EXPOSURE DRAFT

Inserts for

New residential dwellings & residential dwellings used for certain determined activities or purposes not subject to loss quarantining

Part 1—Preliminary

4 Definitions

Note: Expressions have the same meaning in this instrument as in the *Income Tax Assessment Act 1997* as in force from time to time—see paragraph 13(1)(b) of the *Legislation Act 2003*.

In this instrument:

announcement time means 7.30 pm, by legal time in the Australian Capital Territory, on 12 May 2026.

certificate of occupancy, for a dwelling, means a certificate (however described) that:

(a) is issued or recognised by the relevant Australian government agency or local governing body responsible for issuing or recognising certificates in the area in which the dwelling is located; and

(b) certifies that the dwelling is suitable for residential purposes.

National Disability Insurance Scheme has the meaning in section 9 of the *National Disability Insurance Scheme Act 2013*.

special disability accommodation has the meaning in section 5 of the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020*.

the Act means the *Income Tax Assessment Act 1997*.

Section 5

Part 2—New residential dwellings

5 Requirements for a new residential dwelling

(1) Under subsection 26-160(4) of the Act, each of subsections (2), (4), (6) and (8) determines requirements in relation to you and a residential dwelling (the ***test residential dwelling***) for the purposes of subsection 26-160(3) of the Act.

Basic case

(2) The requirements are:

(a) you acquired an ownership interest in land that does *not* have a residential dwelling constructed or installed upon the land at a time (the ***acquisition time***); and

(b) the land is located in Australia; and

(c) after the acquisition time, the test residential dwelling is constructed or installed on that land; and

(d) your interest in the test residential dwelling is a legal interest that is capable of being acquired by another entity.

(3) The test residential dwelling does *not* satisfy the requirements of subsection (2) if a certificate of occupancy for the dwelling was first issued before the announcement time.

Special case: Adding more residential dwellings to a parcel of land

(4) The requirements are:

(a) you acquired an ownership interest in land, on which there was at least one residential dwelling, at a time (the ***acquisition time***); and

(b) the land is located in Australia; and

(c) after the acquisition time, the test residential dwelling is one of multiple residential dwellings on the land, the number of which exceeds the number of residential dwellings that were on the land at the acquisition time; and

(d) your interest in the test residential dwelling is a legal interest that is capable of being acquired by another entity independently of any other dwelling referred to in paragraph (c).

(5) The test residential dwelling does *not* satisfy the requirements of subsection (4) if a certificate of occupancy for the dwelling was first issued before the announcement time or the acquisition time.

Special case: Acquiring a dwelling before a time no more than 24 months after certificate of occupancy issued

(6) The requirements are:

(a) you acquired an ownership interest in the test residential dwelling in Australia from another entity at a time (the ***acquisition time***); and

(b) before the acquisition time, the test residential dwelling was a new residential dwelling for the other entity; and

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(c) the acquisition time is no more than 24 months after a certificate of occupancy was first issued for the test residential dwelling; and

(d) your interest in the test residential dwelling is a legal interest that is capable of being acquired by another entity.

(7) The test residential dwelling does *not* satisfy the requirements of subsection (6) if a certificate of occupancy for the dwelling was first issued before the announcement time.

Special case: converting a building to residential dwelling

(8) The requirements are:

(a) you acquired an ownership interest in land, on which there is a building which is *not*, and does *not* comprise, any residential dwellings, at a time (the ***acquisition time***); and

(b) the land is located in Australia; and

(c) after the acquisition time, the building is converted into, or converted into a building that comprises, the test residential dwelling; and

(d) your interest in the test residential dwelling is a legal interest that is capable of being acquired by another entity independently of any other residential dwelling if the building comprises 2 or more residential dwellings.

(9) The test residential dwelling does *not* satisfy the requirements of subsection (8) if a certificate of occupancy for the dwelling was first issued before the announcement time or the acquisition time.

Schemes entered into for a purpose of treating a residential dwelling as a new residential dwelling

(10) For the purposes of this Part, disregard the effects of a scheme if it would be reasonable to conclude that a purpose of the entity, or one of the entities, who enters into or carries out the scheme or any part of the scheme is to treat a residential dwelling as a new residential dwelling to obtain a tax benefit.

Part 3—Residential dwellings for a determined activity or purpose

6 Residential dwellings used for certain determined activities or purposes not subject to loss quarantining

Under paragraph 26-155(2)(c) of the Act, the following activities and purposes for which a residential dwelling is used or held are determined for the purposes of subsection 26-155(1) of the Act:

(a) leasing the residential dwelling, or making it available for lease, for the sole purpose of providing residential accommodation to an individual who receives support for specialist disability accommodation under the National Disability Insurance Scheme;

(b) leasing the residential dwelling, or making it available for lease, to an eligible community housing provider for the purpose of allowing it to provide affordable housing in the performance of its activities as a community housing provider;

(c) leasing the residential dwelling, or making it available for lease, for the sole purpose of providing residential accommodation to an Australian government agency or a local government body for the purpose of providing public housing;

(d) leasing the residential dwelling, or making it available to lease, where the residential dwelling is a dwelling of an active build to rent development.

Note 1: Where residential premises are used or held for any of the activities or purposes set out in this section, deductions relating to the residential premises will *not* be quarantined under subsection 26-155(1) of the Act.

Note 2: Part 2 of the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020* determines whether an individual is eligible to receive support for specialist disability accommodation under the National Disability Insurance Scheme.

Note 3: Section 980-5 of the Act explains when a dwelling is used to provide affordable housing.

Part 10—Application and transitional provisions

7 Application of the instrument as originally made

This instrument as originally made applies to the 2027-28 income year and later income years.

8 Transitional rule: builders or developers holding residential dwellings prior to announcement

(1) For the purposes of paragraph 5(6)(b), treat a residential dwelling as a new residential dwelling of a builder or developer where:

(a) the builder or developer has an ownership interest in the dwelling before the announcement time; and

(b) a certificate of occupancy for the dwelling was first issued before the announcement time; and

(c) the builder or developer holds the dwelling at all times after the announcement time for the purposes of sale.

(2) Where subsection (1) applies, disregard the operation of subsection 5(7).