary resident, then the substitute formula produces an indexation factor of 1. This means that no indexation applies.

70 Before subsection 960-275(2)

Insert:

Indexation under subsection 110-36(1) of a CGT asset's cost base

71 Before subsection 960-275(4)

Insert:

General rules

72 Subsection 995-1(1)

Insert:

deferral exemption has the meaning given by subsection 112-152(2).

deferral realisation event has the meaning given by subsection 112-152(1).

membership testing period has the meaning given by subsection 112-200(1).

EXPOSURE DRAFT

Taxation Administration Act 1953

73 Subsection 12-405(2) in Schedule 1 (method statement, at the end of step 2)

Add:

; and (c) adjusting the amount of any capital gain of the trust to be the amount remaining under subsection (7) of this section if subsection (6) of this section applies to the capital gain.

74 At the end of section 12-405 in Schedule 1

Add:

Special rule relating to indexation

(6) Subsection (7) applies if a *capital gain from *taxable Australian property of the trust has been worked out using a *cost base that includes indexation because of subsection 110-36(1A) of the *Income Tax Assessment Act 1997*.

(7) For the purposes of step 2 of the method statement in subsection (2), work out the amount of the trust's *capital gain remaining assuming that:

(a) in working out the amount of the capital gain before any reductions under the method statement in subsection 102-5(1) of the *Income Tax Assessment Act 1997* were applied, the *cost base was adjusted to remove the effect of indexation on its calculation; and

(b) the assumption in paragraph (a) did not result in any changes to the application of *capital losses, previously unapplied *net capital losses or quarantined amounts (including how much of each of those was applied) under that method statement in that Act to reduce the capital gain.

75 Subsection 12A-110(5) in Schedule 1 (method statement, at the end of step 2)

Add:

Also do so by adjusting the amount of any capital gain of the trust to be the amount remaining under

EXPOSURE DRAFT

subsection (12) of this section if subsection (11) of this section applies to the capital gain.

76 At the end of section 12A-110 in Schedule 1

Add:

Special rule relating to indexation

(11) Subsection (12) applies if a *capital gain from *taxable Australian property of the trust has been worked out using a *cost base that includes indexation because of subsection 110-36(1A) of the *Income Tax Assessment Act 1997*.

(12) For the purposes of step 2 of the method statement in subsection (5), work out the amount of the trust's *capital gain remaining assuming that:

(a) in working out the amount of the capital gain before any reductions under the method statement in subsection 102-5(1) of the *Income Tax Assessment Act 1997* were applied, the *cost base was adjusted to remove the effect of indexation on its calculation; and

(b) the assumption in paragraph (a) did not result in any changes to the application of *capital losses, previously unapplied *net capital losses or quarantined amounts (including how much of each of those was applied) under that method statement in that Act to reduce the capital gain.

Part 2—Application and transitional provisions

77 Application of amendments

(1) The amendments made by Part 1 of this Schedule apply in relation to assessments for the income year that includes 1 July 2027 and for later income years.

(2) To avoid doubt, subsection 276-345(6) of the *Income Tax Assessment Act 1997* (as added by Part 1 of this Schedule) can apply in relation to an assessment for a discovery year that is:

(a) the income year that includes 1 July 2027; or

(b) a later income year;

even if the base year ends before 1 July 2027.